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Centre for Work + Life



Work, Family and the Proposed National Employment Standards: A Submission to the Australian Government

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EXECUTIVE SUMMARY:

The Centre for Work + Life is a research centre at the University of South Australia. It is part of the Hawke Research Institute for Sustainable Societies. It was founded in January 2006 and is funded by the University of South Australia, the Australian Research Council (through various grants) and industry partners (including the Brotherhood of St Laurence, Lend Lease Communities, state governments, the National Centre for Vocational Education and Research, unions and community groups). It is led by Professor Barbara Pocock with a staff of eight researchers and four post graduates. Its charter, publications, personnel and activities can be viewed at <http://www.unisa.edu.au/hawkeinstitute/cwl/default.asp>.

The Rudd Government's election platform included many important measures aimed at relieving the pressure on working families.

The new *National Employment Standards (NES)* are one of these. They will replace the old Australian Fair Pay and Conditions Standard with new statutory rights for all workers. This paper offers some commentary on these.

These new national standards represent important advances on the hollowed-out standards of *Work Choices*. They are to be welcomed. By and large they represent the reinstatement of conditions and entitlements that preceded *Work Choices*, rather than an advance to meeting the changed and changing circumstances of working carers in Australia. They represent a significant - if essentially defensive - recovery and reinstatement of labour standards, rather than a large leap forward. If implemented fulsomely, they enact the promise of an element of *Forward with Fairness: Labor's Plan for Fairer and More Productive Australian Workplaces* (April 2007).

The effective period of operation of *WorkChoices* was quite short. However, it was preceded by almost a decade of deterioration in labour market regulation in respect of work and family standards (including enforcement). This deterioration especially affected low paid workers, women and youth. This chapter of Australia's industrial history, especially the particular deteriorations under *WorkChoices*, should not be permitted to 'acclimatise' Australia's workplaces and system to lower labour standards and regulation. It should not be permitted to cast a long shadow over the fairness and adequacy of employment regulation in Australia, by enculturating a long term concession in proper labour market regulation.

The mandate for serious repair lies in the new Commonwealth Government's election to enact *Forward with Fairness* in its fullness. There is no reason to adopt FWF in scant or minimalist terms.

Looking ahead, it is vital that Australia's work regulation include provisions to meet the changing circumstances of the labour market and its participants - employers and employees - and their households and dependents.

There remains plenty of scope to address other pressing issues in the work and family, work-life areas of public policy which shape the experiences of millions of Australian men, women and children, as well as the economic outcomes and social coherence of Australia.

However, this submission confines itself to the mandate of *Forward with Fairness* (FWF), advocating that the detail of the National Employment Standards is very important in shaping how and to what extent, the new Standards assist working men and women and their households to operationalise the Government's mandate to assist Australia's working families to 'face the daily challenge of balancing the pressures of work with the demands of family life' (FWF: 7).

Our main recommendations relate to:

- the specificity of definitions of ‘reasonableness’;
- the processes of discussion;
- the means of appeal;
- the need for monitoring, review and research
- capacity for Fair Work Australia to hear and decide test cases and to resolve disputes between employees and employers in relation to the National Employment Standards.

This paper addresses the National Employment Standards (NES) in the context of the Government’s larger commitments and objectives, and in the context of the current labour market.

The Government’s Plan and Promise

The Rudd Government was elected on 24th November 2007 on six main policy planks:

1. An education revolution
2. Decisive action on climate change
3. Balance and fairness in the workplace
4. Maintaining our national security
5. A strong economy delivering for working families
6. A national plan to fix hospitals

The Government promises significant new possibilities to reshape the experiences of working families. The Prime Minister foreshadowed this in his victory speech when he said:

Australia’s long-term challenges demand a new consensus across our country. I’m determined to use the Office of Prime Minister to forge that consensus. It is necessary for us to embrace the future as a nation united, forged with a common vision... Everything I have said through this election campaign, and in the year leading up to it, is our agenda for work: to start building a world class education system; to embrace the long-term funding needs of our public hospital system; to act, and act with urgency, on the great challenges of climate change and water; to build a 21st century infrastructure for a 21st century economy; and to get the balance right between fairness and flexibility in the workplaces of the nation; and to ensure by that and by other practical assistance to working families in Australia that the great Australian fair go has a future and not just a past.

The first acts of the new Government show that the Prime Minister and his Government have a strong personal, legislative, consultative and administrative commitment to assisting working households meet the challenges of work, and to seeing greater equity and fairness between them as they do so.

The NES are an important part of this commitment. It is vital that a robust interpretation of electoral commitments is implemented. The gap between weak and robust interpretation is the gap between significant, enforceable change for working families and changes which might make little effective difference especially for those who lack power in the labour market.

The Labour Market Context

It is worth bearing in mind the state of the Australian labour market which forms the background to policy implementation. The past 30 years have seen major changes, and we highlight twelve significant factors which are the context for the implementation of the NES:

1. long term growth in female participation as women make up an increasing proportion of the labour market;
2. rapid growth in part-time employment, much of it constituting a form of 'constrained choice' as women returning from childrearing in particular 'downshift' to lower paid, lower hours employment, often well below skills levels;
3. a wide gap between the actual and preferred hours of workers, with 60 per cent of workers in our 2007 randomised sample of Australian workers working different hours than they would prefer, with two-thirds of these working longer than they would like (Pocock, Skinner and Williams 2007). Such poor fit between actual and preferred hours is strongly associated with poor work-life interaction;
4. growth in full-timers who work long hours, with 20 per cent of full-timers now working more than 50 hours a week. Long hours of work are associated with poor work-life outcomes in our 2007 study;
5. many workers (55 per cent in our 2007 sample) feeling 'overloaded' at work, with such perceptions of overload strongly associated with poor work-life interaction;
6. increased casualisation of work, with around a quarter of employees now working on casual terms;
7. growth in contracting and self-employment, some of which is not genuine self-employment;
8. while official unemployment is low by historic measure, it should be borne in mind that unemployment and under-employment are unevenly spread and continue to affect workers in many fields and locations, especially in low paid occupations like cleaning, and areas of the service sector;
9. while collective bargaining has spread to many areas of employment, it remains the case that many employees are not - and not likely to ever be - covered by a collective agreement, given the nature of their workplaces and industries. This makes multi-employer agreements and industry standards vital in some areas of employment if there is to be meaningful regulation of work;
10. significant inequities continue to differentiate the experiences of women and men at work, with wide (and in some cases, widening) gaps between women and men;
11. very uneven access to various forms of leave and flexibility across industries and occupations, with particular problems for working carers. For example, the majority of Australia's workers do not have access to flexibility in their start and finish times. The inequity is also very marked in relation to basic provisions like paid sick and holiday leave, and access to both unpaid and paid maternity and parental leave;
12. the entry of many young workers into the labour market in the past decade, at a time of 'talking down' workplace protections and amidst great legislative change and complexity, means that many young or re-entering workers lack basic literacy about their rights at work, how to find out about these and how to find help to enforce them where they

need it.

Our research about working life in Australia through a range of projects leads us to especially emphasise the need for (in accord with the Government's platform):

- National Employment Standards (NES) that apply to 'all Australian employees...regardless of their industry or occupation' (FWF: 3, 7);
- reduced complexity and confusion about rights and responsibilities (FWF: 6);
- a system that gives certainty to employees and employers (FWF: 6);
- certainty about hours of work in particular (FWF: 7);
- job security (FWF: 7);
- a comprehensive 'decent, relevant and enforceable minimum wages and conditions' regime (FWF: 7);
- NES standards that 'cannot be removed or replaced' (FWF: 7).

Commentary on National Employment Standards (NES)

Threshold issues

We strongly support the provision of NES in general terms. Their provisions should be set out in simple terms, be widely available to employees, and be relevant to all employees unless categories of workers are expressly excluded. Such standards can help remediate some of the legacy of *WorkChoices*: that is weak standards, poor knowledge about basic rights, and an absence of basic protections.

We note that there appears to be some distance between the provisions as set out in the Exposure Draft and the proposed legislation. We recommend that they be made consistent.

We also note that the relationship between the NES, awards and collective agreements is not clear in the Exposure Draft. We recommend that NES should function as floors but not ceilings: that is, awards should be able to include provisions which improve upon (but do not go below) the NES, and of course collective agreements should include the same possibility for advancement but not net reductions.

Giving practical meaning to many aspects of the NES requires simple but effective external powers of review and in some cases arbitration. It is vital that Fair Work Australia (FWA) have such powers, including the power to conduct reviews of decisions made in relation to many elements of NES, if these national employment standards are to have real meaning. This is a threshold issue. Without it, many women, young people and those with limited workplace power will be unable to practically access the NES.

Finally, it is vital that the NES be accompanied by effective protection from unfair dismissal so that employees who enquire about the NES, seek flexibilities or to access other elements of NES will not be vulnerable to dismissal and/or other detriment. Proper enforcement and information are vital in this respect.

1. Employees without award coverage

The Government is committed to providing minimum standards for all employees. We see a strong case for a general minimum wage and award for non-award workers as a basic provision in a comprehensive set of national employment minima.

Employees without award coverage include those with little bargaining power and those vulnerable to exploitative behaviour on the part of an employer. Women, young workers and unskilled workers have traditionally been over-represented amongst workers outside the award system. Legal protections for such employees are necessary. They should provide employees with minimum standards that include both the NES and provisions in the allowable categories of award provision.

The provision of protections through an interim award, complementing the NES and developed in consultation with employers and unions with potential coverage, would be of very considerable assistance to these employees. Such a general award should operate until comprehensive industry or occupational awards, where appropriate, can be developed.

With minimum wages essentially the business of awards and enterprise agreements, the key provisions in the NES include:

2. Maximum working hours

Our research amongst working families suggests that working time issues are amongst the most important – alongside minimum wages – in shaping the quality of working life and its effects on workers and their households (Masterman-Smith and Pocock 2008 forthcoming). Several dimensions of working hours are critical including total hours worked; ordinary hours; overtime rates and overtime requests and refusal; the configuration of hours over the working day, week and year; the extent of worker say over working time; and the capacity for review of employer decision.

Under the NES 38 hours are to operate as the standard working week, with provision that an employee can be ‘required’ to work reasonable additional hours in the week. There will be no provision for unfettered averaging over a period greater than a week. (Such averaging may be possible through awards but not where the hours in any week are unreasonable). Awards will be able to include averaging provisions but overall working hours should not be unreasonable.

This removes a pernicious aspect of *WorkChoices* which, by allowing averaging over a very long period, effectively removed effective limits on the length of individual working weeks. The new provision does not restrict long working hours per se, except to preserve the requirement that additional hours not be unreasonable.

This is well below the standard now adopted in many developed countries which set maximum total working hours per week (eg at 48 hours in the European Directive). This is a step which we strongly recommend be considered in Australia, in view of the mounting evidence about the public and private health costs of long hours, their effects on families and individuals and their association with diminishing productive returns. Much of this evidence was canvassed and accepted by the Australian Industrial Relations Commission in the 2001/02 Reasonable Hours Test Case.

However, in terms of the proposal before us in relation to working hours in the NES, we find it weak in several respects. The NES as drafted does not discuss what is to occur if an employee refuses extra hours as unreasonable when ‘required’ to work them.

The lack of procedure if an employer insists and employee refuses to work additional hours, which are seen by an employer as reasonable and by the employee as unreasonable, will mean uncertainty in workplaces. The current wording gives employers the opportunity to ‘require’ extended hours. While the Exposure Draft sets out some criteria that are relevant to the consideration of what is reasonable, it is not clear how disagreements are to be resolved, what protections exist for employees who refuse overtime, and how the balance of interests between employer and employee are to be resolved or weighed up.

This is a critical issue for many workers. Many find that the imbalance between worker and employer is expressed in the sorting of preferences over long working hours. The large proportion of Australians who currently work more hours than they would prefer suggests that – even in professional and skilled occupations where one would expect employee’s to exercise voice relatively confidently – workers need backing to implement their preferences and contain working hours to genuinely ‘reasonable’ levels. There is a real danger, that the normalization of extended hours of overtime creates new barriers to the employment of workers with caring responsibilities who cannot rise to the ‘high bar’ of overtime expectations and norms. This will indirectly discriminate against women.

Further there is no guidance about how the various factors (such as risk to health and safety, personal circumstances (including family responsibilities) and the needs of the enterprise, periods of notice, etc) are to be interpreted.

These uncertainties make a process of appeal and resolution of critical importance if the notion of ‘reasonable overtime’ is to have effective meaning. Such clarification and appeal should be made possible through *Fair Work Australia*.

Further, we recommend that some additional factors be considered in weighing up ‘reasonableness’ including: all forms of caring responsibilities, study commitments and availability of transport.

The framing of the standard, and its reading in conjunction with award provisions, should put beyond doubt the capacity of the combined effects of the NES, awards and agreements to detail a range of matters relating to working hours and not just maximum hours, averaging and overtime. Such matters should include:

- Starting and finishing hours of the normal working day/shift;
- Shift patterns, cycles, organisational arrangements;
- Amount of notice required for any request to work additional hours;
- Definitions and arrangements for part-time and casual employment;
- Change of status from casual/temporary to permanent after a set time;
- Consultative and dispute procedures regarding proposals to change working hours numbers & patterns.

We do not support that the NES expressly provide that an employer will not be in breach of the NES when an employee works additional hours ‘of their own volition’. The reality of ‘volition’ is not always obvious in workplaces. Studies of the impact of a lack of specified and detailed rights under *WorkChoices* on vulnerable workers confirms the unequal power of individual employees and employers and the capacity of an employer to directly and indirectly pressure employees to ‘agree’ to arrangements that are not in their health, caring or other interests. An employee

working unsafe excessive hours sets a bad example to other employees, who can feel pressured to follow suit.

Employees working less than 38 hours

We also recommend that employees working less than full-time hours should not be regarded as having ‘free time’ that can be easily called upon for additional paid work. They generally work on a part-time basis in order to manage other commitments, including caring and study. Such commitments can involve, for example, child care bookings and costs or lectures that cannot be changed, even with notice.

The maximum hours standard should define ‘unreasonable hours’ by reference to the hours normally worked.

Pieceworkers

Studies of home-based and off-site work show that remuneration by piecework can place pressure on employees to work long hours in order to obtain a living wage. Regulation and limitation of working hours is required for the protection of the health, safety and work/life balance of pieceworkers and to encourage employers to offer rates that are fair and proper.

3. Requests for flexible working arrangements

The NES sets out a right to request flexible working arrangements for parents of a child under school age who have responsibility for the care of a child under school age. FWF states that ‘employers will only be able to refuse any request on reasonable business grounds’ (Exposure Draft: 8).

This is an important right which implements the Governments commitment to flexibility for working families: however, its significance lies in its real effect. An unenforceable right, confusion about the meaning of reasonableness, the absence of any transparency and review, can all contribute to confusion and uncertainty at the workplace for employers and employees and the appearance of a right without real effect (FWF: 8).

The Exposure Draft is correct in stating that flexibility is often best dealt with at the workplace. But the key aspect of such an approach is the *cultural and regulatory framework within which such flexibility is negotiated*. This is why many countries exhort employers to adopt flexible employment practices, assist them to do so, and establish a regulatory framework which gives employee’s real voice and a clear process to guide employers and employees as they negotiate.

It is also the case that some flexibilities are *not* best negotiated at the workplace level: paid maternity leave being an outstanding example. Many small and feminised workplaces are unlikely to ever grant such flexibilities without government leadership and support, including regulation.

It is clear from experience in the UK, Germany and the Netherlands that such rights have many positive benefits for workers and workplaces, as well as for the well-being of families and dependents. There have been relatively low rates of appeal or refusal. In this light, clarity about the meaning of ‘reasonable business grounds’, and opportunities for appeal, both internal to the firm and beyond it, will assist businesses and workers. Protection from discrimination for those who seek flexibilities are also important.

In the Australian case, many workplaces have cultures which do not support an easy transition to part-time work for full-timers. Many have little experience of allowing workers to work from home. This is so even in workplaces with high levels of part-timers, who recruit to part-time jobs, but do not facilitate the transition of full-timers into them. This transition path is especially

important to parents returning to work after children, many of whom at present (especially mothers) must change occupations, workplaces and even industries in order to get the working conditions they need as working carers.

Such cultures are not easy to change. They sometimes require support, models, pilots and advice. Most importantly, workplaces implementing changes which are against dominant cultures require clarity. Employees who are using provisions like a right to request in environments where they are new, require an opportunity for face to face discussion and the possibility of external review of processes.

The 'Request for flexible working arrangements' proposal is an improvement on the pre-*Work Choices* 'right to request' (achieved in the AIRC) in some ways in that it does not apply only to flexibility in the form of part-time work but 'might include part-time work, non-standard start of finish times, working from home, working 'split shifts' or job sharing'. Further, as a national employment standard embedded in legislation it will be available to all employees (not just those covered by awards with such provisions). This is important. Finally, if enacted this provision would be available to all workers with children under school age, not just those returning from parental leave. This gives good potential access to both men and women workers. These are important provisions in coverage and content.

However, the main difficulty with this standard is its lack of clarity about definitions, processes and review. Implementation where refusal can be brushed off with a letter and on very wide grounds –will have little practical effect beyond giving the appearance of a right. It is important that the legislation provide more practical and effective implementation¹.

It is also worth noting that a measure like the right to request flexibility is likely to be of particular assistance to women, so the failure to treat enforcement of such a measure in the same robust and meaningful as any other right is quite possibly to indirectly discriminate against women.

The international evidence about these rights suggests that many employers already meet such requests, but that their implementation increases the spread of flexibility arrangements, helps change workplace cultures, assists parents to better meet family needs, and that very few requests go to appeal. UK evaluations of such measures have led to their enlargement.

Eligibility

We strongly support the enactment of this facilitative right which is 'light touch' in its effects on employers but can have significant affects on work culture and individual circumstances.

The UK right to request gives flexibility to parents of children under six, or of disabled children up to 18 years and carers of adults. Much wider eligibility exists in other countries where in some cases no reasons for the request are required and the right is available to all workers.

We recommend the extension of eligibility for access to flexible working arrangements to those with care responsibilities more generally (not just parents of children under school age but parents of school aged children generally, and also those with responsibility for caring for a dependent adult). The right would also be useful for those engaging in further education and training. This measure would facilitate vocational education and training and help address skills shortages into the future.

¹ See Charlesworth and Campbell (2008) 'Right to request regulation: A panacea for work-family imbalance' Non-refereed Paper, Proceedings of the 22nd Conference of AIRAANZ, Melbourne, 6-8 February 2008, for an excellent discussion of these issues set in international context.

At a minimum, the right should be extended to parents caring for a disabled child up to age 18.

Consultation: A requirement to meet where requests are not agreed to

We recommend that there should be a requirement that employers, where they do not agree to the request, should be required to meet with employees to discuss the request, explain reasons for their decision, and hear the employee's reasons for the request. Most employers will have no difficulty doing this, and many would do it as a matter of course.

The UK legislation gives a good model of the way forward on this issue, with a requirement for a meeting within 28 days of receiving a request where it is not granted.

The regulation should make clear that employees can take a supporter to such a meeting.

Criteria for refusal and Right of appeal

Employers can refuse such requests if they have 'reasonable business grounds'. Further, the Draft states that *Fair Work Australia* will not be empowered to impose the requested working arrangements on an employer' (Exposure Draft: 12).

The grounds for refusal are not well defined in the Exposure Draft. Businesses and employees will benefit from greater clarity around these definitions. They should give some assessment of the meaning of terms like 'business needs'. The UK Government gives some specificity about these grounds, and provides a model of how they might be more clearly laid out to assist employers and employees.

The grounds for refusal should expressly prohibit discrimination, defined broadly.

Further, we recommend that the decision should also consider the impact of refusal upon the employee, in the interests of – to coin a phrase – a 'fair go all round'. To weigh up only the potential costs and difficulties for business without any consideration of the impact on employees is unfair.

There should be some opportunity for workers to test the validity and scope of specific facts tendered as part of refusal. Such appeals should be possible within the workplace through a simple process.

We recommend that employees be given 14 days to appeal the refusal of their request, and that businesses establish processes that permit appeal, ensuring that refusals are not arbitrary or 'kneejerk', and unfairly refused by first line supervisors, but clearly thought through and following organisational and regulatory procedures. There might be good reason to limit internal appeal access in small businesses; we do not believe that this extends to the possibility of external appeal, however.

Such appeals might go to the facts of claims, or to the size of claimed 'needs' or 'effects' where the right is not granted initially. Without some specificity, this right will be effectively unavailable to those who need it most: that is, those whose employers are difficult to approach and lack experience with flexible provisions.

Beyond the workplace refusal of a request for flexible arrangements should be open to review by *Fair Work Australia* as an independent umpire. We see no reason why a right of appeal to an external body, and examination of the merits of the application and refusal should not be available, especially as they can detrimentally impact on the employment opportunities and security of low paid employees (Elton et al. 2007; Pocock et al. 2008 forthcoming).

Employees can be forced out of employment when they make a request for flexibility or because of a lack of access to flexible working arrangements. The practices of some employers evident in

our study of the impact of *WorkChoices* on vulnerable workers supports a right of external appeal and a transparent process beyond the workplace. Without it, this facilitative right will not have real meaning for many women in low paid, casual employment whose requests for changes in hours sometimes meet with effective loss of employment. We do not see any reason why employees in small businesses should not have the same right to make an external appeal to FWA as any other employee.

Employees should be expressly protected from detriment which arises from their request for flexibility or for their use of flexible arrangements. This detriment should be defined to include job security, wages, location, and other employment conditions including promotion and training. We do not see any reason why employees in small businesses should not have the same protection from detriment where they make request.

It is hard to bring to mind meaningful employment standards that expressly exclude any form of review, appeal or enforcement. Why should a right to request flexibility be any different to any other form of labour right, unless it is viewed as an inferior right, or a right without effect? Such a right may be more of an empty gesture than a real advance, especially for those with limited effective voice at work. It is especially important to ensure that this right has effect across workplaces regardless of size and circumstance.

Tools, models and support for workplaces

We recommend that support for businesses in enacting this right be provided. For many businesses, however, such support will be unnecessary as many already readily and regularly discuss employee's preferences and meet them by mutual agreement. Simple model forms and processes will assist workplaces, and specific support and resources for small businesses may be appropriate.

Research

Experience in other countries has established the importance of evaluation of new policy initiatives like the right to request flexibility. This allows assessment of the costs and benefits of such measures, guidance about how their operation can be improved and a good platform of evidence from which to consider next steps. We recommend a program of research which reviews implementation and outcomes.

3. Parental leave:

Two spouses will be entitled to take a year of unpaid parental leave at separate times, or one partner can ask for a years extra leave. This can only be refused on 'reasonable business grounds'.

This is an important right for working parents. However, current eligibility rules leave many without access to unpaid leave (for example those who changed jobs in the past year and many casual workers). The proposed approach does not provide paid leave for the majority of working women who lack it.

We recommend that unpaid leave should be available to all employees with more than 6 months employment with their current employer. Further, some unpaid leave should be available to all employees (including casuals and employees with less than 6 months service). We recommend a minimum period of unpaid leave for *all* employees of at least 14 weeks.

The absence of specific detail about the grounds for reasonable refusal for a request for extended unpaid leave is a serious deficiency in relation to this provision. It will contribute to uncertainty and possibly to wrong decisions. As set out above in relation to the right to request

flexibility, the right to request extended unpaid parental leave should be accompanied by:

- clarity about the grounds for refusal
- a process for internal appeal
- the possibility of external appeal to FWA, both on the grounds of wrong process or inaccurate facts (as in the UK right to request provisions)
- prohibition of discrimination as a result of making or being granted a request, including detriment in relation to job security, wages, location or other employment conditions

It is unclear why parents are prevented from taking leave simultaneously. Unless they share the same employer, there would not seem to be any reason why employees should be precluded from taking extended parts of their separate years (if they decide to both take a year each) simultaneously. This will suit some families and since there is nothing in FWF that would suggest otherwise, we suggest it should be a possibility that parents are able to request.

We also support the provision of paternity leave from a date around birth, but that this date should not be narrowly confined to the birth date.

Paid maternity leave

Almost 100 years after the ILO declared it a basic and essential right for working women, and a founding principle of equal opportunity for women at work, we believe it is past time to implement paid maternity leave. We recommend that the NES include provision for a period of at least 14 weeks paid maternity leave for all women calculated at a rate not less than the prevailing federal minimum wage (plus 9 per cent superannuation) and paid on a fortnightly basis to the woman employee. We recommend that the government fund such a payment.

4. Annual leave:

The basic entitlement of 4 weeks (or pro rata for part-timers) is incorporated into the NES. Awards may provide more for shift workers or allow cashing out, but the legislated minimum standard remains as it has been for some decades.

This is also an important right for working parents. However, the lack of paid annual leave for the large number of casual workers, who are working parents and especially mothers, leaves them without any paid holiday, which is a serious difficulty. Countries like New Zealand have recently addressed this issue through the provision of paid annual leave for workers regardless of their casual or permanent status. We should aspire to the same condition and so we recommend that a period of 4 weeks (or pro rata) paid annual leave for all workers should be a reasonable aspiration for the NES.

Cashing out of annual leave should be prohibited for workers except on termination. Such cashing out is not anticipated in FWF and it is hard to justify such an arrangement except in some extreme situations. An annual holiday is associated with well-being, good health, opportunities for shared family time, and better workplace relations. It should be a basic employment provision for workers.

5. Personal leave

This standard confers 10 days paid personal/carers' leave per year, and 2 days paid compassionate leave and 2 days unpaid carer's leave on request as needed. The requirements for notification and justification seem less specific, although awards may perhaps include such

detail. Employees should not be out of pocket, relative to their usual take home pay (excluding overtime) including shift allowances, when they take such leave.

This is an important provision for parents. It preserves existing benefits rather than advances them.

6. Community service leave

This leave gives unpaid leave (to a 'reasonable' level) to those involved in voluntary emergency services and jury duty. There may be some exemption for small business. As for personal leave, workers should be compensated for usual shift loadings when they take such leave.

7. Long service leave

The Government will work towards a new national approach to long service leave, given the diversity of arrangements around the nation. The NES does not specify a specific amount but says employees must receive the entitlement as set out in an applicable award or notional agreement preserving State awards (NAPSA).

8. Public holidays

There is an inconsistency between FWF and the Exposure Draft in that FWF stated that employees working on public holidays would be entitled to an appropriate penalty rate or other compensation (FWF: 8). We recommend that the NES make clear that employees are entitled to compensation if they work on a public holiday and that employees have recourse to FWA if they are required to work on a holiday and do not want to. Employees need protection from being forced to work on public holidays where their families face a detriment.

9. Notice of redundancy and termination:

We recommend that redundancy and termination entitlements should be available to long term casual employees

10. Fair Work Statement

We support this provision and agree that it should contain basic details of the NES, advice on appeals and the role of FWA, as well as setting out rights freedom of association.

11. Research

The implementation and effect of the new standards, and future iterations of these standards, their evolution to meet the changing demands of Australian workplaces and society, will all benefit from robust research which monitors and evaluates. Australia has seen the run-down of its research capacity in the general field of workplace and industrial analysis over the past decade. Data sources are now inadequate to answering basic questions about pay, conditions and work and family provision. The absence of comprehensive longitudinal analysis is especially obvious and detrimental.

In this light we recommend the conduct of an Australian Workplace Industrial Relations Survey as soon as possible. We also recommend that the Government work with academic experts to develop resources, and to evaluate specific programs and initiatives to build on the lessons of positive and negative experience, to promote and accelerate the essential cultural and practice

changes that will benefit working women and men, their dependents, and Australia's workplaces. Such evaluation should also be attentive to the impacts on gender equity and equal opportunity for women.

Conclusion

In sum, we welcome the establishment of a new set of National Employment Standards.

The NES, if amended along the lines we recommend, represent some recovery from the hollowed-out standards of *Work Choices*. However, by and large (with the exception of our recommendation on paid maternity leave) they represent the reinstatement of conditions and entitlements that immediately preceded *Work Choices*, rather than an advance to meeting the changed and changing circumstances of working carers in Australia. They represent a defensive recovery, rather than an innovative leap forward.

It is vital that Australia's labour regulation include provision for the arbitration of test cases that allow significant responses to the changing circumstances of the labour market and its participants – employers and employees – and their households and dependents. Such a system must also provide effective recourse for employees in support of the practical enactment of their rights, ensuring that FWA has the capacity not only to hear and decide test cases but also to resolve disputes at the workplace level.

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