

Inquiry into the operation and adequacy of the National Employment Standards

Mining and Energy Union Submission to the House of Representatives Standing Committee on Employment, Workplace Relations, Skills and Training

March 2026



**Mining &
Energy
Union**

Submission: Inquiry into the operation and adequacy of the National Employment Standards

A. Introduction

1. The Mining and Energy Union (hereafter **MEU**) is the principal trade union representing employees in the coal mining industry. Our membership also includes workers in power stations, coal export terminals, locomotive drivers in the Pilbara, and those employed in metalliferous mining. Altogether, we represent approximately 25,000 workers across Australia's mining and energy industries.
2. Our members are based in regional communities across the country. They work in coal mines in the Hunter Valley, Central Queensland, the Illawarra, Lithgow and Mudgee in Western New South Wales, Collie in Western Australia's South West, and Tasmania. They are also employed in metalliferous mines in the Pilbara and Far West New South Wales, as well as in power stations in the Latrobe Valley, the Hunter Valley, the Lake Macquarie region of New South Wales, and Central Queensland.
3. MEU members play a vital role in supporting Australia's economic strength. The mining sector contributes approximately 11% of national GDP and generates around two-thirds of the country's merchandise export revenue.¹ Our members working in the energy sector continue to provide the power that keeps the nation running.
4. Given their essential contribution to these highly profitable industries, MEU members deserve secure employment, safe workplaces, and fair pay and conditions.
5. The MEU welcomes the opportunity to make a submission to the House of Representatives Standing Committee on Employment, Workplace Relations, Skills and Training inquiry into the operation and adequacy of the National Employment Standards (**NES**) under the *Fair Work Act 2009* (Cth) (**FW Act**) (**NES Review**). The MEU has a substantial interest in ensuring that the NES is strong, fit for purpose and reflective of a modern safety net for all employees, including its members.
6. The NES fails to adequately protect workers whose hours, rosters and working patterns differ from the traditional 5-day working week, based on 7.6 hours per day and 38 ordinary hours per week. This includes the majority of the MEU's members, who work DIDO/ FIFO, significant amounts of rostered overtime, shiftwork, rotating rosters or a combination of the above.
7. The NES also fails to adequately provide for working parents or parents-to-be. This is inconsistent with the object of the FW Act as amended by the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (**SJBP Act**). In particular, the FW Act is to provide "*a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians by providing workplace relations laws that are fair to working Australians, promote job security and*

¹ Department of Industry, Science and Resources, Commonwealth of Australia Resources and Energy Quarterly, December 2025, p.5.

gender equality".² Amendments to the parental leave provisions and the improvement of protections for these workers would ensure the NES is reflective of Australian workplaces and those who participate in it.

B. MEU Recommendations

1. **Personal/ carer's leave – Accrual and rate of pay:** Amend s 99 of the FW Act to require payment at the employee's 'full rate of pay' for rostered hours. Amend s 96(2) of the FW Act to provide that accrual of paid personal/ carer's leave is based on rostered hours.
2. **Annual leave – Accrual and rate of pay:** Amend s 90 of the FW Act to require payment at the employee's 'full rate of pay' for rostered hours. Amend s 87(2) of the FW Act to provide that accrual of annual leave is based on rostered hours.
3. **Paid parental leave:** Insert a paid parental leave entitlement into the NES, to be paid as if at work. Repeal requirement in s 67 of the FW Act to complete 12 months' service prior to accessing unpaid parental leave.
4. **Improved protections for pregnant women, and for workers when they return to work following a period of parental leave:** Insert a prohibition on dismissing pregnant women, parents on parental leave and parents who return to work following parental leave for at least a 6 month period with certain narrow exceptions, to be enforceable by unions and the Fair Work Ombudsman.
5. **Fair Work Information Statement – Improve relevance for employees:** Amend ss 124-125 of the FW Act to require employers to provide new employees with a document that outlines the actual terms and conditions of their employment.
6. **Equal dignity for labour hire workers:** Prohibit discrimination on the basis of status as a labour hire worker in the NES in respect of non-wage conditions of employment. Enshrine rights to equal rights to training, permanent vacancies, amenities and collective facilities and rostering protections and consultation in the National Employment Standards in line with the Prime Minister's *Fair Work Amendment (Same Job, Same Pay) Bill 2021* introduced when in Opposition.

C. Recommendation #1

Personal/ carer's leave – Accrual and rate of pay

1. Section 99 of the FW Act provides that if an employee takes a period of paid personal/carer's leave, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period.

² *Fair Work Act 2009* (Cth), s 3(a).

2. This disadvantages workers who work shift arrangements that are not the traditional 5-day, 38 hour work week. The majority of MEU members fall into this category.
3. The MEU submits that s 99 of the FW Act should be amended to provide that when an employee takes a period of paid personal/ carer's leave, the employer must pay the employee their 'full rate of pay' as defined in s 18 of the FW Act for their rostered hours. Section 96(2), which provides for the accrual of paid personal/ carer's leave, should also be amended so the rate of accrual is on rostered hours.
4. In the mining and energy industries, workers' earnings routinely consist of significant penalty rates, allowances, loadings and rostered overtime, reflecting the unsociable hours employees work in isolated and high-risk conditions. These payments are critical parts of workers' take-home pay each pay cycle, rather than being occasional or exceptional entitlements. Failing to account for these components in minimum sick leave requirements creates an incentive structure in which taking leave results in a significant financial penalty, as explained further below.
5. As outlined above, should an employee need to access paid personal/ carer's leave, the NES provides that the employee is only paid their base rate of pay for their ordinary hours of work. For employees covered by the *Black Coal Mining Industry Award 2020* (**Black Coal Award**) and the *Coal Export Terminals Award 2020*, ordinary hours are an average of 35 hours per week. For employees covered by the *Mining Industry Award 2020* (**Mining Award**), this is an average of 38 hours per week.
6. Employees in metalliferous mining work shifts of up to 12.5 hours in length, and rotating rosters of up to 14 shift 'swings' – for example, 7x day shifts, 7x night shifts, 7x days off before the roster repeats. An employee working this work pattern works 58.33 hours per week (averaged over the roster cycle). This means an employee covered by the Mining Award would forfeit 20.33 hours of pay per week if they needed to access paid personal/ carer's leave. This does not include the loss of any applicable penalties, allowances and loadings.
7. Employers in the mining and energy industries generally take one of two approaches to this problem:
 - a. *One*, they deduct and pay personal/ carer's leave at the base rate on the portion of the shift that is ordinary hours. This results in a substantial reduction in income for the employee.
 - b. *Two*, they deduct and pay personal/ carer's leave at the base rate on the total shift length (e.g. 12.5 hours). This results in the employee being able to access less paid personal/ carer's leave in terms of shifts.
8. As demonstrated above, for the vast majority of mining shiftworkers, the NES does not currently provide a fair and relevant safety net. Employees taking paid personal/ carer's leave often face a significant loss of income. This discourages employees from taking leave when unwell, which is especially problematic in safety-critical industries like mining and energy. In circumstances where employers deduct paid personal/ carer's leave on a

per-shift basis rather than only on ordinary hours, employees receive less paid leave off work to recuperate or care or support family members or members of their household.

MEU Recommendation #1:

Amend s 99 of the FW Act to provide that when an employee takes a period of paid personal/ carer's leave, the employer must pay the employee their 'full rate of pay' as defined in s 18 of the FW Act for their rostered hours.

Amend s 96(2) of the FW Act to provide that accrual of paid personal/ carer's leave is based on rostered hours.

D. Recommendation #2

Annual leave – Accrual and rate of pay

1. Section 90 of the FW Act provides that if an employee takes a period of annual leave, the employer must pay the employee at the employee's base rate of pay for the employee's ordinary hours of work in the period.
2. As explained above, this disadvantages workers who work shift arrangements that are not the traditional 5-day, 38 hour work week. Again, most workers in the mining industry fall into this category.
3. The MEU submits that s 90 of the FW Act should be amended to provide that when an employee takes a period of annual leave, the employer must pay the employee their 'full rate of pay' as defined in s 18 of the FW Act for their rostered hours. Section 87(2), which provides for the accrual of annual leave, should also be amended so that the rate of accrual is on rostered hours.
4. Payment of annual leave differs to that of paid personal/ carer's leave in the mining and energy industries. Most of the industry awards provide that an employee is to be paid the greater of either the base rate for ordinary hours + a fixed loading; or for the employee to be paid their full rate of pay on ordinary hours or for their rostered hours, less certain allowances or loadings.
5. When deducting annual leave, employers in the mining and energy industries generally take one of two approaches:
 - a. *One*, they deduct annual leave on the portion of the shift that is ordinary hours.
 - b. *Two*, they deduct annual leave on the total shift length (e.g. 12.5 hours). This results in the employee being able to access less annual leave in terms of shifts.
6. This results in employees experiencing a substantial reduction in income when accessing annual leave, or receiving less annual leave on a per shift basis. Employees should not be

financially penalised for taking paid leave from work to rest and recuperate or receive fewer shifts off because of their shift pattern. This is particularly important for MEU members, who work long shifts, often on rotating rosters and away from their families and loved ones. The current lack of a fair and relevant safety net in the NES for annual leave accrual and payment may result in employees cashing in annual leave instead of taking it, to minimise loss of income.

MEU Recommendation #2:

Amend s 90 of the FW Act to provide that when an employee takes a period of annual leave, the must pay the employee at the employee's 'full rate of pay' as defined in s 18 of the FW Act for rostered hours.

Amend s 87(2) of the FW Act to provide that accrual of annual leave is based on rostered hours.

E. Recommendation #3

Paid parental leave

1. Presently, the NES does not provide for paid parental leave. This is provided through the *Paid Parental Leave Act 2010* (Cth). The NES only provides 12 months of unpaid parental leave pursuant to clause 70 of the FW Act, subject to an employee having completed 12 months' service.³
2. While the MEU commends the significant improvements made to paid parental leave by the Albanese Government, there is significant work still to do to achieve gender equality in the workplace and limit the cost of living challenges faced by working families. The parental leave framework could be further improved in the following ways to better achieve the object of the FW Act and provide a fair and relevant safety net to all employees.
3. *Firstly*, an entitlement to paid parental leave should be inserted into the NES. This would ensure all national system employees are able to receive paid parental leave. Currently, this is not the case. Paid parental leave is only available to Australian Citizens, Permanent Residents and holders of certain types of visas, the latter generally being subject to a two year waiting period post-arrival.⁴ This means that some employees are not eligible to receive paid parental leave, despite working and paying taxes in Australia.
4. *Secondly*, the amount paid to employees is insufficient. An amendment to the NES to require employers to 'top up' the difference between Government-funded paid parental leave and the employee's take home pay would ensure employees do not experience a

³ Section 67, FW Act.

⁴ Services Australia, 'Residence Rules', accessed at <<https://www.servicesaustralia.gov.au/residence-rules-for-parental-leave-pay?context=64479>>.

significant loss of income at a time they need it most. This approach more equitably distributes the costs of parental leave across workers, the Government and employers.

5. Government-funded paid parental leave currently pays an employee 24 weeks' pay at the national minimum wage rate of \$948.10 per week. This is significantly lower than employees in the mining and energy industries are paid, including those who are award reliant. As noted above, a significant reason for higher salaries in mining is the unsociable shift patterns and high-risk nature of the work.
6. For example, a full-time Mineworker paid at the minimum award base rate for ordinary hours under the Black Coal Award receives \$1,134 each week. An employee receiving Government-funded parental leave is \$185.90 worse off per week, or \$4,461.60 over the 24 week period.
7. The pay reduction is even more stark when employees employed pursuant to enterprise agreements are considered. For example, a full-time employee of Syntech Resources at Cameby Downs Mine classified as a Mineworker Classification A and paid in accordance with the *Cameby Downs Mine Enterprise Agreement 2023* is entitled to receive a base rate of \$1,355.55 for their ordinary hours each week. Should they receive Government-funded paid parental leave, they will be \$407.45 worse off per week, or \$9,778.80 over the 24 week period. For many employees in the mining and energy industries to whom an enterprise agreement applies, this disparity generally increases as an employee's skills and experience increase, and in turn, their income.
8. The figures above do not include penalties, shift loadings, allowances or rostered overtime. As stated above, such payments are commonplace in the mining and energy industries. This results in a further reduction in income to employees taking Government-funded paid parental leave at a time when workers need to maintain their full rate of pay.
9. The inadequacy of the current scheme has three negative results. *First*, it further entrenches the gender pay gap. *Second*, it disincentivises parents (most commonly women)⁵ from taking time off to have a baby and spend time with their newborn child due to the financial pressure it creates on a household. *Third*, and because of the existing gender pay gap, it reinforces care arrangements in which men stay at work without taking any (or very limited) parental leave because of the significant impact on fathers' take-home pay.
10. Australia-wide, 67% of private sector employers already offer paid parental leave schemes to their employees in addition to Government-funded leave.⁶ In mining, 88% of employers offer some form of paid parental leave; in coal mining, this is 100% of employers; and in electricity supply, this is 95% of employers (noting that labour hire and contracting

⁵ Workplace Gender Equality Agency, 'National Data Explorer | WGEA Gender Equality data' from the 2024-2025 reporting period, accessed at <<https://www.wgea.gov.au/Data-Explorer/National>>. Note: WGEA reporting applies to all private sector employers with more than 100 employees.

⁶ Ibid.

companies are often excluded from the above data given they are often classified in other data divisions).⁷

11. In our experience, labour hire and contracting companies are more likely to not have employer-funded paid parental leave. In the mining and energy industries, this disproportionately affects women, as female employees are more likely to work for these employers. This further disadvantages labour hire workers beyond the mere disparity in salaries that is reflected in contracts and collective instruments, as these benefits are generally provided to permanent workforces via company policy.
12. By inserting paid parental leave into the NES to be paid as if at work, all employees would have the ability to access paid parental leave and not suffer a significant loss in income.
13. *Thirdly*, s 67 of the FW Act needs to be amended to remove the 'general rule' that an employee must have completed 12 months' service with their employer to be eligible for unpaid parental leave. This requirement is out of step with current approaches to parental leave, including Government-funded paid parental leave, which does not have a service-based requirement.
14. This means that employees with less than 12 months' service cannot access unpaid parental leave while they receive Government-funded paid parental leave, unless their contract of employment or industrial instrument (if any) provides otherwise. This is a bizarre outcome which needs to be amended.
15. Each of the matters outlined above would assist the NES to better meet the object of the FW Act as amended following the SJPB Act, in particular in relation to promoting gender equality, and provide a fair and relevant safety net.

MEU Recommendation #3:

Insert a paid parental leave entitlement into the NES, to be paid as if at work. Repeal requirement in s 67 of the FW Act to complete 12 months' service prior to accessing unpaid parental leave.

F. Recommendation #4

Improved protections for pregnant women, and for workers when they return to work following a period of parental leave

1. The MEU submits that the NES should contain a prohibition on dismissing pregnant women, parents on parental leave and parents who have returned to work following parental leave for at least a 6 month period. This would bring Australia into line with recent

⁷ See, for example, WorkPac Mining Pty Ltd, who does not provide employer-funded paid parental leave and is classified as being in the 'Administrative and Support Services' division. Accessed at <<https://www.wgea.gov.au/Data-Explorer/Employer>>.

reforms passed by the United Kingdom Government in recognition of the unique vulnerability of workers in these circumstances, as detailed below.

2. These employees are too often unfairly targeted. They are frequently dismissed or made redundant while pregnant, while on parental leave or soon after returning to work. In a 2025 cross-industry study of 772 pregnant women in Australia, 7.2% of respondents reported being threatened with redundancy or termination, 8.4% reported being made redundant or restructured out of role, 4.1% reported being terminated, 8.2% reported not having their contract renewed.⁸
3. These employees are often unable to obtain alternative employment due to their circumstances:
 - a. A pregnant employee will find it difficult to find new employment as they are about to give birth, and even if they do, they will not be eligible to take unpaid parental leave to access Government-funded paid parental leave (and in some circumstances, employer-funded paid parental leave).
 - b. An employee on parental leave is terminated or their position or made redundant is left without the full period of any employer-funded paid parental leave and again, is unlikely to be able to obtain a new job when they had intended to be on paid leave to care for a baby.
 - c. An employee returning to work following a period of parental leave will also find it difficult to find new employment, particularly if they need to request part-time or flexible working arrangements to enable them to care for their child. In particular, the MEU notes that flexible working arrangement requests made pursuant to s 65 of the FW Act are only available to employees who have completed 12 months' service, so would not be available to an employee commencing a new job following parental leave.
4. The UK has introduced similar protections. First, it provides pregnant employees, employees on maternity leave and new mothers (up to 18 months after the birth) priority for any suitable alternative employment during a redundancy process. Second, the *Employment Rights Act 2025* extends protections to make it unlawful for an employer to dismiss pregnant employees, those on parental leave and new mothers for at least six months after returning to work, except in narrowly defined circumstances. Similar protections can and should be implemented in the NES.
5. The MEU accepts that there may have to be certain circumstances in which an employer could terminate an employee's employment but that any such circumstances should be limited due to the significant impact termination of employment has on these employees.

⁸ R. E. Potter et al, 'National review into work conditions & discrimination for pregnant and parent workers in Australia' (2025) *Safety Science* 186, p. 5. See also, UNISON UK, 'Parental Leave Survey 2025', accessed at <<https://www.unison.org.uk/content/uploads/2025/09/Parental-Leave-Survey-Report-2025.pdf>>.

6. While the MEU notes the general protections provisions in Part 3-1 of the FW Act exist, they are often difficult to enforce and generally operate in a retrospective manner (i.e. when the employee has already been terminated, made redundant etc.)
7. These additional protections should also be civil penalty provisions, consistent with the general protections regime.
8. These amendments would also strengthen the NES and ensure it is meeting the object of the FW Act as amended by the SJBPA Act, promoting job security and gender equality, and provide a fair and relevant safety net.
9. This would assist mining families in several ways. Firstly, these issues create real career challenges for women workers in the mining and energy industries, who already face an increased risk of discrimination in male-dominated industries. Further, for two-income families, should an employee lose their job during this period, it places additional stress and burden on their partner by limiting options to share work and care more equitably between both parents. Fathers may also be less likely to access parental leave if they perceive that the risk of losing their job is going to increase by accessing parental leave.

MEU Recommendation #4:

Insert a prohibition on dismissing pregnant women, parents on parental leave and parents who have returned to work following parental leave for at least a 6 month period with certain narrow exceptions, to be enforceable by unions and the Fair Work Ombudsman.

G. Recommendation #5

Fair Work Information Statement – Improve relevance for employees

1. Section 125 of the FW Act currently requires an employer to provide a new employee with a copy of the Fair Work Information Statement (**FWIS**), which the Fair Work Ombudsman (**FWO**) is required to develop. The information it is required to contain is stipulated by s 124 and contains generic information about Australia's workplace relations system and employee entitlements. It does not require an employer to provide specific information to an employee about their employment.
2. While a well-intentioned reform, in practice it is an afterthought that provides little to no practical assistance to the vast majority of workers whom it is designed to protect.
3. It is important to note that, in Australia, there is no requirement to provide workers with a written contract of employment or letter of offer. Incidence of verbal contracts of employment is most likely to arise in cases involving the most vulnerable cohorts such as temporary migrant workers and non-English-speaking workers.
4. The information provided is not necessarily reflective of an employee's terms and conditions of employment, and is prone to cause confusion. It is cast at too high a level of

generality and does not impose any meaningful disclosure obligation on employers to ensure workers are properly informed when commencing a new job.

5. This is particularly so in the mining and energy industries. For example, an employee covered by the Black Coal Award who is not a shiftworker is entitled to 5 weeks of annual leave per annum, rather than the 4 week entitlement in the NES which is set out in the FWIS provided to new employees.
6. The MEU submits that the NES should be amended to replace the current FWIS with a new document which outlines the actual terms and conditions of their employment, using a standard form template published by the Fair Work Ombudsman. Employers should be required to provide the new FWIS to employees before the commencement of the job.
7. The FWIS should be required to set out the following matters:
 - a. the name of the employer and the employee;
 - b. job title;
 - c. classification (under the relevant enterprise agreement or award, if applicable);
 - d. type of employment and what this means (e.g. fixed term can only be for a period of up to 2 years, casuals have a right to request conversion to permanency after 6 months);
 - e. rate of pay and how and when it will be paid;
 - f. amount of applicable allowances, loadings and penalty rates;
 - g. that the employee has a right to be provided with payslips and the details that are required to be included on each payslip;
 - h. amount of superannuation payable;
 - i. minimum engagement period each shift;
 - j. hours of work (including ordinary hours per week and overtime, and the amount of each per shift);
 - k. leave entitlements specific to the employee;
 - l. place of work;
 - m. a link to the FWO website and the role of the FWO; and
 - n. information on the general protections in Part 3-1 of the FW Act.
8. All employees would be provided with a standardised, written document with their actual terms and conditions of employment prior to commencing employment, allowing the employee to understand the document they are presented with and can consider the terms and conditions of their role prior to accepting it. This document would be in addition to any written contract of employment provided by the employer to the employee.
9. Several other countries have such a requirement in place, including New Zealand and the UK.⁹

⁹ See, for example, Campbell, I and Charlesworth, S, 'Promoting Secure Work: Two Proposals for Strengthening the National Employment Standards' (2023) 36 Australian Journal of Labour Law, pp. 257-258.

10. This amendment will significantly assist unions and the FWO in enforcement actions and to support vulnerable workers.

MEU Recommendation #5:

Amend ss 124-125 of the FW Act to require employers to provide new employees with a document that outlines the actual terms and conditions of their employment.

H. Recommendation #6

Equal dignity at work for labour hire employees

1. The NES should contain protections to ensure that labour hire employees are not treated as a second class of employee. These issues relate to fundamental dignity and rights at work, rather than the 'same job, same pay' targeted by the regulated labour hire arrangement order reforms implemented in the *Closing Loopholes No 1 Act*. The need for such protections is particularly evident in the mining and energy industries, where the use of labour hire is common and labour hire employees are in insecure, transient employment subject to the whim of the host employer.
2. While same job, same pay has had demonstrable and significant benefits for labour hire workers in the mining industry (as set out more fully in our submission to the statutory review of that legislation and in recent McKell Institute reports), it remains the case that it is lawful for host enterprises to discriminate against labour hire workers in:
 - a. denying them the right to apply for permanent positions at the enterprise;
 - b. denying them equal access to training and career progression;
 - c. denying them the right to access the same facilities and amenities as permanent workers;
 - d. denying them access to equal roster treatment, including consultation over changes.
3. Indeed, under Australian law it remains generally permissible to discriminate against labour hire workers in terms of conditions, benefits and fair treatment in all respects other than pay where a regulated labour hire arrangement order is made.
4. When in Opposition, the now Prime Minister, Anthony Albanese, introduced the *Fair Work Amendment (Same Job, Same Pay) Bill 2021*. This Bill proposed to insert a provision in the NES to ensure that labour hire workers received equal rights in relation to training, amenities and collective facilities, rostering and consultation, and the right to apply for vacancies with the host employer.
5. The most effective means to achieve this goal is to insert a statutory non-discrimination principle in relation to the use of labour hire workers. That is, the NES should provide that an employer cannot discriminate on the basis of status as a labour hire or agency worker in comparison to an employee engaged by the host employer in respect of any of the terms

and conditions of employment (other than wage-related issues which are dealt with by the regulated labour hire arrangement order scheme).

6. In addition, specific protections to enshrine the right to equal access to training, vacancies, amenities, rostering and consultation should be included because these critical matters deserve to be separately dealt with as they are essential to achieving equal dignity at work. These amendments would also ensure the NES continues to provide a fair and relevant safety net for all employees, irrespective of whether they are employed by a host employer or labour hire company.

MEU Recommendation #6

Prohibit discrimination on the basis of status as a labour hire worker in the NES in respect of non-wage conditions of employment. Enshrine rights to equal rights to training, permanent vacancies, amenities and collective facilities and rostering protections and consultation in the National Employment Standards in line with the Prime Minister's *Fair Work Amendment (Same Job, Same Pay) Bill 2021* introduced when in Opposition.

I. Other matters

Submission of the Australian Council of Trade Unions

1. The MEU has also read the ACTU Submission to the NES Review. In addition to the comments made above, the MEU agrees with and supports the ACTU Submission, including the recommendations made therein.

Appearance at Inquiry and Further Assistance

2. The MEU is available to provide further information or details to the Committee should it assist in its deliberations. The MEU would also welcome the opportunity to appear before the Inquiry at a public hearing to discuss our concerns and proposals with Committee Members directly.

Mining and Energy Union
6 March 2026