



Electrical Trades Union

***Inquiry and Report into the
Operation and Adequacy of The
National Employment Standards
(NES) under the Fair Work Act***

February 2026

27 February 2026

About the ETU

The Electrical Trades Union of Australia (**ETU**) is a division of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (**CEPU**). The ETU is the principal union for electrical and electrotechnology tradespeople and apprentices in Australia, representing well over 70,000 workers around the country.

The ETU's membership has significant concentrations in the resources, construction and power industries, although it is spread throughout the economy including the manufacturing, tourism, entertainment, business equipment and defence support industries. The typical ETU member is a highly skilled electrotechnology worker who has completed at least a four-year apprenticeship and is subject to ongoing training, certification, licensing and development requirements.

ETU members rely heavily on the National Employment Standards (**NES**) as the foundation of their workplace rights. Many of our members work in environments characterised by project-based employment, shift work, long hours, fly-in-fly-out arrangements, labour hire arrangements and high safety risks. In these contexts, the NES is not an abstract legal framework but the core minimum protection that determines whether workers can safely take leave, balance work and caring responsibilities, and exercise their rights without fear of reprisal.

The ETU therefore has a direct and substantial interest in ensuring that the NES is clear, fit for purpose, enforceable, and capable of operating effectively in modern, complex and insecure labour markets.

Acknowledgement

In the spirit of reconciliation, the ETU acknowledges the Traditional Custodians of country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all First Nations peoples today.

ETU Recommendations

1. **Annual Leave** - amend the NES so that annual leave and personal/carer's leave accrue and are deducted based on an employee's *actual hours worked*, not the ordinary hours or the notional 7.6-hour day.
2. **Shift Worker Definition** - amend s.87(3)(a)(iii) of the FW Act by removing the word "regularly" so that all workers on regular rostered patterns including Sundays or public holidays qualify as shift workers for the additional week of annual leave.
3. **FIFO Leave Entitlements** – amend the NES so full-time FIFO workers receive a guaranteed four (4) full weeks of annual leave and ten (10) days of personal/carer's leave annually.
4. **Public Holiday Protection** - amend ss.89 and 98 of the FW Act so public holiday protections apply to the *entire* annual and personal/carer's leave entitlement under an enterprise agreement, not just the NES minimum entitlement.
5. **Industrial Action and Leave Accrual** – amend ss.22 and 87 of the FW Act to ensure periods of protected industrial action count as "service" for the purpose of accruing annual leave.
6. **Employer Directions to Take Annual Leave** - amend ss.93 and 94 of the FW Act to limit employers' powers to direct workers to take annual leave, ensuring leave is taken primarily for the benefit of the employee, not to reduce employer liabilities.
7. **Enterprise Agreements and Service** - prevent enterprise agreements from undermining NES entitlements by treating rostered days off in compressed rosters as unpaid authorised leave for the purpose of "service" under s.22 of the FW Act.
8. **Personal/Carer's Leave - Accrual** - amend s.96 of the FW Act so that the ten (10) days of paid personal/carer's leave accrues according to *actual hours of work*, not on notional daily hours.
9. **Personal/Carer's Leave - Rate of Pay** - amend s.99 of the FW Act to require payment at the employee's *full rate of pay* for the rostered hours, including penalties and allowances.
10. **Redundancy - Ordinary and Customary Turnover** - remove the "ordinary and customary turnover of labour" exemption in s.119 of the FW Act.
11. **National Long Service Leave Standard** - insert a Long Service Leave (**LSL**) entitlement into the NES.
12. **Further Review of the Portability of Entitlements** - Conduct a further review of the portability of entitlements under current industrial frameworks, including the NES and state schemes of long service leave.

The ETU welcomes the opportunity to respond 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 (FW Act)*.

The ETU submits that while the NES are intended to operate as a safety net, in practice their effectiveness has been weakened by inconsistent interpretation, outdated drafting, and a failure to reflect how work is now organised in many industries.

The ETU supports the proposals advanced by the Australian Council of Trade Unions (ACTU) with respect to reforming the NES to improve clarity, fairness, and practical operation for all workers. These proposals highlight a range of systemic issues, including the need to clarify definitions, modernise leave accrual arrangements, and ensure that NES entitlements operate consistently alongside enterprise agreements and modern awards.

While broadly supportive of the ACTU's positions, the ETU wishes to stress and advance specific proposals that are particularly relevant to FIFO workers and other employees within the electrical industry. These proposals aim to address the ways in which the NES currently fails to deliver its intended protections for workers whose hours, rosters, and working patterns differ from the traditional full-time model.

For workers in electrical, construction, maintenance and energy industries, the reality is that employment is often project-based, shift-based, labour-hire mediated and insecure. NES entitlements must operate clearly, consistently and fairly in those contexts. At present, they do not.

To address this, the ETU recommends targeted reforms to strengthen the clarity, fairness and practical operation of the NES, with a particular focus on fly-in fly-out (FIFO) workers and their ability to access NES entitlements under the current framework.

A. FIFO WORK

1. The Nature of FIFO Work

A significant proportion of ETU members work in FIFO arrangements, typically in remote construction, resources, offshore oil and gas, maintenance, and renewable energy projects. These workers travel away from home to isolated project sites and perform long daily hours over compressed roster cycles, such as 7 days on/7 days off, 14 days on/7 days off, or 21 days on/7 days off. While these arrangements allow for blocks of time off, they concentrate fatigue, family separation, and physical demands into intensive work periods.

2. Why the NES is not Fit for FIFO Work

The current NES regime is not fit for purpose, when it comes to FIFO employees, primarily because it is still largely framed around assumptions of a standard working day and week, that is 38 ordinary hours per week and an 8-hour day. The NES must be capable of operating effectively for workers whose hours, rosters and working patterns differ significantly from the traditional “five days on, two days off” model.

FIFO workers typically work 10 or 12 hour shifts with ordinary hours averaged across the roster cycle. In practice, this creates two compounding problems in relation to annual leave and personal/carer’s leave:

- Firstly, FIFO workers commonly accrue annual leave and personal/carer’s leave at a rate based on a notional 7.6-hour day. However, when leave is taken, it is often deducted at their actual rostered shift length, for example, 12 hours per day. The result is that leave is used faster than it accrues.
- Secondly, in some workplaces leave is both accrued and paid at only 7.6 hours per day, even where the worker is rostered for 12-hour shifts. This means that when a FIFO worker takes annual leave or personal/carer’s leave, they suffer an immediate loss of income. This discourages workers from taking leave when they are fatigued, unwell or injured.

Over time, FIFO workers receive less than four weeks of effective annual leave per year and significantly reduced personal/carer’s leave protection, despite working long, intensive rosters in remote and high-risk environments. This undermines a fundamental purpose of the NES, which is to ensure all workers have a genuine opportunity to rest, recover and attend to illness or caring responsibilities without financial penalty.

3. Undermining the NES – Enterprise Agreements

A significant number of ETU FIFO members are employed under enterprise agreements (EAs). Many EAs correctly average ordinary hours over the roster cycle, allowing FIFO workers to receive the full four (4) weeks of annual leave and ten (10) days of personal/carer’s leave. Where this occurs, the NES operates largely as intended.

However, problems arise where EAs are drafted in a way that departs from this approach, drawing from the standard set by the NES. Some agreements contain clauses that:

- limit leave accrual to “ordinary hours” defined strictly as 38 hours per week, and
- treat rostered days off in compressed FIFO rosters as periods of “unpaid approved leave” for the purposes of “service” under s.22 of the FW Act.

The combined effect of these provisions is that FIFO workers, who meet or exceed the monthly average of ordinary hours over a condensed roster, are treated for the purpose of NES leave accrual as working only part of the time they are actually on roster.

The injustice of that arrangement is illustrated in *CEPU v Simpec Pty Ltd* [2025] FCA 470 (**Simpec Decision**):

Case Example: *CEPU v Simpec Pty Ltd* [2025] FCA 470 (Simpec)

In *Simpec*, the Federal Court considered a case brought by the CEPU on behalf of FIFO workers engaged on the Iron Bridge Project, seeking to have annual leave and personal leave accrual at the standard rate (152 hours per month) of other full-time employees.

The employees were engaged as “full-time” workers on a 21 days on / 7 days off roster. They worked long, compressed shifts and were described in both their contracts and the enterprise agreement as averaging 38 ordinary hours per week over a four-week cycle (152 hours).

However, under the terms of the *Simpec Pty Ltd Enterprise Agreement 2019*, the seven days off in each roster cycle were characterised as “authorised unpaid leave” during Rest and Recreation (R&R). As a result, the employees accrued leave only during the 21 days worked and the R&R period was excluded from “service” for the purposes of ss 22, 87 and 96 of the FW Act.

The ETU argued that the employees accrued leave on the basis of 152 ordinary hours per four-week cycle. *Simpec* argued that the workers only accrued leave on 114 hours per four weeks.

Justice Colvin accepted *Simpec*’s construction of the enterprise agreement. Although the workers were described as “full-time”, the Court held that the drafting of the agreement lawfully treated part of the roster cycle as unpaid authorised leave, with the result that FIFO workers accrued significantly less annual leave and personal/carer’s leave than a standard full-time employee.

In practical terms, this meant that over a 12-month period:

- Instead of accruing 4 weeks (152 hours) of annual leave, FIFO workers accrued only about 3 weeks (114 hours).
- Instead of accruing 10 days (76 hours) of personal/carer's leave, FIFO workers accrued only about 7.5 days (approximately 57 hours).

His Honour acknowledged the unfairness of this outcome, observing that "all this was possible without any terms of the EA expressly exposing that consequence to the employees".

As the above example illustrates, FIFO engaged on a full-time basis and working as much or more than a full-time load of hours (152 hours averaged over a monthly roster cycle) accrue substantially fewer days of annual leave and personal leave under the NES than employees who work the same hours over a more typical spread of ordinary hours. That arrangement is manifestly unjust.

The same cohort of employees have a more pressing need for leave due to the fatiguing effect of their compressed work cycle.

Case Study – Benjamin Cation:

The ETU interviewed a SIMPEC employee, Benjamin Cation who worked as a Communications Technician on a FIFO basis at the Iron Bridge Wet Processing Plant in the Pilbara. His contract specified that he was a full-time employee. He worked on a 21-day-on, 7-day-off rotating roster, consisting of 10-hour shifts per day. Over each roster cycle he worked well in excess of the 152 hours of a full-time worker, however on his condensed roster cycle, some of those hours attracted overtime rates.

"Like most FIFO workers, I put in big weeks in a remote, high-risk environment, away from home and family. I assumed that, as a full-time worker, I was building up the same leave entitlements as anyone else, four weeks of annual leave and 10 days of sick leave a year.

Over time, though, I started to realise something didn't add up. My payslips showed I was working well over 152 ordinary hours in a month, yet my leave balances were growing much more slowly than I expected. When I raised it with management, I was told everything was correct and that my leave was based on "ordinary hours". But when I looked closely, the numbers didn't lie."

After a full year of full-time FIFO work, he had only accrued 112 hours of annual leave, and 54 hours (7 days) of personal leave despite working full time. Any other full-time worker would expect to accrue 152 hours of annual leave and 10 days of personal leave for the same amount of work.

"It felt unfair and demoralising. I was working long, exhausting rosters in harsh conditions, but I wasn't getting the rest and recovery time that the law is supposed to guarantee. It made me feel like the system just isn't built for workers like us."

The purpose of annual leave and personal leave provisions of the NES is to guarantee a minimum period of leave for workers to have a genuine opportunity to rest and to sustain themselves and their dependents through unavoidable circumstances of illness or injury. There is no principled reason why employees should be denied that minimum entitlement merely because a portion of what would otherwise be their minimum weekly average of ordinary hours are paid at overtime rates due to their working a compressed roster.

ETU Proposal:

- Leave under the NES should accrue and be deducted in a way that reflects the ‘*actual hours worked*’ by the employee, rather than the ‘*notional daily*’ averages.
- The NES should protect full four (4) weeks of annual leave, and ten (10) days person/carers leave.

B. ANNUAL LEAVE

1. Annual Leave and Definition of Shift Workers:

The NES recognises that shift workers face particular demands and should receive additional annual leave. However, the current drafting of s.87(3)(a)(iii) of the FW Act has allowed a narrow and rigid interpretation of what it means to “regularly work on Sundays and public holidays”. This has excluded many genuine shift workers whose rosters fluctuate based on operational demand.

In industries where work peaks at particular times of the week, employees may work a substantial number of weekend and public holiday shifts without fitting a mathematically “even” pattern across all seven days. In practice, the Fair Work Commission has often interpreted “regularly” as requiring an employee to work at least 34 Sundays and 6 public holidays in a year. That numerical threshold is arbitrary, does not reflect how most shift-based industries actually operate, and undermines the purpose of the NES.

Recent judicial commentary recognising this problem. In *Fair Work Ombudsman v Woolworths Group Limited*; *Fair Work Ombudsman v Coles Supermarkets Australia Pty Ltd*; *Baker v Woolworths Group Limited*; *Pabalan v Coles Supermarkets Australia Pty Ltd* [2025] FCA 1092, Perram J¹ at paragraph 496 indicated that applying an arbitrary numerical benchmark to s 87(3)(a)(iii) is not the correct approach.

¹ *Fair Work Ombudsman v Woolworths Group Limited*; *Fair Work Ombudsman v Coles Supermarkets Australia Pty Ltd*; *Baker v Woolworths Group Limited*; *Pabalan v Coles Supermarkets Australia Pty Ltd* [2025] FCA 1092 at 496.

Nonetheless, the Commission continues to rely on this standard in practice, creating uncertainty and excluding workers who plainly perform regular weekend and public holiday shift work from the additional leave the NES is intended to provide. As much can be seen from the number of Awards that continue to require an arbitrary number of Sundays and public holidays (often 34 and 6 respectively) must be worked before the entitlement accrues.

ETU Proposal:

The word “regularly” should be removed from subsection 87(3)(a)(iii), such that all shift workers who work on a regular roster pattern that includes a Sunday, or a public holiday are entitled to the additional week of annual leave.

2. Annual Leave and Personal Leave – Deductions on Public Holidays

Sections 89 and 98 of the NES provide that an employee is not taken to be on annual leave or personal/carer’s leave on a public holiday. In practice this protection is often undermined where an enterprise agreement provides more generous annual and personal/carer’s leave entitlements than the NES minimum. The public holiday protection is applied only to the NES minimum portion of leave, resulting in employees losing the benefit of their above-NES leave entitlements on the public holiday.

ETU Proposal:

Amend ss. 89 and 98 of the FW Act to clarify, where a worker has an entitlement to annual or personal/carer’s leave above the NES minimum under an enterprise agreement, the public holiday protection should apply to the entire entitlement, not just the minimum component.

3. Annual Leave Accrual & Industrial Action

The current legal framework treats periods of protected industrial action as breaks in service for leave accrual purposes. Protected action is considered a period of unpaid authorised absence and is therefore excluded from a period of service for the purposes of s.22 of the FW Act. This undermines the exercise of lawful workplace rights and places pressure on workers not to participate in collective bargaining activity.

ETU Proposal:

Workers should not lose leave entitlements for lawfully exercising their right to take protected industrial action. Sections 87 and 22 should be amended to clarify that periods of protected action, count as service for the purposes of accruing annual leave.

4. Annual Leave – Employer Directions to Take Leave

Sections 93(3) and 94(5) of the FW Act allow employers to direct employees to take annual leave in certain circumstances. While these provisions are intended to manage operational requirements, in practice

some employers rely excessively on this power to reduce employees' accrued leave, purely to reduce the employer's liability. This can erode a worker's entitlement to a genuine period of rest and recovery, undermining the protective intent of the NES.

ETU Proposal:

Sections 93(3) and 94(5) should be amended to restrict excessive employer use of leave direction powers, ensuring annual leave is taken primarily for the benefit of the employee. That is, the subclauses should provide clear limits on the circumstances and timing under which an employer may direct annual leave, balancing operational needs with the employee's right to genuine leave.

C. PERSONAL LEAVE

1. How Personal/Carers Leave Entitlements Are Calculated

The current NES framework for personal/carer's leave produces outcomes that disadvantage workers on long, irregular, or compressed shifts, such as FIFO employees. Under existing arrangements, leave accrues based on the "ordinary hours of work", typically this is your standard 38 hour week, 7.6-hour day rather than the hours actually worked. As a result, employees working 10 or 12-hour shifts may accumulate fewer hours of personal/carer's leave than workers performing standard daily hours, despite working as many or more hours in total.

ETU Proposal:

Section 96 of the FW Act should be amended to provide that an employee is entitled to 10 days of paid personal/carer's leave accrued according to the employees "*actual hours of work*".

2. Personal Leave – Rate of Pay

Further to that expressed above, many workers experience a drop in income when they access personal/carer's leave because they are paid only their base rate of pay, excluding penalties, allowances or regular loadings.

Take for example FIFO workers or shift workers, when they take personal/carer's leave, they are typically paid only for a standard day (7.6 hours) rather than their full rostered hours. This means that when a worker is sick or injured on a rostered workday, they suffer a direct loss of income at precisely the time they are least able to afford it. This creates a perverse incentive for workers to attend work while unwell, which is particularly unsafe in high-risk electrical and construction environments.

This discourages workers from taking leave when unwell and undermines health and safety outcomes.

ETU Proposal:

When a worker takes personal/carer's leave, they should receive their usual earnings for the rostered hours they miss, including penalties and allowances. Accordingly, 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 at the employee's 'full rate of pay' for the employee's actual hours of work in the period.

D. REDUNDANCY

1. The Exception - "Ordinary and Customary Turnover"

A large proportion of ETU members, particularly in construction, work on project-based jobs. Under the current NES (s.119), employers can avoid paying redundancy where a termination is said to arise from "ordinary and customary turnover of labour." This provision is vague and has been used to deny redundancy pay in situations that are clearly genuine job losses.

In contracting and labour-hire environments, this creates significant uncertainty and unfairness, leaving long-serving workers without the protections they should expect under the NES.

ETU Proposal:

The "ordinary and customary turnover" exemption in s.119 of the FW Act should be removed from the NES. Employers already have mechanisms to manage genuinely temporary or project-based work, and these should not be used to circumvent redundancy entitlements for employees whose employment ends due to a termination, restructure, or contract completion.

E. LONG SERVICE LEAVE

1. A National Safety Net Standard for Long Service Leave

The ETU is highly supportive of the ACTU's proposal for the establishment of a national Long Service Leave (LSL) standard as part of the NES. At present, LSL entitlements are fragmented across state and territory laws and influenced by outdated award-derived provisions, resulting in inconsistency, complexity, and inequity.

There is a strong case for creating a single national LSL entitlement within the NES, built on the most generous and workable elements of existing state and territory schemes. This would promote consistency, fairness and clarity for both workers and employers across the national system.

ETU Proposal:

Insert a Long Service Leave entitlement into the NES.

E. FURTHER REVIEW

1. Portable entitlements to support labour mobility

The ETU takes this opportunity to highlight a significant gap in current NES provisions when it comes to supporting an increasingly mobile workforce. Significant NES conditions, including personal leave and redundancy pay, accrue on the basis of service with a single employer and do not survive termination of the employment. Those conditions that are most consequential for stability of employment – supporting a worker to maintain an income through periods of illness, the care of dependents, and for a time after dismissal – are substantially less beneficial for workers in industries and parts of industry where short-term, seasonal, or project-based employment are the norm.

An employee who moves between multiple engagements in a year receives no redundancy entitlement and stands to lose access to some of all of their annual personal leave accrual before it is needed. That system, which conditions essential features of job security on length of service, compounds the insecurity of employees in industries where a high turnover of labour is customary. The consequential gap in leave accruals affects not only worker in involuntary, precarious employment but also an increasing portion of the workforce for whom short-term employment is expected and even preferred.

Significant parts of industry are organised around short-term models of employment. The ABS Participation, Job Search and Mobility survey for the year ending February 2025 found over half of people

employed (57%) had been in their current job for less than 5 years, and about 17% had been in their job for less than one year.² The job mobility rate for the same year was 7.7%, and was disproportionately high for younger workers – at 9.2% for workers aged 25 to 44 years and 11.5%, for workers aged 15 to 24 years.³

The construction industry is a prime example of an industry organised around short-term models of employment, in which even workers engaged on a permanent basis often have an expectation of moving to a new employer at the end of a project. The construction industry sets what should be the standard for delivering a stable career through portability of entitlements in circumstances where it is not possible to offer stable long-term employment. Standard in enterprise agreements across the industry are provisions for contribution to portable redundancy entitlements, schemes of income protection for personal injury and illness, and contribution to State administered schemes of portable long service leave. Those entitlements provide a minimum guarantee of leave and a degree of insurance against the effects of redundancy irrespective of an employee's length of service with any one employer.

Portability of entitlements is a critical driver of labour mobility, which in turn is a driver of productivity. Absent portable entitlements, the risk of losing access to accrued entitlements or deferring the accrual of entitlements by breaking service with an employer is a significant disincentive for employees to take up new opportunities, move between regions, or transition into new industries or parts of industry. The result is a less flexible economy, and a labour market that is slow to respond to shifting labour demand. This compounds existing pressure on key industries from high labour demand, especially in locations and industries that are the focus of significant new public and private investment.

ETU Proposal:

Conduct a further review of the portability of entitlements under current industrial frameworks, including the NES and state schemes of long service leave.

² Australian Bureau of Statistics, *Job mobility February 2025*, Chart 1: Duration of employment in current job [Online] Accessed 19 February 2026: <https://www.abs.gov.au/statistics/labour/jobs/job-mobility/latest-release>

³ *Ibid.*, Chart 4: Job mobility rate, by age.