

National Employment Standards

1. Minimum Weekly Hours

Unions NSW notes and supports the ACTU Submission with regard to the minimum weekly hours. In relation to NSW the minimum weekly hours are primarily dealt within industry specific (or enterprise based) awards. Each award deals specifically with the hours of work within that industry. Problems shall arise with the proposed NES where industries do not operate on a 38 hour week. An example of such an industry is that of Teaching.

2. Requests For Flexible Working Arrangements

Unions NSW notes and supports the submissions of the ACTU with regard to Requests for Flexible Working Arrangements. Of particular concern is the lack of access to any dispute resolution procedures and representation by their union in circumstances where requests are reasonably refused.

3. Parental Leave & Related Entitlements

Unions NSW and its affiliates submit that the proposed NES provisions relating to Parental Leave is deficient and below current community standards. Parental Leave in NSW is governed by the provisions of the IR Act 1996 and the Family Provisions Test Case. Of particular concern is that the proposed NES:

- a) Reduces the amount of concurrent parental leave from 8 weeks to 3 weeks
- b) Omission of access to Parental Leave for same sex couples
- c) Does not allow for the transfer to a safe job whilst pregnant and/or **breastfeeding**
- d) NSW legislation stipulates different notice periods for the taking of maternity leave. Whilst initially an employee is to notify their employer of their intent to take maternity leave at least 10 weeks prior to taking such leave, they do not have to provide the actual date of commencement and return to work until 4 weeks prior to taking such leave.
- e) Right to request part time work until school age of the child
- f) Adoption leave in NSW is available for adoption of all children to the age of 18.

Attached and marked Attachment 1 is the NSW test case provision relating to parental leave. The majority of NSW Parental Leave entitlements are contained within the IR Act NSW.

Unions NSW is also concerned that if a business or employer refuses a reasonable request by an employee for additional leave, that there is not stated ability for third party intervention/involvement. Nor is there ability for a member to be represented by their union.

4. Annual Leave

Annual Leave in NSW is regulated by the Annual Holidays Act NSW and also NSW state awards.

We note that the NES provides for annual leave to be paid at the “base rate of pay”, which expressly excludes incentive based payments and bonuses, loadings, monetary allowances, overtime or penalty rates or any other similar separately identifiable amounts.

The NSW legislation and awards provide that employees when taking annual leave are paid at their ordinary rate of pay. Ordinary pay is defined as the employee’s gross wage (not including overtime) plus shift allowances and weekend penalties for the ordinary hours that they would have worked if they were not on annual leave. Further all commissions or incentive payments must be averaged out over the previous 12 months and included into the annual leave pay of the employee. Annual leave is paid at the ordinary rate of pay of the employee at the time of taking the leave. Both full – time and part – time employees are entitled to four weeks leave per year, which does not directly accrue based on the employee’s ordinary hours of work throughout the year. Although part – time employees receive four weeks annual leave per year, they are paid at their part – time rate for four weeks at the time of taking the leave.

Unions NSW and affiliates also note that the NES does not include reference to a 17½% annual leave loading. Whilst this is primarily identified throughout NSW awards, it is considered a minimum community standard within NSW (and many other jurisdictions) and should therefore be reflected in the NES.

Further Section 30 (1) of the NES provides for the “cashing out” of annual leave. The NSW act and awards expressly prohibit the cashing out of annual leave except in circumstances of termination of employment.

5. Personal/Carer's Leave & Compassionate Leave

The proposed NES in relation to Personal/Carer's Leave is inferior to the provisions provided in the NSW Test Case Standard, which was determined by the Full Bench of the NSW IRC. The proposed NES provision does not include the ability of an employee to take leave for a same sex partner or a foster child, and it does not provide for the accessing of annual leave or time off in lieu for the purposes of carer's leave.

The NSW Test Case Provision in relation to Personal Carers Leave is attached and marked as Attachment 2. We submit that this test case provision should form the basis of any Personal/Carer's Leave NES, particularly for workers in NSW.

In relation to compassionate leave, we submit that the minimum standard for the many of NSW Award workers (including those on NAPSAs such as Restaurant and Catering (State) Award and the Shop Employees (State) Award) is 3 days. We do note though that there is a general order for NSW awards of not less than 2 days paid leave.

We make the same comments as above regarding payment as the "base rate of pay". Payment should be at the employee's ordinary rate of pay. We strongly submit that employees should not be "penalised" for taking this type of leave, particularly by a reduction in their pay through the loss of penalty rates.

6. Community Service Leave

Unions NSW and affiliates note and support the submissions of the ACTU in regards to Community Service Leave.

We make the same comments as above regarding payment as the "base rate of pay". Payment should be at the employee's ordinary rate of pay. (As defined above in Annual Leave) Again we submit that employees should not be "penalised" for taking this type of leave, particularly by a reduction in their pay through the loss of penalty rates.

7. Long Service Leave

Unions NSW and its affiliates support the retention of the NSW Long Service Leave provisions, including the Act and all of its provisions/entitlements as an absolute minimum standard for all workers in NSW.

Unions NSW and its affiliates do not support the proposition outlined within the Discussion Paper that any other instrument which may exclude the employee from being entitled to long service leave prevails over the NSW legislation.

Unions NSW and affiliates note that there are a number of legislative Long Service Leave arrangements in NSW which deal with particular industries, such as the portability of long service leave in the building industry and the Transport Administration Act, which should not be disturbed.

8. Public Holidays

It is noted that the NES only enshrines 8 public holidays as a Minimum Standard. Those considered public holidays for the purpose of the NES are as follows:

- a). 1 January (New Years Day)
- b). 26 January (Australia Day)
- c). Good Friday
- d). Easter Monday
- e). 25 April (Anzac Day)
- f). Queen's Birthday Holiday (on the day on which it is celebrated in a State or Territory or region of a State or Territory)
- g). 25 December (Christmas Day)
- h). 26 December (Boxing Day)

Eleven public holidays is the current community standard in NSW. Public holidays in NSW are gazetted in the Bank Holidays Act (NSW). One additional day is outlined in the majority of all NSW awards and NAPSA's including the Shop Assistants (State) Award, which is one of the largest awards in NSW.

Whilst it is understood that *"(c) any other day declared by a or under a law of a State or Territory to be observed generally within the State or Territory, or region of the State or Territory, as a public holiday, other than a day, or kind of day, that is excluded by the regulations from counting as a public holiday,"* It should be noted that Labour Day, Easter Saturday and the additional public holiday, also referred to as Union Picnic Day is not included in the list of public holidays pursuant to the NES. Unions NSW submit that all should be included in the NES. Labour Day, whilst celebrated on different days in each state could easily be inserted in the same format as the Queen's Birthday Holiday. i.e.

"Labour Day Holiday (on the day on which it is gazetted in a State or Territory or region of a State or Territory)"

Further it is noted that Easter Saturday is a gazetted public holiday in NSW, Vic, Qld, SA, ACT and NT. Unions NSW and its affiliates submit that Easter Saturday is considered as a community standard public holiday within the majority of Australia and therefore should form part of the NES public holiday provisions.

In addition, we again note that employees are to receive their “base rate of pay”. The NSW standard is for payment to be made at ordinary rates of pay, which include shift penalties, allowances and over award payments.

9. Notice of Termination & Redundancy Pay

The proposed NES provision is inferior to the NSW Test Case Provision in regards to termination and redundancy pay. Unions NSW supports the retention of the NSW Test Case Provision made by the NSW Industrial Relations Commission as a minimum NES. The proposed NES provision for Notice of Termination and Redundancy Pay does not include key elements of the NSW Test Case Decision specifically the requirement of consultation prior to any redundancy, (such consultation is to occur with the employee/s concerned and the union to which they belong) and different quantum’s to be paid should an employee be made redundant.

The NSW Test Case Provision in relation to termination and redundancy is attached and marked as Attachment 3. In reaching its decision, the NSW Industrial Relations Commission found that this provision should be the community minimum standard for all NSW employees after careful consideration of evidence from various witnesses from industry, employees and submissions as to relevance. This has been the standard in NSW since its introduction.

Further the NES provides that redundancy payments are to be made at the “base rate of pay”. The NSW standard is for payment to be made at ordinary rates of pay, which include shift penalties, allowances and over award payments.

10. Fair Work Information Statement

Unions NSW notes and supports the comments of the ACTU in regards to the Fair Work Information Statement.