

Inquiry into the operation and adequacy of the National Employment Standards

Finance Sector Union of Australia Submission

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Finance Sector Union

National Secretary: Julia Angrisano
Level 13, 380 La Trobe Street
Melbourne VIC Australia 3000

Ph: 1300 366 378

E: fsuinfo@fsunion.org.au

www.fsunion.org.au

This submission has been prepared by FSU Research and Policy Manager Angela Budai.

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Contents

Background	3
National employment standards	3
Reproductive health leave	4
Menopause and menstrual leave	4
Fertility leave.....	6
Reproductive health leave.....	6
Summary and recommendations	6
Digital Transformation	7
The right to information	8
Effective consultation	8
Reskilling, surveillance and data protections.....	9
Summary and recommendations	9
Conclusion.....	9

Background

The Finance Sector Union (FSU) is a registered industrial organisation under the Fair Work (Registered Organisations) Act 2009. The FSU represents members in the banking, finance and insurance industries (finance sector) in Australia. The finance sector consists of approximately 548,400 workers (approximately 3.7% of the workforce) with women making up approximately 52% of the total number of workers within the sector.¹

Finance workers include bankers, insurance workers, credit and loans officers, claims managers and assessors, financial planners and analysts, investment managers. FSU members are also technology workers, administrators, call centre operators and work in a large variety of jobs such as marketing, fraud investigations and cyber security in all of Australia's largest finance companies.

National employment standards

The finance industry is broad and covers people who work in very small workplaces with fewer than 5 employees up to and including those who work for Australia's largest banks and insurance companies that employ upwards of 30 000 workers. There are a variety of employment arrangements found in the finance industry including workers covered by Enterprise Agreements (EAs), those covered by the Banking Finance and Insurance Modern Award (BFIA), those who have common law contracts and those who rely on the National Employment Standards (NES) to provide the minimum level of workplace entitlements.

There are approximately 182 250 finance workers are covered by EAs that the FSU is party to - this represents approximately one third of the total number of finance workers - the remaining two thirds of the workforce are covered by common law contracts or the BFIA. All of these instruments are underpinned by the NES.

The NES exist to guarantee every employee in the national system a floor of minimum entitlements that cannot be displaced or diminished by any industrial instrument, contract or arrangement. This purpose was articulated with precision in the Explanatory Memorandum to the *Fair Work Bill 2008*, which identified the Government's key objective as addressing "public concern about the adequacy of the safety net" by providing standards that are "fair for employers and employees and [that support] productive workplaces."

The legislative history of the NES demonstrates that Parliament intended them to be a living instrument; one that is capable of growth and adaptation as the nature of work and the expectations of the community evolve. The NES have expanded to include flexibility, expanded parental leave rights, and domestic and family violence support. As the Committee Chair, Dr Carina Garland MP, observed, the NES is "a critical part of the workplace relations framework, setting out a guaranteed

¹ [Financial and Insurance Services | Jobs and Skills Australia](#) [accessed 13 Jan 2026]

minimum safety net of terms and conditions that cannot be undercut.” It is vital that the NES continues to move with the times and that minimum conditions bring equity to the labour market to ensure that everyone is able to participate in work.

As the Australian economy rapid undergoes digital transformation it is also important that the NES provide obligations on employers to ensure they consult workers as their workplaces undergo these major changes. The proliferation of artificial intelligence, digital platform work, automated decision-making, and the increasing capacity of employers to monitor, surveil and direct work remotely has fundamentally altered the employment relationship in ways that the original drafters of the *Fair Work Act* could not have foreseen. The pace of change demands ongoing vigilance and a rapid regulatory response. As AI systems are deployed to augment or replace human labour, as roles are restructured or made redundant in consequence of technological adoption, and as employers increasingly use algorithmic management tools, the NES must continue to evolve to meet these challenges.

The first section of this submission addresses the need for the NES to provide for reproductive health leave. It examines the current state of play in the finance industry including a case study. The second section of this submission calls out the need for the NES to provide minimum standards of consultation for employers that introduce digital transformation and AI.

The FSU is affiliated to the Australian Council of Trade Unions. We support the ACTU submission to this enquiry for matters on which this submission is silent.

Reproductive health leave

The FSU started campaigning for the introduction of paid leave for workers who were experiencing symptoms of menopause and menstruation in 2021. In 2021 there was a single employer that had introduced paid menopause and menstrual leave in the EA that covered approximately 700 workers. At the time of writing this submission there are 8 EAs in the finance industry - covering just over 31 500 workers - that provide some form of paid leave to support workers if they need time away relating to their reproductive health. Unfortunately, that leaves more than 500 000 workers without access to additional paid leave. There is a clear need for reproductive health leave² and unless this is contained in the NES employers will, in most cases, only make this entitlement available where required to by unions through collective bargaining. This means that a worker with the same health challenges will be treated differently depending on whether or not the EA contains relevant provisions. A summary of the different approaches that have been taken in the finance industry is outlined below.

Menopause and menstrual leave

One of the earliest approaches to reproductive health leave was the introduction of paid menopause and menstrual leave. This reflects the need for paid leave for the minority of workers for whom severe symptoms of menopause and menstruation have a debilitating impact on their ability to work. Most

² The FSU report “Breaking Taboos” sets out the case for the introduction of paid leave. It includes the results of a 2023 survey of finance workers and the business case for the introduction of paid leave [Menopause-and-Menstrual-Leave-Policy-Framework-2024.pdf](#) [accessed 16 Feb 2026]

workers who experience menopause and menstruation do so without any adverse impact on their working lives, but for the workers unfortunate enough to have severe symptoms the impact is high. The NES provides for just 10 days of paid personal/caring leave each year for a full-time worker. The majority of workers who experience severe menstrual or menopause symptoms are workers who also have caring responsibilities and often use their personal/caring leave for their caring responsibilities. For those who experience severe symptoms each month they can find themselves having little or no paid leave available for when they are unable to work due to severe symptoms or for when they contract contagious illnesses such as influenza. These workers may come to work when they are unable to work or are sick as they do not have sufficient paid leave to allow them to stay home. This has the unintended consequence (see the case study below) of these workers facing performance improvement plans due to their inability to work through severe symptoms. The recent experiences of COVID-19 show how important it is for people to stay at home when they are sick.

Workers who experience severe symptoms are still subject to the social taboo associated with discussion of reproductive health, and most workers impacted choose not to disclose to their colleagues the reasons they are unable to work. FSU members reported in our 2024 report “Breaking Taboos”³ that the social stigma attached to the discussion of reproductive health issues was a greater barrier to disclosure than concerns about privacy. Employers in the finance industry that are keen to take action to break the taboo as well as to support their workers have introduced specifically named “Menstrual/menopause leave” or have included “menopause and menstrual leave” as a specific sub-category, rather than the more generic reproductive health leave to ensure it has a normative benefit.

Case Study

An FSU member in a call centre and was experiencing severe menstrual symptoms which meant that she needed to use the bathroom hourly. She did not believe she was “sick” and had not used her sick leave to see a doctor about the issue. Call centre workers’ time away from the phone is closely monitored and she was told she may be put on a performance improvement plan (PIP) due to the amount of time spent in the bathroom. The PIP may have led to dismissal if her performance did not improve. The member disclosed to her employer reason for her absences was due to severe menstrual bleeding. Her employer worked with her to allow her to access her sick leave so she could go to the doctor to investigate the cause of her severe bleeding. During enterprise bargaining this FSU member shared the experiences she had at work and the difference it would have made if she had been able to access additional flexibility, support and paid leave. Her employer agreed during bargaining to introduce paid menstrual/menopause leave as well as right to request flexibility when suffering severe symptoms. This was the first time an employer in the finance industry had introduced paid menstrual/menopause leave in an EA.

³ Ibid pg. 5

Fertility leave

Some employers have been unwilling to introduce menopause and/or menstrual leave but have recognised the importance of additional paid time away for workers who are struggling with their fertility when trying to start a family. Not only are these workers often paying a lot of money for fertility treatment, but the cost is also then compounded by when they are required to use annual leave or unpaid leave to attend appointments. There are a small number of workers who are covered by EAs that allow access paid personal/sick leave to attend medical appointments. Westpac introduced 5 days of paid fertility leave into workplace policy, and in 2025 included the paid leave entitlement in their EA. This leave can be used to attend appointments related to fertility treatment, adoption, foster care or surrogacy.

Reproductive health leave

Reproductive health leave is the catch all that allows workers who need time away from the workplace for the treatment or management of symptoms relating to menopause, menstruation, fertility treatments, perimenopause, polycystic ovarian syndrome, endometriosis, vasectomy, hysterectomy - and in some cases termination - to access paid time in addition to the 10 days of personal/carers leave in the NES. The clauses that FSU has negotiated with finance employers range from additional 5 days each year to an additional 12 days of paid leave, with one employer having both reproductive health care leave *and* menopause and menstrual leave (two separate buckets of leave). The leave does not accrue from year to year, nor is it paid out when employment ends. All the clauses include the ability to request flexible work in addition to or instead of paid leave when this will assist with the management of severe symptoms.

Summary and recommendations

The costs of providing reproductive health leave are often cited by employers as a barrier to the introduction of the additional leave entitlement. There are two employers in the finance industry that have gone through a full EA cycle and have continue to include this paid leave when their agreements were renegotiated. These employers' experience is that workers are much more likely to request access to flexible work than they were to take paid leave. Both employers noted that the take up and cost of providing additional paid leave was negligible, and the FSU's experience is in line with the experience of employers who were early adopters of paid family and domestic violence leave. The fear of widespread take up and the associated cost to employers was overblow. One finance sector employer is concerned that the social stigma means that there has not been adequate uptake of the entitlements and they are actively seeking to promote this leave and encourage further uptake. Should the committee wish to speak to one of our employers to discuss the cost of this leave we can provide contact details.

The FSU recommends that the NES be amended to include 12 days of paid reproductive health leave, and our preferred wording for this is for in line with the approach outlined in the ACTU submission – noting our recommendation is for 12 days (not 10 days) of paid leave.

Digital Transformation

The current state of play

Artificial intelligence is one of the most significant transformations occurring in Australian workplaces today. It is changing how work is organised, how it is performed, how it is monitored, and whether it continues to exist at all. The NES do not address these new technologies and have nothing to say about the deployment of AI systems that can replace workers without warning, monitor them without disclosure, assess their performance without transparency, and reshape their roles without consultation. That silence is not neutral. It means that the safety net has a gap in it precisely where workers need it most.

The FSU has surveyed more than 1,100 finance workers about their experience of AI and technology across two consecutive years. In 2025, 70% of finance workers told us that AI threatens their job security, up from 60% the year before. Almost three-quarters reported that their employer had not discussed with them how AI might affect their role. Only 30% of respondents felt prepared to work alongside AI technologies.⁴

These figures describe an industry in which AI is being adopted at pace, but in which workers are being left behind. At the Commonwealth Bank, worker Kathryn Sullivan was told a chatbot would be taking over her customer-facing role.⁵ There was no meaningful consultation about the decision, no retraining pathway offered before implementation, and no genuine opportunity to transition into alternative work.

At Bank of Queensland, 185 workers in contact centre and collections roles were told their jobs would be outsourced to an external company called Capgemini in Manila as part of what the bank described as an AI and technology partnership.⁶

The work was not being eliminated, rather it was being transferred offshore to be performed by cheaper labour, with AI systems layered in to scale the operation.

In both cases, the existing safety net provided only an entitlement to be consulted about the decision after it was made, and only the job losses triggered the “major change component”. There was no obligation on the company to provide information about how the new technology would be used, and no substantive pathway to remain in employment.

⁴ <https://www.fsunion.org.au/FSUnion/Campaigns/AI-in-finance-Transparency-voice-fairness/Hub/Content/Campaigns/AI-in-finance.aspx?hkey=7895738b-e0cd-49f5-b4db-0ada4eb2c58d>

⁵ <https://www.sbs.com.au/news/article/kathryn-lost-her-banking-job-to-a-chatbot-she-just-confronted-her-ba-bosses/cgx8kmymj>

⁶ <https://au.finance.yahoo.com/news/anz-bank-of-queensland-set-to-cut-400-jobs-in-major-offshoring-restructure-plans-055556196.html>

The right to information

The most basic right a worker should have is to be included in the conversation about potential changes that will impact their job. No such right is contained within the NES.

Employers are introducing AI technologies and do not have any obligation to disclose to their workforce information about the technologies that are being developed, the functions they are intended to perform, the roles they are likely to affect, and on the timeline for these changes. This robs workers of agency over their working lives and takes time away from them to make decisions about their own futures. This also deprives workers of the ability to identify roles that will continue to exist, and to develop the skills and undertake the training required to perform these roles.

The result is that the first-time workers find out about AI it when it is introduced and the redundancy notice lands on their desk. By that point, the decisions have been made, the contracts have been signed, and the workers have no capacity to influence the outcome.

The NES should include a minimum entitlement to transparency about the development and intended deployment of AI and automated decision-making systems in the workplace. Workers should not have to wait until implementation day to learn that their employer has been building or buying a system that will substantially change or eliminate their role.

Effective consultation

The NES does not currently include any general right to be consulted about major workplace change. Where consultation rights exist, they are found in enterprise agreements, employment contracts and modern awards. The scope and quality of those provisions varies enormously and where consultation clauses are strong on paper, the reality is that employers treat consultation as a process that begins after they have made their decision.

Workers and their unions are consulted about the effects of the implementation including transitional arrangements, redeployment options, voluntary redundancy packages but not about the decision itself.

Current consultation provisions in enterprise agreements, employment contracts and modern awards are (generally) triggered only when an employer has made a definite decision to introduce a major change that has significant effects. The decision to develop AI, to enter a technology partnership, or to outsource the function may not necessarily trigger consultation.

In the BOQ matter, the bank entered into its strategic partnership with Capgemini and announced the outsourcing of 185 roles before any substantive consultation with workers or the FSU occurred.

The bank's position was that the enterprise agreement required consultation about the implementation of change, not about the decision to change. By the time consultation commenced, the decision was irrevocable, the contract was signed, and the only remaining question was the terms on which 185 workers would lose their jobs.

The NES should include a minimum entitlement to consultation about AI and automated decision-making that attaches at the point of development or procurement, not merely at the point of implementation.

This is not a radical proposition, it reflects the standard that the Government's own National AI Plan set when it said that AI adoption "should involve meaningful consultation with workers, including into the design of AI systems." The NES should give that commitment enforceable legislative form.

Reskilling, surveillance and data protections

Transparency and consultation are the primary gaps in the safety net, but they are not the only ones. The NES should also be amended to support a minimum entitlement to reskilling or retraining before an AI-related redundancy is implemented.

Our survey data shows a persistent gap between employer engagement on AI and worker preparedness and the proportion of workers who feel equipped to work alongside AI has not improved. That gap tells us that whatever training is being offered is either insufficient or ineffective, and that workers need a substantive entitlement rather than a discretionary offer.

More than half of the finance workers we surveyed described experiencing high or very high levels of workplace surveillance, and the deployment of AI-enabled monitoring tools. The only proper use of workplace surveillance is for the protection of health and safety.

Workers are entitled to know what data is being collected on them at work, and how that data is being used in decisions about their employment or what third parties have access to that data. These issues are part of the same fundamental question of whether the NES will evolve to protect workers in the age of AI, or whether it will remain silent while the nature of work is transformed around them.

Summary and recommendations

The NES needs to be updated, and minimum standards must be updated to reflect the needs of the modern workplace. Australian workplaces are experiencing rapid transformation, and it is vital that workers are provided with opportunities to engage prior to decisions being taken that result in job losses. Companies benefit when workers and employers come together to consider the impact of proposed changes prior to their implementation.

The FSU recommends that the NES be amended to include an obligation on employers to consult with their workforce when they undertake any digital transformation, including the introduction of AI. This clause may be similar to those found in modern awards, subject to the definition of significant effects including the introduction of AI and/or digital systems.

The FSU recommends that the NES be amended to include an obligation for employers to be transparent with workers about digital development and procurement.

The FSU recommends that the NES be amended to include right to reskilling, data security and protection from invasive surveillance.

Conclusion

The NES are essential in setting out the minimum standards that must be provided to all workers in Australia. It is vital that NES are continually updated to reflect an improvement in minimum standards as our expectations of workers and their workplaces change over time. The NES should be updated to include access to paid reproductive health leave so that no Australia worker must choose between paid work and accessing the health care they need. The digitisation of the Australian economy is well underway, and the NES should be amended to include an obligation for employers to consult with their workforce as they undertake digital transformation and/or introduce AI that will change the workplace.