

# Submission to the National Employment Standards Exposure Draft

Melbourne Church of Christ  
ACN 111 933 325

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## 1 NES Introduction

1. The Melbourne Church of Christ (MCOC) is a religious institution which operates in accordance with its purpose to promote the fellowship of the Christian religion. In keeping with this purpose, the church employs people who work in accordance with roles outlined in the Bible such as Evangelists, Pastors and Teachers.

## 2 Maximum Weekly Hours

1. The church holds the view that Christian teachings require all believers to be involved in “good works”, and a result of this teaching, much of the work done by employees of the church is done alongside volunteer members of the church. Employees have additional flexibility for these works, as they do not need to also seek external paid work for income support.
2. Consistent with this religious teaching, persons who are employed by the church may be involved with activities of the church, either as a member of the church, or as an employee. The dividing line between what is done as an employee and what is done as a member can be unclear. Our employment contracts state a working week of 38 hours, which is consistent with the proposed NES. In practice, our employees would “work” longer hours than this, but much, if not all, of this additional work would be done even if they were not an employee of the church.
3. Resulting from this the MCOC highlights:
  - that it requires protection from any possible penalty that could arise from employees doing “work” beyond 38 hours that is done in good faith consistent with religious teachings.
  - recognition that much of this “work” should not be considered overtime in the normal employment sense of that word.
4. In answer to Question 1 (page 8 of the discussion paper), the MCOC believes that the employer should be expressly not in breach of the NES where an employee works additional hours of their own volition.
5. In answer to Question 2 (page 9 of the discussion paper), the MCOC realizes that a balanced approach is required. The church would be opposed to all ministry work done by its employees to be considered working hours under the NES due to the reasons highlighted in point 2 of this section.

## 3 Request For Flexible Working Arrangements

1. The MCOC is comfortable with the draft NES in relation to this section.

## **4 Parental Leave and Related Entitlements**

1. The notice period of 4 weeks for a request to extend Parental Leave may be too short. MCOC believes that a longer notice period of 6 weeks is required, or that the notice period be a negotiable matter in an employment agreement between employees and employers.
2. The provision that any extended leave taken by one parent reducing the parental leave entitlement of the other parent may be difficult to implement where the two parents are employed by different employers.
3. Aside from the above two points, the MCOC is comfortable with the draft NES in relation to this section.

## **5 Annual Leave**

1. The MCOC welcomes the “progressive accrual” simplification of accrual of Annual Leave.
2. The MCOC highlights that a provision must be made in order to prevent the longer term accumulation of Annual Leave beyond reasonable limits. The MCOC suggests that 2 times the annual entitlement should be the maximum accrual. The employer should be able to direct the employee to take Annual Leave where the accrual has exceeded the accrual. This is consistent with the overall objective of Annual Leave to provide opportunity for rest and relaxation. If this provision is not to be provided in the NES, then it should be able to be provided in a Modern Awards or an Employment Agreement.

## **6 Personal/Carer’s Leave and Compassionate Leave**

1. The MCOC is comfortable with the draft NES in relation to this section.

## **7 Community Service Leave**

1. Provision should be made for public funding of Community Service Leave where an employee is on jury service for an extended period of time.
2. Aside from this concern above, the MCOC is comfortable with the draft NES in relation to this section.

## **8 Long Service Leave**

1. It has been the experience of the MCOC that employees have found it difficult to take Long Service Leave. Employees who are on leave have found that they have been unable to “not work” during times of Annual Leave taken while remaining at home, and expect that this experience would be the same if on Long Service Leave.
2. While employees have accrued significant Long Service Leave, no employee has ever taken Long Service Leave at the MCOC. The accruals have become a significant burden to the MCOC.
3. The employees of the MCOC have expressed significant interest in being able to access Long Service Leave in alternative forms at their discretion.
4. In order to enable this access, the MCOC took advantage of the former “Workchoices” regime and replaced individual common law contracts with an Employee Collective Agreement which featured a flexible arrangement to Long Service Leave. This agreement provided:
  - Employees could “cash out” part or all of accrued Long Service Leave.
  - “Cash out” could be in any payment form allowed under the agreement, including super, fringe benefits, or cash.

- The Employer (MCOC) did not gain any additional rights such as any ability to direct Employees to take Long Service Leave or to cash it out.
5. The Employees of the MCOC and the MCOC both believe that this flexibility is in the interests of both Employees and Employers. The MCOC does not have the ability to direct Employees to do anything in relation to their Long Service Leave, however the Employee can deal with his or her Long Service Leave as he/she feels fit.
  6. The MCOC strongly believes that the NES needs to provide a flexible approach which would allow this flexibility to continue. The MCOC does not hold that the employer should have any right to request or require that employees should “cash out” Long Service Leave, rather this flexibility should be at the hands of the Employee. If the NES is not to provide this facility in general, it should still make it available to religious practitioners.
  7. The MCOC provides access to Long Service Leave after 7 years of service. The MCOC is supportive of any mechanism to standardize Long Service Leave across different jurisdictions in Australia.
  8. Specifically in answer to Question 34, the MCOC holds that workplace agreements should be able to override state and territory Long Service Leave laws, but subject to a no disadvantage test.
  9. MCOC and MCOC staff would also seek to see that any reasonable “cash out” clause in existing agreements be honoured by the transitional legislation and the new NES regime before the nominal expiry of those agreements.

## **9 Public Holidays**

1. The MCOC is comfortable with the draft NES in relation to this section.

## **10 Notice of Termination and Redundancy Pay**

1. The proposed Redundancy Pay Period is greater for employees serving for 7 years to less than 10 years than those serving 10 years or greater. MCOC would prefer to see the Redundancy Pay period increase as proposed but be limited to 14 weeks. This would mean that service for 9 to 10 years see a reduction of the period from 16 weeks to 14 weeks, and service for 10 years and greater increased from 12 weeks to 14 weeks.
2. Aside from this, the MCOC is comfortable with the draft NES in relation to this section.

## **11 Fair Work Information Statement**

1. The former statement under “Workchoices” was viewed by MCOC staff as a waste of time, hard to understand and unreadable. MCOC suggests that a short “plain English” statement that refers to further information available by the Internet and information lines would be more appropriate.

## **12 “Modern” Awards**

1. It has been suggested that a default Modern Award be created to cover any employee not covered by other awards. As MCOC staff are not covered by existing awards, MCOC desires not to see any award that sets out a restrictive regime that limits the arrangements that MCOC staff and the MCOC can enter into aside from those provided by the NES.
2. MCOC staff have traditionally sought a substantial portion of their benefits in non cash forms. The MCOC’s position is to allow for unrestricted “salary sacrifice” at the employee’s discretion. The employee should not be required to take a minimum cash entitlement.