LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON ECONOMY AND GENDER AND ECONOMIC EQUALITY
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Submission Cover sheet

Inquiry into the future of the working week

Submission number: 028

Date authorised for publication: 17 November 2022

Construction, Forestry, Maritime, Mining and Energy Union (CFMEU),

Construction and General Division,
ACT Divisional Branch

Submission to

INQUIRY INTO
THE FUTURE OF THE WORKING WEEK

ATTN: Standing Committee on Economy and Gender and Economic Equality

Contents

A. Introduction

The Construction, Forestry, Maritime, Mining and Energy Union Construction and General Division ACT Divisional Branch (CFMEU) is one of the largest trade unions operating in Canberra, and represents over 2000 workers across the ACT Construction Industry, off-site construction and ACT Government. Our union is dedicated to fighting for the rights and safety of our members, which includes securing better pay and working conditions, and ensuring greater health and safety on construction sites throughout the ACT.

The scope of this inquiry is significant, and in the interest of providing the most succinct and valuable feedback possible, we will limit our detailed comments to those matters in which our members have experience or a direct interest. We will accordingly begin by outlining the principles we support in relation to any proposed change; and other policies, references and proposals that we support or recommend, based on these principles.

We will then provide detailed comment in three specific areas – the union's historical experience of proposals to change the length of the working day or working week; our view on how such a change might be managed in the ACT Public Sector, and the issues raised by a move towards shorter working weeks in the ACT or Australian private sector.

B. Principles and references

At the level of principle, CFMEU supports any initiatives that return leisure time to workers.

All working people are entitled to dignified, rich and fulfilling lives, and that necessarily entails sufficient time to spend with family, community, self-improvement and the pursuit of happiness. Construction workers have been at the forefront of movements to claw back their time from the workplace since Melbourne stonemasons won the 8 hour day in 1856. The famous principle “8 hours labour, 8 hours recreation, 8 hours rest”, commonly shortened to 8/8/8, has been a guiding principle of the union movement since that time.

Shorter working hours are also important for the role they play in the health and safety of workers. We more fully understand now the impact of fatigue in workplace accidents, as well as being an underlying cause of chronic conditions such as repetitive strain injury, musculoskeletal damage, and poor mental health.

We also know that the issue of long working hours is inextricably bound up with the drive towards greater control and micromanagement of workers. The slide back towards longer days for full-time workers coincided with deregulation of the labour market and the commencement of the enterprise bargaining system in the 1990s. With the development of new technologies that allow for remote surveillance and management of workers, as well as the creeping encroachment of work into leisure time, policies that seek to enforce strong limits and promotes norms around switching off are preferable.

That said, we do not support policies that reduce the wages or conditions of workers. Many CFMEU members perform long hours, either by choice or by necessity. They have financial goals and obligations that they seek to pursue through often intense periods of work; often in hazardous or remote conditions. Our mission is to support their ability to make these choices safely, and over time improve wages and conditions to reduce the burden on them and their families. We don’t support interventions that would see workers unable to maintain their standard of living or create unintended consequences by having high value positions broken into lower value positions.

We also have a strong, principled objection to the ongoing casualisation of labour. Any policy that seeks to regulate full-time work or permanent work runs the risk of creating financial incentives for employers to shift more of their workforce to a precarious employment model, either via casualization, fixed term contracting, labour hire or sham contracting/gig work. We ask that consideration be given to measures to mitigate this risk and prevent any further descent into an unfair, two-tier workforce.

C. Historical experience of working hours reduction

While, as noted above, the Operative Masons Society was the first in the world to successfully win the 8 hour day in Melbourne in 1856, the adoption of shorter days was not universal across the building industry from this time. After significant setbacks to unions generally during the 1880s depression, builders labourers in particular continued to fight for eight hour days into the 1890’s, as

a key demand of the major strike in Sydney in 1890[1], and Perth in 1896[2]. Despite their early advances, many construction workers did not finally achieve the 8 hour day until the Eight Hours Act was passed in 1916. Through this period, all construction workers continued to work a full, ordinary day on Saturdays – resulting in a 48 hour week.

In 1920, the Commonwealth Conciliation and Arbitration Court awarded engineers a 44 hour week[3] – with only a half day on Saturdays; a standard that was immediately reversed by the federal government and formed the basis of contention until a further decision in 1939 spread the 44 hour week across the workforce.

Finally, after further campaigning and litigation in 1947, the ACTU successfully ran a further case that set in place the 40 hour week[4]. This was intended to be a 5 day week of 8 hours per day. Within that year, the court also introduced the first national system of penalty rates[5], establishing that Saturdays were to be paid at time and a half and Sundays at double time, to discourage employers from eating into the weekend.

In the construction industry, these later decisions did not have the intended effect. Instead of a reduction in hours, the six-day week survived and Saturdays became "the cream" – a higher paid, often slightly quieter day that partially compensated for low wages and poor conditions experienced throughout the rest of the week. By decoupling from the broader workforce in terms of hours of work at this time, the construction industry also held out against many positive labour market reforms that began in the decades after WW2, and in fact went backwards, losing increment weather conditions in some cases. In this period, the segmented character of the industry worked against industry-wide reform, with deep and intractable divisions between labourers and tradesmen. Often on-site conditions between the two groups varied widely.

It wasn't until a further outbreak of activism by building unions from the late 60s to the early 80s that the industry as a whole caught up, achieving between 1972 and 1976 annual leave, public holidays, redundancy pay, paid sick leave and portable long service leave. It was also in this period that the "daily hire" rate first emerged, an early form of casualisation that still exists in the BCGOA.

But the six-day week remained in place. In 1981, the Amalgamated Metalworkers and Shipwrights Union succeeded in introducing the 38 hour week (though they were actually calling for 35); and the new national standard spread throughout other awards. However, the construction industry remained static, increasing the penalties paid on Saturdays to double time after the first two hours, but in no respect reducing the hours of work. Once again, theoretical hours reductions were converted into pay rises by a profitable industry willing to pay more to extend its hours of operation and able to set the terms.

In the period between the 80's and today, the construction workforce has continued to change. Increasing use of heavy machinery and complex building techniques has both increased the capital intensity of the industry and the specialisation of workers, leading to increasing pressures to keep sites open longer and specific workers on site for the whole time. Despite rising wages and a

[1] https://www.labourhistory.org.au/hummer/no-8/waterside-workers/
[2] https://www.surplusvalue.org.au/McQueen/BLF/blf_perth_strike.htm
[3] Amalgamated Engineering Union v J Alderdice & Company Pty Ltd and Others 24 CAR 755

[4] The Standard Hours Inquiry, 1947, 59 CAR 581

[5] *Weekend Penalty Rates Case* [*1947*] 58 CAR 610

universalised system of penalty rates, employers have been prepared to continue to pay premiums to keep sites operating from before dawn to late into the evening. At no time since has the industry moved away from the six day week, until some significant experiments within the last 5 years, which we will discuss later in this submission.

However, the deregulation of the labour market from the 90s onwards has also produced an underclass of workers perceived as "unskilled or "replaceable", initially often casual or the "daily hire" rate in the relevant award, but increasingly farmed out to labour hire operations. These workers work wildly variable hours, from a few a week to 60 or 70 in line with permanent workers. They average at around 30, but are less likely to be paid correctly, or receive penalty rates, and are more likely to experience discrimination and wage theft. This ancillary workforce is clustered in cleaning, traffic control and general labouring, and is perceived as a cheap alterative to squeezing additional hours out of the permanent workforce.

These workers represent the alternative employer approach to a more regulated hours environment – utilising a larger number precarious workers to extract the required number of hours without penalty rates, and with chaotic rostering or hiring practices serving to discipline the workforce rather than meeting their needs.

D. Powers of the ACT Legislature

While we applaud the determination of ACT Legislators to inquire into matters with the potential to improve workers' quality of life, the legislature has limited power to act unilaterally in this area.

As an entity of the Commonwealth, the Territory is entirely subject to acts of the Commonwealth parliament. Clauses 51 (xxxix) and 122 of the *Commonwealth of Australia Constitution Act 1900* have been held to provide jurisdiction over all matters of law and governance in territories administered by the Commonwealth, including the ACT and NT. As the ACT has experienced frequently over its post-self-government history, the Commonwealth has not been shy about asserting this power.

While it's theoretically possible that this situation may change – given, for example, the large number of federal Senate candidates in the ACT currently promising to reform this relationship – even the States have limited regulatory powers over IR, with most of the action in this sphere monopolised at the federal level, as per the ratio in *NSW v Commonwealth (2006) HCA 52.*

The federal *Fair Work Act 2009* (Cth) at s62 establishes the 38 hour week as the workload of a full-time employee; and through the various Awards, it generally sets the pattern of hours as a Monday to Friday 5 day week, except where shift rosters, penalty rates or very specific industry conditions apply. The Award system sets a range of minimum conditions that can be exceeded in favour of the employee via either collective or individual bargaining – allowing for enterprises and employees to move to a 4 day week, for example, without affecting other enterprises or employees in their industry. This system comprehensively "covers the field" and it's not apparent in what way the Territory – with or without a strengthened jurisdiction – could legislate in this area without creating an inconsistency such that the law would be invalid.

In the short term then, the two areas where the ACT Government has power to act are as follows:

1. The power to set wages and conditions of employment within the ACT Public Sector (subject to agreement with their employees), analogous to the powers of a private sector employer.
2. The power to require terms affecting wages and conditions when contracting with private sector employers who supply goods or services to the ACT Government. This "power of the purse" is already utilised in projects like the Secure Local Jobs Certification program that seeks to drive cultural change in local industry. As with that program, it would have the greatest impact on sectors highly exposed to government, such as social services, cleaning, and construction.

To drive change in this area, the ACT Legislature would need to adopt a segmented and nuanced approach, working with public sector employees to establish a transitional framework, while learning the lessons of the SLJC and predecessor programs and imposing clear, non-negotiable requirements and strict discipline to drive any change at all in the private market

E. ACT Public Sector Working Hours Reduction

The ACT Public Sector is a diverse operation. With a workforce that operates across core policy departments, schools, hospitals, regulatory bodies, social workers, roads, and parks, there is no possibility of a one-size fits all introduction of a 4 day week. In particular, the impacts between white collar workforces engaged in policy, administrative, financial and business functions and workers in the service delivery functions – which encompasses the technical and trades capacity of the ACTPS – would be stark. As a union which primarily represents those technical and trade staff, we week to provide comment primarily on how a "reduced" week (in the terms established by the discussion paper) would impact on these areas.

It is beyond argument that a reduction of hours for workers performing demanding manual labour is a positive, and should lead to reductions in injuries, illness, downtime, conflict in the workplace and an enhanced quality of life for workers. We note with approval the references provided in the discussion paper, and would add that the aging workforce of the ACTPS's technical areas puts these issues into even starker relief.

It is also true that a properly resourced reform of this nature would build in more surge capacity and redundancy to the ACT Government's service delivery functions, features which, as the recent pandemic showed, are seriously lacking.

However, any reform that simply attempts to reduce the hours during which services are provided is likely to run into problems unique to particular sections. In horticulture, city presentation or roads, for example are often season, light and weather dependent, meaning that there are parts of the year where a high intensity of work is required, and other parts of the year where work must be performed within tight windows when operations are possible. The perennial ACT concern of park and verge mowing is one such function.

In other areas like building management, limiting the hours during which services are provided is likely to have knock on effects in the areas supported. Often trades staff in these areas are maintaining and repairing the facilities relied on by other front line staff – health professionals and teachers, for example. The work is also highly reactive and often urgent – with the services disrupted or stopped entirely until an area is made functional or safe.

In either of the above circumstances, the ingrained habit of the ACTPS is likely to be to shift more of the work to contractors. We have already seen over the past decade a significant privatisation by stealth of the trades and technical elements of the service; with a ramp up of external contractors justified by "surge" work, "infrequent" or "specialised" functions, or just the purported convenience of outsourcing. In a circumstance where the ACTPS leadership is called upon to undertake a complex workforce reform task involving the co-operative management of new rosters and hours, we are concerned that their first instinct will again be to hand the problem on to the private sector. We support in this respect the ongoing work of the Insourcing Taskforce.

Given the need to maintain service levels to the public and prevent further erosion of the service through outsourcing, any functional reform of this nature would require most or all of the trades and blue collar areas to move to shiftwork rosters, alongside wholesale reform of on-call rosters. Unfortunately, we do not think the ACTPS currently has the internal capacity to manage a process of this size and scope; and would not support a program of this nature at the present time.

Under the current system, although RDOs are being rolled out broadly, weekend and on-call rosters are in place across many depots and areas, but are often at capacity, poorly administered and lacking in flexibility and redundancy. They are often paper-based, and dependent on the whims of middle management, leading to a constant cycle of dispute and disruption within the areas affected. A reform that simply added an additional day to those required to be covered under such rosters is not practically possible – and with the current senior and middle management structures in place, likely to become highly conflictual and produce dysfunctional rosters.
In order to put the ACTPS in a position where a reform of this nature could be contemplated:

- The number of trades and GSO staff must be expanded dramatically; and conditions of work improved to attract qualified staff, as discussed below. The increase in workforce would be a valuable step in and of itself towards the phasing out of thoughtless and nonsensical outsourcing across the service.
- The ACT Government must improve its capacity in terms of administrative support staff trained to deal with complex rostering systems; as well as the IT systems necessary to replace paper timesheets and rosters.
- Care and attention must be given to improving the management of existing rosters, improving management quality at depots and discouraging the aggressive and conflict-generating management practices that often characterise blue collar areas. Delegates and WHS reps must be seen at all levels as partners in the move towards improved working conditions, rather than rivals to be squashed.

Finally, should other parts of the service proceed down this path while the trades and technical areas are ringfenced from these reforms, the disparities between GSO and ASO pay will be further heightened. We note that a process considering the GSO classification is already underway within the service; and reiterate our support for a classification structure that properly recognises the

variety and complexity of tasks performed for the ACT by this class of worker, as well as the desperate need – in an era of re-emerging inflation – for a decent pay rise for GSO staff.

At the 2022 CFMEU Construction and General Division, ACT Branch's Conference, delegates passed the following motion, which we wish to draw to the attention of the committee:

4.	GSO Pay rises	
	a.	General Service Officers (GSO) are ACT Government employees who keep our city running. GSOs are essential workers.
	b.	GSO wages have not kept pace with the cost of living in Canberra, nor have relativities been maintained with other comparable work across membership.
	c.	This Committee calls upon the Branch to commit to a substantial campaign in 2022 for the restructuring of GSO wage scales, with substantive increases to wages in order to ensure that GSO wages are decent and fair and reflective of the high cost of living in Canberra.
	d.	This Conference calls for a Fair Go for GSOs.

We ask that this Committee consider that the base rate for a GSO2, an entry level position, is currently $50,247; which in Canberra, one of the most expensive cities in Australia, if not the OECD, is not a practically liveable wage.

F. Encouraging change in the private sector

As set out in our history above, there are parallel labour markets operating in the territory. At one end of the market is a core segment of skilled or difficult-to-replace staff which will be resistant to hours reductions; and a marginal segment which is already operating in a way which habitually underemploys workers and removes their job security and choice.

In the ACT construction sector, both these "core" and "marginal" sectors are present and will require different policies and approaches. Our experience has been that regulatory approaches that seek to address only the employment relationship position of the theoretical 38-hour full-time worker result in the industry offering increasing financial incentives to core workers to maintain the status quo, while shifting a larger proportion of their work to insecure workforces, such as labour hire companies or ABN sole contractors.

For this reason, the focus to drive working hours change in this industry cannot be on the individual employment relationship; but must commence at the level of the worksite. The evidence of experience is that changes to work culture that are driven by a combination of worker self-organisation on-site, as well as contractual and EBA interventions at the level of principal contractors (who control the pace and tempo of the work) has been able to drive positive change, such as with the widespread industry acceptance of lockdown weekends i.e. the synchronisation of rostered days off adjacent to pre-arranged weekends to allow entire sites to close.
Luckily, this is also the level at which the ACT Government has the greatest ability to act on the sector, in its role as developer.

G. 5 Day Week Resolution

At ACT CFMEU's recent Branch Conference, the Union committed to trialling 2 sites over the next 12 months on a 5 day working week. This would not be a straight hours reduction – instead it is likely to mean 10 hour days, Monday to Friday, along the lines of the compression model discussed early in the discussion paper.

If successful, this would represent the very first time that construction workers in the ACT would have the ability to enjoy regular weekends, and a key focus will be on assessing the health, financial and social impacts of the change. Another element of the trial will be to assess the impacts of this model in the Canberra industry – to ascertain, for example, whether it reduces overall overtime as it has in other places, triggers the reorganisation of high-risk work on site for less crowded days to improve safety outcomes and amenity for nearby residents, or necessitates improvements in job sequencing on-site.

The experiences of the CFMEU's Queensland branch are instructive in this respect. Since 2018, the Queensland branch has been negotiating site-specific arrangements relating to the 5 day work week, particularly in urban sites through the south-east. Like the ACT, south-eastern Queensland has experienced a sustained construction boom that has seen the industry stretched to the limit, with attendant pressures on workers to put in long hours of work. Like Canberra, they also suffer from challenging climatic conditions that can compromise site safety in specific seasons.

Delegates and workers raised issues around the unsociable hours – many members reported never having been to their kids weekend sport, for example. Interestingly, though, a significant issue had developed around the control and dominance that the 6 day system extended to management – with such a large proportion of workers' income dependent on working (discretionary) overtime, there was a concern that this was being utilised to pressure workers into accepting unsafe conditions or other inappropriate behaviour.

Initially, the branch experienced significant push-back from some members, concerned primarily with the loss of income; as well as senior managers of building entities, concerned about the progress of their projects. However, the trial sites revealed substantial unexpected benefits like the dramatic reduction of absenteeism, reportable safety incidents and substantial buy-in from site management who have also realised additional time with family from the changes.

The key to all of these benefits has been the ability to intervene at the site level – to reshape the organisation of work at a project, rather than attempt to take individual action or create new individualised rights. This necessarily involves a transfer of power and control away from senior management of the construction sector towards line management and workers. We are in no doubt that this shift will provoke resistance, as it does in every case where management prerogative and dominance is challenged.

Accordingly, we seek the support and assistance of the ACT Government as we proceed to roll-out the trial. In particular, we seek that the ACT Government utilise its power as a major developer to support businesses and consortiums willing to co-operate on trial sites and/or nominate specific construction projects as 5 day projects.

H. Conclusion

We put to the committee a simple argument underscored by the historical synopsis contained in the committee's own discussion paper:

Any truly transformative, positive and permanent change to working conditions can only be achieved by worker self-determination and self-organisation.

That includes reform of the working week, which will have different characteristics, concerns, advantages and disadvantages in each particular industry; and which must be approached on a sectoral basis with reference to the organic demands of workers and their unions in that sector. We look forward to working with an engaged and active ACT Legislature to ensure that all Canberra workers can access dignified work that allows them to enjoy rich, full lives outside of the workplace.

Yours sincerely,

Zachary Smith

Divisional Branch Secretary

CFMEU, Construction & General Division (ACT Branch)