



australian
nursing federation

Award Modernisation

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The Australian Nursing Federation (ANF) proposal is for a new modern nursing award to replace approximately 50 federal and 50 NAPSAs currently applying across the states and territories. A list of the awards to be considered in this exercise forms Attachment A to this submission.

1. The proposed scope of the award

1.1 ANF has prepared a draft award scope clause that may apply to a new modern nursing award.

1.2 Draft Nursing Award Scope Clause

The scope of an award to apply to the occupation of nursing shall apply to all persons who are primarily employed to provide or assist in the provision of nursing care and/or nursing services. Nursing care and nursing services encompass any care or services provided in the course of the provision of care to persons in need of medical or health care and/or in need of assistance in daily living

1.3 The draft scope is intended to encompass employees who are primarily employed to provide or assist in the provision of nursing care and not to apply to employees who may undertake tasks or responsibilities that are subsidiary to providing nursing care or nursing service. Traditionally these employees are registered nurses, enrolled nurses, and assistants in nursing. These employees are currently covered by nursing federal and state awards.

1.4 The terms of the draft scope is consistent with a number of decisions of the AIRC and state industrial tribunals. For example see Decisions T4652 paragraphs 38 to 42 and R7043.

2. Demographics of the employment of nurses

2.1 Nurses work in hospitals, rural and remote communities, schools, prisons, aged care facilities, the armed services, higher education, mental health, within state and federal government general medical practices, private business and in peoples homes.

2.2 Nurses are the largest health profession and comprise over 55% of the entire health workforce.

2.3 The latest published data for the nursing workforce is found in the Australian Institute of Health and Welfare (AIHW) publication *Nursing and Midwifery Labour Force 2005*.

2.4 According to the AIHW, there were 285,620 nurses licensed in Australia in 2005. Of these, 230,578 (81%) were registered nurses and 55,042 (19%) were enrolled nurses.

2.5 The 2005 data shows that the largest proportion of nurses were employed in clinical practice (91.2% of registered nurses and 91.5% of enrolled nurses). Of these, 31.5% were employed in the clinical practice areas of medical and surgical nursing; 15.3% were employed in gerontology; 14.4% in intensive care; 8.4% in maternity care; 7.5% in operating theatres; 6.3% in community health; and 5.7% in mental health.

- 2.6 Approximately 59.0% of employed nurses work in public and private acute hospitals; 13.3% in residential aged care facilities; 9.0% in a community setting; 4.3% in psychiatric hospitals/mental health services and 14.4% in other nursing areas.
- 2.7 It was estimated in 2004 that there were also around 67,000 unlicensed nursing assistants employed in hospitals and the residential aged care sector to assist nurses in the provision of nursing care.
- 2.8 In 2005, 49.8% of nurses worked part-time (48.2% of the registered nurse workforce and 56.6% of the enrolled nurse workforce). The average number of hours worked per week however increased slightly from 32.8 hours in 2004 to 33 hours in 2005 (33.3 hours for registered nurses and 31.6 hours for enrolled nurses).

3. Analysis of existing nursing award coverage

- 3.1 Attachment B to this submission provides lists of federal and state nursing awards: those that are wholly nursing and those awards that cover nurses and others. Of these awards around 70% apply only to the occupations of nursing
- 3.2 It is estimated that there are approximately 64,000 nurses currently covered by NAPSA's who will be affected by the award modernisation exercise vis: 40,000 in NSW, 20,000 in Qld, 2,000 in Tas, 1,000 in WA and 1,000 in SA.

4. The industry of nursing

- 4.1 The award modernisation request envisages the establishment of new awards at both an industry and occupational level.
- 4.2 Pursuant to S.4 of the WRA the definition of an industry includes:
- “(b) Any calling, service, employment, handicraft, industrial occupation or vocation of employees”.
- 4.3 The Macquarie dictionary defines industry to include “any particular branch or trade or manufacture”.
- 4.4 The Rules of ANF provide eligibility to enrol persons employed in the “industry of nursing” (Rule 5.1.1).
- 4.5 In the consultation proceedings it has been submitted that the term industry in respect to the award modernisation request means the industry of the employer. It is the view of ANF that nothing in the award modernisation request or associated materials supports that restricted view.
- 4.6 Historically federal and state industrial tribunals and the courts have treated nursing as an industry of employees that has little or no existence in the employer sense (For example see II IR at page 245 and the decision of the High Court in s74 of 1985 Re RANF V Ex Parte NSWNA).

5. A community of interest

- 5.1 The industrial and professional history of nursing is founded on a recognition that nurses work across a range of settings in the health and welfare sectors.

- 5.2 Nurses are a highly mobile workforce where staff shortages remain entrenched. The impact of these characteristics on the nursing labour market has in part resulted in federal and state tribunals favoring consistent safety net wage and employment conditions in awards (see for example AIRC decisions J4011 & K3662)
- 5.3 As a profession nurses strongly identify with each other regardless of the sector in which they work. This also serves to make them a clearly identifiable group by employers and the public. Common issues across the sectors such as labour shortages, workloads and medication administration bond nurses professionally and assist in maintaining standards of care.
- 5.4 Further, common national training and registration requirements facilitate labour mobility and further strengthen the justification for a single national safety net award for nurses.

6. Sections 576A and 576B

- 6.1 The ANF submits that the proposal to make a new modern nursing award is consistent with a number of factors set out in s.576A and s.576B.

576A Object of Part

- (1) The object of this Part is to provide for the Commission to make modern awards in accordance with an award modernisation request;
- (2) Modern awards:
- (a) must be simple to understand and easy to apply, and must reduce the regulatory burden on business; and

ANF Comments

- *Existing structures have been in place for many years and are known and accepted by nursing employers. Historically there have been very few disputes over the interpretation and application of nursing awards.*
- *Many award conditions continue to apply in agreements which reflect their acceptability and application.*

- (b) together with any legislated employment standards, must provide a fair minimum safety net of enforceable terms and conditions of employment for employees; and

ANF Comments

- *The current terms of nursing awards both federal and state were established during the period of the application of the structural efficiency wage fixing principles.*
- *Since that time the awards have been subject to a number of award review exercises.*

- *In the paid rates review decision Q7661 the AIRC said in part “We accept the submission that although the rates contained in the awards (excluding Appendix A) have been treated as paid rates in the past, they are nevertheless properly fixed minimum rates for the relevant classifications being within the acceptable range of relativities in relevant minimum rates awards.”*
 - *Nursing awards today provide a consistent safety net for all nurses regardless of where they may be employed.*
- (c) must be economically sustainable, and promote flexible modern work practices and the efficient and productive performance of work; and

ANF Comments

- *Uniform safety net award conditions covering all nursing groups will assist employers to fairly compete in a competitive labour market.*
 - *Nursing awards provide for a comprehensive set of employment conditions that have been developed specifically for nurses.*
- (d) must be in a form that is appropriate for a fair and productive workplace relations system that promotes collective enterprise bargaining but does not provide for statutory individual employment agreements; and

No comment

- (e) must result in a certain, stable and sustainable modern award system for Australia.

ANF Comments

- *Nursing awards remain stable and relevant to the industry.*
- *Fragmentation of nursing award conditions will occur if they are included in “industry” awards. They will become less stable as the impact of profitability and funding arrangements etc. impact on the safety net.*

Division 2 – Award modernisation process

576B Commission’s award modernisation function

- (1) It is a function of the Commission to carry out one or more award modernisation processes.
- (2) In performing its functions under this Part, the Commission must have regard to the following factors:
- (a) promoting the creation of jobs, high levels of productivity, low inflation, high levels of employment and labour force participation, national and international competitiveness, the development of skills and a fair labour market;

ANF Comments

- *Consistent structures and conditions provide for fair national and interstate competitiveness ;*
- *Skills are developed by providing consistent nursing remuneration arrangements based on skills, educational qualifications and levels of responsibility rather than the sector in which the nurse is employed;*
- *Nurses are more productive when protected by occupational awards because nursing occupational awards are more tailored to meet the required role and responsibility of the nurse. Eg the use of specific classification descriptors.*

- (b) protecting the position in the labour market of young people, employees with a disability and employees to whom training arrangements apply;

ANF Comments

Nurses have consistent training and licensing arrangements. C.O.A.G. has determined that national licensing arrangements are to apply from mid 2009. This in part is in recognition of the need to remove anti- competitive barriers to the movement of nursing labour.

- (c) the needs of the low-paid;

ANF Comments

Many nurses are low paid workers and continue to rely of the award safety net where they do not have access to agreements. The entry level award rate for an Assistant in Nursing is around \$15 per hour and for an Enrolled Nurse starts at around \$16.50 per hour.

- (d) the desirability of reducing the number of awards operating in the workplace relations system;

ANF Comments

ANF proposes to reduce 100 awards to a single nursing award.

- (e) the need to help prevent and eliminate discrimination on the grounds of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, and to promote the principle of equal remuneration for work of equal value;

No comment

- (f) the need to assist employees to balance their work and family responsibilities effectively, and to improve retention and participation of employees in the workforce;

ANF Comments

There are long term and entrenched nursing shortages across most nursing disciplines. In response there are long term and comprehensive programmes across government and industry designed to positively address recruitment and retention across all nursing sectors. No programme to our knowledge contemplates providing for different arrangements for nurses in different parts of the health and welfare industry.

- (g) the safety, health and welfare of employees;

ANF Comments

Nurses are important human capital. If the profession is to remain viable its status must be respected and the welfare of nurses promoted. Nursing specific awards assist in this

- (h) relevant rates of pay in Australia Pay and Classification Scales and transitional awards;

No Comment

- (i) minimum wage decisions of the Australian Fair Pay Commission.

No Comment

- (j) the representation rights, under this Act or the Registration and Accountability of Organisations Schedule, of organizations and transitionally registered associations.

ANF Comments

ANF has representative rights of nurses in every state and territory. ANF has over 165,000 nurses as members and is the largest industrial and professional nursing organisation in Australia.

7. An Aged Care Industry Award

- 7.1 The HSU, LHMU and AWU propose a new modern award to cover all employees engaged in the “aged care” industry.

- 7.2 The proposed scope of the award is set out in Exhibit HSU2 as follows:

Aged Care Modern Award (draft scope)

A modern Aged Care Award will apply to all employees in operations engaged in providing accommodation for aged persons in a hostel, nursing home, aged care independent living units, aged care services apartments or garden settlement or retirement village or any other residential accommodation facilities.

Including:

- *Accommodation for the aged operations*
- *Aged care hostel operations*
- *Nursing home operations*
- *Residential centres for the aged operations*
- *Retirement village operations*

Excluding:

- *Local Government provided aged care operations*
- *Home care operations*
- *Day respite operations*
- *Non aged care residential operations*

- 7.3 The proposed award scope is unclear in its attempt to define the industry and is inconsistent with the views of many employer groups. (For example see Para 7 of Exhibit ACIEA 1)
- 7.4 Exhibit HSU2 seeks to introduce artificial exclusions which do not reflect aged care operations. For example the exclusion of “home care operations” suggests that Home and Community Care Services (HACC) are not to be included in the new award. HACC is a significant and growing sector in aged care services. Many employees have responsibilities for providing residential as well as community support and care for the frail and the aged.
- 7.5 It is unclear what is meant by ‘non aged care residential operations’ given that the sectors currently provide accommodation and care for persons not defined as aged, for example persons with significant disabilities.
- 7.6 It is unclear whether HSU2 intends to include those parts of the industry providing Extended Aged Care at Home programs or services to veterans. Given that such services are often provided by organizations that also provide traditional residential care this would make such an exclusion impracticable if not ludicrous.
- 7.7 It should also be noted that ‘aged care’ is a subset of the range of clinical services delivered by public and private hospitals. In some circumstances this is delivered as residential aged care, as transitional care (pending placement in a residential aged care facility), as acute care pending an alternative placement, as psycho geriatric extended care, as secure dementia care, as geriatric evaluation and maintenance, as rehabilitation, as home nursing and as other forms of sub-acute or extended care. These services are provided by the same work groups of nurses who deliver all other care in the facilities, even within the same pay period. It would be impractical that a single employer be required to remunerate these nurses in accordance with two or even three awards, or that nurses performing identical work be covered by more than one award.
- 7.8 The AIRC consultation process to date has clearly demonstrated that there is no unity of views amongst employer groups about the scope of the aged care industry or whether it should be in the award priority list at all . For example:

Mr Boyce representing a number of state and national aged care employers:

PN1777

The only other submission the associations make goes to the issue of timeframes. We'll be putting in our final written submissions a revised timetable in relation to the priority list for the Commission's consideration. If the Commission doesn't consider that revised timetable as something they're prepared to adopt given the time constraints currently applying, then the aged care employers still submit that they should be taken off the priority list and given a new timeframe. And that goes to issues of funding which I've developed in the outline of submissions and will develop further in our final written submissions.

Mr Schmidt on behalf of the ACT Chamber of Commerce

We therefore urge the Commission to consider the inclusion of one additional industry for its list of priority industries for award modernisation, that being the community services industry. This could be achieved either by including the community services industry in the list in its own right or, if the Commission prefers, by broadening the scope of a similar industry already identified on the list.

PN2349

As there are many similarities between the community sector and the aged care industry we feel that the two could profitably be grouped together and considered collectively as the Community Services and Aged Care Industry. We submit that the community services sector is deserving of inclusion in the priority list based on the importance of the sector in Australia, the potential for reduction in the number of awards that currently apply and the similarity of the community services sector to other industries.

Miss Darwin on behalf of the Queensland chamber of Commerce:

PN2099

In respect of the aged care industry we believe that nurses should be included in the aged care industry because they make up a significant part of the workforce in that particular sector. We would also state, and I know it's been said previously so I won't go into it, but we do believe because of the funding and also regulatory controls on aged care industry that it should not form part of the priority listing. We would also state that we believe that the Commission in the modernisation of the award should look at whether the aged care industry should be broadened to the community sector, and if that is the case then we believe that domiciliary nursing should in fact be included in that broader industry scope.

MR P MAZENGARB on behalf of Tasmanian aged care employers:

PN2626

In light of the comments made I submit on behalf of Aged and Community Services Tasmania that the aged care industry be removed from the priority lists finally determined by the Commission through these deliberations. Commissioner, as briefly alluded to previously the second issue I wish to address today is the exclusion of the nursing occupation from the aged care industry on the draft list of awards. Nursing occupation has its own discrete heading reflecting that nurses in the aged care industry would be examined as part of the overall nursing industry and not in the context of the aged care industry.

Ms Khune on behalf of the WA chamber of Commerce:

PN2891

We do agree with Mr Blake in his description of the common history of wage fixation for nurses, both Federal and State, and the consistency of rates of pay and a number of employment conditions apply across both Federal and State awards. But, your Honour, it's not at this stage a submission to support including nursing classifications within the aged care sectors. It's really simply to say that the aged care sector awards need to be examined within the context of a wider examination of health and nursing and we think that not to do so will create anomalies within the industry. It will create further complexity in an already very complex industry and may prejudice one group over another and we think all of those are issues that seem to us to be at odds with the intent of the modernisation process.

- 7.8 If those who advocate for an “aged care” industry award are unable to accurately describe the industry in which the new modern award is intended to operate, the Commission should reject this potentially far reaching and uncertain proposal.
- 7.9 Based on the material and the submissions the Commission cannot be satisfied that the “aged care” industry has been clearly defined or that there is a clear commitment by employers who provide aged care services that they are prepared to commit the required resources to properly participate in this important exercise.
- 7.10 Some employers have also submitted that nurses working in the aged care industry are different from those employed in other parts of the health and welfare industry .

In his verbal submission (PN1764) Mr Boyce stated “Nurses are a very important component of the workforce of the aged care industry but they are not the same as the acute sector , they are not the same as the public hospital sector..” In support of this argument Mr Boyce referred to a decision of the NSWIRC re. Nurses State Award Re. (4) reported in 2005 138 IR at page 409

While it is true to say that in this decision the Full Bench declined to re-establish the wages nexus between public hospital nursing staff and aged care nursing staff the Bench did make the following observations about the relationships

“68 That is not to say that the rates of pay for nursing staff in public hospitals is not a relevant consideration in determining rates in the aged care sector. There has been, and we consider there continues to be, a strong relationship between the work value of nurses in the two sectors and RNs are able to move relatively easily between the two sectors. It would be unfair and inconsistent with the requirements of s 10 of the Industrial Relations Act to provide fair and reasonable conditions of employment for employees to allow too big a gap to develop between the award rates of pay for nurses in the two sectors because of the strong work value correlation.

69 Further, if award rates of pay become too much out of kilter it will distort the nursing labour market by disadvantaging one sector against the other in their competition for what continues to be a relatively scarce resource, namely, nurses. The employers recognise this and many favour the parity principle but they face the limitations imposed by the Commonwealth's funding arrangements - a paramount consideration for them given that the Commonwealth substantially funds the sector. “

It is for these reasons that the ANF supports the inclusion of a new modern nursing award in the priority list on the basis that such a proposal meets the requirements of the award modernisation process.

Nicholas Blake
6 June 2008

Attachment A Lists of awards

Attachment B List of awards only covering nurses & list of awards covering nurses and others