



Fair Work
Commission

Modern Awards Review 2023-24 (AM2023/21)

Submission cover sheet

Name

(Please provide the name of the person lodging the submission)

Paul Yiallourous

Organisation

(If this submission is completed on behalf of an organisation or group of individuals, please provide details)

Australian Nursing and Midwifery Federation

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Work and Care:

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How to prepare a submission

Submissions should be emailed to awards@fwc.gov.au. Directions set out the due dates for submissions. Directions are issued by a Member of the Commission and will be published on the [Commission website](#).

Make sure you use numbered paragraphs and sign and date your submission.

Your submission. Provide a summary of your experience and any relevant issues. You may wish to refer to one or more of the issues outlined in the relevant discussion paper.

Issues

1. [Using numbered paragraphs, outline the main issues you want the Fair Work Commission to consider as part of the Modern Award Review 2023-34 including your responses to any questions set out in Commission discussion papers. Include, if possible, references to any relevant sections of the *Fair Work Act 2009*, or other legislation or specific clauses in modern awards that apply].

Proposals

2. [Tell us your proposals to the address the issues you have raised in the submission. If you are proposing that the Commission should consider varying an award, you should include draft wording for the proposed variation]

Signature:



Name:

Paul Yiallourous

Date:

21 February 2024

ANMF submission in reply

1. The Australian Nursing and Midwifery Federation (**'ANMF'**) welcomes the opportunity to provide a submission in reply as part of the Job Security Stream of the *Modern Awards Review 2023-24* (the **'Review'**). This submission should be read in conjunction with the ANMF's submission filed 5 February 2024.
2. The ANMF has had the opportunity to view the submissions of the Australian Council of Trade Unions (**'ACTU'**) and supports their positions on both the meaning of 'job security' within the context of this Review, as well as concerns raised around the means by which industry and occupation specific matters, including those pertaining to the *Nurses Award 2020* (**'Nurses Award'**), will be addressed in these proceedings.

Response to submissions

3. The ANMF will not restate the ACTU's position in full but notes that it would be inconceivable if this Review did not examine the breadth of modern award provisions where job security is an issue. This must necessarily include consideration of certainty and predictability about when work is performed and the manner in which workers are engaged, and not be limited to a discussion around whether award terms entail an inherent risk of termination, as put forward by The Australian Industry Group (**'AiG'**).¹
4. The ANMF will not respond to all statements made by other parties in these proceedings but will selectively respond to certain assertions.

The concept of secure work

5. Several of the submission provided by employer associations have suggested that it is the position of the Discussion Paper, the ACTU and its affiliates (including the ANMF) that permanent full-time employment is the only form of secure employment, with all other forms of work, such as part-time and casual work being inherently insecure,² and that they are being characterised as lacking legitimacy.³ This is a misrepresentation of the ACTU's position and that of the ANMF.

¹ AiG Submission at [39].

² ACCI Submission at [10].

³ AiG Submission at [53].

6. At paragraph 10(4) of its submission in this Review, the Australian Chamber of Commerce and Industry ('ACCI') cited an earlier submission from the ACTU to the Senate Select Committee on Job Security. It should be noted that the ACTU's in that submission stated:

*Insecure work is often associated with certain forms of employment, including casual work, fixed-term work, seasonal work, independent contractors and labour hire. It is also increasingly a problem faced by workers employed part-time and workers in non-traditional workplaces, such as home-based outworkers.*⁴

7. The ANMF does not hold the view that part-time work is inherently insecure. Our position is more nuanced, focusing on the elements of part-time employment that are susceptible to insecurity. We note that the part-time provisions in various modern awards are not uniform, with some providing greater levels of security than others.
8. Indeed, many ANMF members work part-time for a variety of reasons, including to be able to meet unpaid caring responsibilities. The fact that a worker may gravitate towards part-time employment does not negate the possibility that modern award provisions may not meet the modern awards objective when considering the need for the Fair Work Commission ('FWC') to consider job security when setting award conditions.

Part-time employment

9. In its submission, ACCI asserts that part-time work should be considered a form of secure employment for the purposes of this Review because modern award conditions broadly require reasonably predictable hours.⁵ The ANMF does not accept that a modern award containing a provision around 'reasonably predictable hours of work' in isolation would satisfy the modern awards objective in respect of job security.
10. AiG similarly asserts that the suggestion that award-covered part-time employment is susceptible to insecurity is 'illogical and irrational'⁶. It does so by citing the common features of part-time award definitions, including:

⁴ Australian Council of Trade Unions, Submission No 98 to Select Committee on Job Security, Inquiry into the impact of insecure or precarious employment (30 April 2021) at [3]

⁵ ACCI Submission at [33].

⁶ AiG Submission at [55].

- a. A regular pattern of hours and/or reasonably predictable hours;
 - b. Agreement on ordinary hours upon engagement, including days of the week to be worked, specified start and finish times, and sometimes the timing and duration of meal breaks;
 - c. The inability of employers to change the arrangements reached at (b) unilaterally;
 - d. Minimum engagement period, generally of 3 or 4 hours duration;
 - e. Work performed in excess of agreed hours being treated as overtime.
11. It is precisely these terms that are partly lacking in the Nurses Award that the ANMF is seeking to have included in the part-time definition. If the abovementioned factors are to be taken to represent a benchmark for security within employment (which the ANMF does not necessarily accept as a minimum), then it follows that the Nurses Award falls short by multiple factors, as set out in our original submission of 5 February 2024.
12. The ANMF rejects the suggestion that part-time employment provisions in awards are ‘overwhelmingly rigid and inflexible’⁷, particularly in the Nurses Award. Any move to lower the protections afforded part-time employees would be contrary to the task of rebalancing awards to include job security as a new feature of the modern awards objective.

Full-time employment

13. At paragraph 57 of their submission, AiG state:
- This approach to regulating part-time employment guarantees employees fixed agreed hours of work, that can be varied only with their consent; and overtime rates for additional hours of work. Indeed, in some respects, part-time employees have far greater control over their hours of work than full-time employees. Generally, the hours of work of full-time employees are arranged at the employer’s prerogative, within certain parameters set by the relevant award. The employee’s consent as to when those hours are to be worked is not required.* (Emphasis added)
14. While the ANMF believes that the Discussion Paper rightly focuses on the issues of job insecurity affecting workers engaged in non-standard employment, it should be noted that permanent full-time

⁷ Ibid at [116].

employment is not immune to these issues. Nor is the modern awards objective concerning job security constrained to non-standard forms of work.

15. By way of further submission, the ANMF would encourage the FWC to consider whether full-time provisions in modern awards adequately provide for job security, particularly when compared to existing part-time employment provisions.
16. For example, the Nurses Award provides the following at clause 9.1 with respect to full-time employment:

A full-time employee is engaged to work:

 - (a) 38 hours per week; or*
 - (b) an average of 38 hours per week in accordance with clause 13.1 of this award.*
17. The ANMF considers that the full-time employment definition, particularly in awards that apply to shift workers, as is the case with the Nurses Award, could be enhanced by explicitly providing the following:
 - a. A guarantee of a regular pattern of hours, or reasonably predictable hours;
 - b. Agreement upon engagement around days of the week to be worked, specified start and finish times, and possibly the time and duration of meal breaks;
 - c. A requirement that the terms of the agreement at (b) be recorded in writing and can only be varied by further agreement in writing; and
 - d. A minimum engagement period.