



Awards Review 2014 (AM2014/207)

Submissions to Fair Work Commission on
exposure draft of *Nurses Award*

and

Outline of submissions regarding ANMF
substantive claims re *Nurses Award*

15 July 2015

Introduction

1. The Australian Nursing and Midwifery Federation (ANMF) refers to the Amended Directions issued by the Fair Work Commission on 6 May 2015 regarding Group 2 Awards. In accordance with those Directions, the ANMF makes the following submissions on the exposure draft of the *Nurses Award* (MA000034) and provides an outline of submissions regarding substantive variations to the *Nurses Award* sought by the ANMF.

Exposure draft of *Nurses Award* dated 8 December 2014

2. The ANMF has previously made submissions on the Fair Work Commission's (FWC) exposure draft of the *Nurses Award* released on 8 December 2014 in:
 - a. submissions dated 28 January 2015
 - b. submissions in reply dated 4 March 2015
3. The ANMF has held discussions with other parties with an interest in the *Nurses Award*, including with the assistance of Commissioner Bissett (in February 2015). Those discussions have resulted in agreement between those parties on most of the issues arising from the earlier written submissions made by parties on the exposure draft.

Agreed matters

4. Attached at **Attachment A** is a table containing the agreed changes to the exposure draft. The 'item number' in the left hand column refers to the item numbers and corresponding issues contained in the FWC's Summary of Submissions document (FWC Summary) as revised on 17 March 2015.
5. The table includes only those items agreed between the parties that would require *changes* to the *Nurses Award* exposure draft wording. It does not contain other agreed matters that would *not* require changes to the exposure draft wording or issues that have been withdrawn by parties.
6. The rationale for many of the agreed proposed amendments is to minimise the possibility of unintended consequences arising from changes proposed in the exposure draft to the existing *Nurses Award* wording. Other changes have been agreed in order to clarify the operation of the relevant clause.
7. The table also does *not* include any changes that result from FWC decisions that have been made or may be made regarding Group 1 exposure drafts (including the Full Bench decision of 23 December 2014 ([2014] FWCFB 9412)). This relates to the following item numbers in the FWC summary:
 - 1, 3, 6, 9, 60, 64 – NES summaries, examples

- 8 – supercession clause
- 11 – facilitative provisions wording common to all awards
- 38 – payslips
- 41 – allowances
- 76 – summary of hourly rates

Non-agreed matters

8. Some issues have not yet been agreed, however the parties intend to hold further discussions in the near future and are hopeful that most of these remaining issues can be resolved with an agreement on a common position. For example, various parties have identified possible unintended consequences arising from wording in the exposure draft pertaining to phrases such as ‘minimum hourly rate’.

Annual leave loading for shiftworkers

9. Clause 17.5 of the exposure draft of the Nurses Award relates to annual leave loading. The draft asks parties “to clarify whether the leave loading in clauses 17.5(b)(i) and 17.5(b)(ii) is based on 4, 5 or 6 weeks”. The subclauses referred to relate to shiftworkers (as defined) who are entitled to six weeks of paid annual leave per year (see clause 17.2).
10. The ANMF’s submission of 28 January 2015 stated our view that shiftworkers are entitled to receive the higher of the 17.5% loading or their usual penalties for all leave that they accrue, ie. six weeks per year. The ANMF position is based on the clear terms of the Award and on the position in pre-modern awards. Some other parties provided different answers to this question including four weeks per year. More detail regarding parties’ prior submissions on this issue are contained in item 62 of the FWC Summary.
11. Parties have held discussions regarding this issue and have been unable to reach agreement on the question. The ANMF considers that, despite being a matter raised as an exposure draft issue, due to its complexity the issue would more conveniently be dealt with along with the substantive matters relating to the Nurses Award (which the ANMF elsewhere indicates in this submission should be referred to a separate Full Bench).

Substantive variations to Nurses Award sought by ANMF

12. On 25 November 2014, the ANMF filed a short outline of variations sought regarding the Nurses Award. The following outline of submissions provides some more detail of the ANMF proposals. Draft determinations relating to the proposals are attached as **Attachment B**.

13. Please note the references to clause numbers in this section of these submissions are references to the *existing* award, ie. the Award as amended to 18 June 2015, *not* to clause numbers in the exposure draft. The headings however include the relevant item number contained in the FWC Summary of the exposure draft.

Clauses 14.2(a) and B.3 (Schedule B) – Student enrolled nurse [item 35]

14. In its outline of variations of 25 November 2014, the ANMF stated that it sought the deletion of the classification of student enrolled nurse. The ANMF does not wish to proceed with this variation.

Clause 16 – Allowances – In-charge and leading hand allowances (new clause)[item 42]

15. The ANMF proposes the introduction of a clause providing for an in-charge allowance for registered nurses and a leading hand allowance for enrolled nurses and nursing assistants.
16. The ANMF submits that registered nurses, enrolled nurses and nursing assistants are not being adequately compensated for work performed under the Award.
17. The proposed variation relating to registered nurses (see draft determination relating to proposed new clause 16.6 at Attachment B) seeks to address the situation where a Registered Nurse of a lower classification (RN 1 or 2) is required to take charge of a facility, for example an aged care facility. The registered nurse taking charge takes on significant additional responsibilities in addition to their normal duties without appropriate compensation under the Award.
18. The ANMF proposal would also introduce a leading hand allowance for enrolled nurses and nursing assistants performing supervisory functions, for example acting as a team leader (see draft determination relating to proposed new clause 16.7 at Attachment B) . The rate of the allowance would be based on the number of employees supervised. Such additional responsibilities are not currently recognised or compensated for in the Award.
19. The ANMF envisages that some witness evidence will be submitted relating to the type and nature of additional duties performed by employees undertaking 'in charge' duties.

Clauses 28.5-28.6 (recall to work) and clause 16.4 (on-call) [item 56]

Telephone etc advice

20. Clauses 28.5 and 28.6 of the existing Nurses Award provide for a minimum payment of three hours work at the overtime rate where an employee is recalled to work. The ANMF

proposes to vary these clauses to confirm that they apply to situations where nurses are recalled to perform work remotely, for example via telephone.

21. Performing work remotely, especially by registered nurses, is becoming increasingly common especially in the home care sector where nurses are employed as case managers.
22. The ANMF's proposed determination (see draft determination relating to proposed clauses 28.5 and 28.6 at Attachment B) would amend the existing recall to work clauses to remove any doubt that the clauses apply to a situation where an employee is required to perform work without needing to return to the usual workplace.

Excessive on call

23. The ANMF is also proposing additional amendments to ensure suitable award conditions for nurses and midwives placed on call.
24. Existing clause 16.4 provides for an employee who is required by an employer to be on call at their private residence or any other mutually agreed place to be paid an allowance. Currently (from July 2015) this allowance is worth \$19.58 for on call performed between rostered shifts Monday-Friday, \$29.50 for Saturdays, and \$34.42 for Sundays, public holidays, and any day when an employee is not rostered to work.
25. The ANMF submits that these amounts are inadequate compensation for a serious intrusion into the work/life balance of employees. It is also inadequate to address sometimes excessive levels of on call being performed by nurses and midwives.
26. To redress the serious interruption and inconvenience placed on the activities of an employee who is placed on call, the amount of compensation should be improved and other amendments made.
27. The ANMF proposal (see draft determination relating to proposed new clause 16.4(c) at Attachment B) would provide for the accrual of additional annual leave when a particular amount of on-call duty is performed. The amount of additional annual leave would be accrued on a sliding scale based on the amount of oncall work performed in a particular period.
28. In addition, to remove doubt, the proposal would make clear that the existing clause 21.4, which requires an employee to be free from duty for specified periods, includes periods when an employee is on call (see draft determination relating to proposed clause 21.4 at Attachment B).
29. Witness evidence may be filed to provide examples of the operation of oncall and recall arrangements in practice.

Clause 10 – Types of employment (minimum engagement/payment provisions)[item 21]

30. In its outline of variations of 25 November 2014, the ANMF sought the introduction of a clause providing for a minimum shift length for all employees covered by the Nurses Award. Clause 10.4(c) of the award currently provides for a minimum two hour payment for casual employees.
31. The ANMF proposal for a minimum shift length regarding part-time and casual employees is being dealt with as part of the ACTU claim being heard by the Full Bench dealing with casual employment and part-time employment (AM2014/196 & AM2014/197).
32. It is the ANMF's view that our proposal for a minimum shift length regarding full-time employees should be dealt with after the part-time and casual employee claims have been dealt with because the fulltime proposal will cover similar issues, and may rely on the same or similar evidence as will be filed in the casual and part-time Full Bench proceedings.
33. We expect draft determinations relating to part-time and casual employees, including in respect of the Nurses Award, to be filed by the ACTU on 17 July 2015. Evidence in support is currently required to be filed by 12 October 2015.

Clause 23 – Rest breaks between rostered work [item 31]

34. Existing clause 23 of the Nurses Award provides that "an employee will be allowed a rest break of eight hours between the completion of one ordinary work period or shift and the commencement of another ordinary work period or shift." Unlike in the case of a rest period after overtime (existing clause 28.3), the Award does not outline any penalty for a breach of this entitlement.
35. The ANMF proposes that the minimum rest break between ordinary shifts be increased to ten hours except where an individual employee agrees to an eight hour break. The draft determination relating to proposed clause 23 is at Attachment B.
36. In addition, the ANMF proposes the introduction of a penalty for breach of this entitlement, ie. an employee returning to work without having had the minimum rest break would be entitled to be paid at overtime rates until they have taken the minimum rest break.
37. The ANMF submits that the existing eight hour break is insufficient to allow employees an adequate period of rest and recuperation before recommencing work. Evidence exists of a link between inadequate breaks between shifts and effects on the health of workers. Lack of adequate breaks also has significant effects on work-life balance, for example the ability of employees to complete non-work related obligations outside work hours.

38. The ANMF submits that a penalty also needs to be inserted into the Award to provide a disincentive for employers to schedule a break shorter than the minimum period specified. We note that the Award already specifies an overtime penalty (in clause 28.3) as a disincentive for employers providing an insufficient break after a period of overtime work is performed and it is appropriate that a similar disincentive exist regarding breaks after ordinary hours.
39. Research evidence will be provided regarding the link between breaks and health outcomes.

Clause 27.1 – Meal breaks [item 29]

40. The ANMF proposes two main changes to the existing meal breaks clause. The draft determination relating to proposed clause 27.1 is at Attachment B.
41. Firstly, existing clause 27.1(a) provides that an employee who works in excess of five hours is entitled to an unpaid meal break of 30 to 60 minutes. The clause does not specify when during the shift the meal break must be taken. On its face, the clause could mean that a meal break could occur at any time during a shift, even if it resulted in an employee working excessive hours before taking a break or finishing a shift.
42. To ensure that long periods are not worked without a meal break, the ANMF proposes to clearly specify that meal breaks will be taken between the fourth and the sixth hour after beginning work, unless otherwise agreed by the majority of employees affected. The provision of a majority agreement would enable some flexibility in the operation of the clause at particular workplaces. Additionally, individual employees who work shifts of six hours or less could, by agreement, forfeit the meal break.
43. The second change relates to subclause 27.1(b) which currently provides that “where an employee is required to remain available or on duty during a meal break, the employee will be paid overtime for all time worked until the meal break is taken.”
44. The ANMF proposal seeks to clarify and improve upon the existing subclause (b) by splitting it into two subclauses.
45. The effect of new paragraph 27.1(b) would be the same as currently, ie. where an employee is required to work during a meal break, the employee must be paid overtime for all time worked until the meal break is taken.
46. New paragraph 27.1(c) would provide for compensation while being effectively ‘on call’ during a meal break. Under the existing wording the consequence of ‘remain[ing] available’ during a meal break where the employee is not required to return to work is unclear. The ANMF proposes that an employee would receive ordinary rates for a period during which

they are required to remain available. Currently, in some workplaces nurses and midwives are prevented from leaving the workplace during meal breaks. This proposal would either require employers to enable employees to leave the workplace during their meal break or compensate them for being prevented from doing so.

47. If employees were required to restart duty, they would receive overtime payments (as per the existing clause 27.1(b)) unless and until they took the balance of the meal break.
48. Witness evidence relating to current practices regarding meal breaks may be provided in support of the ANMF proposals.

Clause 29 – Shift penalties [item 47]

49. In its outline of variations of 25 November 2014, the ANMF stated that it would propose variations to clarify when shift penalties are payable. The ANMF does not wish to proceed with this proposal.

Clause 32.3 – Public holidays [item 67]

50. In its outline of variations of 25 November 2014, the ANMF proposed to extend existing clause 32.3, which currently provides that full-time employees will receive a day's ordinary pay for public holidays that occur on their rostered day off, to at least some part-time employees.
51. This proposal is being heard by the public holidays common issues Full Bench (AM2014/301). The ANMF filed a brief outline of submissions including a draft determination with that Full Bench on 13 February 2015.

Schedule B – Classification Definitions – Nursing Assistant [item 72]

52. The ANMF proposes to vary the definition of Nursing assistant contained in clause B.1 of Schedule B – Classification Definitions. The variation would remove the words 'or Enrolled' so the clause would read:

Nursing assistant means an employee, other than one registered with the Nursing and Midwifery Board of Australia or its successor or one who is in training for the purpose of such registration, who is under the direct control and supervision of a Registered ~~or Enrolled~~ nurse and whose employment is solely to assist an RN or EN in the provision of nursing care to persons.

53. The rationale for the variation is that, under the rules of the Nursing and Midwifery Board of Australia (NMBA), enrolled nurses cannot supervise nursing assistants. Supervision of

nursing care is outside the scope of practice of an enrolled nurse. The definition thus needs to be amended to reflect the current state of the law.

54. If required, evidence of the relevant regulations will be filed.

Other matters

55. The ANMF confirms that the ANMF proposal to make changes to the classification definitions and wage rates of enrolled nurses and entry level registered nurses (item 73 of the FWC summary) was withdrawn by correspondence dated 23 March 2015.

56. The ANMF considers that the ANMF proposals being pursued should be referred to a separately constituted Full Bench (along with the annual leave loading shiftworker issue referred to earlier in this submission).

Attachment A

Agreed Matters

Note this table includes only those items agreed between the parties that require *changes* to the Nurses Award exposure draft wording. It does *not*, however, include any changes that result from FWC decisions that have been made or may be made regarding Group 1 exposure drafts.

Item No	Exposure Draft <i>Nurses Award</i>	Agreed Wording or Outcome																		
12, 13	<p>5.2 Facilitative provisions in this award are contained in the following clauses:</p> <table border="1"> <thead> <tr> <th>Clause</th> <th>Provision</th> <th>Agreement between an employer and:</th> </tr> </thead> <tbody> <tr> <td>9.2(b)</td> <td>Paid tea breaks</td> <td>An individual</td> </tr> <tr> <td>10.7(a)</td> <td>Payment of wages</td> <td></td> </tr> <tr> <td>15.2</td> <td>Time off instead of payment for overtime</td> <td>An individual</td> </tr> <tr> <td>18.3</td> <td>Public holiday substitution</td> <td>The majority of employees</td> </tr> <tr> <td>18.6</td> <td>Additional leave days by mutual agreement</td> <td>An individual</td> </tr> </tbody> </table>	Clause	Provision	Agreement between an employer and:	9.2(b)	Paid tea breaks	An individual	10.7(a)	Payment of wages		15.2	Time off instead of payment for overtime	An individual	18.3	Public holiday substitution	The majority of employees	18.6	Additional leave days by mutual agreement	An individual	Parties recommend that last column re payment of wages remain blank or a dash be inserted.
Clause	Provision	Agreement between an employer and:																		
9.2(b)	Paid tea breaks	An individual																		
10.7(a)	Payment of wages																			
15.2	Time off instead of payment for overtime	An individual																		
18.3	Public holiday substitution	The majority of employees																		
18.6	Additional leave days by mutual agreement	An individual																		
14	6.1(b) At the time of engagement an employer will inform each employee of the terms of their engagement and in particular whether they are to be employed on a full-time, part-time or casual basis. An employer may direct an employee to carry out such duties that are within the limits of the employee’s skill, competence and training, consistent with the respective classification	6.1(b) At the time of engagement an employer will inform each employee of the terms of their engagement and in particular whether they are to be employed on a full-time, part-time or casual basis. An employer may direct an employee to carry out such duties that are within the limits of the employee’s skill, competence and training, consistent with the respective classification																		
15	<p>6.3(a) A part-time employee:</p> <ul style="list-style-type: none"> (i) is engaged to work less than an average of 38 ordinary hours per week; (ii) has reasonably predictable hours of work; and (iii) receives, on a pro rata basis, pay and conditions equivalent to those of full-time employees who do the same kind of work. <p>(b) Before commencing part-time employment, the employer and employee will agree in writing to the guaranteed minimum number of hours to be worked and the rostering arrangements which will apply to those hours.</p> <p>(c) The terms of the agreement in clause 6.3(b) may be varied by agreement and recorded in writing.</p>	<p>6.3(a) A part-time employee <u>is engaged to work less than an average of 38 ordinary hours per week and has reasonably predictable hours of work.:</u></p> <p>(i) — has reasonably predictable hours of work; and</p> <p>— (ii) — receives, on a pro rata basis, pay and conditions equivalent to those of full-time employees who do the same kind of work.</p> <p>(b) Before commencing part-time employment, the employer and employee will agree in writing to the guaranteed minimum number of hours to be worked and the rostering arrangements which will apply to those hours.</p> <p>(c) The terms of the agreement in clause 6.3(b) may be varied by agreement and recorded in writing.</p> <p><u>(d) The terms of this award will apply on a pro rata basis to part-time employees on the basis that the ordinary weekly hours for full-</u></p>																		

		<u>time employees are 38.</u>
17 18	<p>6.4 Casual employment</p> <p>(a) A casual employee is an employee engaged on an hourly basis.</p> <p>(b) Casual loading</p> <p>(i) For each ordinary hour worked, a casual employee must be paid:</p> <ul style="list-style-type: none"> • The minimum hourly rate; and • A loading of 25% of the minimum hourly rate, for the classification in which they are employed. <p>(ii) The casual loading is paid instead of annual leave, paid person/carer's leave, notice of termination, redundancy benefits and other entitlements of full time or part time employment.</p> <p>(iii) The following provisions of this award do not apply to casual employees:</p> <p>(c) A casual employee will be paid a minimum of two hours pay for each engagement.</p> <p>(d) A casual employee will be paid shift allowances calculated on the minimum rate of pay excluding the casual loading with the casual loading component then added to the penalty rate of pay.</p>	<p>6.4 Casual employment</p> <p>(a) A casual employee is an employee engaged on an hourly basis.</p> <p>(b) Casual loading</p> <p>(i) For each ordinary hour worked, a casual employee must be paid:</p> <ul style="list-style-type: none"> • The minimum hourly rate; and • A loading of 25% of the minimum hourly rate, for the classification in which they are employed. <p>(ii) The casual loading is paid instead of annual leave, paid person/carer's leave, notice of termination, redundancy benefits and other entitlements of full time or part time employment.</p> <p>(iii) The following provisions of this award do not apply to casual employees.</p> <p>(c) A casual employee will be paid a minimum of two hours pay for each engagement.</p> <p>(d) A casual employee will be paid shift allowances calculated on the minimum rate of pay excluding the casual loading with the casual loading component then added to the penalty rate of pay.</p>
24	<p>8.1(e) An accrued day off (ADO) system of work may be implemented where an employee works no more than 19 days in a four week period of 152 hours.</p> <p>8.3(a) Where an employee is entitled to an ADO, in accordance with the arrangement of ordinary hours of work as set out in clause 8, the ADO will be taken within 12 months of the date on which the first full ADO accrued.</p>	<p>8.1(e) An accrued day off (ADO) system of work may be implemented where <u>an-a full-time</u> employee works no more than 19 days in a four week period of 152 hours.</p> <p>8.3(a) Where <u>an-a full-time</u> employee is entitled to an ADO, in accordance with the arrangement of ordinary hours of work as set out in clause 8, the ADO will be taken within 12 months of the date on which the first full ADO accrued.</p>
25	<p>8.1(c) The ordinary hours of work for a full-time employee will be:</p> <p>(i) 38 hours per week;</p> <p>(ii) 76 hours per fortnight; or</p> <p>(iii) 152 hours over 28 days.</p> <p>(f) Each employee must be free from duty for not less than:</p> <p>(i) two full days in each week;</p> <p>(ii) four full days in each fortnight; or</p>	<p>8.1(c) The ordinary hours of work for a full-time employee will be:</p> <p>(i) 38 hours per week; <u>or</u></p> <p>(ii) 76 hours per fortnight; or</p> <p>(iii) 152 hours over 28 days.</p> <p>(f) Each employee must be free from duty for not less than:</p> <p>(i) two full days in each week; <u>or</u></p> <p>(ii) four full days in each fortnight; or</p>

	(iii) eight full days in each 28-day cycle.	(iii) eight full days in each 28-day cycle.
30	9.3 Rest breaks between rostered work An employee will be allowed a rest break of eight hours between the completion of one ordinary work period or shift and the commencement of another ordinary work period or shift.	9.3 Rest breaks between rostered work An employee will be allowed a rest break of eight hours between the completion of one ordinary work period or shift and the commencement of another ordinary work period or shift. 8.34 Accumulation and taking of accrued days off (ADOs)
32, 33, 34	10. Minimum weekly wages An employer must pay adult employees the following minimum wages for ordinary hours worked by the employee: Columns in clauses 10.1, 10.2, 10.3, 10.4, 10.5, B.1.3, B.2.3, B.3.3, B.4.3, and B.5.3 are headed "Casual hourly rate"	10. Minimum weekly wages wage rates An employer must pay adult employees the following minimum wages for ordinary hours worked by the employee: Change headings of columns in clauses 10.1, 10.2, 10.3, 10.4, 10.5, B.1.3, B.2.3, B.3.3, B.4.3, and B.5.3 to " <u>Minimum</u> casual hourly rate"
37	10.6 Progression through pay points (a) Progression to the next pay point for all classifications for which there is more than one pay point will have regard to (i) the acquisition and use of skills described in the definitions contained in Schedule A – Classification Definitions; and (ii) knowledge gained through experience in the practice settings over such a period. (b) Progression will be: (i) for full time employees – by annual movement; or (ii) for part-time or casual employees – 1786 hours of experience.	10.6 Progression through pay points (a) Progression will be: (i) for full time employees – by annual movement; or (iii) for part time or casual employees – 1786 hours of experience. (a) Progression to the next pay point for all classifications for which there is more than one pay point will have regard to (i) the acquisition and use of skills described in the definitions contained in Schedule A – Classification Definitions; and (ii) knowledge gained through experience in the practice settings over such a period. (b) Progression will be: (i) for full time employees – by annual movement; or (iii) for part time or casual employees – 1786 hours of experience.
39	11.2 The following allowances do not apply to employees classified at Registered nurse levels 4 or 5.	Parties agree RN 4 & 5 are not entitled to any of the allowances in clause 11.
43	11.4 (a) Clothing and equipment (i) Employees required to wear uniforms will be supplied with an adequate number of uniforms appropriate to the occupation free of cost. Uniforms are to remain the property of the employer and be laundered and maintained by the employer free of cost to	11.4 (a) Clothing and equipment (i) Employees required <u>by the employer</u> to wear uniforms will be supplied with an adequate number of uniforms appropriate to the occupation free of cost. Uniforms are to remain the property of the employer and be laundered and maintained by the

50	<p>the employee.</p> <p>15. Overtime</p> <p>15.1 Overtime penalty rates</p> <p>(a) Hours worked in excess of the ordinary hours on any day or shift prescribed in clause 8 are to be paid as follows:</p> <p>(i) Monday to Saturday (inclusive) – 150% of the minimum hourly rate for the first two hours and double time thereafter.</p> <p>(ii) Sunday – 200% of minimum hourly rate; and</p> <p>(iii) Public holidays – 250% of the minimum hourly rate.</p>	<p>employer free of cost to the employee.</p> <p>15. Overtime</p> <p>15.1 Overtime penalty rates</p> <p>(a) Hours worked in excess of the ordinary hours on any day or shift prescribed in clause 8 are to be paid as follows:</p> <p>(i) Monday to Saturday (inclusive) – 150% of the minimum hourly rate for the first two hours and double time 200% thereafter.</p> <p>(ii) Sunday – 200% of minimum hourly rate; and</p> <p>(iii) Public holidays – 250% of the minimum hourly rate.</p>
54	<p>15.3 Rest period after overtime</p> <p>(a) When overtime work is necessary, it will, wherever reasonably practicable, be so arranged that employees have at least 10 consecutive hours off duty between the work of successive days or shifts, including overtime.</p> <p>(b) An employee working overtime, other than a casual employee, is entitled to 10 consecutive hours off duty between the termination of work on one day and the commencement of work on the next day, without loss of pay for ordinary hours.</p> <p>(c) If on the instructions of the employer, an employee referred to in clause 15.3(b) does not receive 10 consecutive hours off duty, the employee is entitled:</p> <p>(i) to be paid at a rate of 200% of the minimum hourly rate for their classification until being released from duty; and</p> <p>(ii) upon being released from duty, to be absent until they have had at least 10 consecutive hours off duty, without loss of pay for rostered ordinary hours during their absence.</p>	<p>15.3 Rest period after overtime</p> <p>(a) When overtime work is necessary, it will, wherever reasonably practicable, be so arranged that employees have at least 10 consecutive hours off duty between the work of successive days or shifts, including overtime.</p> <p>(b) An employee working overtime, other than a casual employee, is entitled to 10 consecutive hours off duty between the termination of work on one day and the commencement of work on the next day, without loss of pay for ordinary hours.</p> <p>(c) If on the instructions of the employer, an employee referred to in clause 15.3(b) does not receive 10 consecutive hours off duty, the employee is entitled:</p> <p>(i) to be paid at a rate of 200% of the minimum hourly rate for their classification until being released from duty; and</p> <p>(ii) upon being released from duty, to be absent until they have had at least 10 consecutive hours off duty, without loss of pay for rostered ordinary hours during their absence.</p> <p><u>(b) An employee, other than a casual employee, who works so much overtime between the termination of their ordinary work on one day and the commencement of their ordinary work on the next day, that they have not had at least 10 consecutive hours</u></p>

			<p><u>off duty between those times, will be released after completion of such overtime, until they have had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.</u></p> <p><u>(c) If, on the instruction of the employer, an employee resumes or continues to work without having had 10 consecutive hours off duty, they will be paid at the rate of double time until released from duty for such period. The employee will then be entitled to be absent until they have had 10 consecutive hours off duty without loss of pay for rostered ordinary hours occurring during the absence.</u></p>
61	17.2(b)	A shiftworker , for the purposes of the additional week's annual leave provided by the NES and referred to in clause 17.1, is an employee who:...	17.2(b) A shiftworker, for the purposes of the additional week's annual leave provided by the NES and referred to in clause 17.1 , is an employee who:...
66	18.2	<p>Payment for work done on public holidays</p> <p>(a) All work done by an employee during their ordinary shifts on a public holiday, including a substituted day, will be paid at 200% of the minimum hourly rate.</p> <p>(b) Where 25 December falls on a weekend and, because of substitution, is not a public holiday within the meaning of the NES, an employer conducting a business that operates seven days a week will pay to an employee the following rates for each hour worked:</p> <p>(i) Where the employee works on 25 December and that day is:</p> <ul style="list-style-type: none"> • A Saturday – 200% of the employee's minimum hourly rate; or • A Sunday – 225% of the employee's minimum hourly rate. <p>(ii) Where the employee works on the substitute day – 150% of the employee's minimum hourly rate.</p>	<p>18.2 Payment for work done on public holidays</p> <p>(a) All work done by an employee during their ordinary shifts on a public holiday, including a substituted day, will be paid at 200% of the minimum hourly rate.</p> <p><u>(b) Businesses that operate seven days a week shall recognise work performed on 25 December which falls on a Saturday or Sunday and, where because of substitution, is not a public holiday within the meaning of the NES with the Saturday or Sunday payment (as appropriate) plus an additional loading of 50% of the employee's ordinary time rate for the hours worked on that day. All work performed on the substitute day by an employee will receive an additional loading of 50% of the ordinary time rate for the hours worked on that day instead of the rate referred to in clause 18.2(a).</u></p> <p>(b) Where 25 December falls on a weekend and, because of substitution, is not a public holiday within the meaning of the NES, an employer conducting a business that operates seven days a week will pay to an employee the following rates for each hour worked:</p> <p>(i) Where the employee works on 25 December and that day is:</p> <p>A Saturday – 200% of the employee's minimum hourly rate; or</p> <p>A Sunday – 225% of the employee's minimum hourly rate.</p> <p>(ii) Where the employee works on the</p>

		substitute day — 150% of the employee's minimum hourly rate.																														
70	<p>19. Ceremonial leave</p> <p>An employee who is legitimately required by Aboriginal tradition to be absent from work for Aboriginal ceremonial purposes will be entitled to up to ten working days' unpaid leave in any one year, with the approval of the employer.</p>	<p>19. Ceremonial leave</p> <p>An employee who is legitimately required by Aboriginal <u>or Torres Strait Islander</u> tradition to be absent from work for Aboriginal ceremonial purposes will be entitled to up to ten working days' unpaid leave in any one year, with the approval of the employer.</p>																														
75	Schedule B – Summary of Hourly Rates of Pay	Columns in all tables should be in the same order																														
78	<p>C.1 Wage related allowances ...</p> <table border="1"> <tr> <td>On-call allowance</td> <td>11.3(a)</td> <td></td> </tr> <tr> <td>Between rostered shifts or ordinary hours on:</td> <td></td> <td></td> </tr> <tr> <td>Monday to Friday inclusive</td> <td></td> <td>2.35</td> </tr> <tr> <td>Saturday</td> <td></td> <td>3.45</td> </tr> <tr> <td>Sunday, public holiday or non-rostered day</td> <td></td> <td>4.13</td> </tr> </table>	On-call allowance	11.3(a)		Between rostered shifts or ordinary hours on:			Monday to Friday inclusive		2.35	Saturday		3.45	Sunday, public holiday or non-rostered day		4.13	<p>C.1 Wage related allowances ...</p> <table border="1"> <tr> <td>On-call allowance</td> <td>11.3(a)</td> <td></td> </tr> <tr> <td>Between rostered shifts or ordinary hours on:</td> <td></td> <td></td> </tr> <tr> <td>Monday to Friday inclusive</td> <td></td> <td>2.35</td> </tr> <tr> <td>Saturday</td> <td></td> <td>3.45 <u>3.4554</u></td> </tr> <tr> <td>Sunday, public holiday or non-rostered day</td> <td></td> <td>4.13</td> </tr> </table>	On-call allowance	11.3(a)		Between rostered shifts or ordinary hours on:			Monday to Friday inclusive		2.35	Saturday		3.45 <u>3.4554</u>	Sunday, public holiday or non-rostered day		4.13
On-call allowance	11.3(a)																															
Between rostered shifts or ordinary hours on:																																
Monday to Friday inclusive		2.35																														
Saturday		3.45																														
Sunday, public holiday or non-rostered day		4.13																														
On-call allowance	11.3(a)																															
Between rostered shifts or ordinary hours on:																																
Monday to Friday inclusive		2.35																														
Saturday		3.45 <u>3.4554</u>																														
Sunday, public holiday or non-rostered day		4.13																														

Attachment B

<<FileNo>> <<PrintNo>>

FAIR WORK COMMISSION

DRAFT DETERMINATION

Fair Work Act 2009

Part 2-3, Div 4 – 4 Yearly reviews of modern awards

Nurses Award 2010

(ODN AM2014/190) [MA000034]

Health and Welfare

<<FWC MEMBER>>

<<PLACE, MONTH, YEAR>>

Review of modern awards to be conducted.

[1] Further to the Decision and Reasons for the Decision << Decision No>> in <<File No>>, it is determined pursuant to section 156(2)(b)(i) of the *Fair Work Act 2009*, that the *Nurses Award 2010* be varied as follows.

[2] By inserting a new clause 16.6 as follows:

16.6 In charge allowance

(a) A registered nurse who is designated to be in charge of a facility during the day, evening or night shall be paid in addition to his or her appropriate salary, whilst so in charge, the per shift allowance set out as follows:

(i) in charge of facility of less than 100 beds - \$22.82 per shift

(ii) in charge of facility, 100 beds or more - \$36.77 per shift

(iii) in charge of a section of a facility - \$22.82 per shift

(b) This clause shall not apply to registered nurses holding classified positions of a higher grade than registered nurse – level 2.

[3] By inserting a new clause 16.7 as follows:

16.7 Leading hand allowance

- (a) A leading hand is an enrolled nurse or nursing assistant who is placed in charge of not less than two other employees of the classification of enrolled nurse or nursing assistant.
- (b) A leading hand will be paid a weekly allowance of the amount specified in the following scale:

Leading hand in charge of:	% of standard rate
2-5 other employees	2.67
6-10 other employees	3.81
11-15 other employees	4.81
16 or more other employees	5.88

- (c) This allowance will be part of salary for all purposes of this award.
- (d) An employee who works less than 38 hours per week will be entitled to the allowances prescribed by this clause in the same proportion as the average hours worked each week bears to 38 ordinary hours.

[4] By deleting clauses 28.5 and 28.6 and replacing them with the following:

28.5 Recall to work when on call

- (a) An employee, who is required to be on call and who is recalled to work, will be paid for a minimum of three hours work at the appropriate overtime rate. **To avoid doubt, this includes any occasion where the work can be managed without the employee having to return to the workplace, such as by telephone.**

28.6 Recall to work when not on call

- (a) An employee who is not required to be on call and who is recalled to work after leaving the employer's premises will be paid for a minimum of three hours work at the appropriate overtime rate. **To avoid doubt, this includes any occasion where the work can be managed without the employee having to return to the workplace, such as by telephone.**
- (b) The time spent travelling to and from the place of duty will be deemed to be time worked. Except that, where an employee is recalled within three hours of their rostered commencement time, and the employee remains at work, only the time spent in travelling to work will be included with the actual time worked for the purposes of the overtime payment.

(c) An employee who is recalled to work will not be obliged to work for three hours if the work for which the employee was recalled is completed within a shorter period.

(d) If an employee is recalled to work, the employee will be provided with transport to and from their home or will be refunded the cost of such transport.

[5] By deleting clause 21.4 and replacing it with the following:

21.4 Each employee must be free from duty for not less than two full days in each week or four full days in each fortnight or eight full days in each 28-day cycle. Where practicable, such days off must be consecutive. **To remove doubt, for the purposes of this sub-clause, duty includes time an employee is on call.**

[6] By inserting a new clause 16.4(c) as follows:

(c) Employees shall accrue up to an additional 5 days of annual leave if they are placed on call for 50 or more times in any one year, according to the following:

Placed on call for 10 or more times in any one year – 1 day additional annual leave

Placed on call for 20 or more times in any one year – 2 days additional annual leave

Placed on call for 30 or more times in any one year – 3 days additional annual leave

Placed on call for 40 or more times in any one year – 4 days additional annual leave

Placed on call for 50 or more times in any one year – 5 days additional annual leave

This leave is paid at ordinary rates and is exclusive of leave loading.

[7] By deleting clause 23 and replacing it with the following:

23. Rest breaks between rostered work

23.1 An employee will be allowed a rest break of **ten** hours between the completion of one ordinary work period or shift and the commencement of another ordinary work period or shift.

23.2 By mutual agreement between employer and employee, the ten hour rest break may be reduced to eight hours.

23.3 If, on the instruction of the employer, an employee resumes or continues to work without having had 10 consecutive hours off duty, they will be paid at the rate of double time until released from duty for such period.

[8] By deleting clause 27.1 and replacing it with the following:

27.1 Meal breaks

- (a) An employee who works in excess of five hours will be entitled to an unpaid meal break of not less than 30 minutes and not more than 60 minutes. Such meal breaks will be taken between the fourth and the sixth hour after beginning work, unless otherwise agreed by the majority of employees affected. Provided that, by agreement of individual employees, employees who work shifts of six hours or less may forfeit the meal break.
- (b) Where an employee is required to be on duty during a meal break, the employee will be paid overtime for all time worked until the meal break is taken.
- (c) Where an employee is required by the employer to remain available during a meal break, but is free from duty, the employee will be paid at ordinary rates for a 30 minute meal break. If the employee is recalled to perform duty during this period the employee will be paid overtime for all time worked until the balance of the meal break is taken.

[9] By deleting clause B.1 of Schedule B and replacing it with the following:

B.1 Nursing assistant

Nursing assistant means an employee, other than one registered with the Nursing and Midwifery Board of Australia or its successor or one who is in training for the purpose of such registration, who is under the direct control and supervision of a Registered Nurse and whose employment is solely to assist an RN or EN in the provision of nursing care to persons.

[10] The determination shall operate on and from <<date>>