

FAIR WORK COMMISSION

S.165 FAIR WORK ACT – 4 Yearly Review of Modern Awards

Matter No. AM2014/207

NURSES AWARD 2010

**Submissions of the Australian Nursing & Midwifery Federation
on the Nurses Award 2014 Exposure Draft**

The Australian Nursing and Midwifery Federation (ANMF) provides these submissions in response to the Fair Work Commission *Exposure Draft - Nurses Award 2014*.

The ANMF has reviewed the provisions of the exposure draft and has identified a number of issues that can be characterised as technical and/or drafting issues. In reviewing the draft award the ANMF has had regard to the Full Bench decision [2014] FWCFB 9412 (23 December 2014) ('the Full Bench decision') dealing with Group 1 exposure draft awards.

General comment

As with other exposure drafts, the Fair Work Commission has proposed substantial changes to the structure, layout and the clause numbering in the Nurses Award. We note that since the establishment of modern awards a great deal of time and resources have been expended by employees, employers, industrial representatives and statutory authorities in understanding and applying modern awards in workplaces. The ANMF questions whether wholesale changes to the presentation and structure of modern awards now is necessary or wise.

Specific comments

Unless otherwise indicated, the clause number referred to below is the clause number contained in the exposure draft.

In several places in the exposure draft, the phrase 'minimum hourly rate' (or similar phrase) is used, usually replacing existing terms such as 'ordinary rate', for example in clause 6.4(d). The new references are not always consistent with each other (compare 'minimum hourly rate' in clause 16 with 'minimum hourly rate for their classification' in clause 15.3(c)(i)). Further consideration should occur in relation to such proposals to ensure that no unintended changes have been made to the meaning of the existing provisions.

Clause 1.2 – supercession clause

The ANMF submits that, consistent with the Full Bench decision (at [10-11]), the following words should replace the exposure draft proposal:

A variation to this award does not affect any right, privilege, obligation or liability that a person acquired, accrued or incurred under the award as it existed prior to that variation.

Clause 2.3 – availability of award and NES

The ANMF submits that, consistent with the Full Bench decision (at [29]), the following words should replace the exposure draft proposal:

The employer must ensure that copies of the award and the NES are available to all employees to whom they apply, either on a notice board which is conveniently located at or near the workplace or through accessible electronic means.

Clause 6.3 Part-time employment

The ANMF prefers the wording of existing clause 10.3, in particular we prefer the words pertaining to ‘pro rata’ remaining in a separate subclause. Clause 6.3(a) is dealing with the *definition* of a part-time employee whereas subclause 6.3(a)(iii) (existing subclause 10.3(c)) specifies *entitlements* of a part-time employee. Proposed subclause 6.3(a) conflates two separate issues.

Clause 6.4 Casual employment

The ANMF notes that the Full Bench (at [68-69]) has decided to remove subclause 6.4(b)(iii). The ANMF submits that clause 6.4(b)(ii) should also be deleted as a result.

Clause 9.3 Rest breaks between rostered work

The ANMF considers that this clause should not be included under clause 9 (Breaks) but should be a separate standalone clause as in the current award (see existing clause 23). We note that clause 15.3(a) (Rest period after overtime) also deals with a ‘break’ in the sense of a break after (not during) a work shift, but is dealt with in a standalone clause.

Clause 10 – Minimum wages

The exposure draft provides a new minimum wages structure for all classifications on a minimum weekly, minimum hourly and casual basis.

Clause 10 of the exposure draft is titled “minimum *weekly* wages”. However the wages tables now also specify minimum *hourly* rates of pay.

The ANMF also proposes that the casual hourly rate column be retitled as “*minimum* casual hourly rate” in recognition that the hourly rate specified is, like the other rates, a minimum rate. This comment also applies to the tables in Schedule B of the exposure draft.

The word ‘adult’ should be deleted from the introduction to clause 10 as there are no junior wage rates provided for in the award apart from that specifically outlined in clause 10.2(a) (regarding student enrolled nurses under 21 years of age).

The ANMF considers that the proposed change (in proposed clause 10.6) to the existing Progression through pay points clause is unnecessary and the existing clause 15 (with a minor change to the Schedule reference) should be retained so that unforeseen consequences do not arise.

Clause 11 and Schedule C - Allowances

Page 14 of the exposure draft document asks whether Registered nurses classified at levels 4 and 5 are entitled to any of the allowance listed in Clause 11. The ANMF submits that all employees are entitled to payment, by way of an allowance or reimbursement, for any expense incurred in the course of their employment. Examples of these types of expenditures are set out in subclauses 11.4(a)(clothing and equipment) and 11.4(c)(travelling, transport and fares).

The ANMF queries the utility of splitting allowance matters into clause 11 and Schedule C. This increases the chance of an unintended inconsistency or confusion between the two sets of provisions. For example, clause 11.3(a)(i) provides for a dollar amount for the on-call allowances, while clause C.1 of Schedule C also refers to a percentage of the standard rate. Splitting allowance matters also unnecessarily requires the user to flick back and forth between the two sets of provisions.

It is also noted that the percentage rate for Saturday in clause C.1 is incorrect. The current percentage is 3.54%, not 3.45% (per existing clause 16.4(a)(ii)). The corresponding dollar amount however appears to have been calculated on the correct percentage.

Clause 17 (existing clause number) - District allowances

It is the ANMF’s understanding that, while the transitional provisions relating to district allowances have sunsetted by virtue of existing clause 17.3, the provisions have not otherwise been removed by the Fair Work Commission as part of AM2014/190 (as noted on page 22 of the comparison document), which is a reference to the transitional provisions common matters proceedings. We note in particular the FWC decision in [2014] FWCFB 7767 (31 October 2014), which deleted transitional redundancy provisions but did not explicitly delete accident pay and district allowance clauses. We also note that union applications in relation to such allowances are continuing in the common matter proceedings.

Clause 17 Annual leave

The Full Bench has indicated in its decision (at [35-36]) that the legal version of the revised award will not contain summaries of NES entitlements and that an annotated version of each award will be prepared. While parties will be consulted regarding the annotated award, we note at this stage that the wording of clause 17.1 in the exposure draft may be confusing, especially when read with clause 17.2(c) regarding the number of weeks for shiftworkers. The words 'and referred to in clause 17.1' which have been added to clause 17.2(b) should also be deleted.

The exposure draft (p.21) asks whether the leave loading in clauses 17.5(b)(i) and 17.5(b)(ii) (which deal with annual leave loading for shiftworkers) is based on 4, 5 or 6 weeks. The ANMF's view is 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.

Clause 18 Public holidays

The ANMF queries why the wording of existing clause 32.1(b) (as proposed in clause 18.2(b)) needs to change. The current wording was agreed between the parties relatively recently (see FWC Determination (PR539905 (1 October 2013) and see FWC Decision [2013] FWC 5369 (30 September 2013) at [4-7]). The change to clause 18.5 is another example of a change to wording that is unnecessary (as noted in the General Comment above).

Schedule B - summary of hourly rates of pay

The Schedule does not contain tables dealing with some situations where more than one loading potentially applies, for example, where casuals perform overtime.