

Australian Nursing and Midwifery Federation

Modern Awards Review 2023-2024
**ANMF Response to Discussion Paper –
Job Security**

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Nursing &
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Australian Nursing and Midwifery Federation Response to Job Security Discussion Paper

Introduction

1. These submissions are provided in response to the *Modern Awards Review 2023-24 Discussion Paper- Job Security* (**'Discussion Paper'**).
2. The Australian Nursing and Midwifery Federation (**'ANMF'**) welcomes the opportunity to contribute to the Job Security stream of the *Modern Awards Review 2023-34*. The issues raised in the Discussion Paper reflect many of the concerns identified by the ANMF as contributing to the negative impact of insecure work, particularly as they impact employees working in the female dominated industry of nursing and midwifery care.
3. These submissions will focus on responding to questions two and three of the Discussion Paper. It will focus on the following themes:
 - The intersection of job security and gender equality;
 - Clauses of the Nurses Award 2020 (**'Nurses Award'**) and issues that impact on job security;
 - Proposals to amend clauses to promote job security;
 - Matters that could be considered for further review and research.
4. The ANMF has had the opportunity to view the submissions of the Australian Council of Trade Unions (**'ACTU'**). The ANMF supports this submission and wishes to express its strong support for the positions contained therein. The submissions in relation to casuals being granted a positive right to be absent on unpaid sick leave, thereby extending the jurisdiction of the general protections provisions of the *Fair Work Act 2009* (Cth) is particularly welcomed, as are the proposed improvements concerning more genuine consultation and the ability to review an employer's stated reason for dismissal prior to termination of employment being carried out.
5. In addition to the ACTU's submissions, the ANMF seeks to provide further analysis concerning job security issues that impact its members.

Background

6. The ANMF represents nurses, midwives and assistants in nursing and carers in the public and private health, aged care and disability sectors across a wide variety of urban, rural and remote locations.
7. The Nurses Award is the underpinning award for nurses, midwives and Assistants in Nursing.
8. The ANMF represents personal care workers, predominantly employed in the aged care sector, under the *Aged Care Award 2010* (**'Aged Care Award'**).

9. For the purposes of these submissions, the ANMF proposes to address the provisions of the Nurses Award as the most relevant award to its membership. That said, we submit, as identified in the Discussion Paper, that the issue of ensuring access to secure work is one of broad importance across the economy, and the ANMF supports proposed reforms that promote access to secure work across all modern awards.
10. The ANMF agrees with observations made in the Discussion Paper, that the issue of job insecurity is multi-faceted and that:

‘The common thread across these different dimensions appears to be the lack of certainty and control experienced by workers in relation to the circumstances of their employment. In an even broader sense, job insecurity has been described as any form of uncertainty surrounding employment that reduces wellbeing’.¹
11. On the basis of the multi-faceted nature of the problem, the ANMF submits that this review must take a broad approach to considering how modern awards can be varied to provide access to secure work. In reviewing the Nurses Award, it is apparent that as many clauses intersect with other clauses, the review and proposed variations must be considered holistically and in light of how clauses interact with one another.

Job security and gender equality

12. The ANMF submits that issues of job security and the impact of gender-based undervaluation and perception of work in female dominated industries are inextricably linked. To this extent, some of the issues raised in response to the Discussion Paper are also likely to be addressed in relation to other streams of the Modern Award Review 2023-24, and the Annual Wage Review, particularly as it seeks to address identified gender inequality.
13. The report prepared for the Fair Work Commission (**‘FWC’**), *Gender-based Occupational Segregation: A National Data Profile*² provides data with respect to the categories of employees covered by the Nurses Award, which shows employees covered by the award are amongst the most highly feminised categories of the workforce. For example, midwives in hospitals are identified as being the most feminised occupation in the review, with registered nurses in general practice medical services also falling within the most segregated category.³ Registered nurses (**‘RNs’**), enrolled nurses (**‘ENs’**), nursing support and personal care workers are also categorised as working in highly feminised occupational classifications.⁴
14. The report also shows that the same categories of RNs, ENs and midwives have a high proportion engaged in part-time work when compared to the workforce as a whole. For example 56.8% of RNs work part-time compared to 32.9% across the workforce.⁵

¹ Discussion Paper, Job Security, Modern Awards Review 2023–24 at [57].

² Cortis, N., Naidoo, Y., Wong, M. and Bradbury, B. (2023). *Gender-based Occupational Segregation: A National Data Profile*. Sydney: UNSW Social Policy Research Centre.

³ *Ibid* 6.

⁴ *Ibid* 6-7.

⁵ *Ibid* 33-34.

15. Another important feature of the workforce covered by the Nurses Award, is that they are more likely to have unpaid childcare responsibilities than the total workforce.⁶
16. The report identifies the Nurses Award as one of the awards covering highly feminised industries and occupations.⁷
17. As the Discussion Paper states, part-time can be and often is a preferred mode of employment.⁸ It allows time for work life balance and to meet caring responsibilities. The ANMF submits however, that a number of clauses of the Nurses Award create disadvantages for part-time workers that result in employment that has features of insecure work. Such work further entrenches gender-based inequality.
18. The ANMF submits that reform to the Nurses Award that meets the objective of improving access to secure work, will also meet the objective of promoting gender equality.

Nurses Award clauses and issues that impact on job security

Part-time clauses and job security

19. The following sets out clauses that disadvantage part-time employees and proposes amendments that will meet the updated objectives.

Cl 10. Part-time employment

20. The Nurses Award currently provides the following with respect to the definition of part-time employees:
 - 10.1 *A part-time employee is engaged to work less than an average of 38 ordinary hours per week and has reasonably predictable hours of work.*
 - 10.2 *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.*
 - 10.3 *The terms of the agreement in clause 10.2 may be varied by agreement and recorded in writing.*
 - 10.4 *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-time employees are 38.*
21. When the predecessor *Nurses Award 2010* was created in 2009, the Australian Nursing Federation (**'ANF'**), as the ANMF was then known, raised concerns over the definition inserted into the Award.
22. In submissions filed by the ANF at the commencement of the award modernisation process⁹, an exemplar award was proposed. The definition of part-time employment put forward by the ANF at the time was as follows:

x.2 ***Part-time employment***

⁶ *Ibid* table 6.1 and 7.1.

⁷ *Ibid* 28-29.

⁸ Discussion Paper at [78].

⁹ AM2008/1, Submission of ANF, October 2008.

A part-time employee is an employee engaged as such who works a regular pattern of hours which average less than 38 hours per week or 76 in a fortnight.

- x.2.1 *At the time of engagement, the employee and the employer will agree in writing upon the hours to be worked by the employee and the rostering arrangements which will apply to those hours.*
- x.2.2 *The number of hours worked by a part-time employee may be varied by mutual agreement between the employee and the employer and must be recorded in writing.*
- x.2.3 *A part-time employee's roster may be changed in accordance with clause..... Rosters, provided that the agreed number of ordinary hours per week or fortnight can only be amended in accordance with clause x.2.2.*
- x.2.4 *For ordinary working hours part-time employees shall be paid at an hourly rate equal to 1/38th of the weekly rate appropriate to the employee's classification and entitled, on a pro rata basis to:*
 - (a) Annual leave, Personal leave, long service leave, parental leave and community service leave and;*
 - (b) Such allowances, penalty rates and benefits as apply to full time employees where applicable.*
- x.2.6 *(sic) In relation to the accumulation of pro rata entitlements, all authorised time worked in excess of rostered hours but within ordinary hours of work will be counted towards the accrual of pro rata entitlements.*

- 23. The definition put forward by the (then) ANF was challenged by employer groups. Employers, citing a requirement for flexibility and the cost burden of payment for overtime¹⁰, argued for part-time employees to be engaged on minimum hours of engagement basis. These engagements were practice at the time under some private sector state-based awards.¹¹
- 24. The practical implications of these arrangements allowed for:
 - a. Workers to be engaged on a minimum hours arrangement that did not reflect the actual hours they would typically be required to work;
 - b. Avoidance of payment of overtime payments where the employee agreed to work rostered hours in excess of their minimum hours of engagement, that remained less than 38 hours in a week (discussed below at paragraphs 39-40);
 - c. Underemployment of workers due to uncertainty around ordinary hours and an inability to effectively combine work and care; and
 - d. Uncertainty regarding leave entitlements and superannuation contributions.
- 25. Further evidence was provided to the former Australian Industrial Relations Commission ('AIRC') regarding the practices of employers engaging nurses in the aged care sector, offering

¹⁰ AIRC s576E- Award Modernisation Transcript of Proceedings, Monday 23 February 2009, PN385-92.

¹¹ ANF Submission, 11 December 2008 at page 4, point 5 'Part-time Employment'.

part-time employment, but requiring nurses to work hours resembling full-time employment.¹²

26. Despite the provision of this evidence, the AIRC ultimately accepted the position offered by employers that the number of additional hours worked by nurses, using a minimum hours of engagement model, would be insignificant and that not paying overtime to part-time employees who consented to work additional hours would represent important cost-savings for employers.
27. In the decision of 3 April 2009¹³ in relation to outstanding matters in the award modernisation process, the AIRC offered the following explanation regarding the part-time definition adopted in the *Nurses Award 2010*:

[147] *There were a number of key factors which the parties raised which require comment in this decision. One matter which was raised in all but the Medical Practitioners Award 2010, related to the use of part-time employees. There are a number of common features for the use of part-time employees. To begin, they must have reasonably predictable hours of duty. Underlying provisions vary but generally there is a requirement to provide certainty when employing part-timers. We have included a relevant provision. The next issue is in relation to changes to working hours of part-timers. There are of course notice periods for roster changes contained in the underlying awards but these seem not to be used in relation to part-timers. Instead, part-time hours appear to be changed regularly on a daily basis where the employee consents. Many employers saw this as a necessary flexibility. The private hospital industry employer associations estimated that, on average, part-timers would work an extra six hours per week. The impact of this consent is that the employee does not receive overtime for working in excess of the rostered hours when requested but is paid at the ordinary time rate.*

[148] *We have some reservations about the nature of the consent in circumstances where a supervisor directly requests a change in hours on a day where the part-timer had otherwise planned to cease work at a particular time. Existing provisions require that any amendment to the roster be in writing and we have retained this provision. We also have no doubt that many part-time employees would welcome the opportunity to earn additional income.*

However, there may also be part-timers who would be concerned to ensure that their employment is not jeopardised by declining a direct request from a supervisor to work additional non-rostered hours at ordinary rates. From the submissions of the employers this is a major cost saving and used widely.

[149] *Whilst all the relevant underlying awards have different provisions there is a general opportunity for part-time employees to consent to working additional hours at ordinary rates within an average of less than a 38 hour week. We have sought to provide some common provisions which retain cost savings for employers in the knowledge that any change requires written consent. There was never any suggestion that asking part-timers to work additional hours did not relate to unforeseen [sic] circumstances on the day.*

Deficiencies with the definition

28. The definition has been exploited by employers to create a quasi-casualised workforce, without access to entitlements like overtime, particularly in the context of aged care. This definition is exceptionally problematic in addressing issues of work value, gender equality and

¹² ANF Submission, February 2009.

¹³ [2009] AIRCFB 345.

the gender pay-gap for ANMF members. It has significant implications for combining work and care and the ability of our members to engage in paid employment.

29. Whilst the issue of an award definition may seem only applicable to award-reliant employees, this is not the case. The definition is often carried over into enterprise agreements¹⁴ and it provides a particularly low bar when it comes to BOOT assessments, particularly in the context of overtime payments and secure work.

Proposed variation to the Nurses Award

30. The ANMF contends that it is relevant and necessary to vary the Nurses Award to amend the provisions concerning the definition of part-time work contained at clause 10. The current provisions do not support “secure work” but rather advance “precarious work”, giving employers a part-time workforce that can have their hours moved up and down at their whim.
31. The Aged Care Award at clause 10.3 and the *Health Professionals Award 2020* (**‘Health Professionals Award’**) at clause 10 contain a similar definition to each other of a part-time employee. Crucially, both awards provide that before commencing employment, the employer and employee will agree in writing on a regular pattern of work including the number of hours to be worked each week, days of the week the employee will work and starting and finishing times each day.¹⁵ Any hours in addition to the agreed number of hours to be worked each week are paid as overtime.¹⁶
32. Nurses covered by the Nurses Award work alongside workers covered by both the Aged Care Award and the Health Professionals Award. Midwives covered by the Nurses Award work with workers covered by the Health Professionals Award.
33. The ANMF propose that clause 10.2 of the Nurses Award is varied to remove the current clause 10.2 and insert the following:
- 10.2 Before commencing employment, the employer and employee will agree in writing on a regular pattern of work including the:*
- (a) number of hours to be worked each week;*
- (b) days of the week the employee will work; and*
- (c) starting and finishing times each day.*
34. Similar to the provisions of the Aged Care Award and Health Professionals Award, the Nurses Award will also need to be varied at clause 19 to ensure that work in excess of the ordinary hours to be worked each week are paid as overtime. Clause 19.1(d) of the Nurses Award should be varied to read as follows:
- (d) Part-time employees*
- All time worked by part-time employees in excess of their agreed ordinary hours (except where agreement has been reached in accordance with clause 10.3) will be overtime and will be paid as prescribed in clause 19.1(a)*

¹⁴ See for example: [AE521531](#) at cl 3.3(a)(ii), [AE507196](#) at cl 12.2.2, [AE523024](#) at cl 15(c)(iii), [AE511210](#) at cl 18.2.1.

¹⁵ Health Practitioners Award cl 10.2.

¹⁶ Aged Care Award cl 25.1(b)(iii), Health Practitioners Award cl 25.1(b)(i).

35. The ANMF is also attracted to a further amendment, by adding wording at clause 19.1 that ensures clarity around payment of wages and the pro-rata accrual of entitlements, as follows:
- (e) receives remuneration, leave and other paid entitlements, on a pro-rata basis to a full-time employee employed for 38 hours per week for that classification, according to the number of hours worked.*
36. The proposed amendments provide access to secure work by virtue of the requirement for agreement in writing to regular patterns of work, including hours, days of the week and start and finish times. This provides certainty for both parties by setting out when work will be performed and will promote predictable work patterns for the employee.
37. More importantly, by establishing a regular pattern of work, any variation to that pattern can be more easily identified as such, and when considered in conjunction with the proposed amendment to clause 19, will reduce the incentive to treat additional hours for part-time employees as 'de facto' casual hours without the cost of the casual loading.
38. The parties can still agree to additional hours, thus still providing both parties with some flexibility, however, in the absence of agreement in writing, it is clear that additional hours worked will be performed as overtime. The proposed changes will result in contracted hours being more reflective of actual hours worked, thus promoting access to secure work.

Overtime

39. The ANMF proposes a number of amendments to clause 19 Overtime (see paragraphs 20-38). With respect to the interaction between the proposed amendments to clause 10.2, the ANMF proposes that clause 19(d) be amended. The clause currently reads as follows

All time worked by part-time employees in excess of the rostered daily full-time hours will be overtime and will be paid in as prescribed in clause 19.1(a).

40. The current clause means that part-time employees do not access overtime payments unless they have worked in excess of 8 (or 10) hours per day. Employers have a strong incentive to engage part-timers on low hour contracts and gain a disproportionately high degree of flexibility at no additional cost, save accrual of entitlements.
41. The current clause also creates uncertainty about the nature of rostered daily full-time hours, in relation to the number of hours that comprise the daily full-time hours as this can vary even within the same facility.
42. The ANMF proposes clause 19.1(d) be amended to read:

All time worked by part-time employees in excess of their agreed ordinary hours in accordance with clause 10.2 will be overtime and will be paid as prescribed in accordance with clause 19.1(a).

43. The proposed amendment relies on the written agreement entered into by the parties as the basis of determining when overtime will become payable. This will create an incentive for employers to enter written agreements that reflect the actual hours worked.

Review of part-time hours

44. The NA currently makes no provision for review of part-time hours. The ANMF submits that access to secure work will be enhanced if part-time workers have the opportunity to review the actual hours worked over a set period of time to assess whether this reflects their contracted hours. Where an employee works in excess of their contracted hours, the employee should be able to request a variation of their contract to reflect those hours.

45. Provision of a review clause would promote secure work when viewed in conjunction with the proposed part-time employee definition and payment of overtime for work performed outside of the agreed regular hours. Employees are given the opportunity to access secure, permanent hours of work that reflect actual work performed. This may also result in greater uptake of full-time employment.
46. The ANMF considers the award should be amended to include a part-time guaranteed hours review clause. The *General Retail Industry Award 2020*¹⁷ provides an example of a clause that could be used for consideration.

Progression through pay points for part-time and casual employees issue

47. Part-time and casual employees progress to the next pay point within a relevant classification level after 1,786 hours of experience, being the equivalent of a year of full-time work of 47 weeks. The Nurses Award currently provides:

15.3 Progression through pay points

(a) Progression will be:

- (i) for full-time employees – by annual movement; or*
- (ii) for part-time or casual employees – 1786 hours of experience.*

(b) Progression to the next pay point for all classifications for which there is more than one pay point will have regard to:

- (a)** *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.*

48. The ANMF recognises the importance of experience as the means of gaining increased skill and knowledge in nursing care. It is appropriate that incremental progression recognises the increase in work value as the benefit of experience is gained.
49. The ANMF considers that pay progression after the equivalent of a year of full-time service is too long as it disproportionately impacts women working part-time, both in working income and the compounding effect on retirement income.
50. The ANMF considers an appropriate benchmark should be established to provide for pay point progression that alleviates the impact of requiring part-time workers to work the equivalent of full-time work before progressing to the next pay point.
51. In the award modernisation process the ANF proposed progression after completion of 1,200 hours or 12 months service, whichever was the later¹⁸. The employer representatives argued that the trigger for progression should be the equivalent of a full 52 weeks of service. The Nurses Award is expressed as 1,786 hours, the equivalent of a full-time year after deduction of 5 weeks annual leave.

¹⁷ [MA000004] cl 10.11.

¹⁸ Exemplar Nurses Award.

52. A review of progression clauses in current public sector agreements shows:

State/territory	Progression
ACT	Part-time employees progress annually. Casual employees progress based on average hours worked. ¹⁹
NSW	Same as the Nurses Award ²⁰
NT	Same as the Nurses Award ²¹
Qld	Full-time and part-time employees -12 months' service (annual increment). Casual employees - 1200 hours and 12 months' continuous service with the same employer.
SA	Completion of 1,610 hours for casual/part time employees within the public sector but no earlier than 12 months ²²
Tas	Part-time employees progress annually. Award is silent on casual employees. ²³
Vic	Casual/part-time: A Year of Experience means an average of 3 shifts or more per week in a year. If an Employee averages less than 3 shifts per week or 48 hours per fortnight (whichever lesser), then they will need to complete an additional year to advance. ²⁴
WA	Casual/part-time: An employee who has worked an average of 24 hours per week, or less, in a year will be required to work a further 12 months before being eligible for advancement to the next succeeding experience increment. Provided that those employees who reach the full time equivalent hours (1,976 hours) before 2 years have elapsed will progress to the next experience increment upon reaching the full time equivalent hours. ²⁵

53. The ANMF considers the trigger for part-time progression, whether for permanent or casual employment should be reduced from the current equivalent of a year of full-time service. This will increase access to secure work by allowing part-time workers to benefit from higher salary commensurate with appropriate levels of experience.
54. The clause should also be amended to ensure that experience gained with other employers, whether prior or contemporaneous employers is recognised. This is particularly relevant for casual and part-time employees. The ANMF considers that it would be more appropriate for progression to derive from the amount of time worked at a particular classification level, rather than service with a particular employer.

¹⁹ [ACT Public Sector Nursing and Midwifery Enterprise Agreement 2020-2022](#), cl 17.3 and cl 17.8.

²⁰ [Incremental Salary Progression for Part-time Employees of the NSW Health Service](#) (PD2014_047).

²¹ [Northern Territory Public Sector Nurses and Midwives' 2022 – 2026 Enterprise Agreement](#), cl 23.

²² [Nursing/Midwifery \(South Australian Public Sector\) Enterprise Agreement 2022](#).

²³ [Nurses and Midwives \(Tasmanian State Service\) Award](#), cl 2.

²⁴ [\[redacted\]](#), cl 4(w), cl 4(w).

²⁵ [WA Health System - Australian Nursing Federation – Registered Nurses, Midwives, Enrolled \(Mental Health\) and Enrolled \(Mothercraft\) Nurses - Industrial Agreement 2020](#) cl 16.

Other conditions

Clause 17 Allowances

55. Clause 17 of the Nurses Award makes provision for the following allowances:
- 17.2 (a) and (b) On call allowance
 - 17.3 (a) Clothing and equipment
 - 17.3(b) Meal allowances
 - 17.3(c) Travelling, transport and fares
56. The ANMF considers a review of whether the above allowances meet the modern award objectives should be conducted with respect to:
- Whether the quantum of the allowances is comparable to other male dominated award rates; and
 - Whether there are additional allowances that are appropriate to include, in particular a qualifications allowance and or a managerial allowance.

Qualifications allowance

57. The ANMF submits it would be appropriate to include a qualifications allowance in the Nurses Award. Inclusion of a qualifications allowance would promote access to secure work by recognising that attaining further relevant qualifications brings valuable skills and knowledge to the workforce. Such recognition will assist in retaining skilled and qualified workers in the health and aged care sectors.
58. The ANF sought the inclusion of a qualifications allowance in the award modernisation process. The Full Bench of the AIRC rejected the inclusion of a qualifications allowance in both the *Nurses Award 2010* and *Health Professionals and Support Services Award 2010* on the basis that mandatory qualifications should be recognised in the classification structure and non-mandatory qualifications should not attract an additional payment for work performed at the same classification level.²⁶
59. The Nurses Award provides five classification levels for RNs. Descriptors for each level from level two onwards makes reference to an employee holding any other qualification required for working in the employee's particular practice setting.
60. The ANMF submits this position is out of step with common conditions in public sector industrial instruments. Examples of such provisions include:
- Clause 39 of the *ACT Public Sector Nursing and Midwifery Enterprise Agreement 2017-2019*;
 - Schedule 9, part 4 of the *Nurses and Midwives (Queensland Health and Department of Education and Training) Certified Agreement (EB10) 2018*;
 - Clause 30 of the *Northern Territory Public Sector Nurses and Midwives' 2018 – 2022 Enterprise Agreement*;

²⁶ Award modernisation Statement, 23 January 2009, [2009] AIRCFB 50 at [80].

- Clause 13 of the NSW *Public Health System Nurses' and Midwives' (State) Award 2021*;
- Appendix 12 of the *Nursing/Midwifery (South Australian Public Sector) Enterprise Agreement 2022*;
- Clause 15 of the *Nurses and Midwives (Tasmanian State Service) Award 2013*;
- Clause 31 of the *Nurses and Midwives (Victorian Public Sector) (Single Interest Employers) Enterprise Agreement 2020-2024*;
- Clause 21 of the *WA Health System – Australian Nursing Federation – Registered Nurses, Midwives, Enrolled (Mental Health) and Enrolled (Mothercraft) Nurses – Industrial Agreement 2020*.

61. The ANMF proposes the inclusion of a qualifications allowance in the Nurses Award that recognises additional relevant qualifications.

Managerial allowance

62. RNs at levels 4 and 5 are excluded from payment of allowances,²⁷ overtime²⁸ and shiftwork penalties.²⁹ The basis of the exclusion is that the ordinary base salary rate is sufficient to compensate the employee at these levels for the loss of overtime, allowances and penalties. The classification levels may broadly be described as managerial in nature.
63. The ANMF submits firstly, that the ordinary base salary rate at levels 4 and 5 may not be set at a rate that sufficiently compensates for the loss of the above entitlements. The ANMF submits a review of the actual value of the entitlements when compared to the ordinary rate should be conducted.
64. Alternatively, the ANMF proposes the introduction of a managerial allowance to recognise and compensate RNs performing managerial duties at levels 4 and 5. This would promote access to secure work, and address indirect gender undervaluation. The ANMF notes for example that a managerial allowance is payable for Senior Doctors under clause 18.2(b) of the *Medical Practitioners Award 2020 ('Medical Practitioners Award')*.³⁰ Doctors classified at the level of Senior Doctor are eligible for payment of a managerial allowance as set out below:

(b) Managerial allowance per annum for Senior Doctors only

To be eligible for payment of this allowance, the additional management responsibilities will include direct line responsibility for a unit, department or service and involvement in a number of, but not necessarily all of the following:

- *cost centre management including budget preparation and management of allocated budget;*
- *participation in planning and policy development;*
- *responsibility for the co-ordination of research, training or teaching programs; or*
- *membership and participation in senior executive management teams.*

²⁷ Nurses Award cl 17.1.

²⁸ Nurses Award clause 19.2(b).

²⁹ Nurses Award cl 20.1(e).

³⁰ Medical Practitioners Award [MA000031] cl 18.2.

65. Under the Medical Practitioners Award, senior doctors are recognised in the classification structure as skills, training and qualifications increase, however, in contrast to the Nurses Award, senior doctors also have access to a managerial allowance, other allowances and shiftwork penalties.
66. The ANMF submits that the combined effect of excluding RNs at levels 4 and 5 from existing allowances and relying solely on placement within the classification structure to recognise additional managerial responsibility results in RNs at these levels being undervalued. This should be addressed both to ensure gender equality, but also to promote access to secure work. Recognition of managerial responsibility enhances career pathways, and attraction and retention to more senior positions in the health and aged care sectors.

Overtime rates – full-time and part-time employees

67. Clause 19.1 provides overtime rates for full-time and part-time employees as follows:
 - (i) *Monday to Saturday (inclusive)—150% of the minimum hourly rate applicable to their classification and pay point for the first 2 hours and 200% after 2 hours;*
 - (ii) *Sunday—200% of the minimum hourly rate applicable to their classification and pay point; and*
 - (iii) *Public holidays—250% of the minimum hourly rate applicable to their classification and pay point.*
68. Clause 21 provides penalty rates for ordinary hours performed on a Saturday or Sunday.
69. Ordinary hours performed between midnight on Friday and midnight on Saturday are paid at a rate of 150% of the minimum hourly rate, and between midnight on a Saturday and midnight on a Sunday at 175% of the minimum hourly rate.
70. The current provisions of the Nurses Award treat the first two hours of overtime on a Saturday and the applicable shift loading as the same. The effect of this, is to incentivise payment of additional hours as overtime rather than ordinary hours of work as overtime does not attract accrual of leave entitlements or payment of superannuation.
71. Similarly, the Sunday overtime rate is only 25% higher than the Sunday penalty rate, which when leave entitlements and superannuation are factored in, also incentivises the use of overtime ahead of ordinary hours.
72. The ANMF submits that the Saturday rate for overtime should be set at 200% for all overtime hours and the Sunday rate be increased to 250%. The impact of this proposal will be to promote access to secure work by making engagement for work performed as ordinary hours on Saturday and Sunday more viable than ad hoc overtime hours. The rate for overtime performed on a public holiday would also be subject to review, if the proposed changes were made.
73. The above analysis applies equally to clauses 19.2 of the Nurses Award, which provides overtime rates for casual employees and its interaction with clause 21. However the exception to this is that casuals do not accrue leave entitlements but are paid superannuation on ordinary hours only.

Minimum engagement of 4 hours for all employees

74. The Nurses Award makes no provision for minimum hours of engagement for part-time employees. The absence of a minimum engagement term, particularly when viewed in conjunction with the current definition of part-time employment, compounds the problems

identified at paragraph 24 of this submission. The absence of a term exposes part-time employees to greater levels of disruptive work patterns and the cost associated with attending work for unreasonably short periods of time.

75. The Discussion Paper analysis of the seven most frequently used awards, shows that all seven have terms providing for minimum engagement per shift for part-time employees.
76. The ANMF submits that the concerns related to low minimum hour contracts for part-time employees and the impact of short engagements would be addressed by inclusion of a minimum hours of engagement clause in the Nurses Award.
77. The ANMF submits that a minimum engagement of four hours should be considered as a key means of promoting access to secure work. An example of a 4 hour minimum shift length is provided for in the *Ambulance and Patient Transport Industry Award 2020*.³¹
78. The Nurses Award provides a minimum engagement period of two hours for casual employees.³² The ANMF submits the casual minimum engagement period should also be increased in line with the proposed minimum for part-time employees.

Definition of shift worker to be used for accessing 6 weeks annual leave

Deficiencies with the definition

79. The Nurses Award provides a definition of shiftworker as set out below in clause 4 'Definitions':

shiftworker means an employee who is regularly rostered to work their ordinary hours of work outside the span of hours of a day worker as defined in clause 1.1(a).

80. The above definition is largely replicated in clause 13 of the Nurses Award for the purposes of rostering. Work that does not fall within the span of hours for a day worker attracts shiftwork loadings at clause 20 of the Nurses Award.

13.1 Ordinary hours and roster cycles

(a) Span of hours—day worker

Ordinary hours of work for a day worker are worked between 6.00 am and 6.00 pm, Monday to Friday.

(b) A shiftworker is an employee who is regularly rostered to work their ordinary hours of work outside the span of hours of a day worker as defined in clause 13.1(a)

81. The Nurses Award at clause 22 'Annual leave' provides for an additional week of annual leave for all workers under the Nurses Award, and a further additional week for shiftworkers. Clause 22.2(b) defines shiftworker (in terms that are different to both the definition at clause 4 and the adoption of that definition at clause 13.1(e)) as follows:

A shiftworker, for the purposes of the additional week's annual leave provided by the NES, is an employee who:

(i) is regularly rostered over 7 days of the week; and

(ii) regularly works on weekends.

³¹ [MA000098] cl 10.4.

³² [MA000034] cl 11.3.

82. The ANMF submits that the definition of shiftworker for the purposes of the additional week's annual leave should be consistent with the definition provided in the definitions section of the Nurses Award. Access to the additional week's annual leave under the current wording of the clause, can be, and is, applied by employers in a manner that restricts access to the additional week.
83. The ANMF submits the purpose of the additional week is to compensate for the disruption to personal and family life, working unsocial hours – which impacts health and wellbeing. This is a significant and well recognised negative of shiftwork³³. The health and aged care sectors are reliant on shiftwork to meet care needs, however the additional burden placed on nurses is not recognised as many shift workers are not entitled to the additional week of annual leave.
84. Clause 28.2 of the Aged Care Award in contrast provides the additional week of annual leave for shiftworkers who regularly work outside of ordinary weekly hours.

Proposed variation to the Nurses Award

85. The clause should be amended to provide access to the additional week of annual leave to shiftworkers as defined in clauses 4 and 13 of the Nurses Award. Clause 22.2(b) should be amended to provide:

*A **shiftworker**, for the purposes of the additional week's annual leave provided by the [NES](#), is defined at clause 4.*

86. This proposed change would enhance access to the additional week of leave for shiftworkers covered by the Nurses Award. It would recognise the true burden of working unsocial hours which in turn would promote better access to secure work.

Frequency of payment

87. In the 2016 review of modern awards, the full bench of the FWC outlined the frequency of pay cycle provisions across modern awards.³⁴ The analysis allowed awards to be grouped as follows:
 - 7 awards provided solely for weekly payment cycles
 - 5 awards provided solely for fortnightly payment cycles,
 - 45 awards provided for weekly or fortnightly pay cycles,
 - 21 awards provided for weekly, fortnightly or monthly pay cycles,
 - 7 awards contained no provision for frequency of payment,
 - 37 awards contained some other provision.

³³ Gu F, et al. Total and cause-specific mortality of U.S. nurses working rotating night shifts. *Am J Prev Med*. 2015 Mar;48(3):241-52. doi: [10.1016/j.amepre.2014.10.018](https://doi.org/10.1016/j.amepre.2014.10.018). Epub 2015 Jan 6. PMID: 25576495; PMCID: PMC4339532.

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³⁴ *Four yearly review of modern awards* [2016] FWCFB 8463 at [22]-[23].

88. The then *Nurses Award 2010* provided for fortnightly pay, unless otherwise mutually agreed up to a monthly maximum period. Clause 16.1 of the Nurses Award retains this provision.
89. The 2016 review of modern awards focussed largely on the merits of payment in arrears and the method of payment, rather than any benefits in setting the duration of the pay cycle itself. The ANMF is not seeking any changes to the method of payment under clause 16.2 of the Nurses Award.
90. The ANMF invites the FWC to consider whether payment frequency provisions in modern awards should be set with reference to job security. In particular, weight should be given to the financial security afforded to employees with the shorter pay cycles where this has not previously formed part of the FWC's deliberations.
91. The ANMF submits that the benefit for workers in paying wages at shorter intervals is that it allows those workers to align their income with expenses. Everyday financial pressures impact workers, who may not always be in a position to wait for pay day to meet their living expenses, particularly when their pay cycle could extend for a full month. Where workers fall short of money before the next payday, the alternatives may include borrowing money or going into credit card debt, both of which may carry a financial penalty for the worker.
92. To meet the modern award objective of advancing security in employment, the FWC should consider specifically permitting wages to be paid at weekly or fortnightly intervals, unless otherwise agreed up to a monthly maximum period. By expanding pay cycles to expressly include weekly pay periods, the award would permit employers to move to weekly payroll cycles where feasible, while allowing fortnightly and other longer pay cycles to continue. It would also preserve longer pay cycles for employees who have chosen this as their preferred payment structure.

Rosters

93. The rostering provisions under the Nurses Award are deficient in that they do not afford employees sufficient foresight about future work patterns, in a manner that contributes to insecurity in employment.

Notification of Roster

94. Clause 13.2(c) of the Nurses Award stipulates that a roster will be displayed at least 7 days before the commencement of the roster period. Noting that uncertainty around patterns of work is an aspect of insecure employment, the shortness of the notification period for a roster denies workers the ability to plan their lives around potential variations in hours and patterns of work.
95. This issue is particularly problematic for employees who need to balance work and care responsibilities and currently may need to make outside of work arrangements at relatively short notice.
96. The ANMF considers that a minimum 14 day notification period for the publishing of rosters would be more appropriate in establishing predictability around hours and patterns of work. This would also provide greater lead time for parties to consult around problems with a roster well before commencement. The ANMF notes that public sector enterprise agreements in some jurisdictions currently require employers to display rosters up to 28 days before commencement as common practice in hospital settings.

Roster Changes

97. In terms of changes to the roster after publication, the ANMF submits that clause 13.2(e) of the Nurses Award, which provides that an employer may change the roster with 7 days' notice, should be amended to 14 days. The ANMF would also encourage the FWC to consider whether an appropriate penalty should apply in circumstances where a roster has been changed with less than 14 days' notice. For the reasons already stated, this would provide greater certainty and predictability for workers subject to the roster and provide for forward planning around balancing work and care responsibilities.
98. The ANMF acknowledges that in hospital and other health facilities it is appropriate that employers may from time to time need to alter a roster to account for unforeseen staff absences, such as sick leave. The ANMF submits that clause 13.2(f) of the Nurses Award should be retained for this purpose to ensure that health settings can be adequately and safely staffed.

Roster Cycle

99. Forward planning of work and care not only requires rosters to be published well in advance of commencement, but also requires employees to be able to see their work pattern well in advance. It follows that clause 13.2(a) of the Nurses Award, which provides for a weekly of fortnightly roster cycle, may not provide sufficient security and predictability around hours and patterns of work.
100. The ANMF notes that some public sector instruments applicable to nurses provide for up to a 28 day roster cycle, and recommends that this be adopted as the standard in the Nurses Award. Such an adjustment would be particularly suitable to the nursing profession and health settings necessarily need to properly plan for the adequate and safe staffing of hospitals and health facilities.

Night shift penalty

101. The night shift loading under the Nurses Award is set at 15% per clause 20.2(b).
102. The rate paid for ordinary hours worked by 'Career Medical Practitioners and Senior Career Medical Practitioners' between midnight and 8am under the Medical Practitioners Award is 25%.³⁵
103. Blue-collar awards, which are dominated by male employees, often pay higher than the Nurses Award for night shift. These include the *Road Transport and Distribution Award 2020* and *Waste Management Award 2020*. They provide a for a night shift premium of 30% of the ordinary rate.³⁶ The *Security Services Award 2020* provides 121.7% or 130% for permanent night workers.³⁷ Similar to the Nurses Award, these penalties are not payable on weekends or public holidays when other loadings are applicable.
104. The problem of being able to persuade staff to work night shifts has been specifically addressed in collective agreements made by ANMF branches. For example, the Queensland public sector agreement provides a night shift penalty of 25% for work done from 00.00am on

³⁵ Medical Practitioners Award cl 21.1.

³⁶ *Road Transport and Distribution Award 2020* cl 22.3, *Waste Management Award 2020* cl 20.3.

³⁷ *Security Services Industry Award 2020* cl 20.2.

Monday morning (the time before then attracts Sunday penalty rates).³⁸ The usual night shift rate is 20% under the *Nurses and Midwives (Queensland Health) Award – State 2015*.³⁹

105. In Western Australia, the night shift penalty under their public sector agreement is 35%.⁴⁰ The Victorian public sector agreement provides a night shift penalty that is 72% higher for Sunday night/Monday mornings than any other day.⁴¹ It should be noted that this is a fixed amount and payable every day of the week.

Proposed variation to the Nurses Award

106. In many health and aged care settings, night shift must be worked. The organisation cannot avoid employing people to work overnight, particularly in public hospitals and aged care facilities. These unsocial hours must be worked by someone and should be rewarded.
107. Employees covered by the NA should at least be compensated similar to medical practitioners. The Nurses Award should be varied at clause 20.2(b) so it reads as follows:

(b) Where an employee works a rostered night shift between Monday and Friday, the employee will be paid a loading of 25% of the minimum hourly rate applicable to their classification and pay point.

Casual Loading

108. The ANMF contends that it is necessary to re-evaluate the quantum of the casual loading in light of changes to the modern awards objective now requiring the FWC to take into account the need to improve access to secure work across the economy. The casual loading is currently set at 25% across all modern awards.
109. The 25% loading for casuals has been the uniform rate across all modern awards following the December 2008 decision of the former AIRC concerning award modernisation.⁴² In setting the loading at 25% for all modern awards, the AIRC adopted the reasoning from the *Metal, Engineering and Associated Industries Award 1998*⁴³ ('**Metal Industry Award**'). It is not the intention of the ANMF to disturb the standardisation of the casual loading across modern awards. In this respect, the ANMF is not making a submission solely for a variation to the casual loading in the Nurses Award, but seeks a uniform change to the loading in all modern awards.
110. The ANMF notes that when the casual loading was set at 25% under the Metal Industry Award in 2000, the AIRC set out to ensure that the loading was set at a rate that created an equivalence with full-time and part-time (ongoing) employees, notwithstanding the difficulties in quantifying both the tangible and less-measurable benefits afforded to ongoing employees. Specifically, the Full Bench stated at [157]:

[W]e consider that the proposition does crystallise what should be an important objective in calculating and fixing the loading. A logical and proper consequence of providing for casual employment with the incidents currently attached to it is that, so far as the award provides, it

³⁸ *Nurses and Midwives (Queensland Health and Department of Education) Certified Agreement (EB11) 2022* cl 41.2 (Matter no. CB/2022/133).

³⁹ *Ibid* cl 15.12.

⁴⁰ *WA Health System – Australian Nursing Federation – Registered Nurses, Midwives, Enrolled (Mental Health) and Enrolled (Mothercraft) Nurses – Industrial Agreement 2020*, cl 25(2).

⁴¹ *Nurses and Midwives (Victorian Public Sector) (Single Interest Employers) Enterprise Agreement 2020-2024*, p 224.

⁴² *Award Modernisation Decision [2008]* AIRCFB 1000 at [47]-[50].

⁴³ Print T4991, (2001) 105 IR 27.

should not be a cheaper form of labour, nor should it be made more expensive than the main counterpart types of employment.'

111. The Full Bench in its decision went on to outline how it calculated the 25% loading with reference to the various entitlements that were fully, partially or not quantified as part of the task of creating an equivalence between casual and ongoing employees.
112. The ANMF is not convinced that the casual loading as currently set at 25% is sufficient to even be described as being equivalent to the totality of benefits afforded to ongoing employees.
113. The ANMF would further encourage the FWC to re-consider the adequacy of the quantum of the casual loading, noting that at the time the 25% loading was set, the former AIRC was not required to give specific consideration to the need to improve access to secure work across the economy as part of the modern award objective. By creating an equivalence between ongoing and casual employment through the 25% casual loading, the FWC neither promotes nor discourages secure employment, whereas the FWC is now required to consider the need to improve access to secure work across the economy. It therefore is open to the FWC to increase the casual loading to shift the balance in favour of casual employees. This would have the effect of incentivising employers to structure their workplaces in ways that favour engaging employees in more secure forms of work (such as full-time and part-time ongoing roles), while disincentivising insecure casual work. Employers would be pushed to reconsider the necessity for maintaining a casual workforce if a higher casual loading were viewed as being greater than equivalent in labour cost to a permanent workforce, but rather that the casual loading represented a penalty for opting to engage workers through insecure casual work.