



# Modern Awards Review 2023-24 (AM2023/21)

## Submission cover sheet

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## ANMF submission in response to the Literature Review

1. The Australian Nursing and Midwifery Federation (**'ANMF'**) welcomes the opportunity provided by Deputy President O'Neill during Consultation 1 for parties to provide further submissions in response to the Literature Review prepared for the Work and Care Stream of the *Modern Awards Review 2023-24* (the **'Review'**).
2. This submission should be read in conjunction with the ANMF's submission filed 12 March 2024, submission in reply filed 26 March 2024, and oral submissions provided during the course of consultations.
3. The ANMF acknowledges the request by Deputy President O'Neill during Consultation 2 for parties to identify their three priority areas for consideration. The ANMF will focus this response to the Literature Review on our three priority areas, being secure part-time work, improved access to overtime, and predictable rostering. The ANMF stresses that we have focused these submissions as such to address the request by the Deputy President, but that variations to the Nurses Award in the priority areas identified herein should not occur to the exclusion of addressing other matters raised in this stream of the Review.
4. The ANMF also takes this opportunity to clarify previous submissions on weekend penalty rates, overtime and other entitlements (leave accrual and superannuation).

## Part-time employment

1. The Literature Review reinforces the interrelationship between gendered undervaluing of care (and other) professions, low wages, prevalent part-time employment, and imbalances in the lives of working carers.<sup>1</sup> For employees in the highly gender segregated occupations of nursing and midwifery,<sup>2</sup> where part-time employment is common, the impacts of these coalescing pressures are felt acutely. Reforming part-time employment in the Nurses Award is of utmost importance to the ANMF and our members.
2. It is the common experience of ANMF members that part-time employment, under the current provisions of the Nurses Award, provides 'bad flex'. 'Bad flex' is set out in the Literature Review as 'precarious and poorly rewarded work where the flexibility overwhelmingly benefits employers and workers have low levels of control over these arrangements [and] such flexibility is seen as coming at the expense of job security, and gender equality over the life course.'<sup>3</sup>
3. ANMF members in part-time employment regularly experience an 'on-demand' utilisation of part-time by employers where an employee's hours may be flexed up and down above a set of guaranteed minimum weekly hours.<sup>4</sup> This makes planning work and care difficult and, in conjunction with the low pay of highly-feminised workforces and 'artificially low' hours contracts,

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<sup>1</sup> Smith, M and Charlesworth, S (2024) *Literature Review for the Modern Awards Review 2023-24 Relating to the Workplace Relations Settings Within Modern Awards That Impact People When Balancing Work and Care*, Western Sydney University, pp. 14 and 15.

<sup>2</sup> Ibid, p. 13.

<sup>3</sup> Ibid, p. 11.

<sup>4</sup> Ibid, p. 21.

disrupts income continuity and security.<sup>5</sup> It is the employee who bears the brunt of these time and financial pressures.

4. The extensive evidence set out in the Literature Review supports the submissions of the ANMF and others that 'part-time status is seen to limit access to modern award working time protections that provide the stability and the predictability that many worker carers require in their engagement in paid work while also meet their caring responsibilities'.<sup>6</sup> The ANMF reiterates our position that amendments to the part-time provisions of the Nurses Award, as proposed by the ANMF, are necessary to rectify the imbalances and bad flexibility of part-time work that disadvantage working carers, the majority of whom are women.

### Overtime

5. The Literature Review found that 'permanent part-time arrangements often result in insufficient guaranteed weekly hours, while workers are required to make themselves available to employers for a wider span of hours in order to secure additional hours of work and sufficient income.' In the context of overtime, employees on artificially low part-time contracts are disadvantaged as 'hours worked in addition to the guaranteed hours (up to 38 hours per week) are paid at ordinary time rather than overtime rates.'<sup>7</sup>
6. This summary of the substantial evidence on insufficient Modern Award provisions for overtime supports the experience of ANMF members and the recommendations to vary the Nurses Award to improve access to overtime. Diminished access to overtime, in conjunction with variable, bad flex part-time hours, disrupts an employee's ability to plan work and care, and financially disadvantages them.

### Rosters

7. The Literature Review sets out evidence that in care industries, employee working time is fragmented, including as a result of poor management rostering practices, where an employee does not have input to rostering and where late-notice rostering changes are frequent.<sup>8</sup> Insecure and unpredictable rostering arrangements, described as poor working time security,<sup>9</sup> is a common experience of nurses and midwives working in care and health settings.
8. Poor rostering practices, including inadequate notification periods and duration of rosters, and frequent late-changes to rosters, compound the issues of 'on-demand' part-time employment set out above at paragraphs [2] and [3]. In fact, as the Literature Review surmises, 'on-demand' forms of part-time work can occur because of an employee being 'exposed to rostering practices which extinguish any reasonable predictability of working hours.'<sup>10</sup>
9. The ANMF draws particular attention to the Literature Review's characterisation of the impacts of poor rostering and its relationship to gendered workforces, 'Women with caring responsibilities

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<sup>5</sup> Ibid, p. 39.

<sup>6</sup> Ibid, p. 60.

<sup>7</sup> Ibid, p. 40.

<sup>8</sup> Ibid, p. 16

<sup>9</sup> Ibid, p. 15.

<sup>10</sup> Ibid, p. 21.

are disproportionately likely to be ‘on-demand’ workers in either casual employment or in short-hours part-time employment. The irregular, fragmented hours inherent in on-demand work [and] this working-time insecurity and underemployment dislocates daily life and provides limited control over work-care schedules.’<sup>11</sup>

10. Given the intersection with part-time employment, and access to overtime, it follows that of high priority for ANMF members is amendments to rostering provisions. Varying the roster provisions of the Nurses Award in the terms set out by the ANMF would promote predictability and security (of hours of work, hours of care, and income) for working carers.

### Weekend penalty rates

1. The ANMF takes this opportunity to clarify our initial submissions at paragraphs 75-81 and our oral submissions during Consultation 3 on 9 April 2024, with respect to overtime, penalty rates and entitlements.
2. 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 (150%). 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.
3. An employer may have a choice of offering additional hours or an additional shift to be worked on a Saturday to a FT employee or a PT employee. The additional hours/shift worked by a full-time employee would be paid as overtime, assuming the additional hours are above the employee’s ordinary full-time hours. The payment for overtime in accordance with clause 19.1(a)(i) of the Nurses Award for overtime worked on Monday to Saturday inclusive is 150% of the relevant minimum rate for the first 2 hours and 200% after 2 hours.
4. For the first 2 hours of overtime the hourly rate is the same as the ordinary hourly rate for working on a Saturday (Clause 21.1 - 150%). The employer is paying the same hourly rate as an ordinary rate for a Saturday, (Clause 21, Saturday and Sunday work), and is financially advantaged because annual leave does not accrue on overtime hours and superannuation does not have to be paid on overtime hours. If, on the other hand, a part-time employee worked the additional hours/shift as part of their ordinary hours, the hours worked would accrue towards the employee’s annual leave entitlement and the amount paid would attract superannuation.
5. The incentive for the employer is to use a full-time employee working overtime because there is no difference in the hourly rate in the first 2 hours and no requirement to accrue leave or pay superannuation on the hours worked.
6. The overtime rates for weekend work in the Nurses Award, as stated in our initial submission at paragraph 80, should be amended to 200% for all overtime hours worked on a Saturday, which would align with the Saturday overtime rates in the Aged Care Award, and the overtime rate for Sunday should be increased to 250%. This would make working Saturday and Sunday as part of

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<sup>11</sup> Ibid, p. 43.

ordinary hours more viable, thereby promoting access to predictable work, instead of using ad hoc arrangements such as overtime to cover service or business requirements.

7. For nurses and midwives, diminished access to fairly compensated weekend work or accrual of entitlements, exacerbates the disadvantages already experienced from 'gendered patterns of working time for many worker-carers, their location in jobs which are less secure or ineffectively regulated, and the ongoing consequences for women's lifetime earnings and superannuation balances at retirement.'<sup>12</sup>

#### Concluding remark

8. The work of the Literature Review to consider and summarise over 300 sources on the issues faced by working carers in employment, should not be disregarded. It is evident from this comprehensive body of work that working carers, who are predominantly women, face myriad barriers within employment that prevent them from accessing secure working time and income, and in turn disrupt their ability to balance work and care. Amendments to Modern Awards must reflect the interconnectedness of issues, including beyond those set out in this submission.

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<sup>12</sup> Ibid, p. 19.