

Submission by the Australian Nursing and Midwifery Federation

Review of the Closing Loopholes Acts – Response to the Draft Report

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**Australian
Nursing &
Midwifery
Federation**



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Introduction

1. The Australian Nursing and Midwifery Federation (ANMF) is Australia's largest national union and professional nursing and midwifery organisation. In collaboration with the ANMF's eight state and territory branches, we represent the professional, industrial and political interests of more than 356,000 nurses, midwives and care-workers across the country.
2. Our members work in the public and private health, aged care and disability sectors across a wide variety of urban, rural and remote locations. We work with them to improve their ability to deliver safe and best practice care in each and every one of these settings, fulfil their professional goals and achieve a healthy work/life balance.
3. Our strong and growing membership and integrated role as both a trade union and professional organisation provides us with a complete understanding of all aspects of the nursing and midwifery professions and see us uniquely placed to defend and advance our professions.
4. Through our work with members, we aim to strengthen the contribution of nursing and midwifery to improving Australia's health and aged care systems, and the health of our national and global communities.
5. The ANMF thanks the Department of Employment and Workplace Relations and Ms Susan Booth for the opportunity to provide feedback on the *Closing Loopholes – An Independent Statutory Review* draft report.



Overview

6. The ANMF is broadly supportive of the recommendations made in the Draft Report and welcomes the comprehensive and considered work of the Review. These submissions in reply aim to further address our initial submissions and particular areas of interest.
7. The ANMF has had the benefit of reviewing the Australian Council of Trade Union (ACTU) submissions addressing the draft recommendations in advance. Where specific recommendations are not addressed in the following submissions, the ANMF expresses support for the ACTU's submissions.

Delegate's Rights

8. The ANMF strongly supports Recommendations 35 and 36 of the Draft Report. A further review of how the delegate's rights term is operating in 2-3 years' time is an appropriate measure. Recommendation 36 is welcomed by the ANMF and deals directly with our experience that more beneficial elements of bargained-for delegates rights terms have been supplanted and rendered void by the model term in its entirety during the approval process.
9. The ANMF further emphasises the need for 'reasonable communication' to be more specifically defined. As it stands, employers continue to limit the capacity of our delegates to communicate with their colleagues, especially in contemporary post-COVID hybrid workplaces reliant on email communication. A large national employer we are currently bargaining with has repeatedly obstructed our requests for delegates to be provided with work email addresses to facilitate communication with union members and potential members. Only after extensive requests and argument were we provided with deidentified group email addresses. While this has been an improvement, we have no visibility over who is receiving emails from the lists and delegates have received automatic replies from the CEO and members of the executive team, thus identifying themselves as being on the list and monitoring our communications.
10. The ANMF notes that Federal Court proceedings are underway concerning what constitutes



reasonable communication. Subject to the outcome of these proceedings, the ANMF encourages the Review to recommend the government legislate specific parameters around reasonable communication to better facilitate the ability of delegates to discuss workplace matters with members and potential members of unions. These parameters should particularly acknowledge the widespread nature of working from home across many industries, the rise of the hybrid workplace and the need for workers to reach one another when not in the same physical workplace.

Minimum Standards Orders for Employee-Like Workers

11. The ANMF supports Recommendation 12 and notes our particular role in contributing to the take up of minimum standards orders in the care sector.
12. The ANMF submits that workers in the care economy do not necessarily identify as digital platform workers. Often, it is difficult for the ANMF to identify members engaging in digital platform work as it is supplementary to their main source of income. For example, a nurse working part time in a public hospital with their union membership reflecting that work may occasionally also work via the Mable platform. Unions appear broadly supportive of future applications in the care and disability sectors but have difficulty in finding these members and understanding their use of digital platforms.
13. In alignment with the ACTU's submissions, the ANMF supports the piloting of information sessions facilitated by the Fair Work Ombudsman for digital platform workers. This would provide an opportunity for registered employee organisations to access workers directly, explain the functions and processes of a minimum standards order and build consensus for future applications.

Intractable Bargaining Determinations

14. The ANMF objects to Recommendation 22 in the Draft Report. The ANMF continues to bargain in good faith across our enterprise negotiations and is concerned any list of considerations added to s 235 would provide employers with further grounds to oppose



applications and continue delaying bargaining. The low take-up of this jurisdiction within ANMF negotiations, with no workplace determinations ultimately being made, evidences no need to counterbalance any perceived incentive the ANMF may have in itself delaying bargaining. The ANMF has observed that in light of the intractable bargaining jurisdiction employers have been more willing to negotiate efficiently, resulting in much needed improvements to pay and conditions much faster for our members.

15. Recommendation 23 goes directly to resolving issues raised by the ANMF in our initial submission and we are pleased to see these addressed.

Paid Family and Domestic Violence Leave Act

16. The ANMF is very supportive of every recommendation made by the Review in relation to paid family and domestic violence leave.

17. Recommendation 46 to expand the availability of the FDV leave entitlement is supported. The ANMF notes, however, that any new legislative drafting must be subject to the usual consultation processes. While we support expanding the availability of the entitlement with a more general wording akin to that of personal leave, any changes would need to be carefully considered to avoid the disputation that surrounds the entitlement as currently expressed. This recommendation, as noted in the second dot point, should also be aligned with any educative processes or enhancing of awareness as well as less stringent evidence requirements.

18. Recommendation 47 to clarify the types of evidence that can be used is supported. The ANMF would specifically like to see medical certificates expressly included in the list as well. The ANMF would also seek that any evidence provided when taking FDV leave is limited to only one form and is effective for an enduring period, ideally 12 months. This would prevent repeated appointments and costs associated with authorising evidence and enable victim-survivors to address the FDV more effectively.

19. Recommendation 48 is supported, noting that the ANMF would add that FWO guidance



make explicit the difficulties that requiring evidence can impose on victim-survivors.

20. Recommendation 49 is supported, noting that the ANMF would also seek the explicit inclusion of young people, the LGBTQIA+ community and people with disabilities as target audiences for education. These groups are overrepresented as victim-survivors as well as vulnerable employees experiencing insecure employment.
21. Recommendation 50 is supported and the ANMF supports the submissions and solution proposed by the SDA. This solution requires that where a casual employee takes FDV leave they receive a weekly payment averaged from their previous 3 months work.
22. Recommendations 51 and 52 are supported in their entirety with no additional comment.
23. The ANMF understands the conclusion that several proposals raised in our initial submission were outside the scope of the Review. Despite this, the ANMF reiterates the need for:
 - Increasing the entitlement to 20 days;
 - Expansion of the entitlement to include sexual and other gender-based violence; and
 - Expansion of the entitlement to facilitate ‘solidarity’ leave for family and other household members to support victim-survivors.
24. These measures would further support victim-survivors in receiving the financial relief this legislative scheme was introduced to provide.

Conclusion

25. The ANMF once again thanks the Review for the opportunity to provide further submissions on the Draft Report. The ANMF asks that the positive findings of the Draft Report are carried over into the final version to be presented on 15 June 2026, and that the further feedback of the union movement across roundtables and these submissions be incorporated.