

IN THE MATTER OF THE NURSES AWARD 2010 (2008/13)

IN THE MATTER OF AN APPLICATION BY THE AUSTRALIAN NURSING FEDERATION (AM2009/17)

SUBMISSIONS OF THE AUSTRALIAN NURSING FEDERATION

1. These submissions are in support of the union's application to vary Clause A3.5 of Schedule A – Transitional Provisions of the Nurses Award 2010.
2. The application seeks to amend the model phasing provisions incorporated into a number of awards arising from a decision of the award modernisation full bench on 2 September 2009 in AIRCFB800.
3. The model phasing arrangements, in part, provide that increases and reductions in wages and specified conditions are to be phased in tranches commencing from 1 July 2010.
4. The application seeks to delay the commencement of the reduction in award rates of pay for nursing staff employed in New South Wales and Queensland who are currently award reliant. The vast majority of these nurses are principally employed in residential aged care settings.
5. The model phasing arrangements will reduce the current award wage rates of nursing classifications currently contained in the Nurses Aged Care Award State 2005 (a Qld NAPSA) and the Nursing &c., Nurses' (State) Award 2005 (a NSW NAPSA). Both of these NAPSA's apply to nursing staff employed in not-for-profit and private for profit residential aged care facilities.
6. Details of the amounts to be absorbed into the Nurses Award 2010 as a result of the model phasing arrangements are set out in Attachment 1 to this submission. It is noted that in New South Wales the amount to be absorbed may be up to \$294 per week and in Queensland \$124 per week.
7. The current award wage rates in the Nurses Aged Care Award State 2005 were last reviewed by the Queensland Industrial Relations Commission in April 2002 in B1019 of 1998 where inter alia the tribunal inserted new classifications and wage rates for Assistants in Nursing and Enrolled Nurses on the basis of changes in work value.
8. The current award wage rates in the Nursing Homes &c., (State) Award 2005 were last reviewed by a Full Bench of the New South Wales Industrial Relations Commission on 29 March 2005 in Decision NSWIR COMM88. In this decision the tribunal adjusted rates for pay for all nursing classifications on the basis of changes in work value.
9. In both instances full benches of the state tribunals undertook a comprehensive and extensive examination of the roles and responsibilities of nursing staff and determined to establish new

wage rates and revised classification structures and definitions in accordance with the relevant state wage fixing principles and which, in part, met industry and community needs.

10. In the award modernisation consultation proceedings of 3 December 2008, ANF referred to a document titled "Award rates of pay key classifications entry level". The document contains two tables: The first sets out weekly rates of pay for key classifications across several federal awards, and the second provide similar information in relation to existing NAPSA awards in New South Wales and Queensland. A copy of the table is attached at Attachment 2 of this submission.
11. While the union recognizes that the award modernisation process required the Commission to use the relevant principal federal award as the starting point for drafting modern awards (See Statement of 29 April 2008 at paragraph 11), it would be fair and reasonable to amend the model phasing arrangements where the rates of pay between federal instruments and NAPSA's is significantly different so as to allow the industrial parties a reasonable period to address this difference at the enterprise level.
12. Nurses employed in the aged care sectors are heavily reliant on awards and often do not have the benefit of enterprise agreement.
13. The union estimates that in Queensland there are between 5,000 and 6,000 nursing staff employed in aged care who are not covered by an agreement. In NSW it is estimated that the figure may exceed 10,000. Many of these award reliant nurses are employed by smaller providers as Assistants in Nursing.
14. In the absence of an agreement many nurses will effectively suffer a reduction in their earnings as award wages are eroded by inflation. Award reliant nurses employed in Queensland and New South Wales are amongst the lowest paid nurses in those states, with an entry level registered nurse at the highest award increment for the classification earning on average \$300 per week less than their counterpart in the public sectors. Increasing in the wages gaps between the sectors will have strong adverse consequences for the provision of care for the frail aged.
15. In our submission award reliant nurses in Queensland and New South Wales will be further disadvantaged should the model phasing arrangements not be amended as sought.
16. The model phasing provisions may result in award reliant nurses finding it more difficult to participate in enterprise bargaining principally because there will be little if any incentive for their employers to do so over the next five years.
17. The promotion of enterprise bargaining is a key objective of the award modernisation process (s576A (1) (d)). The variation, if granted, will assist in promoting bargaining in these sectors.
18. Successful bargaining in the aged care sectors in Queensland and New South Wales will increase productivity, competitiveness and promote employment. This is also consistent with the objectives of award modernisation (s.576B (2) (a)).

19. Factors that discourage bargaining are inconsistent with the Objects of the Fair Work Act 2009, in particular s.3(f) and s.172(a).
20. In our submission it would be both fair and reasonable to delay any absorption of the Queensland and New South Wales NAPSA wage levels for a reasonable time so as to allow the parties to address the issue at the enterprise.
21. Should the application be granted the relevant employers will not be disadvantaged as they will still be required to observe their obligations under terminated transitional instruments (Item 7, Schedule 3 of the Fair Work (Transitional Provisions and Consequential Amendments Act).
22. The variation sought, if granted, will provide a reasonable additional period where the award wage levels and entitlements are more certain, stable and sustainable. This stability and sureness will assist both employers and employees. In this regard the application meets the award modernisation objects including s576 (A) (2) (c).

Attachment 1

- Nursing Homes & c. Nurses' (State) Award Transition details (NSW)
- Nurses' Aged care Award State 2005 Transition details (Qld)

Attachment 2

Current Award Wage Rates – Key classifications entry level