

Submission by the Australian Nursing and Midwifery Federation

Variation of modern awards to include a right to disconnect term

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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 345,000 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 Fair Work Commission (FWC) for the opportunity to provide a submission in response to the full bench statement issued on 21 August 2025¹ (the 2025 Statement).

¹ [2025] FWCFB 185.



Background

6. The 2025 Statement has been provided in the context of an endeavour by the FWC to set a model term for a right to disconnect to apply across the entire modern award system.
7. The right to disconnect is a creature of statute. On 26 February 2024, the *Fair Work Act 2009* (Cth) (the Act) was amended pursuant to the *Fair Work Legislation Amendment (Closing Loopholes No. 2) Act 2024* (Cth). Critically, section 149F of the Act requires a modern award to include a right to disconnect term; a provision that would come into effect on 26 August 2024, other than for small business employers where the operation of the provision would be delayed until 26 August 2025.
8. The ANMF was an active participant in the proceedings for the setting of the modern award term to enshrine a right to disconnect. The ANMF filed submissions on these dates:
 - 20 May 2024 (the main submission);
 - 11 June 2024, and
 - 1 August 2024.
9. On 23 August 2024, the FWC issued determinations to vary all modern awards, including the *Nurses Award 2020* (the Nurses Award). The effect of the determinations was that the right to disconnect was broadly standardised across the award system, and the Nurses Award was no exception to this.
10. The statement that accompanied the determinations indicated that at the time, the FWC intended to review the operation of the right to disconnect terms following 12 months of operation, and that guidelines concerning the right to disconnect ought to be made only once the FWC has dealt with some disputes under the then newly made award terms.²

² [2024] FWCFB 338.



11. The 2025 Statement now poses two questions:

- Whether it is necessary to conduct a review of the model award term, either generally or in respect of specific awards, at this point in time, and if so, what aspects of it; and
- Whether the FWC should now make guidelines, noting the lack of any guiding case authority at this point.

12. The ANMF will address both questions in turn.

Review of the model award term

13. The ANMF shares the view of the Australian Council of Trade Unions (ACTU) that a general review of the right to disconnect term as it currently operates across all modern awards is not necessary.

14. In its main submission to the proceedings in which the right to disconnect term was set, the ANMF highlighted that the Nurses Award facilitates employers to direct employees to recommence work outside of a rostered start time in the following ways:

- Clause 17.2(a) of the Nurses Award allows an employer to require an employee to remain on-call;
- Clause 19.6 of the Nurses Award enables an employer to recall an employee to work when that employee is on-call; and
- Clause 19.7 of the Nurses Award enables an employer to recall an employee to work **even when that employee is not on call.**

15. It was the position of the ANMF at the time that this third provision is fundamentally at odds with the concept and operation of a right to disconnect. To the best of our knowledge, this issue is unique to the Nurses Award.

16. In conjunction with the ACTU and its affiliates, the ANMF sought a model term that would



address this conundrum. Ultimately, the FWC set a model right to disconnect award term that does not address this issue. The ANMF considers this to be an unresolved matter with respect to the Nurses Award.

17. The ANMF submits that the FWC could conduct a targeted review of the Nurses Award to examine whether any changes might be appropriate to ensure that the recall to work provisions do not nullify the right to disconnect term. In the instance that the FWC does not conduct a review of the right to disconnect term, the ANMF will consider initiating proceedings of its own.

Guidelines

18. The ANMF agrees with the position of the ACTU in that it does not support the publishing of guidelines at this point in time.