



australian
nursing federation

Award modernisation - Stage 4 submission

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INTRODUCTION

Following are the submissions of the Australian Nursing Federation (ANF) in relation to Stage 4 of the award modernisation process.

INDIGENOUS ORGANISATIONS AND SERVICES (AM 2008/64)

These are the submissions of the ANF in response to the proposals by the National Aboriginal Community Controlled Health Organisation (NACCHO), Chamber of Commerce Northern Territory (CCNT), and Chamber of Commerce Western Australia (CCIWA) for standalone award/s covering Indigenous organisations or, in the case of NACCHO, Aboriginal Community Controlled Health Services (ACCHSs).

These proposals would include nurses in any Indigenous organisations/services award¹, and would mean that nurses working in such organisations would not be covered by the modern *Nurses Award 2010* (MA34). The Nurses Award, made by the AIRC in stage two of the award modernisation process, covers all nurses in the federal system outside the public sector, with exceptions for primary/secondary school nurses and nurses working for employers covered by the modern *Pharmacy Industry Award 2010*.²

The ANF opposes the NACCHO proposal, and the proposals of the CCNT & CCIWA. The ANF submits that nurses working in ACCHSs should be covered by the modern Nurses Award. Unless the AIRC makes a decision otherwise, nurses in ACCHSs will be covered by the Nurses Award, and not by any other award³.

Unlike most other modern awards, which are based on the industry of the employer, the AIRC decided that there were compelling reasons to make an occupational award to cover nurses working in all industries except those specified above.

¹ See NACCHO submission 16 February 2009, para [7], [33a]

² The ANF notes that it intends to apply to the AIRC for a substantive variation to the Nurses Award to remove the pharmacy nurse exclusion on the basis that they are more appropriately covered by the Nurses Award (see later in submission for more detail).

³ See clause 4.1(a)

We note that the award at this stage of the award modernisation proceedings covers all parts of the health industry including aged care.

Making this decision, the AIRC accepted the ANF's arguments, which were largely based around the need to recognise the occupational identity of nurses. When releasing its exposure draft of awards in the health and welfare industry, the AIRC stated: "Nurses are the single biggest occupational group in health and welfare services and the material advanced suggests at this stage that an occupational award is warranted⁴.

The AIRC in its 3 April 2009 decision ultimately published four modern awards in the health and welfare services industry, including the Nurses Award. It rejected proposals to create one award in the health industry, despite arguments by aged care employers that nurses in aged care should be subject to a different award and therefore treated differently to other nurses. The AIRC decided that the pay and conditions in the modern Nurses Award were the appropriate safety net of minimum wages and conditions for nurses across Australia.

Given that the AIRC has already carefully considered the position of nurses, the ANF submits that there need to be compelling reasons to excise a group of nurses from the occupational award and deviate from the safety net that has already been made. We submit that NACCHO and the other proposers do not supply those compelling reasons.

ACTU submission

The ANF has participated in the development of the submissions of the ACTU that will be lodged at the same time as this submission, and supports the ACTU's submission, including that:

- There should not be a standalone award for Indigenous organisations

⁴ AIRC decision releasing exposure drafts 23 January 2009 at [77]

- Rather, employees working in Indigenous-run organisations should be covered by modern awards that have already been made or which will otherwise be made in stages three and four of the award modernisation process
- The award safety net should be as far as possible the same for employees performing the same types of work across different employers, regardless of whether they work for an Aboriginal-community controlled organisation or not
- any conditions specifically relevant to Indigenous-run organisations which are still required, for example ceremonial leave, should be applicable across all modern awards, not just in Indigenous-run organisations. The ANF notes that the modern Nurses Award already contains a provision for ceremonial leave (clause 33).

Nurses' occupational identity

The ANF relies on its previous submissions, especially those dated October 2008, and reiterates the arguments made in those submissions that nursing work does not differ according to the employers' setting.

All contexts of employment for nurses raise similar occupational issues and concerns. The same nomenclature is used and there are the same requirements for registration and ongoing education. Nurses working in ACCHSs are required to meet the same registration and educational and professional development requirements as nurses working elsewhere. The making of the modern Nurses Award recognises this fact.

While there may be some differences in the Indigenous context of the workplace, nurses working in ACCHSs perform the same type of duties as nurses perform elsewhere and accordingly should not be treated differently to nurses covered by the modern Nurses Award. The duties of nurses in ACCHSs are largely the same as those in Aboriginal-controlled community health centres, which are set up in similar ways to ACCHSs.

The inspections undertaken by the Commission at NACCHO's (and the CCNT's) request have not shown that ACCHSs (or Indigenous organisations more generally) are so unique as to warrant their own award. Nurses work in teams wherever they work, including hospitals and other community health centres, with other health professionals. This is not unique to ACCHSs. Although employees in ACCHSs need to be aware of cultural issues specifically relating to Aborigines and Torres Strait Islanders, nurses in other settings also need to be aware of cultural differences.

Recruitment and retention

The ANF submits that the AIRC should not make awards that would dissuade employees from entering or remaining within part of an industry. Especially in regional and remote areas, ACCHSs face difficulty in recruiting and retaining nurses. ACCHSs are competing with other organisations from the same pool of nurses, and the ANF is concerned that the making of a separate award for nurses in Aboriginal-controlled organisations would lead to a lower safety net being established, which would exacerbate recruitment and retention problems in the sector.

Other NACCHO arguments

The ANF submits NACCHO has failed to provide evidence to support its assertion that a standalone Indigenous health award is essential for achieving better health outcomes for Aboriginal and Torres Strait Islander people.⁵ ACCHSs are currently covered by a number of awards, and this has not prevented the implementation of the model of care used in ACCHSs, including the employment of Aboriginal Health Workers, and coverage by multiple awards would not prevent this in the future.

The ANF further submits that while a reduction in the number of awards is one object of the award modernisation process, this does not, and should not, take precedence over the industrial and public interest benefits of nurses being covered by the same occupational award.

⁵ NACCHO submission of 16 February 2009 at [17]

GENERAL AWARD (AM2008/74)

The ANF makes some submissions on the proposed general modern award.

The ANF represents nurses who are employed by community pharmacies, performing duties such as baby checks and running clinics.

Clause 4.5 of the modern Nurses Award currently states that “[t]he award does not cover an employer bound by the *Pharmacy Industry Award 2010*.” We are unclear as to the origin of this clause.

It is the ANF’s view that it would be more appropriate that nurses who work in pharmacies be covered by the modern Nurses Award. Accordingly, we advise that, pursuant to the process the AIRC announced on 26 June 2009 for the variation of substantive terms of modern awards, we intend to apply to vary the Nurses Award to remove the exclusion in clause 4.5.

We also wish to make comment as part of the stage 4 process however, while the Commission is considering issues surrounding the scope and content of a general award.

At this stage of the award modernisation process, unless amendments are made, nurses in pharmacies would appear to fall within the scope of the proposed general award. This is because there are no relevant classifications in the modern *Pharmacy Industry Award* which could cover nurses. The classifications in that award relate only to pharmacists and pharmacy assistants (who are defined as being in the process of acquiring, or have acquired, the competencies for a holder of a Certificate in Community Pharmacy).⁶

If pharmacy nurses were to fall under the general award, the ANF is concerned that they could miss out on various conditions and the classification structure that are contained in the Nurses Award.

⁶ See Schedule A

We understand that the ACTU has made submissions in relation to the general award, and has made some specific comments in relation to nurses in pharmacies and we support those comments, ie. that specific conditions relating to nurses would need to be included in the general award if nurses were to be covered by it.

The ANF submits that it would be easier for the Commission to remove the exclusion from the Nurses Award, rather than adapt the general award so that it encompasses suitable classifications and conditions for nurses.

We submit that this would also be the more appropriate course given that other nurses are covered by an occupational award that already applies across all industries, ie. it covers employers not only in the health industry, but also covers any employer who employs a nurse principally engaged in nursing duties.⁷ Nurses in pharmacies could be encompassed by the latter limb if the exclusion was removed.

Finally, the ANF recognises that although its proposed variation would be a variation to substantive terms (and so needs to apply via the process that the Commission outlined on 26 June), we submit that a variation would also address a gap in coverage. In its 29 June 2009 statement, the Commission stated that “Any other proposals based on an alleged gap in modern award coverage will also be dealt with in Stage 4”.⁸ We submit that this is a ‘gap’ in coverage, given there are no relevant classifications in the modern *Pharmacy Industry Award* and that it would be more appropriate for nurses to be covered by an existing occupational award than by the general award.

OTHER STAGE 4 INDUSTRIES/OCCUPATIONS

The ANF notes that the Commission is dealing with various other industries in Stage 4, including the remainder of the health and welfare industry. The ANF expects that there will be nurses employed in some of these industries, for example in the social and community services sector, local government administration, correctional facilities, and possibly others.

⁷ *Nurses Award 2010*, clauses 4.1(a) and (b)

⁸ at [6]

The ANF submits that any nurses in these sectors should also be covered by the modern Nurses Award that the Commission has already made, and relies on its previous submissions with respect to Stage 2 Health and Welfare Services in support of a nursing occupational award, specifically ANF submissions dated the following:

- Written submission 31 October 2008
- Written submission 12 December 2008
- Written submission 13 February 2009
- submission 23 February 2009 in transcript.