



australian  
nursing federation

Submission to Senate inquiry into the Workplace  
Relations Amendment (A Stronger Safety Net)  
Bill 2007

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1. The Australian Nursing Federation (ANF) is the national union for nurses with branches in each state and territory in Australia. The ANF is also the largest professional nursing organisation in Australia. The ANF's core business is the industrial and professional representation of nurses and nursing in Australia.
2. The ANF's 150,000 members are employed in a wide range of enterprises in urban, rural and remote locations in the public, private and aged care sectors, including hospitals, health services, schools, universities, the armed forces, statutory authorities, local government, offshore territories and industries.
3. The ANF participates in the development of policy in nursing, nursing regulation, health, community services, veteran's affairs, education, training, occupational health and safety, industrial relations, immigration and law reform.
4. The ANF welcomes this opportunity to make a formal submission on the Workplace Relations Amendment (A Stronger Safety Net) Bill 2007.
5. It is broadly accepted by both employers and employees that a system of enterprise bargaining can be mutually beneficial where workers are appropriately rewarded and supported and industry feels confident that they are able to make timely changes in workplace practices that meet the needs of their business.
6. It is also broadly acknowledged within the Australian community that a fair and robust agreement making regime cannot blatantly favour workers or employers. In the past this balance was achieved, in part, by the application of the "no disadvantage" test administered by industrial tribunals and, in more recent times by the Office of the Employment Advocate.
7. The introduction of "WorkChoices" amendments to the Workplace Relations Act (1996) in March 2006 affectively removed the no disadvantage test and by doing so removed a central plank of the fairness and balance required in the agreement making processes.
8. It is in this context and having regard to recent history that the ANF cautiously supports any attempt to reinstate a fair no disadvantage test but notes that Workplace Relations Amendment (A Stronger Safety Net) Bill 2007 has serious deficiencies including:

#### **Those Left Behind**

9. During the period of March 2006 and May 2007 many nurses lost a significant number of important award benefits and protections.
10. An example of a non union collective demonstrating the extent to which employees can be disadvantaged forms Attachment 1 to this submission.

11. This non union collective agreement (obtained from the OEA website) covers all clerical and nursing employees in a large medical centre in the Northern Territory. The aspects of the agreement of concern to our union include:

- The agreement provides for no pay rise during the life of the agreement (over 3 years);
- Employees working on a public holiday lose the right to be paid at double time and a half;
- Employees lose 17.5 per cent loading on annual leave.
- Employees are not entitled to penalties for working weekends (time and a half on Saturday and time and three quarters on Sunday) and evening or night shifts (12.5-15% penalties).
- Employees lose the right to receive overtime rates (time and a half to double time and a half) for working in excess of 40 hours a week or 8 hours in a day;
- Employees receive nothing extra if they are rostered on-call and/or are recalled to work;
- Employees lose the right to receive a uniform supplied by their employer or alternatively a uniform allowance;
- Employees can be pressured into agreeing to work unfriendly working hours;
- Employees also lose entitlements in relation to:
  - Redundancy
  - Higher duties
  - Meal allowance
  - Vehicle and travelling allowance
  - Minimum time off between shifts
  - Rights to payment for jury service.

No compensation is provided to employees for giving up award conditions. Instead, employees are on minimum Australian Fair Pay Commission (AFPC) rates.

12. With this particular agreement continuing until at least 2010 it will be a long time until this unfairness can be satisfactorily addressed and this remains a stark deficiency in the legislative regime which is not addressed in this Bill.

#### **The lack of transparency and accountability in applying the fairness test**

13. We note that the Bill provides for a "fairness" test that will not require the Workplace Authority to publish reasons why an agreement meets or fails to meet the fairness test. In addition the Workplace Authority is able to confine their investigations to discussions only with an employer and this does not augur well for a transparent process.

14. Further, we understand that the "decision" by the Workplace Authority cannot be subject to review or appeal except in very limited circumstances.
15. This lack of transparency in both process and outcome in applying the "fairness" test continues to be a serious concern to ANF and, we believe the community generally.

#### **The fairness test and protected award conditions**

16. The proposed "fairness" test seeks to protect the notional value of a specific group of award conditions or provide for a level of compensation in the event that they are removed or modified in an agreement.
17. The list of award matters to be considered in the "fairness" test does not encapsulate all award provisions eg redundancy provisions and notice of shift and roster changes, and does not provide for the consideration of award provisions that may be above the A.F.P.&C.S. This is particularly relevant for nursing where a majority of nurses work continuous shifts and are partially compensated by an entitlement to additional annual leave. Many nurses also receive sick leave and long service leave entitlements that are above the standard and this will not be considered by the Workplace Authority.

#### **The requirement to provide 'fair compensation'**

18. Section 346M would set out the factors that the Workplace Authority must have regard to in determining whether there has been fair compensation for the loss of 'protected award conditions'.
19. The ANF is concerned that there is no guarantee that an employee must receive monetary compensation for giving up award conditions.
20. The ANF is also concerned at the potential scope of some of the factors that the Workplace Authority may take into account.
21. Firstly, the Authority would be able to have regard to the 'industry, location or economic circumstances of the employer and the employment circumstances of the employee' in exceptional circumstances, and if it was not contrary to the public interest.
22. The ANF queries the fairness of taking unemployment into account as a relevant factor. In areas of high unemployment (usually rural areas), an employer could be able to force down wages simply by refusing to give a job to anyone who will not accept an AWA that, for example, removes penalty rates.
23. In addition, although factors such as unemployment should only be considered by the Workplace Authority in exceptional circumstances (and where it is in the public interest), it will be very hard for anybody to know whether factors such as unemployment were taken into account or not, and whether there were reasonable grounds to say exceptional circumstances existed.

24. This is because there is no requirement for the Workplace Authority to give reasons for its decision and hence outline what factors it has taken into account.
25. Further, when the legislation previously provided that it might be in the public interest to certify a workplace agreement on the grounds that it was a reasonable strategy to deal with a short-term crisis in an employer's business, this was determined in public hearings of the AIRC, which had to provide (public) reasons for its decisions.
26. Secondly, the Bill would allow the 'personal circumstances of the employee/s', including 'family responsibilities' to be taken into account. The ANF queries whether an employee has necessarily received "fair compensation" if they have to work weekends without penalty rates in exchange for being allowed to leave work early during the week. This effectively provides that you can be asked to give up penalty rates to obtain family-friendly working hours and effectively penalises employees for having outside work commitments.

*Encl.*

*Attachment 1: XYZ Medical Clinic Agreement*

**XYZ MEDICAL CLINIC**

**EMPLOYEE COLLECTIVE AGREEMENT 2007 -2010**

**WORKPLACE RELATIONS ACT 1996**

***Part 8, Division2 s327 – Employee Collective Agreement***

**1. TITLE**

1.1 This agreement will be known as the XYZ Medical Clinic Collective Agreement 2007-2010

**2. ARRANGEMENT**

1. Title.....

2. Arrangement.....

3. Parties Bound.....

4. Commencement Date and Period of Operation.....

5. Relationship to Pre Reform Awards, AFPCS and Protected Award Conditions.....

6. Definitions.....

7. Anti Discrimination.....

8. Disputes Procedure.....

9. Hours of Work.....

10. Employment Categories.....

11. Termination of Employment.....

12. Rates of Pay.....

13. Meal Times.....

14. Rest Breaks.....

15. Public Holidays.....

16. Annual Leave.....

17. Personal Leave.....

18. Parental Leave.....

19. Long Service Leave.....

20. Signatories.....

Attachment "A" - s 661 of the Workplace Relation Act

### **3. PARTIES BOUND**

**3.1** The parties to this agreement are the XYZ Medical Clinic (the employer) and all its employees.

### **4. COMMENCEMENT DATE AND PERIOD OF OPERATION**

**4.1** This Agreement will apply from the date of lodgement with the Office of the Employment Advocate and will expire on September 1, 2010 and remain in force thereafter in accordance with the requirements of the Workplace Relations Act 1996

### **5. RELATIONSHIP TO PRE REFORM AWARDS, the AUSTRALIAN FAIR PAY AND CONDITION STANDARDS and PROTECTED AWARD CONDITIONS .**

**5.1** **Pre Reform Awards.** The following awards have been identified as applying immediately prior to this agreement. These awards will no longer have any application.

- Doctors' Nurses (NT) Award 2003
- General Clerks (Northern Territory) Award 2000
- Nurses (NT) Private Sector

### **5.2 The Australian Fair Pay and Condition Standards.**

**5.2.1** All matters that are the subject of the Standard are clearly identified in this Collective Agreement. In relation to four of the Standards, Annual Leave, Personal Leave, Hours of Work and Family Leave the approach has been to adopt the Standard and then add the local variations. In relation to the fifth Standard "Wages" this is provided for in clause 14 (Rates of Pay)

### **5.3 Protected Award Conditions**

**5.3.1** These conditions –

- Rest breaks;
- Incentive based payments and bonuses;
- Annual leave loadings;
- Observation of public holidays or payment in respect of those days;
- Days to be substituted for public holidays;
- Monetary allowances for:
  - Expenses incurred in the course of employment; or

-Responsibilities or skills that are not taken into account in rates of pay for employees; or  
-Disabilities associated with the performance of work in particular conditions or locations;

- Loadings for overtime or shift work;
- Penalty rates;
- Outworker conditions; and
- Other conditions prescribed by regulation

as contained in the awards referred to in clause 5.1. are expressly extinguished by this agreement

## **6. DEFINITIONS**

“Employee” means a person employed by the XYZ Medical Clinic

“Employer” means XYZ Medical Clinic

“Standard” means the Australian Fair Pay and Conditions Standard

## **7. ANTI-DISCRIMINATION**

**7.1** It is the intention of the parties to help prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

**7.2** Accordingly, in fulfilling their obligations under the disputes avoidance and settling clause, the parties must make every endeavor to ensure that neither the agreement provisions nor their operation are directly or indirectly discriminatory in their effects.

**7.3** Nothing in this clause is to be taken to affect:

**7.3.1** any different treatment (or treatment having different effects) which is specifically exempted under the Commonwealth anti-discrimination legislation; and

**7.3.2** an employee or the employer pursuing matters of discrimination in any state or federal jurisdiction, including by application to the Human Rights and Equal Opportunity Commission.

**8. DISPUTE RESOLUTION PROCEDURES IN THE WORKPLACE**

**8.1** In the first instance the parties will genuinely attempt to resolve the matter at the workplace by discussions between the employee or employees concerned and the relevant supervisor and, if such discussions do not resolve the dispute, by discussions between the employee or employees concerned and more senior levels of management as appropriate.

**8.2** At all times during these procedures one or more parties make choose representation.

**8.3** If a dispute is unable to be resolved at the workplace, and all agreed steps for resolving it have been taken, the dispute may be referred to the Australian Industrial Relations Commission.

**9. HOURS OF WORK**

**9.1** This is as per the Standard ( see Clause 5.2 - The Australian Fair Pay and Condition Standards).

**10. EMPLOYMENT CATEGORIES**

**10.1.** Employees under this agreement will be employed in one of the following categories:

**10.1.1** full-time employees; or

**10.1.2** part-time employees; or

**10.1.3** fixed term; or

**10.1.4** fixed project

**10.1.3** casual employees with a 20% loading in lieu of Annual Leave, Personal Leave, Public Holidays and Compassionate Leave.

**10.2** At the time of engagement an employer will inform each employee of the terms of their engagement and in particular whether they are to be full-time, part-time, fixed term, fixed project and whether a casual allowance is being paid pursuant to clause 10.1.3

**10.3** Where employed under a fixed term or fixed project the termination of the contract of employment within the term or

before the project is completed will not give rise to a claim for payment for the residual of the contract

**11. TERMINATION OF EMPLOYMENT**

**11.1** Termination by the employer will be in accordance with s 661 of the Workplace Relation Act (Attachment "A"). It is expected that employees will follow the same notice period requirements.

**12. RATES OF PAY**

**12.1** No employee will be paid less than the minimum determined by the Australian Fair Pay Commission

**12.2** Payment of wages will be in accordance with the Workplace Relations Act

**13. MEAL TIMES**

**13.1** Each employee shall be allowed a meal break of not less than 30 minutes. Such time will be unpaid. An employee shall not be compelled to work for more than five hours without a break for a meal.

**14. REST BREAKS**

**14.1** A morning tea break of not less than twenty minutes shall be allowed to all employees.

**15. PUBLIC HOLIDAYS**

**15.1** An employee shall be entitled to the following public holidays without loss of pay:

**15.1.1** New Year's Day, Good Friday, Easter Monday, Christmas Day and Boxing Day; and

**15.1.2** the following days, as prescribed in the Northern Territory: Australia Day, Anzac Day, May Day, Queen's Birthday, Picnic Day and Show Day

**15.2** When Christmas Day is a Saturday or a Sunday, a holiday in lieu thereof shall be observed on 27 December.

**15.3** When Boxing Day is a Saturday or a Sunday, a holiday in lieu thereof shall be observed on 28 December.

- 15.4** When New Year's day or Australia Day is a Saturday or Sunday, a holiday in lieu thereof shall be observed on the next Monday.
- 15.5** Where in the Northern Territory public holidays are declared or prescribed on days other than those set out above, those days shall constitute additional holidays for the purpose of this agreement.
- 15.6** An employer at his or her discretion and his or her employees may agree to substitute another day for any prescribed in this clause.
- 15.7** Where an employee is absent from his or her employment on the working day before or the working day after a public holiday, without reasonable excuse or without the consent of the employer, the employee shall not be entitled to the holiday without the loss of pay.

**16. ANNUAL LEAVE**

- 16.1** As per the Standard.

**17. PERSONAL LEAVE/ COMPASSIONATE LEAVE**

- 17.1** As per the Standard except.

**18. PARENTAL LEAVE**

- 18.1** As per the Standard.

**19. LONG SERVICE LEAVE**

- 19.1** Long Service Leave will be in accordance with the *Long Service Leave Act 1992 (NT.)*,

**ATTACHMENT "A" - Notice Period (extract only)**

**s661 Employer to give notice of termination**

(2) The required period of notice is to be worked out as follows:

(a) first work out the period of notice using the table at the end of this subsection; and

(b) then increase the period of notice by 1 week if the employee:

(i) is over 45 years old; and

(ii) has completed at least 2 years of continuous service with the employer.

<b>Employee's period of continuous service with the employer</b>	<b>Period of notice</b>
Not more than 1 year	At least 1 week
More than 1 year but not more than 3 years	At least 2 weeks
More than 3 years but not more than 5 years	At least 3 weeks
More than 5 years	At least 4 weeks