

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996

s.576E – Procedure for carrying out award modernisation process

Award Modernisation

(AM2008/13)

Stage 2 Health and Welfare Industries

FURTHER SUBMISSION OF THE AUSTRALIAN NURSING FEDERATION

In addition to the written and oral submissions of the Australian Nursing Federation (ANF), we seek to respond to a number of matters that arose during the consultation hearings of 3 and 4 December.

1. The role of nursing

A number of employer groups including the AFEI (PN432 and PN433), the Aged Care Employer Group (PN677 and PN678) and the WACCI (PN964) made sweeping and unsubstantiated assertions that nursing work differed according to the employers' setting. We note that in no case did the employers provide any supporting evidence for the assertion such as decisions of industrial tribunals, relevant organisational structures, position descriptions etc.

Evidence to the contrary can be found in the Report "**Working in Aged Care: Medication Practices, Workplace Aggression, and Employee and Resident Outcomes**" a study by the University of Melbourne of aged care nursing staff employed in public and private facilities across Victoria. The report inter alia concluded that there were no significant differences in the role and environment between different facilities be they public or private. The report is attached to this submission.

The employers' assertion is also inconsistent with the approach taken by the state and territory registering authorities as well as the providers of nurse education. It is particularly inconsistent having regard to the recent COAG decision to establish nationally consistent nurse regulation.

The aged care employers draft award provided for a truncated nursing classification structure. We note that the draft award indicated that the employers intended to elaborate on the reasons as to why a truncated classification structure was suitable for the aged care sector. We note that the employers did not do so.

On this issue it is relevant that there are strong parallels in nomenclature and structures across nursing classifications both within and across the public and private sectors of the health and welfare industries.

It is also noteworthy that the private hospitals representatives have echoed the written submissions of the ANF as to the appropriateness and acceptability of the current classification descriptors and structures as follows:

Traditionally industrial instruments governing Health Industry employees have been crafted along occupational lines, specific to the environment in which the service is being provided and as the ANF noted in its submission in the 30 years that Nursing Federal Awards and much longer for the previous State instruments have operated there has been little disputation regarding their interpretation and application. The history in part demonstrates that there is an acceptance by nurses and their employers that the extant Nursing Safety Net Awards reflect appropriate minimum conditions and are understood and applied in workplaces across industries where nurses are employed. We would concur that State based occupational instruments have indeed served the sectors well within the overall Health Industry. (See Fisher PN 484)

2. Award scope of an aged care industry award

At PN188 the HSU assert that aged care is quite an identifiable, growing and large part of the overall health care sector. Unfortunately, neither the HSU nor any other party supporting an “aged care industry” award was able to provide the Commission with a succinct or clear definition of the reach of aged care services that are to be covered by an industry award.

Examples of this inability can be found at PN673 to PN678 where the aged care employers are unclear as to the definition of the industry, similarly Blue Care at PN879 to 881 and finally the ASU at PN1017 to PN1022 where they submit (convincingly) that rather than an industry award the employers are seeking an award that is, in many respects, confined to selected and arbitrary activities and services provided by particular employers.

In the written submissions of 31 October, the ANF put forward that aged care covers a number of services ranging from those provided in a residential aged care facilities in acute hospitals through to community health services such as home and aged care programmes eg. health, nursing services at home and centre based respite care. We also submitted that arrangements for the provision of aged care services are complex and varied with all tiers of government involved as regulators, providers of care or both, (see para 6).

The oral submissions of 3 and 4 December support the ANF view that aged care (however defined) is an extremely complicated and complex area. Accordingly we respectfully submit that the Commission should proceed cautiously when considering whether the aged care sector can be neatly described for the purposes of determining the scope of a modern award given its complexity and the acknowledged fact that it is continually changing.

Finally on this matter we note that historically this hasn't been an issue as, in the main, employees in health and welfare industries have been covered by occupational awards.

3. Demographics of an aged care workforce

In his attempts to distinguish the aged care sector from the health and welfare industries Mr Boyce on behalf of the aged care employers stated at PN 608:

The other important profiling issue for the workforce that sets it apart from the other health sectors is that the workforce is more likely to be female, work shorter hours and be older. And again some of the data there talks about 94 per cent of the aged care workforce being female, 65 per cent being part time, and that issue of part time is central to some of the issues created in the exposure draft awards that the parties have put before the Commission. And then 57 per cent of employees are over the age of 45.

In the written submissions of June and October 2008 the ANF provided the Commission with a range of demographics relating to the national nursing workforce. These included that in 2005 the average age of all nurses was 45.1 years and 49.8% worked part time. In addition approximately 95% of the nursing workforce was female.

The foregoing demonstrates that nurses employed in the aged care sector reflect similar (if not the same) demographics to nurses employed throughout the health and welfare industries.

4. Scope of nursing occupational award

Employers and some unions sought to argue that the potential overlap between the role and responsibility of an Assistant in Nursing and a Personal Care Worker acted against the making of an occupational award.

Whether or not such overlap exists is not relevant to whether nurses are covered by occupational or industry awards.

We submit that any difficulties that the parties may have with the proposed scope of the nursing occupational award are matters for the refinement of the scope, if necessary.

A proposed scope clause should not be fatal to the creation of an occupational award.

5. Part time Employment

We note the various exchanges between the commissioners and employers with respect to part time employment and refer the commission to the existing award provisions providing for part time employment, particularly the references to minimum hours and terms of engagement. An examination of thirteen federal and state awards applying to nursing staff shows that 7 awards contain provisions for minimum hours of work. Of these 4 specifically require hours to be agreed prior to or on commencement and cannot be altered without mutual consent. The ANF draft exemplar nursing occupational award provision for part time employment is based on the latter and includes wording from the Nurses (ANF-SA Private Sector) Award 2003 for agreement in relation to the rostering arrangements which will apply to those hours.

6. Time off in lieu of overtime

We draw the Commissions attention to PN 539 to 547 in transcript on Wednesday 3 December 2008 and comments by the PHAQ in relation to awards containing provisions for the taking of time in lieu at the penalty rate equivalent rather than at time for time. In addition to the awards identified by Ms Hepworth (Victoria, Western Australia and Northern Territory), other federal and state nursing awards that also provide for the taking of time in lieu at the penalty rate equivalent are as follows: The Nurses (Tasmanian Private Sector) Award 2005; and in Queensland the Private Hospital Nurses' Award – State 2003. Other Queensland state awards such as the Nurses' Aged Care Award – State 2005, Hospital Nurses' Award – State 2003 and the Nurses' Domiciliary Services Award – State 2003 all have similar provisions providing for time off in lieu at time for time for the first 3 hours of overtime in any one fortnight and time off in lieu at the penalty rate equivalent for any period in excess of 3 hours overtime in any one fortnight.

7. Blue Care Costings

Blake Dawson Waldron on behalf of Blue Care make submissions [PN915 – PN916] as to the cost impact. The matters they complain about are however already contained in the Blue Care/Wesley Mission Brisbane – QNU/ANF Workplace Agreement No. 6, a nursing only agreement. Clause 5.1.4(f) of that agreement provides that part time employees are paid at loaded overtime rates for overtime worked in excess of rostered hours. Clause 8.1 of that agreement provides for not less than 5 weeks annual leave, and 6 weeks in the case of continuous shift workers.

8. The inconsistency that is the employers

Much has been said by and on behalf of the aged care employers in an attempt to distinguish themselves both from other sections of the health and welfare industry, and from the history of occupational nursing awards that have applied for many many years. Yet these employer submissions are at odds with submissions made by aged care employers in other forums. Attached to this supplementary submission is a copy of a submission made by a number of aged care employers including Blue Care, TriCare, RSL Care and the peak organisation Aged Care Queensland (who are all said to be represented in these proceedings and who it is said support the submissions that have been made on their behalf) to the National Health and Hospital Reform Commission in May of 2008 (the NHHRC Submission).

At PN605 and PN607 of transcript Mr Boyce submits that Aged Care is an industry because the Commonwealth Govt. says it's an industry and "The industry is basically wholly regulated by the Commonwealth..." In the NHHRC Submission the aged care employers submit that:

The financial management of these organisations is complex due to the numerous government funding regimes, their complexity, the government policy of co-contribution by residents or clients. This complexity is a consequence of both federal and state involvement in program delivery and regulation with both state and federal government involvement in a number of significant areas.

..... Against this background it is important to stress that private organizations must meet the normal governance obligations expected in commercial and corporate organizations.

The NHHRC Submission goes on to discuss health policy:

The group supporting this submission is cognizant of the many facets of health policy which have to be considered, their inter-relationships and the history of policy development.

The NHHRC Submission argues for a greater integration of the residential and community care sectors and the acute sector

Identification of areas of greater cooperation on health care related activity, potential coordination between sectors, the physical infrastructure of both sectors and the potential for their efficient mutual use and consideration of issues related to demand and supply for services.

The NHHRC Submission argues further that there are important relationships with other sectors for the industry

An important relationship that supports those services is medical practitioner clinics

The NHHRC Submission rejects the proposition [PN607- PN608] that alleged distinctions in the workforce between aged care and other sectors should be continued:

There are substantial and significant differences between the two sectors in respect of wages, conditions, career structures and training which significantly disadvantage aged care providers when competing for staff with the public sector. This issue will require positive resolution if the goal of intergration and resource efficiency is to be achieved.

... In health services the stability and skills of management and workforce respectively are key factors to achieving outcomes for patients or residents in all care delivery settings. The issue of workforce sustainability is related to wage levels and influences recruitment as prospective employees make choices cover wage and career opportunities.

At PN686 the aged care employers sought again to argue for distinct 'aged care' based structures however the NHHRC Submission argues that:

The integration of the sectors from an education and development perspective would invite an examination of the most efficient and cost effective agenda for training and development...

The NHHRC Submission seeks

... the establishment of a clear policy goal...to establish a partnership between the public and private sectors on infrastructure needs, access, areas of cooperation, and coordination and measurement of achieving agreed goals and a mechanism for review, evaluation and rectification.

In summary, it would appear the aged care employers are quite willing to change their position depending on the forum.