Submission by the Australian Nursing and Midwifery Federation

Workplace Gender Equality Amendment (Closing the Gender Pay Gap) Bill 2023

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About the ANMF

1. The 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 320,000 nurses, midwives, and personal care workers (PCWs) across the country. Approximately 89% of the ANMF's membership are women.

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, to 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 provide 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. The ANMF welcomes the opportunity to make a submission on the *Workplace Gender Equality Amendment (Closing the Gender Pay Gap) Bill 2023* (**the Bill**) to the Senate Finance and Public Administration Committees.

5. Despite the nursing and midwifery workforce being largely feminised, workers have not been immune to the gender pay gap phenomenon on a micro-level.

6. The Care Workforce Labour Market Study, commissioned by the Australian Government via the National Skills Commission in 2021, found that males earn more than females across all categories of care and support roles. For example, men earned more than women across all age brackets of registered nurses, with earning discrepancies totalling up to 20% for the age bracket 35-39 years of age. [1]

7. The implications of a gender pay gap for our members is further exacerbated by the fact that nurses and midwives have been subjected to an historic undervaluation of their work. This undervaluation has been driven by gender-based assumptions about the value of care-based work.

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[1] Care Workforce Labour Market Study; National Skills Commission, Australian Government, 2021, pp.160 & 172.

8. The ANMF therefore considers measures to address gender equality, as crucial to removing the economic and social penalties many of our members have encountered as a consequence of their gender. These measures are also vitally important in challenging the gender-based assumptions that have failed to allow for proper recognition of the highly skilled and technical work our members perform.

The Bill

9. The ANMF commends the federal government for taking steps to address the gender pay gap and promote gender equality in the workplace. Most recently, legislative reform to the Fair Work Act 2009 (Cth) and the Sex Discrimination Act 1984 (Cth) has provided a welcome emphasis to greater rights and protections for women in the workplace.

10. The ANMF welcomes and supports the Government's commitment to implementing the recommendations of the WGEA Review Report[2], and supports the amendments proposed in the Bill as a first step to building an effective, transparent, outcomes-based gender equality reporting framework.

11. The reforms proposed under the Workplace Gender Equality Amendment Bill 2023 will improve the quality of data used to determine the gender pay gap. The reforms will also focus the minds of larger employers on how they can proactively address drivers of gender inequality in the workplace through the setting of gender equality standards as well as implementing parts of the Government's commitment regarding recommendations of the 2021 Review of the *Workplace Gender Equality Act 2012* (Cth) (**WGE Act**).

12. The ANMF supports the submission of the ACTU in relation to this Bill and wishes to express its strong support for the analysis and recommendations contained therein.

13. The ANMF's submission will not repeat analysis covered in the submission made by the ACTU. Instead, we intend to provide additional information and recommendations aimed at strengthening the operation of the Bill to deliver on the objectives of gender equality and women's workforce participation, with specific reference to our members. Adoption of these recommendations will assist in building a comprehensive data set that will accurately capture the gender pay-gap, specifically across the health and aged care sector, as well as more

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[2] Department of Prime Minister and Cabinet, WGEA Review Report: Review of the Workplace Gender Equality Act 2012, December 2021

broadly.

Recommendation 1 - WGEA include overtime payments when capturing total remuneration of employees and positions

14. The Bill seeks to implement Recommendation 2.1 of the WGEA Review Report, in providing for a new positive obligation on WGEA to publish aggregate information for each relevant employer for each reporting period. The sharing of this information is designed to demonstrate the employer's performance and progress in achieving gender equality in relation to remuneration for their workforce.[3]

15. Under the Bill, WGEA will be required to publish gender pay gaps and workforce composition by quartiles (highest paid, upper middle, lower middle and lowest paid quartiles). This data will include the gender composition of each quartile. The ANMF supports this reform. Publishing data by quartiles will demonstrate the degree to which women and men are represented at different levels within an organisation, highlighting where action is required to narrow the gender pay gap.[4]

16. However, the ANMF has concerns regarding the use of base salary and full-time equivalent annual remuneration as the earnings against which this reporting is drawn from.

17. Appendix B of the Impact analysis to the Bill, states that the total remuneration full-time equivalent pay gap calculations will include superannuation, bonuses and other additional payments.[5] However, it is not clear what is meant by additional payments. Of significant concern to the ANMF is the failure of this model to adequately account for overtime payments in the context of part-time employees.

18. In 2020, according to the National Health Work Dataset (published by the Australian Government Department of Health), there was a total of 384,776 nurses and midwives in the workforce, of which 88.4% were women.[6] It is well-established that women are more likely than men to be engaged in work on a part-time basis.[7] Indeed, the average number of average hours worked by women in nursing and midwifery is consistently lower than their male counterparts.[8]

19. Under the Nurses Award, the definition of 'part-time employment', which is

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[3] Explanatory Memorandum, page 10.

[4] Commonwealth of Australia, Department of the Prime Minister and Cabinet, WGEA Review Report. Review of the Workplace Gender Equality Act 2012, December 2021, page 8.

[5] Appendix B of Impact Analysis, page 79.

[6] http://data.hwa.gov.au/ * *This number includes those employed; those on extended leave; those employed outside the profession and looking for work in nursing or midwifery and those not employed and looking for work in nursing or midwifery.*

[7] Australian Bureau of Statistics Labour Force, Australia, 2022. https://www.abs.gov.au/statistics/labour/employment-and-unemployment/labour-force-australia/jan-2022#data-downloads

[8] Department of Health and Aged Care - National Health Workforce Dataset (2021).

commonly adopted in enterprise agreements, provides only for minimum hours of engagement contracts when working part-time. This definition makes it easy for employers to offer minimum hour contracts that do not reflect the actual work done. Overtime is not available for hours done in excess of the minimum agreed hours, provided they fall short of full-time hours. In effect, this results in nurses, midwives and assistants in nursing being engaged in precarious employment, that resembles casual employment without any applicable loadings to their hourly rate of pay.[9]

20. The lack of payment of entitlements like overtime, exacerbate the discrepancy in earnings between men and women in the profession, due to the fact men are more likely to be engaged in full-time work, and consequently eligible for overtime payments. The framing of this entitlement under the Award is also indicative of structural/systemic barriers to bridging the gender pay gap and achieving greater gender equality.

21. The ANMF recommends that WGEA, in capturing and reporting total remuneration by gender, include overtime payments. Total remuneration figures should be accompanied by a breakdown of components included i.e. base salary, superannuation, bonuses, overtime, penalty rates, non-salary benefits (equivalent cash value) and additional payments.

22. Failure to capture overtime payments will distort and inaccurately demonstrate the extent and drivers of the gender pay gap for professions like nursing and midwifery, whose part-time workforce encounter barriers to accessing those entitlements.

Recommendation 2 - Extending reporting obligations for gender equality indicators and compliance with the gender equality standards to all employers regardless of size, including all State, Territory and Local Government public sector agencies.

23. The Bill provides that reporting requirements continue to apply to public sector agencies and businesses with 100 or more employees.

24. The ANMF considers restricting reporting requirements to Commonwealth agencies and businesses of this size will fail to capture or alert a large number of employers to the extent of gender pay gaps and gender inequality within their own structures.

25. The majority of our members work in State/Territory public health organisations. Additionally, many of our members are employed in private practice or for aged care providers that employ less than 100 employees. The failure to capture these organisations in reporting will mean that gender pay gap data will fail to capture

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[9] Nurses Award 2020, Clause 10, https://awardviewer.fwo.gov.au/award/show/ma000034#P208_14782

a significant portion of working women, who have been subjected to the combined impacts associated with the gender pay gap as well as an historic undervaluation of the type of work they perform.

26. The ANMF is strongly of the view that all State and Territory public sector organisation, all businesses regardless of size and labour hire providers must be covered by these laws.

27. The ANMF recommends extending reporting obligations on all gender equality indicators and compliance with the gender equality standards to all employers regardless of size, including all State, Territory and Local Government public sector agencies.

Conclusion

28. The ANMF welcomes the amendments provided in the Bill and is eager to engage in further consultation on the imminent changes to the Instruments to implement some of the remaining recommendations of the WGEA Report.

29. The ANMF urges the Senate Committee to adopt the recommendations we have made regarding reporting requirements to strengthen the quality and accuracy of the data collected and reported.