# SUBMISSION BY THE AUSTRALIAN NURSING FEDERATION TO THE SENATE INQUIRY INTO THE WORKPLACE RELATIONS AMENDMENT (MORE JOBS BETTER PAY) BILL 1999

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## A. INTRODUCTION

The Australian Nursing Federation (ANF) welcomes the Inquiry into the Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999, recognising that the proposed changes will have a profound impact on nurses' working conditions and their ability to provide quality nursing care.

Nursing is an essential service provided to all Australians, and the quality of nursing care affects people from all walks of life. Nurses, wherever they work, need the resources to give the best quality care, they need time to respond to the needs of those in their care, they need a secure, stable working environment to be able to direct their energies to the provision of care, and they need the recognition of their skills through a decent career structure and fair pay and conditions.

Nurses do not need legislation that will take away working conditions and remove access to arbitration when work agreements cannot be reached. The ANF believes that the proposed Bill to amend the *Workplace Relations Act*, with its emphasis on award stripping, reducing the status of paid rates awards, and further restrictions on the role of the Australian Industrial Relations Commission, will erode the conditions of nurses, and therefore, the quality of care that patients deserve.

## B. PROFILE OF THE ANF

The ANF is not affiliated to a political party, and represents approximately 120,000 nurses in branches across all states and territories, employed in a wide range of settings in the private and public sectors including acute hospitals, nursing homes and hostels, community health centres, schools, universities, the armed forces, statutory authorities, local government, offshore territories, industry and in remote and rural locations.

The ANF participates in policy formulation on a national level in health, community services, education, training, occupational health and safety, industrial affairs, immigration, veteran's affairs and law reform.

The ANF has a comprehensive set of national policies on nursing, health and related matters for the guidance of nurses in their practice and at their workplaces, for the provision of quality care.

Since, the early 1980s, the ANF consistently has achieved national nursing paid rates' awards for salaries and salary-related conditions, utilising the mechanism of compulsory arbitration. This consistency of approach to nurses' award remuneration is supported by a long-standing policy of the ANF and has underpinned its submissions in all federal award and wage case proceedings since 1983.

This approach recognises the importance of awards, in the belief that nurses' award entitlements and classification and career structures should, where possible, be nationally consistent and not subject to the vagaries of individual sectors or states. This approach has been consistently supported by employers both in the public and private sectors.

The ANF is party to federal awards in all states and territories. All federal awards have similar wage rates and classification and career structures, with minor variations on a sector or state basis. This is important because it allows the nursing workforce, which is extremely mobile, to move without cumbersome industrial or legislative restrictions.

The ANF is party to approximately 400 enterprise agreements collectively negotiated by the ANF, each of which is assessed and certified under the powers of the Australian Industrial Relations Commission. The philosophy behind this is that employees not be disadvantaged and agreements are underpinned by a relevant and comprehensive award.

The ANF believes it is in the public interest for nurses to have adequate access to an independent industrial tribunal when there are unresolved differences with employers over wages, conditions, workplace issues, rights and obligations.

## C. NURSING LABOUR FORCE

The ANF believes that legislated workplace change of such significance – as outlined in the proposed Bill – cannot be seen to operate in a vacuum. The proposed legislation must be viewed within the context of a nursing labour force that is experiencing serious structural problems and severe skills shortages in many areas.

The ANF believes that the proposed Bill to amend the Workplace Relations Act is unfair and unreasonable, not only because it will remove award entitlements and nurses' working conditions, but also because it will exacerbate existing problems in the nursing labour force.

The nursing workforce is predominantly female (women make up approximately 92.2%)[1] and therefore, is vulnerable to the loss of maternity leave provisions, predictable hours (or rosters) of work, workplace harassment and superannuation clauses in awards.

Of the total number of nurses working in 1998, 44% were employed on a part-time basis.[2]

The 1999 ANF, Nursing Workforce Issues Paper[3] identified several key nursing workforce issues, including: widespread regional skills shortages; recruitment and retention problems; an ageing workforce; unattractive working conditions; and high rates of workplace injury and other occupational health and safety problems among nurses.

These problems can be linked to a national shortage of registered nurses in many specialties, the trend toward earlier patient discharges from hospitals,[4] and funding cutbacks to inpatient and community-based services.

During the ten-year period from 1986 to 1996, the number of patient separations in acute care hospitals, which are the main employers of nurses, increased by 55.6% from 3.3 million to 5.2 million, while during the same period, the number of nurses remained virtually the same – 104,070 in 1986 compared to 104,438 in 1996.[5]

## D. SNAPSHOP OF THE NURSING LABOUR FORCE[6]

- In 1998, there were 197,700 registered and enrolled nurses employed in the workforce. Of these, 158,100 were registered nurses and 39,600 enrolled nurses. The proportion of enrolled nurses in the nursing workforce fell from 24% in 1989 to 20% in 1998.[7]

- There has been a significant jump in part-time employment. In 1998, 44% of nurses worked part-time, compared to 39.2% in 1989.

- The age of the workforce has changed dramatically. In 1986, 23.3 % of nurses were aged less than 25 and 17.5% were aged 45 or more. In 1996, only 9.9% of nurses were aged under 25, while those 45 or over increased to 28.6%. In 1996, the average age was 39.9 years.

- There are significant variations in employed nurse numbers between states. Compared to the national average of 1,064 full-time equivalent nurses per 100,000 population in 1996, Western Australia had 1,236, Victoria 1,178, ACT 1,142, Tasmania 1,120, South Australia 1,097, Northern Territory 1,079, Queensland 962 and NSW 984.

- Between 1986 and 1996 there was a 55.6% increase in the number of inpatient separations in acute care public hospitals from 3.3 million to 5.2 million. In the same period, there was no increase in actual nurse numbers in acute care hospitals (around 104,000).

- In December 1998, the Department of Employment, Workplace Relations and Small Business listed seven areas of nursing practice with national shortages. These were: registered nurses in operating theatre; critical/intensive care; accident/emergency; cardiothoracic; neonatal intensive care; registered midwives and registered mental health nurses.

- 31,063 students were enrolled in nursing courses in 1998, a decline of 13% from the peak enrolment of 35,692 in 1993.

## E. TERMS OF REFERENCE

The Australian Nursing Federation wishes to make the following comments in respect to the Committees'Terms of Reference:

### 1. Whether the principle objects of the Act (particular paragraphs 3(j) and (k)) have been fulfilled in practice:

**Object 3(j):**

If one assumes that object (j) is designed to assist in the prevention and removal of discrimination in the workplace ie. a distinction as in favour of or against a person then the Workplace Relations Act has failed in this regard.

Whilst the Act provides, that in certain circumstances the dismissal of an employee on the basis of discrimination is illegal, the Act fails to provide any other reasonable protection for employees. The major failing in this regard is the jurisdictional inability of the Australian Industrial Relations Commission to include in awards (made pursuant to part VI of the Act) matters that exceed allowable award matters and that exceed minimum employment conditions.

Section 88B(3)(e) provides that in performing its functions the Commission must take into account those matters set out in (j) of the Objects of the Act, once again denies the Commission a reasonable mechanism to ensure that the terms of the Act including Objects (j) and discrimination generally is prevented and/or eliminated from the workplace.

**Object 3(k)**

In 1998 the International Labour Organisation (ILO) Committee of Experts considered a range of matters arising from the application of the Workplace Relations Act in relation to Australia's international obligations on labour standards.

The ILO Committee of Experts found that the Act breached a number of fundamental principles of international labour law including:

- The requirement to encourage and promote collective bargaining.
- The failure of the Act to take necessary measures to ensure their workers are adequately protected against discrimination based on trade union activities.
- Preference for enterprise level bargaining breached the voluntary nature of collective bargaining.
- That a union should be able to negotiate an agreement at least on behalf of their own members.

On all the above matters it was strongly recommended that the government take the necessary measures to ensure that Australia's international obligations were met. This has not happened.

The Workplace Relations Act and the proposed Bill demonstrates without question, that the government has willfully disregarded the obligations it has in relation to international labour standards.

**2. The impact on wages, employment, productivity and industrial disputation levels:**

The Workplace Relations Act 1996 has already had a significant affect on nurses particularly those who have been unable to secure an agreement with their employer. The Workplace Relations Act 1996, and its myopic approach favoring agreements over awards, has ensured that nursing awards no longer reflect the market for nursing wages and conditions.

The most stark examples of this are the comparisons between wages paid to nursing staff employed in state public hospitals and those employed in private sector residential aged care facilities. In August 1999 the wage gap in Victoria, Western Australia and the ACT was between 13% and 15%.

The intention to legislate for the removal of the existing powers of the Australian Industrial Relations to adjust wage rates under S170MW of the Act will only serve to entrench this wage disparity the public health sector.

The impact on employment

There continues to be a chronic shortage of nursing staff in Australia.

This inability to recruit and retain nursing staff is made more difficult in sectors that have historically received funding for wages on the basis of the relevant award wage levels. These awards are progressively becoming less able to adequately provide for the terms and conditions necessary to attract and retain employees.

This coupled with the heavy physical and emotional demands of nursing, the unsociable hours that shift work imposes and the general negative impact on family life has led to a situation where approximately 17.5% of registered and enrolled nurses now choose not to work in nursing[8].

The Workplace Relations Act 1996 has fostered and encouraged precarious employment in particular employment that is of a casual or part time nature. As a consequence under employment is becoming a characteristic of the employment of nursing staff. Permanent full time employment is progressively being replaced by periodic part time and casual employment in most instances against the wishes of nursing staff. As a consequence of this nurses now feel less certain about their ability to retain ongoing employment that is secure and provides adequate and stable compensation.

The intention of the Bill to remove further award conditions will only serve to make nursing employment less attractive. Of particular concern is the intention to remove award prescription that provides for a proportion of employees to be employed at a classification level. For example nursing awards currently provide than an employer must employ a ratio of nursing staff at Level 2. The AIRC imposes this ratio to ensure that the nursing career structure is relevant at a particular workplace and provides reasonable career opportunities for nurses.

The Bill's proposals to further facilitate and strengthen the prerogative of managers/employers to structure work places to meet purely economic consideration, will in turn further dissuade people from entering or remaining in the profession.

Industrial Disputation

Since the enactment of the Workplace Relations Act disputes in the nursing profession have increased and is now more likely to include a withdrawal of labour. Historically nurses have been reluctant to withdraw labour, however, progressively realising that, the attacks on the award system, and the inability of industrial tribunals to ensure awards remain relevant, nurses now have little choice other than to pursue strong and direct industrial action.

The proposed amendments to industrial activity including the extension of the notice period to take industrial action and the requirements for secret ballots prior to taking industrial action will, in our view, lead to a situation where employees consider the regulatory framework to be so hostile to their interests that they will respond in a manner characteristic of a growing level of civil disobedience.

**3. The impact on job security, unfair dismissals, job prospects, protection employees entitlements and conditions, and whether these can be approved:**

Job Security

The Workplace Relations Act 1996 has led to a reduction in the level of job security for the nursing profession. This is evidenced by the fact that increasingly nursing is a part-time insecure type of employment.

Recent surveys conducted by the ANF reinforce this and show members are becoming increasingly concerned about job security. Employment generally is less secure and certainly hours of work are less predictable. It is estimated 44 per cent of nurses are employed on a part-time basis with a decline in the average number of hours worked per week.

For nurses, and no doubt for all workers, job security is more than having or not having a job. It is about having a degree of certainty about the hours and days for work; the particular shift and rostering arrangements, and about having this information far enough ahead to allow people to plan around their personal and family life as well as having the security of regular and stable income.

The pursuit of flexiblity within the workplace, which is fostered and encouraged by the Act, has simply served the interests of employers at the expense of employees' job security and predictability of hours and days of work.

Unfair dismissals

The Workplace Relations Act 1996 has restricted access to a remedy for unfair dismissal by excluding certain employees such as "short term" casuals. Given the increasing casualisation of the workforce generally and certainly nursing is not exempt from this situation, many workers are denied an opportunity to a hearing and are therefore denied their democratic right to natural justice in relation to these matters.

The process and procedures required by the Act work against the interests of employees in favour of employers. In many respects an employee must prove their case twice; both at the conciliation stage and then in arbitration or hearing in Court. The onus of proof has shifted further away from the employer who should be required to justify their actions and prove the dismissal was not harsh, unjust or unreasonable.

The possibility of having costs awarded against an employee is yet another deterrent to pursuing a claim for unfair dismissal. This is a risk which some people cannot afford to take regardless of the apparent merits of their case.

Further, the introduction of the test requiring a "fair go all round" has shifted the balance in favour of employers who can hide their poor human relations practices behind a variety of dubious claims and assertions.

The Australian Nursing Federation strongly opposes increasing the unfair dismissal filing fee to $100, which is more than 25% of the federal minimum weekly wage.

Job Prospects

The increased use of part time and casual employment in the nursing workforce does not advance the professional and industrial interests of nurses. Rather, it has a definite negative impact on career advancement and job opportunities.

The lack of career opportunities has been a major factor in the current nursing shortage as nurses leave the profession to pursue other careers. It is also a major influence on the current decline in student intake into nursing courses

These issue reflects badly on the value placed on the nursing profession where the focus of the employers is all about cost cutting rather than promoting quality care through the implementation of policies and practices which promote skill development and career advancement.

This approach can only result in a further loss of nursing staff to other professions as well as a declining student base. Those nurses remaining in the system will be subject to even more pressures and stress from the system which will impact directly on their ability to provide quality nursing care.

The protection of employee entitlements and conditions.

The reduced role of the AIRC in relation to award making and dispute settlement has significantly restricted the avenues available to employees in disputes concerning wages and conditions of employment. In a working environment where the interests of the patient are paramount, nurses have rarely used industrial action as a means to resolve workplace issues. Rather, they have relied upon the independent role of the AIRC to exercise its power to conciliation and arbitrate in relation to such matters.

The loss of access to the AIRC in relation to matters such as, staffing levels and skill mix, forces nurses to pursue the issue through illegal industrial action or not pursue the matter at all. In the latter case, staff are left to contend with the issues as best they can, leading to an increase in stress, low morale, and a deterioration in patient care.

Nobody's interests, neither nurses, patients or the general community, are served by the imposition of an ideologically driven agenda to reduce access to an independent umpire.

Similarly, the stripping back of Awards to allowable matters is a further attack on employee rights and entitlements forcing those nurses who are industrially strong to negotiate to retain their entitlements through enterprise agreements. As referred to earlier this has resulted in an increase in disputation by nurses since 1996.

For those nurses not in a position to bargain, such as those employed in the private residential aged care sector, the result is less money and a loss of entitlements.

Nursing staff cannot afford the time involved in the lengthy negotiations necessary to achieve agreement over wages and conditions. The Award system, until 1996, had served the interests of nurses and the community in general reasonably well and allowed nursing staff to concentrate on the delivery of patient care without being distracted by the struggle to maintain their rights and entitlements.

**4. The impact on the balance between work and family responsibilities, and whether these can be improved:**

While the Objects of the Act make provision under 3(i) for "assisting employees to balance their work and family responsibilities effectively through the development of mutually beneficial work practices with employers" the reality in nursing is that the Act has promoted a less regulated environment and made it harder for workers for the following reasons:

- The increase in incidence of part-time and casual employment in conjunction with the irregular nature of this work. Nurses have consistently reported in ANF workplace surveys that the lack of regular shifts make accommodating family/personal commitments very difficult.

- The increased flexibility within the workplace encouraged by the Act really means the employer can impose staffing/rostering arrangements which result in unpaid overtime, working through meal breaks and working continuous straight and double shifts.

- Staffing issues have been raised as a key concern for nurses, particularly inadequate staff numbers, high turnover, absence of trained and qualified staff and job insecurity.

- The combined effect of the above is excessive workloads and levels of responsibility, and less time for patient care.

- Survey results also indicate significant health problems occurring as a result of working arrangements manifesting in stress, physical exhaustion and back injuries. Near misses and accidents because of working arrangements are also a major concern.

It is abundantly clear that working conditions such as those described above are not conducive to a proper balance between work and family responsibilities and can only contribute to a great deal of stress for employees and their families. Many nurses have opted out of the system for these reasons.

If the Government was the least bit sincere in relation to this issue it would make specific provisions in the Act to facilitate family friendly arrangements and work practices and provide the means for the enforcement of such provisions.

**5. The balance provided between the roles, rights and obligations of employers (including small business), employees and their respective organisations:**

The Workplace Relations Act has dramatically shifted the industrial balance in favour of employers at the expense of employees and trade unions and as a consequence reduced the obligations of employers under the Act.

The Bill's proposals particularly in respect to the process of securing AWAs and certified agreements and the further shift in respect to the onus of proof away from the employers in unfair dismissals, will only serve to entrench this imbalance.

In contrast the Bill seeks to extend the imbalance to the further detriment of registered trade unions. The Bill proposes in this regard include:

- Prohibiting clauses encouraging union membership in certified agreements.
- Extending right-of-entry restrictions to include:
    1. The requirement that unions receive a written invitation prior to entering the workplace.
    2. The requirement that the union provide 24 hours of notice prior to entering the workplace.
    3. The removal of the Australian Industrial Relations Commission's powers to arbitrate disputes in relation to right-of-entry.
- Defining a closed shop as a workplace that has 60% or more union members.

The above intentions further restrict the legitimate activities of registered trade unions and is evidence of itself that the balance fails to protect employees and their representative organisations.

**6. The powers, standing and procedures of the Australian Industrial Relations Commission, the Office of the Employment Advocate and the Industrial Registrar:**

Australian Industrial Relations Commission

Historically, the role of the AIRC has been important for the health industry in general and nurses in particular. The Award system has provided protection and stability for employees by establishing fair wages and conditions for nursing staff across the country. The Award system has also been critical in underpinning several hundred enterprise agreements negotiated collectively by the ANF and certified by the AIRC.

Furthermore it has been central in the role as an independent umpire to protect workers and employers rights and responsibilities and resolve disputes which could have the potential to be highly disruptive to the industry and detrimental to the community at large. This is a critical role for nurses whose priority is the delivery of quality patient care and who are generally reluctant to use industrial action to protect their industrial and professional interests.

Under the Workplace Relations Act this role has been greatly diminished and has exposed those workers who are not strong industrially to a reduction in wages and conditions and subject to more exploitation and job insecurity.

By confining the AIRCs award making powers to a small number of allowable matters, the type of dispute which can be brought to the Commission is extremely limited. Access to the Commission for purposes of preventing and settling disputes is therefore greatly reduced denying too many employees the right to have their issues heard in a fair and impartial forum. This is contrary to principles of natural justice and certainly not in the interests of employees or the health industry in general.

Many employers take advantage of this environment and take the opportunity to make changes in the workplace resulting in a loss in wages or conditions for staff. The result is more frequent industrial disputes which are more difficult to resolve.

The proposed changes will further limit the powers of the AIRC by reducing the number of allowable matters further. Important award entitlements, such as incremental advancement; long service leave; superannuation and accident make up pay provisions are to be removed along with the Commission's power the prevent and settle disputes in relation to these matters.

ANF is also extremely concerned with the proposal to remove access to arbitration for paid rates awards in situations where the parties are unable to reach agreement. This will impact particularly on nurses working in the private residential aged care sector who have been struggling unsuccessfully to negotiate fair wages and conditions and recently embarked on a process to have their claims arbitrated by the AIRC.

Without access to this process nurses in this sector will fall further behind their colleagues and will, through economic necessity, leave this area of employment. The effects of this are already being felt by employers who are reporting difficulties of attracting and retaining qualified and experienced staff in this sector.

Employment Advocate

The role of the Employment Advocate has in reality proven to be an instrument of the Government to carry out policy. The interference by the Employment Advocate in EBA negotiations in the Building Industry is evidence of this point.

The role of the Employment Advocate in relation to AWAs and the process for approval has not been open to scrutiny the contents of AWAs are not able to be examined.

The proposed changes give the Employment Advocate more power to do the Government's bidding by eliminating the requirement to refer an AWA to the Commission where there are concerns that it does not pass the no-disadvantage test.

Other changes, such as the removal of the obligation on the employer, to offer an AWA in the same terms to comparable employees and allowing AWAs to overide awards and collective agreements will further serve to undermine employees' entitlements to fair and reasonable wages and conditions and expose the most vulnerable workers to more exploitative employment practices and loss of entitlements.

Industrial Registrar

The Industrial Registrar continues to provide an invaluable service to the AIRC and registered organisations and should not be interfered with.

**References:**

1. Australian Institute of Health and Welfare, *Nursing Labour Force 1998*, p.5.

2. Ibid, p.3

3. Australian Nursing Federation, Nursing Workforce Planning Issues Paper, 1999, Introduction.

4. Harding, J. *Trends In Nurse Workforce and Patient Numbers in Australia and Queensland*, data presented at QNU 1999 Annual Conference, Table 4 Nurse Employment trends..

5. AIHW, *Nursing Labour Force 1998*, pp.1-2.

6. All figures are taken from the AIHW, *Nursing Labour Force 1998* series.

7 An **enrolled nurse** is a nurse who has completed the minimum educational requirement of a one-year diploma from a tertiary institution or equivalent from a recognised hospital-based program. A **registered nurse** is a nurse who has completed the minimum educational requirement of a three-year degree from a tertiary institution or equivalent from a recognised hospital-based program. Registered nurses may have their practice certificate endorsed to practise in a specific clinical area (for example midwifery) on completion of a recognised postgraduate course.

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