



australian nursing federation

federal senate inquiry into workplace agreements

The Australian Nursing Federation (ANF) welcomes the opportunity to make this submission to the Senate Inquiry into Workplace Agreements.

1. Introduction

- 1.1 The Australian Nursing Federation (ANF) is the national union for nurses in Australia with branches in each state and territory. 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.
- 1.2 The ANF's 145,000 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. A significant number of nurses work in small businesses including aged care facilities, medical practices and private medical rooms in many small communities and domiciliary facilities.
- 1.3 The ANF regularly participates in the development of policy in nursing, nursing regulation, health, community services, veterans' affairs, education, training, occupational health and safety, industrial relations, immigration and law reform.

2. The nursing labour market

- 2.1 According to the Australian Institute of Health and Welfare (AIHW) there were 236,562 licensed nurses¹ in the Australian workforce in 2003. Of these 80% were registered nurses and 20% were enrolled nurses².
- 2.2 Approximately 58.3% of employed nurses work in public and private acute hospitals; 14.3% in residential aged care facilities; 7.3% in a community setting; and 20.1% in other nursing areas³.
- 2.3 Nurses are the most numerous occupational group in the Australian health workforce representing 54% of the total employed health occupations in 2001⁴.
- 2.4 The nursing workforce is ageing and as each year passes since this trend was first noted, it persists and the proportion of older nurses continues to grow. The nursing labour force was older in 2003 than in 1997, with employed nurses averaging 43.1 years in 2003, compared with 40.3 years in 1997⁵.

2.5 Until recently, the nursing workforce had a disproportionately high number of part time employees. In 1995, 48.8% of nurses worked part time. This proportion increased to 52% in 1997 and to 53.7% in 2001⁶. At the same time, the average number of hours nurses worked per week decreased from 32.4 in 1995 to 30.5 in 2001⁷. The most recent statistics⁸ show some improvement in the part time workforce figure (50% in 2003), and an increase in hours worked (32.5 in 2003) however it is too early to assess whether the upward trend will continue.

2.6 The labour market for nurses is characterised by long term and entrenched labour shortages, excessive workloads, a highly mobile workforce; where many thousands of employers compete for labour, and where there is a shortage of decent jobs, ie. jobs that are reasonably paid, offer attractive hours of work and the opportunity for skilled nursing workers to provide quality care for their patients.

3. Industrial regulation and enterprise bargaining in the nursing industry

3.1 Nurses are employed pursuant to awards and agreements in the main regulated by the Workplace Relations Act 1996 with the major exception being nurses employed in NSW who are regulated by the relevant state industrial instrument(s). In Queensland non public sector nursing employment is regulated by awards under the state industrial laws and by federal enterprise agreements.

3.2 The ANF has embraced enterprise bargaining as the principle vehicle for determining movements in wages and industrial conditions for nurses. However ANF is of the view that there are serious flaws in the bargaining processes and an imbalance in the rights and obligations of the bargaining parties which has led to an artificial and unnecessary fragmentation of wage levels and industrial conditions.

For example in the private residential aged care sector employers have been reluctant to engage in enterprise bargaining with unions or employees and the deficiencies in the present bargaining framework, particularly where employees have little bargaining strength, such employers are insulated from the costs of a competitive labour market.

3.3 The differences in the weekly wage rates illustrated in the table on the following page are primarily the result of employers in the residential aged care sectors failing to reach enterprise agreements with their employees rather than differences in the comparative work value as between nurses working in the acute public sector and nurses working in private aged care facilities.

State	Classification	Public Sector	Private Aged Care	\$ Difference
NSW	RN	1074.20	922.70	151.50
	EN	719.20	617.80	101.40
	AN/PC	548.00	487.30	60.70
VIC	RN	986.79	923.70	63.09
	EN	711.20	673.90	37.30
	AN/PC	604.30	603.80	0.50
QLD	RN	950.25	812.90	137.35
	EN	660.10	621.80	38.30
	AN/PC	582.55	571.65	10.90
SA	RN	929.60	865.05	64.55
	EN	639.83	624.79	15.04
	AN/PC	N/A	519.60	
WA	RN	958.53	754.60	204.00
	EN	N/A	N/A	
	AN/PC	N/A	N/A	
TAS	RN	979.35	923.05	56.30
	EN	724.58	669.58	55.00
	AN/PC			
NT	RN	999.60	801.99	197.61
	EN	732.50	607.73	124.77
	AN/PC			
ACT	RN	1032.00	870.47	161.53
	EN	757.28	601.34	155.94
	AN/PC	N/A	493.60	

Figures based on awards and agreements as at February 2005

- 3.4 In circumstances where an employer simply declines to reach an agreement, the nurse must choose to remain on the lower wage level or move to those parts of the nursing industry where higher wage rates are available. This artificial distortion in the labour market increases the movement of nursing labour and has a detrimental effect on the level of nursing care in those areas where wages are lower.
- 3.5 The majority of agreements covering nurses are collective agreements negotiated between the employer and the ANF and certified by the Australian Industrial Relations Commission under Division 2 or Division 3 of part V1B of the Workplace Relations Act 1996.

- 3.6 These agreements are normally with single nursing employers with notable exceptions being the residential aged care sector in Tasmania and state and territory public hospitals.
- 3.7 The ANF estimates that over 80% of enterprises who employ nurses are covered by industrial agreements (or in the case of NSW, with award variations giving effect to agreements).
- 3.8 Nursing agreements while comprehensive, normally reference and apply a range of matters from awards including skill based classification structures and award definitions. Nursing agreements and awards must also be consistent with the plethora of state and territory regulation of nursing practice and nursing care, as nursing is regulated at the state and territory level.

It is the view of the ANF that there are very few individual agreements and Australian Workplace Agreements that currently apply in the nursing industry, although exact figures are unknown.

- 3.9 Prior to the introduction of enterprise bargaining nurses were remunerated based on their experience, skills and educational qualifications. During the 1980's the Australian Industrial Relations Commission together with state tribunals developed common national nursing industry rates of pay and conditions of employment and, a national career structure to put an end to the subjective and iniquitous approach of paying nurses based on the nursing sector where they happened to be employed.
- 3.10 To the extent that the ANF has been able, we have sought to maintain national consistency across nursing. Similarly, mindful of the need to avoid the significant costs of artificial labour market aberrations arising from enterprise bargaining outcomes, the majority of employers of nurses have pursued common wages and employment conditions in enterprise bargaining agreements.

4. Pattern bargaining in the nursing industry

- 4.1 The ANF actively supports pattern bargaining and has argued that pattern bargaining outcomes in the nursing industries are appropriate on sound, industrial, commercial and public interest grounds.
- 4.2 Pattern or industry wide industrial standards are often preferable to enterprise differences because they benefit employers (particularly small employers) and employees and the community generally. In nursing, nationally consistent industrial standards in both wages and wage related conditions of employment, have resulted in the removal of short term distortions in the labour market as a result of cyclical skill shortages and in significant cost savings for the health sector, as well as promoting industrial harmony.

- 4.3 The arguments used by the opponents of pattern bargaining are generally based on the fundamental assumption that pattern bargaining is contrary to the goals of enterprise bargaining. This 'one size fits all' assumption completely ignores any considerations of the needs of the industry, employers, employees and the communities who our industrial laws are intended to protect and serve.
- 4.4 The federal government's recent announcement of an intention to legislate to further restrict the rights of the negotiating parties to agree on industry wide outcomes is simply based on ideological dogma and has nothing to do with sound industrial arrangements.

5. The enterprise bargaining framework

- 5.1 Enterprise bargaining in Australia under the Workplace Relations Act 1996 is deliberately slanted against employees and their representative trade unions. S.170 of Part VIB of the Act provides that the principal object of the quasi legal framework is to facilitate the making and certifying of agreements. Despite this the application of the balance of Part V1B is cumbersome, legalistic and able to be used to frustrate and impede the making of agreements between unions and employers. Further, the provisions of the Act have been the subject of often unnecessary exposure to minute legal examination (usually initiated by the federal government) resulting in highly technical and legalistic decisions of the industrial tribunals and the court that serve to prevent the industrial parties finalising enterprise bargaining agreements in the terms they are seeking.

This is evidenced by the ridiculous confusion and uncertainty due to a recent change in the approach of the Commission whereby the Commission now examines each and every clause of an agreement to determine whether it pertains to a relationship between employers and employees. In the event that one clause fails this test the agreement is unable to be certified.

The ANF is of the view that appropriate changes to the provisions of Part VIB of the Act are required to facilitate the certification of agreement in the terms sought by the negotiating parties.

- 5.2 Enterprise bargaining under the Act is also characterised now by the facilitation and encouragement given to employers to pick and choose the form of the agreement. However, the Act does not permit employees or unions to choose the form of the agreement.
- 5.3 Under the present system an employer may commence negotiations with the union(s) but at any time prior to the completion of such negotiations, is able to bypass the union(s) and seek an agreement directly with employees. This is a stark example of the imbalance and unfairness of the agreement making arrangements under the Act.

It is the view of the Australian Nursing Federation that in circumstances where the majority of employees at an enterprise support a collective agreement being negotiated on their behalf by a union(s) the employer should be required by law to recognize the wishes of their employees.

6. Parties' ability to genuinely bargain

The ANF is strongly of the view that for collective bargaining to be promoted and encouraged as a vehicle for achieving fair employment conditions and flexible work practices, the Workplace Relations Act 1996 must provide for good faith bargaining provisions to ensure that the process of negotiation is open and fair.

6.1 Good faith bargaining provisions should be introduced and should require the bargaining parties to:

- state their position on the matter at issue;
- meet at reasonable times, intervals and places ;
- act honestly and openly;
- recognise bargaining representatives;
- bargain genuinely and dedicate sufficient resources to the process; and
- adhere to agreed outcomes and commitments.

6.2 Good faith bargaining provisions should empower industrial tribunals to intervene or hear applications on disputes about the bargaining processes and to be able to settle matters on the content of agreements.

7. Work and life balance

7.1 The problems associated with balancing a person's work and non-working life cuts across all layers of the workforce and are now better understood and accepted. Nurses struggle to address the imbalance as workplace demands on them intensify because of the impact of labour shortages. Nurses often conflicting roles as family members and community participants appears to be an increasingly key issue in the way nurses view their employment and they look to enterprise bargaining outcomes to address the difficulties that that they face at the workplace.

7.2 In the absence of an industrial prescription, the extent that work and life balance has been addressed in the workplace is often limited to recitals in a HR policy manual. Generally, employers promise to balance work with other commitments and while these promises are attractive to employees, they are in practice frequently difficult to implement and the outcomes have been disappointing.

- 7.3 In response to nursing seeking more control over their working life, the Australian Nursing Federation has pursued a range of matters in enterprise bargaining including:
- staffing and workload measures;
 - involving nursing in job design;
 - self rostering; and
 - the provision of educational and professional development opportunities and the time to pursue them.
- 7.4 The Australian Nursing Federation has had limited success in achieving these goals with positive outcomes that are patchy and often achieved in the face of strong employer opposition.
- 7.5 In large part this inability to secure across the board outcomes to improve the balance between life and work in those areas has been largely due to the inflexibility of employer policy both in the public and private sector.
- 7.6 In respect of managing workloads, the ANF has had some success with staffing and skill mix mechanisms now in public sector employment in a number of states and territories. A range of systems have been introduced such as nurse to patient ratios in Victoria and nursing hours per patient day provisions in several other states. The effect of the introduction of workload management arrangements has been the return to the workforce of many thousands of nurses.

8. Conclusion

- 8.1 Although the federal government seeks to promote the benefits of enterprise bargaining arrangements they are in practice fundamentally flawed and cannot be sustained.
- 8.2 For enterprise bargaining to become a permanent feature of workplace relations in Australia the laws must reflect: an equal bargaining status of employers, employees and their representative industrial organisations; a requirement that the parties bargain in good faith; a robust and effective independent industrial umpire; and the right to choose the type and content of an agreement be that with a single employer or with a group of employers.

references

1. Registered and enrolled nurses (enrolled nurses are called Registered Nurses Division 2 in the State of Victoria)
2. AIHW 2005 Nursing Labour & Midwifery Force 2003 p.3
3. AIHW 2005 op cit p.25
4. AIHW 2003 Health & Community Services Labour Force 2001, Canberra HXIV
5. AIHW 2005 op cit p.4
6. AIHW 2003 Nursing Labour Force 2002 p.6
7. AIHW 2005 op cit p.5
8. AIHW 2005 op cit p.5