

From: Andrew McCarthy [mailto:amccarthy@anmf.org.au]
Sent: Thursday, 20 December 2018 10:40 AM
To: Chambers - Catanzariti VP
Cc: AMOD
Subject: RE: AM2016/31 - 4 yearly review of modern awards - Nurses Award
Importance: High

Dear Associate to Vice-President Catanzariti

Due to an oversight, the ANMF seeks leave to submit a delayed submission in reply to submissions made by other parties in response to the Decision of the Fair Work Commission dated 3 December 2018 ('Decision') regarding the *Nurses Award 2010*.

The submission is **attached**.

Kind regards
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20 December 2018

Vice President Catanzariti

Fair Work Commission

By email: chambers.catanzariti.vp@fwc.gov.au

Dear Vice President

AM2016/31: 4 yearly review of modern awards – Nurses Award 2010

Due to an oversight, the ANMF seeks the Commission's indulgence to submit a delayed submission in reply to submissions made by other parties in response to the Decision of the Fair Work Commission dated 3 December 2018 ('Decision') regarding the *Nurses Award 2010*.

The ANMF refers to the submission of the Private Hospitals Industry Employer Associations (PHIEA) dated 7 December 2018 and makes the following comments in response.

Recall to work when on call and Recall to work when not on call

The ANMF notes PHIEA's submissions and proposed draft determination [1] and determination [2].

For the reasons outlined by PHIEA, we do *not* oppose the proposed addition of the following words in 28.5(b) and 28.6(b):

Multiple electronic requests made and concluded within the same hour shall be compensated within the same one hour's overtime payment.

We do however *strongly oppose* the other amendments proposed to clauses 28.5(b) and 28.6(b) for the following reasons.

Firstly, PHIEA makes factual assertions in its submissions regarding the circumstances in which a nurse may be contacted away from the workplace that have not been supported by evidence. The ANMF submitted evidence in relation to these proposals, evidence which was accepted in paragraph [67] of the Decision. PHIEA should not be able to rely on untested assertions in circumstances where it had the opportunity at an earlier stage to submit evidence or test the ANMF's evidence.

Secondly, PHIEA's proposal is essentially reopening the Commission's decision. At paragraph [67], the Commission states that "the evidence discloses that

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ANMF Journals

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nurses are required to perform work ... away from the workplace” and that “taking a telephone call, answering a text, replying to an email or responding via other forms of electronic communication is work” (emphasis added). It should not make any difference whether the work performed is “clinical advice relating to a specific patient, resident or client” or any other type of work. If the communication relates to an issue at work, then it is work and should be compensated as such. There is no difference in the level of disutility for the employee. We submit that PHIEA’s proposed amendments, except for multiple requirements in one hour, should be rejected.

Free from duty and on call

The ANMF opposes PHIEA’s proposed determination [3], comprising amendments to clause 21.4, for the following reasons.

The ANMF proposal in relation to excessive on call (outlined in part 3.4 of the Decision) is *partly rejected because of* the Commission’s acceptance of the ANMF’s claim regarding clause 21.4. If PHIEA’s proposed change was accepted, then the Commission’s decision “in response to clause 21.4 places a natural constraint on the occurrence of on call which addresses the concerns underlying the ANMF claim” would be undermined (see paragraph [89] of the Decision).

Secondly, the ANMF submits it is perfectly reasonable for a nurse to be free from work or the contingency of work for two days in each week, four days in each fortnight or eight days in a 28-day cycle. The Commission accepted this argument in paragraph [97] of the Decision. PHIEA’s proposal is reopening the Commission’s decision.

We also note the Commission’s comments at [156-157] of the Decision regarding employee’s feeling pressured to agree to changes to rosters. We submit that similar concerns will arise regarding being pressured to be on call on employees’ days off.

Meal breaks

The ANMF does not oppose PHIEA’s proposed change (contained in its Determination [4]) to clause 27.1(c).

The ANMF otherwise relies on its submissions dated 7 December 2018.

Yours sincerely

A handwritten signature in black ink that reads "Andrew McCarthy". The signature is written in a cursive style and is positioned over a light grey rectangular background.

Andrew McCarthy

A/g Senior Federal Industrial Officer