



Modern Awards Review 2023-24 (AM2023/21)

Submission cover sheet

Name

(Please provide the name of the person lodging the submission)

Lauren Palmer

Organisation

(If this submission is completed on behalf of an organisation or group of individuals, please provide details)

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How to prepare a submission

Submissions should be emailed to awards@fwc.gov.au. Directions set out the due dates for submissions. Directions are issued by a Member of the Commission and will be published on the [Commission website](#).

Make sure you use numbered paragraphs and sign and date your submission.

Your submission. Provide a summary of your experience and any relevant issues. You may wish to refer to one or more of the issues outlined in the relevant discussion paper.

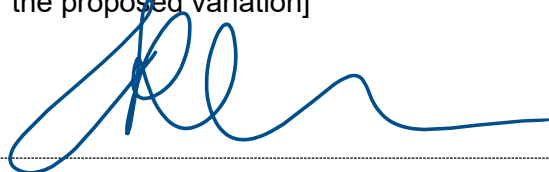
Issues

1. [Using numbered paragraphs, outline the main issues you want the Fair Work Commission to consider as part of the Modern Award Review 2023-34 including your responses to any questions set out in Commission discussion papers. Include, if possible, references to any relevant sections of the *Fair Work Act 2009*, or other legislation or specific clauses in modern awards that apply].

Proposals

2. [Tell us your proposals to the address the issues you have raised in the submission. If you are proposing that the Commission should consider varying an award, you should include draft wording for the proposed variation]

Signature:



Name:

Lauren Palmer

Date:

12 March 2024

Modern Awards Review 2023-2024

Australian Nursing and Midwifery Federation Response to Work and Care Discussion Paper

12 March 2024



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Modern Awards Review 2023-2024

Australian Nursing and Midwifery Federation Response to Work and Care Discussion Paper

Introduction

1. These submissions are provided in response to the *Modern Awards Review 2023-24 Discussion Paper - Work and Care* (**'Discussion Paper'**).
2. The Australian Nursing and Midwifery Federation (**'ANMF'**) welcomes the opportunity to contribute to the Work and Care stream of the *Modern Awards Review 2023-34*. The issues raised in the Discussion Paper reflect many of the concerns identified by the ANMF on the difficulties workers face in balancing work and care, particularly for employees working in the female dominated industry of nursing and midwifery.
3. The ANMF has had the opportunity to review the submission of the Australian Council of Trade Unions (**'ACTU'**) and supports the positions contained therein.
4. The ANMF submission will address the questions in the Discussion Paper, except for questions two, three, five and seven. For questions two and three, we defer to the submissions of the ACTU. For question five, we acknowledge that recent legislative changes address the 'right to disconnect' and there will be a separate process to vary Awards accordingly.
5. For question seven, the ANMFs proposed variation to the definition of shiftworker, as contained in our Job Security submission and this submission at Discussion Question 13 - Annual Leave, along with our variation proposed in this submission at Discussion Question 9 – Availability and Guaranteed Regular Hours for full-time employees, satisfies the issues outlined with regard to Span of Hours.
6. This submission will focus on the following themes:
 - The intersection of work and care and gender equality;
 - The intersection of work and care and health and wellbeing;
 - Clauses of the *Nurses Award 2020* (**'Nurses Award'**) and issues that impact on work and care;
 - Proposals to amend clauses to promote balanced work and care;
 - Matters that could be considered for further review.

7. The ANMF submits that the proposed variations to the Nurses Award will help achieve the amended modern award objectives.¹ In implementing reform to the Nurses Award, a holistic approach must be taken that accounts for the intersecting nature of the clauses, with one another and the amended modern award objectives.

Background

8. The ANMF represents nurses, midwives, assistants in nursing and carers in the public and private health, aged care and disability sectors across a wide variety of urban, rural and remote locations.
9. The Nurses Award is the underpinning award for nearly all nurses, midwives and assistants in nursing. The *Educational Services (General Staff) Award 2020* is the relevant award for nurses working in private schools.
10. The ANMF represents personal care workers, predominantly employed in the aged care sector, under the *Aged Care Award 2010* ('**Aged Care Award**').
11. For the purposes of these submissions, the ANMF proposes to address the provisions of the Nurses Award as the most relevant award to its membership. That said, we submit that the issue of ensuring workers can balance work and care is one of broader social and economic importance across industries and occupations. The ANMF supports proposed reforms that promote balanced work and care across all modern awards.
12. The ANMF made a submission to the Job Security stream of the *Modern Awards Review 2023-34*. The ANMF highlights, as the Discussion Paper pointed to, the convergence with issues of insecure work and difficulties meeting work and care responsibilities. As such, the award variations proposed in our job security submission are relevant here and we encourage the review to consider the issues and proposals holistically.
13. The ANMF made submissions to the Senate Select Committee on Work and Care. We support the call of the Committee in its final report, as highlighted in the Discussion Paper, to 'establish a new work and care social contract' with the Government taking a 'comprehensive and integrated approach to address the challenges of work and care in Australia'. As such, the ANMF supports this review considering the recommendations of the Committee's final report that are within scope.
14. The ANMF acknowledges that the Nurses Award is specifically identified in the Senate Committee Final Report and Discussion Paper as containing provisions that 'likely impact on an employee's ability to balance work and care'.² Variations to the Nurses Award are particularly pertinent in the context that they require amendment to promote balanced work and care, address gender inequality, and to serve as a model to other Modern Awards.

¹ *Fair Work Act 2009* (Cth) s 134(1)(ab),(c) and (da).

² Discussion Paper at [38].

Work and care and gender equality

15. The ANMF submits that work and care responsibilities are predominantly undertaken by females and that the adverse impacts of balancing work and care are felt disproportionately by workers in female dominated health, care and support industries. This is owing to perceptions of caring and care work as naturally suited to women and the subsequent tendency to undervalue caring and care work because of gender-based assumptions. To this extent, some of the issues raised in this submission are also likely to be addressed in relation to other streams of the Modern Award Review 2023-24, and the Annual Wage Review, particularly as it seeks to address identified gender inequality.
16. The report prepared for the Fair Work Commission ('**FWC**'), *Gender-based Occupational Segregation: A National Data Profile*³ provides data with respect to the categories of employees covered by the Nurses Award, which shows employees covered by the award are amongst the most highly feminised categories of the workforce. For example, midwives in hospitals are identified as being the most feminised occupation in the review, with registered nurses in general practice medical services also falling within the most segregated category.⁴ Registered nurses ('**RNs**'), enrolled nurses ('**ENs**'), nursing support and personal care workers are also categorised as working in highly feminised occupational classifications.⁵
17. The report also shows that the same categories of RNs, ENs and midwives have a high proportion engaged in part-time work when compared to the workforce as a whole. For example, 56.8% of RNs work part-time compared to 32.9% across the workforce.⁶
18. The report identifies the Nurses Award as one of the awards covering highly feminised industries and occupations.⁷
19. Another important feature of the workforce covered by the Nurses Award, is that they are more likely to have unpaid childcare responsibilities than the total workforce.⁸
20. As the Discussion Paper states, 'women are significantly more likely to perform unpaid care—whether at home, in workplaces, communities and/or social organisations [and] caring expectations can effectively impose a 'double day' or 'second shift' on top of existing paid work, with women bearing most of this additional labour'.⁹
21. The ANMF acknowledges that 'flexibility (including the ability to work part-time hours or vary start/finish times)' was highlighted as a major incentive to workforce participation for

³ Cortis, N., Naidoo, Y., Wong, M. and Bradbury, B. (2023). *Gender-based Occupational Segregation: A National Data Profile*. Sydney: UNSW Social Policy Research Centre.

⁴ *Ibid* 6.

⁵ *Ibid* 6-7.

⁶ *Ibid* 33-34.

⁷ *Ibid* 28-29.

⁸ *Ibid* table 6.1 and 7.1.

⁹ Discussion Paper at [48 and 49].

working parents, particularly mothers.¹⁰ Flexibility afforded through part-time work can allow time for work life balance and to meet caring responsibilities.

22. However, the ANMF submits that a number of clauses of the Nurses Award create disadvantages for part-time workers that, in conjunction with the gendered undervaluation of care and care work, result in employment that limits a workers' ability to balance work and care. Such work further entrenches gender-based inequality.
23. The ANMF submits that reform to the Nurses Award that ensures increased workforce participation without compromising work and care responsibilities, will also meet the objective of promoting gender equality.

Nurses Award clauses and issues that impact on work and care

Discussion Question 1 – Part-time

24. The following sets out clauses that disadvantage part-time employees and proposes amendments that will promote balanced work and care.
25. The ANMF highlights the summation in the Discussion Paper that 'accommodation of caring responsibilities was historically addressed through provision of part-time employment, with access subject to gender-based restrictions'.¹¹ The Australian Industrial Relations Commission (**the AIRC**) *Personal Carer's Leave Test Case – Stage 2* decision in 1995 noted part-time employment is one of the ways in which families reconcile their work and family commitments and evidence 'which shows an employee preference for part-time work, particularly among women.'¹²
26. The ANMF accepts that engagement in part-time work provides people with caring responsibilities access to the benefits of employment and participation in the workforce that is important for both employees and employers. The ANMF submits, however, that employers have come to rely upon and misuse part-time employment as a mechanism to access a flexible workforce in which work is not properly valued, and the employee's individual preferences and circumstances are not adequately recognised. Part-time employment has become a default employment type offered to working carers, namely women, because of persistent gendered assumptions that ultimately diminish an employee's capacity to meet the demands of work and care.
27. The ANMF submits that employee preferences for how to manage work and care have changed since 1995, particularly as labour market demographics have changed, such as increased women's workforce participation. The current definition of part-time employees in the Nurses Award is deficient in that it does not adequately support

¹⁰ Ibid at [53].

¹¹ Ibid at [91].

¹² *Personal Carer's Leave Test Case- Stage 2* [1995]62IR 48;[1995] AIRC 2396 [4/5/2]-[4.5.3].

employee access to both secure part-time work and the ability to meet work and care responsibilities.

28. When the predecessor *Nurses Award 2010* was created in 2009, the Australian Nursing Federation ('ANF'), as the ANMF was then known, raised concerns over the definition inserted into the Award. In submissions filed by the ANF at the commencement of the award modernisation process¹³, an exemplar award was proposed.

29. The definition of part-time employment put forward by the ANF at the time was as follows:

x.2 Part-time employment

A part-time employee is an employee engaged as such who works a regular pattern of hours which average less than 38 hours per week or 76 in a fortnight.

x.2.1 At the time of engagement, the employee and the employer will agree in writing upon the hours to be worked by the employee and the rostering arrangements which will apply to those hours.

x.2.2 The number of hours worked by a part-time employee may be varied by mutual agreement between the employee and the employer and must be recorded in writing.

x.2.3 A part-time employee's roster may be changed in accordance with clause..... Rosters, provided that the agreed number of ordinary hours per week or fortnight can only be amended in accordance with clause x.2.2.

x.2.4 For ordinary working hours part-time employees shall be paid at an hourly rate equal to 1/38th of the weekly rate appropriate to the employee's classification and entitled, on a pro rata basis to:

(a) Annual leave, Personal leave, long service leave, parental leave and community service leave and;

(b) Such allowances, penalty rates and benefits as apply to full time employees where applicable.

x.2.6 (sic) In relation to the accumulation of pro rata entitlements, all authorised time worked in excess of rostered hours but within ordinary hours of work will be counted towards the accrual of pro rata entitlements.

30. The definition put forward by the (then) ANF was challenged by employer groups. Employers, citing a requirement for flexibility and the cost burden of payment for overtime¹⁴, argued for part-time employees to be engaged on minimum hours of engagement basis. These engagements were practice at the time under some private sector state-based awards.¹⁵

¹³ AM2008/1, Submission of ANF, October 2008.

¹⁴ AIRC s576E- *Award Modernisation Transcript of Proceedings*, Monday 23 February 2009, PN385-92.

¹⁵ ANF Submission, 11 December 2008 at page 4, point 5 '*Part-time Employment*'.

31. The practical implications of these arrangements allowed for:
- (i) Workers to be engaged on a minimum hours arrangement that did not reflect the actual hours they would typically be required to work;
 - (ii) Avoidance of payment of overtime payments where the employee agreed to work rostered hours in excess of their minimum hours of engagement, that remained less than 38 hours in a week (discussed below at paragraphs 39-40);
 - (iii) Underemployment of workers due to uncertainty around ordinary hours and an inability to effectively combine work and care; and
 - (iv) Uncertainty regarding leave entitlements and superannuation contributions.
32. Further evidence was provided to the AIRC regarding the practices of employers engaging nurses in the aged care sector, offering part-time employment, but requiring nurses to work hours resembling full-time employment.¹⁶
33. Despite the provision of this evidence, the AIRC ultimately accepted the position offered by employers that the number of additional hours worked by nurses, using a minimum hours of engagement model, would be insignificant and that not paying overtime to part-time employees who consented to work additional hours would represent important cost-savings for employers.

Deficiencies with the definition

34. Whilst the issue of an award definition may seem only applicable to award-reliant employees, this is not the case. The definition is often carried over into enterprise agreements¹⁷ and it provides a particularly low bar when it comes to BOOT assessments, particularly in the context of overtime payments (discussed below).

Proposed variation to the Nurses Award

35. The ANMF contends that it is relevant and necessary to vary the Nurses Award to amend the provisions concerning the definition of part-time work contained at clause 10. The current provisions do not support secure and predictable work, but rather give employers a part-time workforce that can have their hours moved up and down at their whim. For part-time employees with caring responsibilities, this instability makes planning work and care extremely difficult.
36. The Aged Care Award at clause 10.3 and the *Health Professionals Award 2020* (**Health Professionals Award**) at clause 10 contain a similar definition to each other of a part-time employee. Crucially, both awards provide that before commencing employment, the employer and employee will agree in writing on a regular pattern of work including the number of hours to be worked each week, days of the week the employee will work and

¹⁶ ANF Submission, February 2009.

¹⁷ See for example: [AE521531](#) at cl 3.3(a)(ii), [AE507196](#) at cl 12.2.2, [AE523024](#) at cl 15(c)(iii), [AE511210](#) at cl 18.2.1.

starting and finishing times each day.¹⁸ Any hours in addition to the agreed number of hours to be worked each week are paid as overtime.¹⁹

37. Nurses covered by the Nurses Award work alongside workers covered by both the Aged Care Award and the Health Professionals Award. Midwives covered by the Nurses Award work with workers covered by the Health Professionals Award.

38. The ANMF propose that clause 10.2 of the Nurses Award is varied to remove the current clause 10.2 and insert the following:

10.2 Before commencing employment, the employer and employee will agree in writing on a regular pattern of work including the:

- (a) number of hours to be worked each week;*
- (b) days of the week the employee will work; and*
- (c) starting and finishing times each day.*

39. Similar to the provisions of the Aged Care Award and Health Professionals Award, the Nurses Award will also need to be varied at clause 19 to ensure that work in excess of the ordinary hours to be worked each week are paid as overtime. Clause 19.1(d) of the Nurses Award should be varied to read as follows:

(d) Part-time employees

All time worked by part-time employees in excess of their agreed ordinary hours (except where agreement has been reached in accordance with clause 10.3) will be overtime and will be paid as prescribed in clause 19.1(a)

40. The ANMF is also attracted to a further amendment, by adding wording at clause 19.1 that ensures clarity around payment of wages and the pro-rata accrual of entitlements, as follows:

(e) receives remuneration, leave and other paid entitlements, on a pro-rata basis to a full-time employee employed for 38 hours per week for that classification, according to the number of hours worked.

41. The proposed amendments provide access to predictable patterns and hours of work by virtue of the requirement for agreement in writing to regular patterns of work, including hours, days of the week and start and finish times. This provides certainty for both parties by setting out when work will be performed and will promote predictable work patterns for the employee, around which they can plan the provision of care.

42. More importantly, by establishing a regular pattern of work, any variation to that pattern can be more easily identified as such, and when considered in conjunction with the

¹⁸ Health Practitioners Award cl 10.2.

¹⁹ Aged Care Award cl 25.1(b)(iii), Health Practitioners Award cl 25.1(b)(i).

proposed amendment to clause 19, will reduce the incentive to treat additional hours for part-time employees as ‘de facto’ casual hours without the cost of the casual loading.

43. The parties can still agree to additional hours, thus still providing both parties with some flexibility, however, in the absence of agreement in writing, it is clear that additional hours worked will be performed as overtime. The proposed changes will result in contracted hours being more reflective of actual hours worked, thus allowing employees to plan, and therefore balance, their work and care responsibilities.

Review of part-time hours

44. The Nurses Award currently makes no provision for review of part-time hours. The ANMF submits that access to predictable work that takes into account an individual’s availability and circumstances, as and when these may change, will be enhanced if part-time workers have the opportunity to review the actual hours worked over a set period of time to assess whether this reflects their contracted hours. Where an employee works in excess of their contracted hours, the employee should be able to request a variation of their contract to reflect those hours.
45. The ANMF considers the award should be amended to include a part-time guaranteed hours review clause. In the ANMFs Job Security submission, we referred to the *General Retail Industry Award 2020*²⁰ as an example of a clause that could be used for consideration, which provides for a review of part-time hours every 12 months.
46. The ANMF has since read the submissions of the ACTU and other affiliate ACTU members and acknowledges the proposal for 6-monthly reviews of part-time hours. The ANMF supports the proposals for a more frequent review.

Discussion Question 4 – Working From Home

47. With respect to working from home, the majority of the ANMF membership work in direct care, requiring them to be on site to meet the inherent requirements of their occupation. Variations to other clauses of the Nurses Award become more pertinent for these employees in the context of balancing work and care when working from home is not possible to meet the requirements of a role.
48. For ANMF members working in non-direct care roles, such as nurse education and training, working from home is an important flexibility mechanism that can help employees to manage work and care. Working from home can, for example, reduce travel time to and from a worksite, appointments, or school. This time gained reduces pressures on working carers as it can be used for caregiving responsibilities.
49. The ANMF supports a variation to the Nurses Award that provides employees in non-direct care roles the right to request working from home arrangements, and for any request not to be unreasonably refused by the employer. Any variation must ensure work from home decisions and arrangements can be reviewed and disputed. Any clause must

²⁰ [MA000034] cl 10.11.

also include protections around reasonable working hours, the right to disconnect, Occupational Health and Safety, and other relevant matters.

Discussion Question 6 – Minimum Payment Periods

Minimum engagement of 4 hours for all employees

50. The Nurses Award makes no provision for minimum hours of engagement for part-time employees. The absence of a minimum engagement term, particularly when viewed in conjunction with the current definition of part-time employment, compounds the other problems identified for part-time employees in this submission at [22-43]. The absence of a minimum engagement term exposes part-time employees to greater levels of disruptive work patterns and the cost associated with attending work for unreasonably short periods of time.
51. For working carers, short engagements can negate the economic benefit of paid work. The costs of formal care services such as childcare can be high, particularly when considered relative to the low wages and reduced hours and earning capacity of part-time employees. Additionally, formal care services may only be available in certain locations or for restricted hours. The length of a shift must be sufficient for the employee to meet the real and administrative costs of organising formal care.
52. These issues are felt disproportionately by women, who still undertake the majority of informal caregiving, and are most acute for employees in low-paid sectors such as aged care, and in the health and care industries where unsociable hours and shiftwork are unavoidable. A minimum engagement period would provide additional remuneration to these employees and increase workforce participation, thereby promoting social inclusion and gender equality, in line with the amended Modern Award objectives.²¹
53. The ANMF submits that the concerns related to low minimum hour contracts for part-time employees and the impact of short engagements would be addressed by inclusion of a minimum hours of engagement clause in the Nurses Award. The ANMF submits that a minimum engagement of four hours should be considered as a key means of promoting access to secure work, which in turn facilitates balanced and forward planned work and care arrangements. An example of a 4-hour minimum shift length is provided for in the *Ambulance and Patient Transport Industry Award 2020*.²²
54. The Nurses Award provides a minimum engagement period of two hours for casual employees.²³ The ANMF submits the casual minimum engagement period should also be increased in line with the proposed minimum for part-time employees.

²¹ [1] *Fair Work Act 2009* (Cth) s 134(1)(ab)(c)(da)

²² [MA000098] cl 10.4.

²³ [MA000034] cl 11.3.

Discussion Question 8 – Notice of Rosters

55. The rostering provisions under the Nurses Award are deficient in that they do not afford employees sufficient foresight about future work patterns, in turn contributing to unpredictable, unstable rostering that makes planning of work and care difficult.

Notification of Roster

56. Clause 13.2(c) of the Nurses Award stipulates that a roster will be displayed at least 7 days before the commencement of the roster period. Noting that uncertainty around patterns of work is an identified barrier to well-balanced work and care,²⁴ the shortness of the notification period for a roster denies workers the ability to plan their lives around potential variations in hours and patterns of work. This issue is particularly problematic for employees who may need to make outside of work arrangements at relatively short notice.
57. The ANMF considers that a minimum 28-day notification period for the publishing of rosters would be more appropriate in establishing predictability around hours and patterns of work. This would also provide greater lead time for parties to consult around problems with a roster well before commencement. The ANMF notes that public sector enterprise agreements in some jurisdictions currently require employers to display rosters up to 28 days before commencement as common practice in hospital settings.

Roster Changes

58. In terms of changes to the roster after publication, the ANMF submits that clause 13.2(e) of the Nurses Award, which provides that an employer may change the roster with 7 days' notice, should be amended to 14 days. The ANMF would also encourage the FWC to consider whether an appropriate penalty should apply in circumstances where a roster has been changed with less than 14 days' notice. For the reasons already stated, this would provide greater certainty and predictability for workers subject to the roster and provide for forward planning of work and care responsibilities.
59. The ANMF acknowledges that in hospital and other health facilities it is appropriate that employers may from time to time need to alter a roster to account for unforeseen staff absences, such as sick leave. The ANMF submits that clause 13.2(f) of the Nurses Award should be retained for this purpose to ensure that health settings can be adequately and safely staffed.

Roster Cycle

60. Forward planning of work and care not only requires rosters to be published well in advance of commencement, but also requires employees to be able to see their work pattern well in advance. It follows that clause 13.2(a) of the Nurses Award, which provides for a weekly or fortnightly roster cycle, may not provide sufficient security and predictability around hours and patterns of work.

²⁴ Senate Select Committee on Work and Care, *Final Report* (March 2023) 187 [8.124].

61. The ANMF notes that some public sector instruments applicable to nurses provide for up to a 28 day roster cycle, and recommends that this be adopted as the standard in the Nurses Award. Such an adjustment would be particularly suitable to the nursing profession and health settings necessarily need to properly plan for the adequate and safe staffing of hospitals and health facilities.

Discussion Question 9 – Availability and Guaranteed Regular Hours

62. The ANMF submits that the issues of availability and guaranteed regular hours will be largely dealt with by the variations proposed in this submission relating to part-time and rosters.
63. However, the ANMF is concerned that full-time employees face lesser guarantee of regular hours and rosters compared to part-time employees. Employers exert a higher degree of control over the arrangement of a full-time employee's hours, with no requirement to consult with the employee as to their availability.

Full-time employees

64. The ANMF encourages the FWC to consider whether full-time provisions in modern awards adequately provide for regular patterns of work that allow employees to plan work and care.
65. The Nurses Award provides the following at clause 9.1 with respect to full-time employment:

A full-time employee is engaged to work:

- (a) 38 hours per week; or*
- (b) an average of 38 hours per week in accordance with clause 13.1 of this award.*

66. The ANMF considers that the full-time employment definition, particularly in awards that apply to shift workers, as is the case with the Nurses Award, could be enhanced by explicitly providing the following:
- a. A guarantee of a regular pattern of hours, or reasonably predictable hours;
 - b. Agreement upon engagement around days of the week to be worked, specified start and finish times, and possibly the time and duration of meal breaks;
 - c. A requirement that the terms of the agreement at (b) be recorded in writing and can only be varied by further agreement in writing; and
 - d. A minimum engagement period.
67. The ANMF acknowledges the realities of health and care environments as operating on a 24/7 basis and requiring a workforce that is available to meet acute and unplanned events. The employee must have access to consultation and dispute mechanisms for when their availability and guaranteed hours of work are not being met.

68. The ANMF highlights the importance of all employees having access to a roster cycle in advance and of a duration that enables them to plan work and care. Predictability, wherever possible, is important to working carers.

Discussion Question 10 – Overtime

Overtime

69. It is important to consider the intersection of low wages in formal care sectors and occupations, such as aged care and nursing, with inadequate part-time contracts and lack of overtime payments. Women with care responsibilities who also work in formal care face the compounding structural inequalities of gendered undervaluing and low remuneration, with limited access to overtime and slower and lower accrual of paid entitlements.
70. The ANMF proposes a number of amendments to clause 19 Overtime. With respect to the interaction between the proposed amendments to clause 10.2, the ANMF proposes that clause 19(d) be amended. The clause currently reads as follows:

All time worked by part-time employees in excess of the rostered daily full-time hours will be overtime and will be paid in as prescribed in clause 19.1(a).

71. The current clause means that part-time employees do not access overtime payments unless they have worked in excess of 8 (or 10) hours per day. Employers have a strong incentive to engage part-timers on low hour contracts and gain a disproportionately high degree of flexibility at no additional cost, save accrual of entitlements.
72. The current clause also creates uncertainty about the nature of rostered daily full-time hours, in relation to the number of hours that comprise the daily full-time hours as this can vary even within the same facility.
73. The ANMF proposes clause 19.1(d) be amended to read:
- All time worked by part-time employees in excess of their agreed ordinary hours in accordance with clause 10.2 will be overtime and will be paid as prescribed in accordance with clause 19.1(a).*
74. The proposed amendment relies on the written agreement entered into by the parties as the basis of determining when overtime will become payable. This will create an incentive for employers to enter written agreements that reflect the actual hours worked.

Overtime rates – full-time and part-time employees

75. Clause 19.1 provides overtime rates for full-time and part-time employees as follows:
- (i) Monday to Saturday (inclusive)—150% of the minimum hourly rate applicable to their classification and pay point for the first 2 hours and 200% after 2 hours;
 - (ii) Sunday—200% of the minimum hourly rate applicable to their classification and pay point; and

(iii) Public holidays—250% of the minimum hourly rate applicable to their classification and pay point.

76. Clause 21 provides penalty rates for ordinary hours performed on a Saturday or Sunday.
77. Ordinary hours performed between midnight on Friday and midnight on Saturday are paid at a rate of 150% of the minimum hourly rate, and between midnight on a Saturday and midnight on a Sunday at 175% of the minimum hourly rate.
78. The current provisions of the Nurses Award treat the first two hours of overtime on a Saturday and the applicable shift loading as the same. The effect of this is to incentivise payment of additional hours as overtime, rather than ordinary hours of work as overtime so as not to attract accrual of leave entitlements or payment of superannuation.
79. Similarly, the Sunday overtime rate is only 25% higher than the Sunday penalty rate, which when leave entitlements and superannuation are factored in, also incentivises the use of overtime ahead of ordinary hours.
80. The ANMF submits that the Saturday rate for overtime should be set at 200% for all overtime hours and the Sunday rate be increased to 250%. The impact of this proposal will be to promote access to predictable work by making engagement for work performed as ordinary hours on Saturday and Sunday more viable than ad hoc overtime hours. The rate for overtime performed on a public holiday would also be subject to review, if the proposed changes were made.
81. The above analysis applies equally to clauses 19.2 of the Nurses Award, which provides overtime rates for casual employees and its interaction with clause 21. However the exception to this is that casuals do not accrue leave entitlements but are paid superannuation on ordinary hours only.

Make-up time

82. There is no provision in the Nurses Award for make-up time. Many nurses, midwives and carers work long shifts and night shifts that conflict with ordinary business hours of care and health services, such general practice medical centres and childcare. Conflicting hours make it difficult for these employees to schedule care-related appointments. The common remedy is for the employee to utilise paid leave entitlements, which disadvantages part-time and casual employees with lower or no access to paid leave, and in turn can prevent employees from utilising paid leave when they need to, such as when they are sick themselves (discussed further below at [106-110]).
83. Without a provision in the Nurses Award, employees are exposed to a heightened risk of being required to make-up time without sufficient financial compensation i.e. like-for-like paid hours.²⁵ Provisions that ensure paid make-up time, where the employee may start early or finish late to accommodate appointments, will assist employees to attend to caregiving responsibilities without giving up paid work or exhausting paid leave entitlements.

²⁵ Discussion Paper at [200].

Discussion Question 11 - On-call and recall to duty

Recall to work when on call and when not on call

84. In the course of the 4 yearly review of modern awards²⁶ the ANMF made submissions seeking variations to the Nurses Award 2010, in relation to work required when on call and when not on call. The ANMF sought recognition of the time spent working while on call via telephone or other electronic communication away from the workplace as being no different in value to work performed on site.
85. The Full Bench was satisfied with respect to a number of propositions²⁷
- Taking a telephone call, answering a text, replying to an email or responding via other form of electronic communication is work;
 - Being required to perform work via electronic communication does not have a lower level of disutility than being on call to return to the workplace;
 - The same constraints of making contingency plans that disrupt family and personal life apply;
 - A nurse who is on call for electronic communication and is required to work should be remunerated at overtime rates;
 - A minimum period is appropriate because of the disutility of performing work extends beyond the precise number of minutes spent responding to the electronic communication (provision of a minimum of one hour at overtime rates was made);
 - The same provision was made for a nurse not on call, but required to work via electronic communication.
86. As a result of the above considerations, the Nurses Award was varied accordingly. Those provisions are set out in Appendix A.
87. For the purposes of this review, the ANMF does not seek any variation to the provisions of the Nurses Award in relation to recall to work when on call or recall to work when not on call. The ANMF draws attention to the considerations of the Full Bench in the above matter, particularly as it highlights the disutility of recall to work remotely and the resulting disruption to family and personal life.
88. Provision of payment for work done away from the workplace via electronic communication is in the case of the Nurses Award, appropriately recognised by payment at overtime rates. This both acknowledges the impact of such work on meeting caring responsibilities and also acts as a measure to ensure on call work is utilised appropriately.

²⁶ 4 yearly review of modern awards- Nurses Award 2010 (AM2016/31).

²⁷ Decision [2018] FWCFB 7347 [66]-[69].

Free from duty

89. The Full Bench also accepted the ANMF's argument that being on call should count as duty and is not the same as being free from work as follows:

We agree with the ANMF that a nurse should 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. We consider that being on call gives rise to the constraints of making contingency plans that disrupt family and personal life. Being on call does not provide the opportunity to rest and to pursue personal and family activities in the same way as being free from work.²⁸

90. The above finding resulted in variation to clause 13 Hours of Work in the Nurses Award as set out in Appendix A. The clause makes clear that a period of time designated as free from duty is exclusive of time an employee is on call.
91. This is an important protection that assists in ensuring employees are able to have proper breaks from work and to engage in family and personal life without disruption.

Discussion Question 12 - Travel time

92. The ANMF reinforces the finding of the Senate Select Committee, as referenced in the Discussion Paper, that employees without paid travel time provisions are giving up personal time without additional pay.²⁹ The Nurses Award currently only provides a per kilometre allowance of no less than 0.96 cents for the use of a private vehicle in the course of an employee's duties.³⁰ There is no provision for travel time to be counted as hours of work and paid accordingly, except in the context of recall to duty where travel time attracts overtime rates, but with limitations.³¹
93. No or limited access to paid travel time converges with other issues, such as the absence of minimum engagement periods, low wages and poor conditions. Unpaid travel time can be disproportionate to the pay earned and result in a financial loss for the employee (as discussed at 67). This is particularly true for nurses, midwives and carers working in the home and community care sector, especially those in regional, rural and remote areas where travel over long distances for short engagements are common. The ANMF recommends that all travel time connected to such work should be paid and payment should commence from the time an employee must depart for the first job of their shift.
94. The ANMF submits that the current allowance not only falls short of fairly compensating an employee for their time, it also does not consider the full and increasing costs of petrol, vehicle related emergencies that may occur during a shift (e.g., a breakdown), or maintaining a safe vehicle. For many working carers, access to a vehicle is essential to

²⁸ Ibid [97].

²⁹ Discussion Paper at [207].

³⁰ [MA000034] cl 17.3(c)(i).

³¹ Ibid cl 19.7.

meeting care responsibilities and it is important these employees have a vehicle in safe working order and that they can afford petrol and other associated costs.

Discussion Question 13 - Annual Leave

Definition of shift worker to be used for accessing 6 weeks annual leave

95. The Nurses Award provides a definition of shiftworker as set out below in clause 4 'Definitions':

***shiftworker** means an employee who is regularly rostered to work their ordinary hours of work outside the span of hours of a day worker as defined in clause 1.1(a).*

96. The above definition is largely replicated in clause 13 of the Nurses Award for the purposes of rostering. Work that does not fall within the span of hours for a day worker attracts shiftwork loadings at clause 20 of the Nurses Award.

13.1 Ordinary hours and roster cycles

(a) Span of hours—day worker

*Ordinary hours of work for a **day worker** are worked between 6.00 am and 6.00 pm, Monday to Friday.*

(b) A *shiftworker* is an employee who is regularly rostered to work their ordinary hours of work outside the span of hours of a day worker as defined in clause 13.1(a)

97. The Nurses Award at clause 22 'Annual leave' provides for an additional week of annual leave for all workers under the Nurses Award, and a further additional week for shiftworkers. Clause 22.2(b) defines shiftworker (in terms that are different to both the definition at clause 4 and the adoption of that definition at clause 13.1(e)) as follows:

*A **shiftworker**, for the purposes of the additional week's annual leave provided by the NES, is an employee who:*

- (i) is regularly rostered over 7 days of the week; and*
- (ii) regularly works on weekends.*

98. The ANMF submits that the definition of shiftworker for the purposes of the additional week's annual leave should be consistent with the definition provided in the definitions section of the Nurses Award. Access to the additional week's annual leave under the current wording of the clause, can be, and is, applied by employers in a manner that restricts access to the additional week.

99. The ANMF submits the purpose of the additional week is to compensate for the disruption to personal and family life of working unsocial hours – which impacts capacity to provide care, and the shiftworkers own health and wellbeing. This is a significant and well

recognised negative of shiftwork³². The health and aged care sectors are reliant on shiftwork to meet care needs, however the additional burden placed on nurses is not recognised as many shift workers are not entitled to the additional week of annual leave.

100. Clause 28.2 of the Aged Care Award in contrast provides the additional week of annual leave for shiftworkers who regularly work outside of ordinary weekly hours.

Proposed variation to the Nurses Award

101. The clause should be amended to provide access to the additional week of annual leave to shiftworkers as defined in clauses 4 and 13 of the Nurses Award. Clause 22.2(b) should be amended to provide:

*A **shiftworker**, for the purposes of the additional week's annual leave provided by the [NES](#), is defined at clause 4.*

102. This proposed change would enhance access to the additional week of leave for shiftworkers covered by the Nurses Award. It would recognise the true burden of working unsocial hours which in turn would promote better access to secure work.

Annual Leave at half pay

103. Nurses, midwives and carers working the unsociable hours of shiftwork face greater barriers to accessing leave at times that accommodate caregiving responsibilities, such as school holidays. Annual leave at half pay allows these employees an opportunity to provide care at times they otherwise are not able to, which promotes their own health and wellbeing as well as balanced sharing of responsibilities with other caregivers in their household or community.
104. The ANMF proposes the Nurses Award be varied to include provision for employees to take annual leave at half pay, provided it is granted only at the request and agreement of the employee and not by employer directive.
105. The ANMF suggests the variation reflect the model clause used in variations to modern awards in relation to pandemic leave³³:

X.2.2 Annual leave at half pay

³² Gu F, et al. Total and cause-specific mortality of U.S. nurses working rotating night shifts. *Am J Prev Med*. 2015 Mar;48(3):241-52. doi: [10.1016/j.amepre.2014.10.018](https://doi.org/10.1016/j.amepre.2014.10.018). Epub 2015 Jan 6. PMID: 25576495; PMCID: PMC4339532.

Zhao, Isabella & Turner, Catherine. (2008). The impact of shift work on people's daily health habits and adverse health outcomes. *Australian Journal of Advanced Nursing*. 25.

https://www.ajan.com.au/archive/Vol25/AJAN_25-3_Turner.pdf

Books, Candie RN, BSN; Coody, Leon C. MSN, FNP; Kauffman, Ryan MSNA, CRNA; Abraham, Sam DHA, MS, RN. Night Shift Work and Its Health Effects on Nurses. *The Health Care Manager* 36(4):p 347-353, 10/12 2017. | DOI: [10.1097/HCM.0000000000000177](https://doi.org/10.1097/HCM.0000000000000177)

³³ [2020] FWCFB 1873 at [100].

- (a) Instead of an employee taking paid annual leave on full pay, at the employee's request, the employee and their employer may agree to the employee taking twice as much leave on half pay.
- (b) Any agreement to take twice as much annual leave at half pay must be recorded in writing and retained as an employee record.

Discussion Questions 14 and 17 – Personal/Carer's Leave

Quantum

- 106. The ANMF submits that the Nurses Award should be varied to provide for 20 days of paid personal/carer's leave per year. The ANMF makes this proposal on the basis it meets the objective of promoting balanced work and care by enabling full workforce participation, incentivising employees to take leave when they need it and to attend to their own health and wellbeing.
- 107. As raised in the Discussion Paper, the reality of providing care is that it extends to substantial time spent arranging related appointments and services.³⁴ Employees with caregiving responsibilities are 'at greater risk of experiencing poor health, psychological distress and low wellbeing than the average Australian adult'.³⁵
- 108. The current 10-day entitlement is exhausted quickly for employees who must attend to caregiving and look after their own health and wellbeing. An inadequate entitlement, particularly for part-time employees with lower leave balances that take longer periods of time to accrue, can prevent employees from taking sick leave when they need it.
- 109. The need for additional leave for frontline nurses, midwives and carers was evidenced in the Covid-19 pandemic with the implementation of pandemic leave for high-risk employees. Heightened risks to health and safety meant these employees exhausted leave entitlements quickly and out of proportion to need. The principle of pandemic leave is still applicable; frontline workers require access to a greater amount of personal/carer's leave to keep themselves and the people they care for either in formal or informal settings, safe and healthy.
- 110. Increasing the quantum will better accommodate individual circumstances. Some employees may have higher caregiving responsibilities and require more days of carer's leave, while others may have no caregiving responsibilities but require additional personal leave for preventative health or the management of chronic injury or illness. The ANMF also supports an additional two-days non-cumulative leave for preventative health care, such as vaccinations, breast screens and pap-smears.

³⁴ Discussion Paper at [235].

³⁵ Productivity Commission, A case for an extended unpaid carer leave entitlement? Inquiry report (September 2023), p. 185.

Definition

111. To support the above, and below at 116, the ANMF proposes a broader definition of personal/carer's leave beyond episodic illness, injury or emergency. A broader definition will support employees to access sick leave when they need it, and to attend to preventative health, such as vaccinations, tests and check-ups. It would also allow employees to attend to the preventative health of the people they provide care to, as well as the administrative arrangements related to being a caregiver.
112. A broader definition of personal/carer's leave would align with a variation to the definition of immediate family and encompass changing social norms that impact to whom and how care is provided, what care means, and what health and wellbeing mean.

Evidence Requirements

113. As outlined in this submission, providing care to others and self can be both costly and time consuming. It is particularly difficult for employees trying to balance these responsibilities with unsociable hours of work, and cost pressures are worse for those in low wage industries and with the increasing cost of living.
114. The ANMF supports an approach to evidence requirements for personal/carer's leave that reduces the number of times an employee must provide documentary evidence. The ANMF notes there are public and private sector enterprise agreements in multiple jurisdictions exempting employees from providing evidence where the absence is less than three consecutive days or for a single day's absence for three occasions in any one year of service. These enterprise agreements also allow employees providing or receiving care for a chronic condition or illness to provide evidence from an approved practitioner that is valid for a period of 12 months. The ANMF notes that these clauses provide for the employer to request evidence in certain circumstances. See Appendix A.
115. These clauses incentivise employees to provide care and take leave when they need to, without the added stressors of the time and cost of obtaining evidence each time. In turn, this promotes full workforce participation by assuring a healthy workforce with access to leave that balances care, wellbeing, and paid employment responsibilities.

Discussion Question 15 - Definition of Immediate Family

116. The ANMF supports the recommendation of the Work and Care Final Report Committee, 'that the definition of 'immediate family' in the *Fair Work Act 2009* be amended and broadened for the purposes of an employee accessing carer's leave'.³⁶ A broadened definition acknowledges changing social norms and demographics, particularly with regard to family composition.
117. Nursing, midwifery and care workforces are diverse. A broadened definition of immediate family is important to recognising and supporting first nations and other culturally and linguistically diverse employees, and employees from the LGBTQIA+ community, to fully participate in work while meeting familial and wider community care needs.

³⁶ Senate Select Committee on Work and Care, [Final Report](#) (March 2023) [8.107].

Discussion Question 16 - Unpaid Carer's Leave

118. The ANMF is of the view that an increased emphasis and reliance on unpaid care arrangements through mechanisms like extended unpaid carers leave will have negative consequences for formal and informal caregivers, as well as care recipients. The ANMFs hesitation to extending unpaid carer's leave is founded on four key concerns.
119. The ANMF submits that extending unpaid carer's leave will have a gendered outcome, as women will be overrepresented when it comes to accessing this type of leave and providing unpaid care. Consequently, women will experience a reduction in future income, retirement income, workforce participation and opportunities for career progression. These outcomes are counterproductive to the objective of gender equality.
120. Facilitation of unpaid care arrangements, underwritten by an assumption that there is substitutability between formal and informal care, does little to challenge the persistent undervaluation of professional, care-based industries like nursing and midwifery. Expanding an unpaid care entitlement will undermine the progress made by the recent work value applications for the Aged Care Award and Nurses Award.
121. The sustainability of informal care arrangements is severely limited without access to appropriate, complementary formal supports and a workforce that delivers those services. An increased emphasis on informal care arrangements in the context of older Australians, for example, undermines the importance and prioritisation that should be given to investment in the aged care workforce and aged care system more broadly.
122. Unpaid carers leave does not solve the issue faced by many informal caregivers who wish to remain in the workforce, but do not have access to robust industrial safeguards that would deliver flexible working arrangements.

Discussion Question 18 - Ceremonial Leave

123. The Nurses Award at clause 23 provides for 'An employee who is legitimately required by Aboriginal or Torres Strait Islander tradition to be absent from work for ceremonial purposes will be entitled to up to 10 working days' unpaid leave in any one year, with the approval of the employer'.³⁷ The ANMF strongly supports First Nations employees having access to an expanded number of days of ceremonial leave and for such leave to be a paid entitlement, and for this provision to be more broadly applied.
124. The ANMF supports all modern awards being amended to include a broader entitlement, such as 'ceremonial, kinship and cultural care leave'. This would complement changes to the definition of immediate family member and appropriately recognise that first nations employees' familial, social and kinship structures and responsibilities often do not align with colonial definitions that have been imposed on these employees. It would also capture the wider range of activities and responsibilities that form cultural and kinship caregiving for first nations peoples.

³⁷ [MA000034] cl 23.

125. The ANMF acknowledges that some private and public sector agreements, in nursing and other social and community care sectors, provide for 20 days paid ceremonial leave. This expanded and paid entitlement acknowledges that such ceremonies and cultural practices can occur over a number of days and in remote locations. Travel alone can exhaust multiple days of leave.
126. The ANMF proposes that the use of the word ‘legitimately’ be removed from ceremonial leave clauses. It suggests that there are illegitimate forms of ceremonial leave for which an employer has the discretion and knowledge to determine the legitimacy status. This is wholly inappropriate and out of step with ensuring social and workplace practices are free from racial discrimination.

Discussion Question 19 - Other Variations to Modern Awards

127. The ANMF has concerns as to the scope of duties that an employer may direct an employee to carry out from home and on unpaid time. The COVID-19 pandemic has required nurses, midwives and carers to undertake additional infection prevention and control measures, such as Rapid Antigen Testing (**RAT**). The ANMF is aware of instances where employers are directing employees to undertake RATs at home prior to attending the workplace and commencing the paid shift. The ANMF submits that such duties form part of the inherent requirements for these employees and should be undertaken in a suitable location at work and on paid time. Carrying out such work at home can result in time away from caregiving, diverted attention from caregiving, and a financial penalty to the employee.
128. The ANMF acknowledges that variations to Awards covering other matters such as work from home, and the separate process to address the legislated right to disconnect in Modern Awards, may substantially address the issue of employer’s directing employees to carry out an increasing scope of duties offsite and on unpaid time. However, the ANMF is concerned that these changes will not entirely address the issue and this review should have a mind to other variations that may be appropriate.

Breastfeeding

129. The ANMF has a long and proud history of advocating for breastfeeding women to have access to paid breaks and hygienic, private facilities at the workplace. The ANMF strongly supports variations to Modern Awards that ensure working conditions support working carers with the recovery from birth, caring for infants and breastfeeding.³⁸ Such variations would ensure Australian workplaces are in-step with their international counterparts and upholding the rights and protections of working parents.
130. The ANMF proposes a variation to the Nurses Award, to be replicated in other Modern Awards, that requires employers to provide reasonable paid break time for employees to express breast milk each time they need to within the workplace, for one year after the child’s birth. The employer must also provide a comfortable and clean place, other than a bathroom, that is shielded from view and free from intrusion from co-workers and the

³⁸ Discussion Paper at [219].

public, which the employee may use to express breast milk or breastfeed a child in privacy and make available appropriate refrigeration in proximity to the area for breast milk storage.³⁹

131. At Appendix A, the ANMF has provided a model clause for breastfeeding from the *Nurses and Midwives (Victorian Public Health Sector) (Single Interest Employers) Enterprise Agreement 2020–2024*.

A shorter working week

132. It has been almost 35 years since the 38-hour working week began to be implemented. The profile of working Australia has changed dramatically. Women’s workforce participation is higher than it has ever been; the economic imperative of having dual income households is a feature the industrial landscape has not previously seen. Technology has evolved significantly, both increasing productivity and flexibility for employees and employers.
133. The ANMF supports a gradual reduction of maximum ordinary hours as an important lever that could be pulled to increase the number of hours available to workers to better balance their own wellbeing and care responsibilities. We share the view of the Senate Select Committee that a shorter working week will promote gender equality by ‘offering the possibility that caring responsibilities can be more easily shared between working partners’⁴⁰ and this will have a positive effect on women’s workforce participation and social and economic outcomes.

Conclusion

134. The ANMF welcomes the opportunity to participate in the Work and Care stream of the Modern Awards reviews. The intersecting issues of gender equality, caregiving and decent working conditions are widely and deeply felt by the ANMF membership. Taken together, the variations proposed in this submission will deliver on multiple and intersecting modern award objectives. Additionally, they will complement the other streams of review for the modern awards, supporting a comprehensive and holistic reform process.

³⁹ See: [AE514984](#) at cl. 69.

⁴⁰ Senate Select Committee on Work and Care, [Final Report](#) (March 2023) [6.94 and 6.95].

Appendix A – EA Clauses and Nurses Award Provisions

Rosters –

*Nurses and Midwives (Victorian Public Health Sector) (Single Interest Employers) Enterprise Agreement 2020–2024.*⁴¹

45. Rosters

This clause does not apply to casual Employees, DONs or Deputy DONs.

45.1 The ordinary hours of full-time and part-time Employees will be worked according to a written roster that will:

- (a) be of at least 28 days duration;
- (b) be posted at least 28 days before it comes into operation in each work location where it can be readily seen by Employees and representatives of the Employees, including the Unions, without notice; and
- (c) as far as is practicable reflect the roster each Employee will work.

Nothing in this clause precludes an Employer also issuing the roster or the on-call roster in electronic form.

On-call and recall to duty –

Nurses Award 2020 MA000034, clause 19

19.6 Recall to work when on-call

- (a) An employee who is required to be on-call and who is recalled to work at the workplace will be paid for a minimum of 3 hours' work at the appropriate overtime rate.
- (b) An employee who is required to be on-call and who is required to perform work by the employer via telephone or other electronic communication away from the workplace will be paid at the appropriate overtime rate for a minimum of one hour's work. Multiple electronic requests made and concluded within the same hour shall be compensated within the same one hour's overtime payment. Time worked beyond one hour will be rounded to the nearest 15 minutes.

19.7 Recall to work when not on-call

- (a) An employee who is not required to be on-call and who is recalled to work at the workplace after leaving the employer's premises will be paid for a minimum of 3 hours' work at the appropriate overtime rate.

⁴¹ See: [AE514984](#) at cl. 45.

- (b) An employee who is not required to be on-call and who is required to perform work by the employer via telephone or other electronic communication away from the workplace will be paid at the appropriate overtime rate for a minimum of one hour's work. Multiple electronic requests made and concluded within the same hour shall be compensated within the same one hour's overtime payment. Time worked beyond one hour will be rounded to the nearest 15 minutes.

On-call and recall to duty –
Nurses Award 2020 MA000034, clause 13

13. Ordinary hours of work and rostering arrangements

13.1 Ordinary hours and roster cycles

(a) Span of hours—day worker

Ordinary hours of work for a **day worker** are worked between 6.00 am and 6.00 pm, Monday to Friday.

- (b) A **shiftworker** is an employee who is regularly rostered to work their ordinary hours of work outside the span of hours of a day worker as defined in clause 13.1(a).

- (c) The ordinary hours of work for a full-time employee will be:

- (i) 38 hours per week; or
- (ii) 76 hours per fortnight; or
- (iii) 152 hours over 28 days.

- (d) The shift length or ordinary hours of work per day will be a maximum of 10 hours exclusive of meal breaks.

- (e) An accrued day off (ADO) system of work may be implemented where a full-time employee works no more than 19 days in a 4 week period of 152 hours.

- (f) Each employee must be free from duty for not less than:

- (i) 2 full days in each week; or
- (ii) 4 full days in each fortnight; or
- (iii) 8 full days in each 28-day cycle.

- (g) Where practicable, days off referred to in clause 13.1(f) must be consecutive.

(h) For the purposes of clause 13. (f) and 13.1(g), duty includes time an employee is on-call. (emphasis added)

- (i) The hours of work will be continuous, except for meal breaks. Except for the regular changeover of shifts, an employee will not be required to work more than one shift in each 24 hours.

*Personal/Carer's Leave –
Department of Health and Aged Care Enterprise Agreement 2024–2027.*⁴²

Use of personal/carers leave

- 301) Personal/carers leave gives employees access to paid leave, subject to available credits, when they are absent due to:
- a) personal illness or injury;
 - b) attending appointments with a registered health practitioner;
 - c) managing a chronic condition;
 - d) providing care or support for a family member (including household member) or a person they have caring responsibilities for, because:
 - i. of a personal illness or injury affecting the other person; or
 - ii. of an unexpected emergency affecting the other person;
 - e) for compelling personal reasons of an unexpected, urgent and unpredictable nature; and/or
 - f) to attend preventative health consultations for the employee and/or those in the employee's care.
- 302) Employees are also able to utilise personal/carers leave where they have caring responsibilities for a family member who:
- a) has a medical condition, including when they are in hospital;
 - b) has a mental illness;
 - c) has a disability;
 - d) is frail or aged; and/or
 - e) is a child, not limited to a child of the employee.

Satisfactory evidence requirements

- 304) A certificate from a registered health practitioner may be used as evidence of a chronic condition for up to 12 months for both personal and carer's leave.
- 305) An employee may be requested to provide satisfactory evidence to support applications for personal/carers leave for more than three consecutive days.

*Breastfeeding - Nurses and Midwives (Victorian Public Health Sector) (Single Interest Employers) Enterprise Agreement 2020–2024.*⁴³

⁴² See [AE523185](#) at Part E 'Leave' [301-302] and [304-305].

⁴³ See: [AE514984](#) at cl. 69.

69.1 Paid break

Each Employer will provide reasonable paid break time for an Employee to express breast milk for her nursing child each time such Employee has need to express the milk, or breastfeed the child within the workplace, for one year after the child's birth.

69.2 Place to express or feed

Employers will also provide a comfortable place, other than a bathroom, that is shielded from view and free from intrusion from co-workers and the public, which may be used by an employee to express breast milk or breastfeed a child in privacy.

69.3 Storage

Appropriate refrigeration will be available in proximity to the area for breast milk storage. Responsibility for labelling, storage and use is with the Employee.