



Australian
Nursing &
Midwifery
Federation

Submission to Productivity Commission Inquiry into the Workplace Relations Framework

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'Perhaps some of what underpins current concern about the role of fairness in industrial relations, is the never-ending problem of the society we would like to have and the one we can afford. A question which we should be facing directly, is whether, having acted to ensure fairness in industrial relations for over a century, now that former third world countries are successfully competing with us and working to emulate the success of societies like ours, we no longer see ourselves as able to afford such fairness in our own society?

I suggest that the concept of fairness ought not to be swept aside at the beginning of this century, as being incapable of producing economic outcomes which Australia requires in the future, or as no longer necessary or affordable, as the basis of our industrial relations systems.

It is impossible to imagine that an unfair society will deliver Australia either economic success, or the kind of place we would wish upon our children, when they grow up, hopefully to take our place. Nor is it reasonable to expect that the social welfare system can cure unfairness in people's working lives.'

Justice Monica Schmidt: *The Way Ahead for Industrial Relations*,
2005 address to the NSW State Chamber of Commerce

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INTRODUCTION

The Australian Nursing and Midwifery Federation (ANMF) makes the following submissions to the Productivity Commission Inquiry into the Workplace Relations Framework announced by the commonwealth government in December 2014.

In preparing this submission the ANMF have had regard to a number of specific matters addressed in the Commission's Issues Papers as well as addressing broader themes in response to the Terms of Reference.

The sprawling scope of this Inquiry means the Productivity Commission has embarked on a review of employment law and industrial relations that is important to each and every one of us, to our families and to the future of our country.

In substance it is a debate about our priorities as a community, between economic goals and social justice, over raw versus regulated capitalism and over corporate power versus public needs.

The ANMF enters this discussion firmly embracing the principle that labour regulation should first and foremost protect and promote the nature and dignity of humanity and work.

The nature and dignity of humanity and work means employees cannot be treated as commodities, nor can their labour be treated in purely economic terms. Accordingly the ANMF strongly believe Australian employment and labour laws should reflect the values that are important to our society including the public interest, the fair go, the right to reasonable wages and working conditions, institutional independence, due process and the transparent, recognition, application and regulatory support for collective representation.

The ANMF

The ANMF is the national union for nurses, midwives and assistants in nursing with branches in each state and territory of Australia. The ANMF is also the largest professional nursing and midwifery organisation in Australia. The ANMF's core business is the industrial, professional and political representation of its members.

As members of the union, the ANMF represents over 240,000 registered nurses, midwives and assistants in nursing nationally. They are employed in a wide range of enterprises in urban, rural and remote locations, in the public, private and aged care sectors including nursing homes, hospitals, health services, schools, universities, the armed forces, statutory authorities, local government, and off-shore territories and industries.

Demographics on the employment of nurses and midwives

Nurses and midwives form the largest health profession, providing health care to people across their lifespan. They work independently or as collaborative members of a health care team in settings which include hospitals, rural and remote nursing posts, Indigenous communities, schools, prisons, residential aged care facilities, the armed forces, universities, TAFE colleges, mental health facilities, statutory authorities, general practices, businesses, professional organisations and people's homes.

Nurses and midwives provide professional and holistic care, working to promote good health, prevent illness, and provide care for the ill, disabled and dying. Nurses also work in non-clinical roles to educate undergraduate and newly graduated nurses, conduct research into nursing and health related issues and participate in developing health policy and systems of health care management. Nursing and midwifery are regulated professions. By law, before nurses and midwives may practice, they must be registered or enrolled by the Nursing and Midwifery Board of Australia (NMBA).

The nursing and midwifery professions

Australia has two levels of regulated nurse—registered nurses and enrolled nurses. Registered nurses working at an advanced level and holding a recognised post-graduate qualification may be eligible to seek endorsement as a nurse practitioner. The four titles protected by legislation are: 'registered nurse', 'enrolled nurse', 'registered midwife' and 'nurse practitioner'. These titles may only be used when permitted by the NMBA. Another group of health care worker, assistants in nursing (AINs), also deliver aspects of nursing care. Assistants in nursing do not yet have consistent educational preparation or competency standards as they are not regulated by the NMBA. The ANMF supports the regulation of AINs. There are over 85,000 AINs in Australia, who are mostly employed in aged care.

The latest published data for the nursing and midwifery workforce from the Australian Institute of Health and Welfare (AIHW) is the *Nursing and Midwifery Workforce 2013* published online in 2014. According to the AIHW, there were 344,190 nurses licensed¹ in Australia in 2012. Of these, 285,698 (83%) were registered nurses and 58,492 (17%) were enrolled nurses.²

Table 1
Nursing and Midwifery Workforce 2004-2013

Year	2004	2005	2007	2008	2009	2011	2012	2013
In Workforce	253,592	254,956	277,297	283,087	291,246	303,010	311,176	317,988
Not in workforce	29,110	30,663	28,538	29,649	29,735	23,659	22,902	26,202
% of RNs & ENs not in workforce	10.3	10.7	9.3	9.5	9.3	7.2	6.9	7.6

Overall, 33,969 nurses were authorised as midwives. Of these, 2,714 were registered midwives only.³

The overall supply of employed nurses and midwives in Australia increased by 3.3% between 2009 and 2013, from 1,118 FTE per 100,000 population in 2009 to 1,155 in 2013.

In 2013, 44.7% of the registered nurse workforce and 57.4% of the enrolled nurse workforce worked part time hours (defined by AIHW as less than 35 hours per week). The average number of hours worked per week for 2013 is 34.3 hours, (34.8 hours for registered nurses and 31.7 hours for enrolled nurses).⁴

The industrial history of nurses and midwives

The industrial history of nursing and midwifery is steeped in the recognition of two distinct features:

1. Consistent minimum wages and employment conditions for nurses and midwives

¹ Registered nurses, midwives and enrolled nurses

² AIHW 2014 *Nursing and Midwifery Workforce 2013* [http://www.aihw.gov.au/workforce/nursing-and-midwifery/Supplementary Tables Table 2](http://www.aihw.gov.au/workforce/nursing-and-midwifery/Supplementary%20Tables%20Table%202)

³ Ibid Tables 1 and 2

⁴ AIHW 2014 op cit Table 11

The history recognises the professions work across a diverse range of settings in the health and welfare sectors and, while diversity is characteristic of the occupations, all nurses and midwives are prepared for professional practice through specific courses and programs derived from the discrete knowledge base and discipline. This is well established in tertiary, post-secondary (TAFE) and accredited hospital/health service training institutes and centers.

All contexts of practice/employment for nurses and midwives constitute similar occupational habitat concerns for example: role development; ongoing education; research and knowledge generation; service delivery models and innovation in the delivery of nursing and midwifery ; safe, quality professional practice environments (reasonable workloads, safe skill mix, adequate recruitment and retention of licensed workers, safe workplaces; participatory mechanisms, nursing models).

It is recognised that occupational identity derives from the core beliefs/values central to the role of nurse/midwife whatever the practice context. These are widely agreed and evidenced (in role statements, occupational research, international professional codes, statutes and regulations, policy and practice references) as knowledgeable human caring, professionalism, advocacy, and holism.

As professions nurses and midwives strongly identify with each other regardless of the sector in which they work. This also serves to make them a clearly identifiable group by employers and the public.

This characteristic of occupational identity, entrenched in the nursing and midwifery labour market, has, in part, resulted in federal and state industrial tribunals favoring a consistent safety net of minimum wage and employment conditions in awards.

This process commenced in the federal arena during 1986 and 1992 when the Australian Industrial Relations Commission (AIRC) developed common national nursing industry rates of pay and conditions of employment.

A detailed examination as to the processes and reasons why the AIRC established and maintained awards with common pay and employment conditions structures is incorporated in a number of decisions , vis Prints G7200 (7 May 1987), J0855 (21 December 1989), J4011 (21 August 1990), J8402 (17 July 1991), and K3662 (10 July 1992).

In setting the wage rates for registered nurses in federal awards the tribunal in Decision Print J 4011 stated:

“In considering appropriate rates we have ourselves had regard to the following factors:

- The history of recent wage fixation for nurses by both federal and state tribunals, including those of New south Wales and Victoria;
- The structure of nursing classification in federal and state awards;
- Programmes which have been established in implementing consistency of pay related conditions in federal nursing awards;
- Evidence as to work value and the agreement of all employing authorities respondent to the federal awards as to work value comparability justifying common incremental scales and common rates at Levels 1, 2 & 3 in these awards;
- The submissions of the parties as to cost;
- Rates applying to other health professionals. In this respect we refer to the Statement of the Full Bench in the National Wage decision on August 1989. That paid rates awards should not be fixed at a level which will affect the rates for other workers;
- The need to ensure proper application of the wage fixing principles, in particular structural efficiency principles which requires that “structural efficiency exercises should incorporate all past work value considerations”;
- The familiarity with standards of remuneration for work requiring different levels and qualifications and skills; and
- The assurances of the ACTU which proposed rates higher than those we are granting, that there will be no pressure to flow on to other health professionals or other groups within the hospital environment...” (Print J4011 at pg. 10).

In 1998 the history of the fixation of nurse's wages was again considered by the AIRC in the Paid Rates Review Test Case (Paid Rate Review Decision Print Q7661, October 1998).

At paragraph 18 of the decision the tribunal held:

We accept the submissions that although the rates contained in the awards (excluding Appendix A) have been treated as paid rates awards in the past, they are nevertheless properly fixed minimum rates with rates for the relevant classifications being within the acceptable range of relativities in minimum rates awards. We are also satisfied that the incremental salary levels for nurses and enrolled nurses within the classification structures of the two nursing awards form part of the work value assessment of nurses' rates of pay conducted by full Benches of the Commission in the development of professional rates for the nursing profession in federal awards. Accordingly, they are not affected by our decision. (See Full Bench decisions in Re. Determination No 195 of 1970 [Nursing Staff RANF] [Print J4011] and Re. Hospital Employees Etc. (Nursing Staff – ACT) Award 1980 [Print K3662].

The history of nursing and midwifery minimum wages and conditions, their establishment and maintenance, is significant because the history in part reflects the cogent and consistent considerations of industrial tribunals in seeking to preserve national industrial standards on the basis of the skills, experience and qualifications of the nurse or midwife rather than the state, territory or sector in which they may be employed.

Even today, while wage rates may have become fragmented due to enterprise bargaining, with a few exceptions conditions of employment have remain broadly consistent across all employment settings.

Similarly issues such as labour shortages, workload management and poor wages and conditions are common across the workforce be they covered by an agreement or stranded on the award.

The impact of public funding

The second occupational characteristic that is a feature of the workforce is the exposure of nurses and midwives to service providers who are largely dependent on public funds and who have little capacity to generate revenue.

It is estimated 70% to 80% of nurses and midwives are employed in workplaces that receive public monies to meet labour costs and, in sectors such as aged care and public hospitals, employers receive the bulk of their funding from government.

It has been broadly recognised the failure to appropriately fund services, coupled with an inability to generate revenue, has resulted in employers of nurses and midwives being slow to embrace enterprise specific bargaining and has also generally put downward pressure on wages and employment conditions, leading to recruitment and retention problems and declining health care standards.

An example of the failure of the commonwealth to adequately fund residential aged care facilities in the Northern Territory resulted in the AIRC reflecting on these systemic limitations by observing:

“It is not consistent with equity and good conscience for a society, or for that matter a government, to impose on those who staff such institutions an undue degree of responsibility for the dilemmas of funding and services that appear to be chronic. Nor is it consistent with good conscience to fail to address patient incapacity to deliver a relatively equivalent level of remuneration for work of equal value. Substantial differences which appear to exist in the effective remuneration available to professional aged care service providers in such institutions and comparable staff in other health and human services institutions in the public or private sectors. That circumstance should either be justified or redressed; it should not be simply ignored”.

(AIRC Decision Print S6646 at para 27- Munro J, Duncan DP and Eames C)

The nature, size and distribution of the industry and profession also has led to limitations on the adjustment of nurses and midwives wages because, unfortunately, the issue of costs has repeatedly been a feature in the fixation of wage rates , often regardless of other factors attaching to the valuation of the work. The fact that they are the largest single group within the health system has often put the brake on increases in award/agreements rates.

The difficulties this issue poses within the current enterprise bargaining framework are addressed further in this submission.

COMMENTS ON ISSUES PAPER NO. 1

The Scope and Aim of the Inquiry

It is unfortunate that the government has chosen to embark on another broad ranging inquiry into Australia's industrial relations system. There have been many such enquiries with copious submissions and data being provided. Indeed, the material has been so voluminous that a better starting point for the Productivity Commission might have been a literature review and bibliography rather than the discussion papers and the questions posited within. It is trite to suggest that the previous materials presented to the various inquiries have been merely polemical. There is significant data and research available to the Commission.

A literature review would show that the competing policy tensions in determining the appropriate legislative mix for governing the employment relationship in Australia have remained relatively unchanged, other than some evolving issues reflective of developing societal norms. Those policy tensions manifest in a push on the one part to reduce unit labour costs, reduce regulation and diminish collective bargaining strength and on the other to raise and improve the safety net of wages and conditions and place collectivism at the center of the bargaining unit.

Proposals for change to the system on the one hand advocate greater emphasis on 'productivity' (howsoever defined, or undefined) as a determinate of the employee employer bargain, to greater individual 'flexibility,' to greater decentralisation, or to competition policy and on the other hand advocate greater recognition of the bargaining unit, greater incorporation of unions in the regulatory functions of the industrial relations institutions and more robust safety nets and individual protections. These debates do not need further enquiry.

What the discussion papers and the questions embedded therein fail to address is one of the truly key issues affecting work in Australia today and in particular the nursing and midwifery workforce. That is the continuing gender division of labour and the increasing gap between male and female wages. That gap is now at a 20 year high and is acute in the health and social services sectors.

Any proposals from this inquiry for change to the workplace relations system that does not place gender equity at their core will necessarily fall short.

In September 2008 the (then) ANF submitted to the House of Representatives Inquiry into pay equity and associated issues related to increasing female participation in the workforce (That submission is available upon request). The submission set out in general terms some of the issues that contribute to the gender based pay gap:

Many factors contribute to the gender pay gap including the historical and continuing undervaluing of women's work, levels of workplace participation, workplace conditions and the way work is organised, tribunal processes and methods of setting wages and conditions, education and training and other workplace factors such as access to overtime and higher levels of casualisation and part-time work for females.

The submission went on to expand on these factors. A proper question for the Productivity Commission is what changes need to be made and what measures should be introduced into the industrial relations system to redress the gender based inequity in the Australian workforce. The ongoing inequity is demonstrative of an institutionalised lack of respect for work undertaken by women. Lack of respect is also at the core of violence against women. The cost to the Australian economy and the damage to Australian society through the continuing failure to place these issues at the core of inquiries such as this one are extreme.

1.2 *The Commission encourages stakeholders to give their views on the appropriate objectives of the WR system, how these can be balanced and their capacity to adapt to future structural change and global economic trends.*

A principle concern of the ANMF is that the nomenclature used in law and commentary in the world of work and the relationships and bargains between employees and employers focuses on the workplace or the enterprise. Section 3(f) of the Act sets out that the legislative framework is to:

Promote[s] national economic prosperity and social inclusion for all Australians by: achieving productivity and fairness through an emphasis on enterprise-level collective bargaining

The legislative framework is such as to promote the conduct of industrial relations at the enterprise level to the exclusion of other groupings such as industry, sector or occupation. It is submitted that the Commission should carefully examine the impact of this enterprise focus on the gendered inequity in wage outcomes. An enterprise focus is inappropriate in occupations where the broader Australian public requires a nationally consistent set of standards and regulations for its care and protection. It is inappropriate where a third party controls the funding and therefore directly effects the employer's capacity to deliver wage increases as is the case in government funded organisations delivering nursing services. An enterprise focus is inappropriate where the employees' capacity to bring industrial pressure to the bargaining process is curtailed due to the nature of the work that is undertaken. Nursing and midwifery are such occupations.

Elsewhere in this submission there is some exposition on the difficulties in defining productivity in the sectors where nurses and midwives are usually employed. Productivity if it can be defined at all is complex, multi factored and best measured at an industry or occupational level. Enterprise focused bargaining will inevitably fail to address productivity in nursing and consequently lead to a decline rather than an improvement in productivity.

Beyond their advantages in providing lessons about parts of the WR system and any of its flaws, are there broad lessons for Australia from overseas WR arrangements?

What are the most rigorous and comprehensive measures of the nature and impacts of international WR arrangements? What are the strengths and weaknesses of the existing measures?

The Commission should guard against the idea that 'less is more' when looking to overseas comparisons in industrial regulation. It is well established that the Australian system had a unique and innovative development based on equitable concepts and the resolution of difference through compromise. The specific power in the Australian Constitution for dealing

with employment relations Section 51(xxxv) that in turn led to a conciliation and arbitration system in Australia had as its core resolution of the competing policy tensions. That section now has little work to do and the legislators have sought to regulate employment relationships through the use of the Corporations power section 51(xx). Yet the unique and innovative approach based on equitable concepts and the resolution of difference through compromise remain ingrained. International comparisons with systems that have had a different evolution need to be treated with some caution.

In order to properly address the issues in the world of work the Productivity Commission should be examining how it is that the fundamental underpinning set of principles for the industrial relations framework in Australia have been realised in their recent legislative incarnations. As we have stated, there is a real failure when it comes to gender equity. Therefore if such principles are apparently no longer to be found in Section 51(xxxv) of the Constitution and not realised in Section 51(xx) of the Constitution then perhaps a new foundation needs to be established. In an international globalised economy where capital is moved freely between nation states, where trade agreements are potentially able to be used to attack legislation protecting workers rights as being uncompetitive, where collective bargaining is also attacked as being uncompetitive and where arguments about productivity continue to use unit labour cost comparisons, the Productivity Commission must look to internationally accepted standards to underpin the legislative framework. Those standards exist and have been developed by the International Labour Organisation.

It is not how individual countries regulate their industrial relations that is relevant, it is what fundamental international principles are established and should apply that is relevant.

Australia has ratified 58 of the Conventions of the International Labour Organisation (41 of which remain in force). This includes seven of the eight fundamental conventions: the *Forced Labour Convention 1930* (29), the *Freedom of Association and Protection of the Right to Organise Convention 1948*(87), the *Right to organise and collective bargain convention 1949*(87), the *Equal Remuneration Convention 1951*(100), *Abolition of Forced Labour Convention 1957*(105), *Discrimination (Employment and Occupation) Convention 1957*(111) and the *Worst Forms of Child Labour Convention 1999*(182). The Australia has not ratified the *Minimum Age Convention 1973* (138).

The ratification of a convention has little or no effect on Australian domestic law however. The provisions of a Convention only become part of Australian domestic law if they are incorporated by specific legislation implementing the provisions of a convention.

The connection between Federal Industrial Relations legislation and the international conventions has been at best marginal and since 1996 increasingly remote. The high point of the connection was made in the *Industrial Relations Act 1988* by the *Industrial Relations Reform Act 1993*. That Act had a constitutional footprint that included the foreign affairs power. It had as one of its objects “providing the means for ensuring that labour standards meet Australia’s international obligations” (s3(b)(ii)). The text of many parts of that Act were expressed “to implement” ILO conventions. For example the minimum wage apparatus in the 1988 Act (Division 1 Part VIA) was expressed to implement the Minimum Wage Fixing Convention 1970 (C No 26), the equal pay for work of equal value provisions in Division 2 Part VIA sought to implement the *Equal Remuneration Convention 1951*(100) and the unfair dismissal provisions in Division 3 of Part VIA of the 1998 Act were designed to implement the *Convention on the Termination of Employment Convention 1982* (158).

Since the *Workplace Relations Act 1996* the Federal Parliament has ceased using the implementation of international conventions through the foreign affairs power as the constitutional foundation of the federal statutory labour law.

The impact of the increasing divergence of Australian statutory labour law from international legal norm is compounded by the fact that there are a series of conventions which Australia has not ratified.

It is worthy of note that the greatest gender based wage inequity for 20 years coincides with 20 years of enterprise bargaining and 20 years of departure from accepted international standards for industrial relation regulation

The Commission invites participants to submit proposals they consider would improve the operation of the WR system together with supporting evidence and argument.

In the Australian discourse the components of the employer employee bargain in work have been wages and conditions, flexibility, fairness, labour cost, productivity and third party recognition in the bargain (either representative or tribunal). Yet some fundamental rigidities and barriers have been largely unaddressed. Those rigidities and barriers are in decision

making and are established with the doctrine of management prerogative. There is a pressing necessity for democratic and participatory mechanisms in the Australian industrial relations system that recognises the importance of employee participation in decision-making about the way that work is carried out and other areas of significance to an enterprise. This is especially the case in occupations such as nursing where the work carried out is knowledge based work. There is a real failure to maximise the potential benefits in workplaces where knowledge based employees are disbarred from participating in decision making as a consequence of outdated concepts and doctrines of 'management prerogative.' Suitable models for employee participation can be found in the European works councils. It defies logic to resist the implementation of such structures through enabling legislation when the positive impact of workplace health and safety committees on improvements to workplace safety is examined.

Over the last 20 years there have been many submissions alerting and warning policy makers of the likely and actual impact of industrial relation policies and legislation on women. This submission is another one. Whether characterized as transitional costs, unintended consequences or unanticipated risks the fact is that women have not benefitted equally from many of the features of the last 20 years of industrial relations regulation. Society and the economy have been fettered as a consequence. Therefore central to any changes posited by the Productivity Commission must be addressing gender inequity.

What is the role of industrial laws?

The primary role of industrial law is to protect employees through the regulation of labour market and it is widely acknowledged and accepted regulation of the labour market must have regard to long held Australian values that, because of the nature and purpose of work, employees cannot be simply treated like other parts of the economic process. Put another way the values of society cannot be separated from the values of the workplace.

Australia's industrial laws are rooted in our culture and may be properly seen to be integral to our societal and industrial balance.

Labor regulation is essential to a functional economy. Properly set and enforced, these regulations should be adequate to guard against exploitation, ensure that minimum standards are established and periodically reviewed. In the process, they promote broad and rising prosperity, as well as public confidence.

Labour laws also support stable relationships between business and workers at an industry or enterprise level. ANMF notes Australia's national labour laws have been anything but stable with a plethora of reviews and change, over the last two decades in particular. This constant volatility does not only create uncertainty but feeds expectation of further change.

COMMENTS ON ISSUES PAPER 2

The appropriate role of minimum wages

Minimum wages play an important role and forms part of Australia's industrial fabric.

The legislated federal minimum wage is specifically intended to take aim at the inherent imbalance in power between employers and low-wage workers that can push wages down to poverty levels. An appropriate wage floor set by regulation effectively substitutes for the bargaining power that low-wage workers lack.

The *Harvester* case (HV McKay 2 CAR [1907]) is perhaps the most iconic court decision in the history of the setting of minimum wage rates in Australia. In that case, the President of the Australian Court of Conciliation and Arbitration, Justice H.B. Higgins, made observations which could be considered an internationally recognised articulation of the protective purpose of labour law.

Higgins observed that the provision for 'fair and reasonable remuneration' in the relevant legislation 'must be meant to secure to [employees] something which they cannot get by the ordinary system of individual bargaining with employers', which Higgins referred to as "the higgling of the market" for labour'. Instead, fair and reasonable remuneration must have as its starting point 'the cost of living as a civilised being'.

The *Harvester* case is therefore famous for setting a precedent that legal minimum wages in Australia were to be a 'living wage', and confirming that the underlying purpose of Australian labour law is the protection of employees.

The right to minimum wages remains vitally important to large numbers of working Australians. And despite the media hype most of them do not fit the low-wage stereotype of a teenager with casual employment in their local supermarket. Many are adults with dependent children and who work on a full time basis.

Those opposed to the establishment or adjustment of minimum wages argue that by raising the cost of labour, a higher minimum wage will hurt businesses often leading them to cut jobs and harming the low wage workers it is intended to help . Alternatively they argue it will hurt consumers by pushing up prices. Both arguments are simplistic.

While there is little consensus on the impact of increases in wages on employment it is worth noting, in its annual wages review, the Fair Work Commission, having regard to extensive submissions and evidence on both sides of the debate, has repeatedly held, in a growing economy modest increases in the minimum wage have little or no impact on employment levels.

In the March 2015 IMF Finance and Development Report looking to the employment impact of movements in the minimum wage the IMF noted:

“Some economists argue that while stronger unions and a higher minimum wage reduce wage inequality, they may also increase unemployment by maintaining wages above “market-clearing” levels, leading to higher gross income inequality. But the empirical support for this hypothesis is not very strong, at least within the range of institutional arrangements observed in advanced economies (see Betcherman, 2012; Baker and others, 2004; Freeman, 2000; Howell and others, 2007; OECD, 2006).

<http://www.imf.org/external/pubs/ft/fandd/2015/03/jaumotte.htm> at page 30

Even if a change in the minimum wage did have a marginal negative effect on employment it is worth noting that low income earners spend most if not all of their income. Accordingly minimum wages along with penalty rates earned by low paid workers are effectively returned to the local economy, which in turn increases employer profits and creates employment.

Regarding the appropriate level of the federal minimum wage ANMF supports the ACTU policy:

“minimum wages should be sufficient to allow a worker to participate in and to belong to Australian contemporary society. To ensure this is the case, the worker’s wages should be sufficient to meet his or her needs without relying on transfer payments from government, or the depletion of any assets the worker owns, or transfers within a household”. (ACTU preliminary submission to the Annual Wage Review 2011-12 at page 2)

We also support the periodical review and adjustment of minimum wages by an independent authority. Not only does this help ensure that inequality and poverty levels don’t deteriorate, an important social issue, it also ensures the FMW along with modern award wages remain relevant in the labour market. Above and beyond the wages safety net, the recognition of education, qualifications, skills and experience are remunerated in award pay scales and through agreements. The importance of this work being undertaken by an independent authority is self-evident.

Nursing and midwifery minimum wages

The importance of the minimum wage and safety net for nurses and midwives cannot be underestimated. The barriers that nurses have had in having their work properly valued and the inappropriate enterprise focus as the principle mechanism for increasing wages have resulted in a reliance by the nursing and midwifery workforce on movements in the safety net to increase their wages.

The maintenance and steady increase in the minimum wage therefore has been the principle driver of increases in nursing and midwifery wages. The minimum wage and the NES are the principal mechanisms by which the wages and conditions of nurses and midwives are determined. Movements in nursing and midwifery wages have reflected movements in the minimum wage. Relativity of the minimum wage to nurses and midwives wages has remained constant.

This can be contrasted with the rest of the workforce where compared to other earnings, the value of the minimum wage in Australia has declined over recent decades. This reflects higher rates of growth in these earnings rather than a fall in the minimum wage. (Bray 2013).

There is a real danger inherent in arguments around the reduction of the minimum wage that the employees who will be affected in any reduction, will be women and especially low paid women and especially those in the caring professions such as nurses and midwives and assistants in nursing.

As the table below shows relationship between the minimum wage and key nursing classifications has remained relatively unchanged. Likewise increases in nurses' wages reflect the increases in the minimum wage (the Commission may also be interested in comparing these ratios with those set out in Figure 2.2 in the discussion papers).

Table

	FMW	AIN	EN	RN	Ratio RN	Ratio EN	Ratio AIN
2007	\$ 522.19	\$ 648.19	\$ 761.26	\$ 1,046.69	50%	69%	81%
2008	\$ 543.78	\$ 659.02	\$ 790.03	\$ 1,084.55	50%	69%	83%
2009	\$ 543.78	\$ 692.19	\$ 810.73	\$ 1,124.98	48%	67%	79%
2010	\$ 569.90	\$ 709.39	\$ 822.32	\$ 1,141.04	50%	69%	80%
2011	\$ 589.30	\$ 716.06	\$ 854.79	\$ 1,152.23	51%	69%	82%
2012	\$ 606.40	\$ 731.12	\$ 895.28	\$ 1,182.94	51%	68%	83%
2013	\$ 622.20	\$ 755.82	\$ 927.58	\$ 1,231.96	51%	67%	82%
2014	\$ 640.90	\$ 773.68	\$ 956.46	\$ 1,280.60	50%	67%	83%
07-14 \$	\$ 118.71	\$ 125.49	\$ 195.20	\$ 233.91			
07-14%	23%	19%	26%	22%			

In the interests of public protection and consistency there has been a move to national regulation of the nursing and midwifery workforce. It should also be recognised that industries like health and aged care need consistency of wages, conditions and standards otherwise labour recruitment and retention problems associated with differential rates become apparent. This in turn leads to industry inefficiencies, substitution practices and greater medium term cost pressures on governments.

Women are disproportionately reliant upon, and receiving, the minimum wage across a number of industries (Bray 2013). It follows that any reduction in the minimum wage will further exasperate the gender inequality.

A reduction in the minimum wage will see a reduction in the wages of the lowest paid nurses and midwives in the health sector and a corresponding reduction in the skills base.

Safety Net

There is a real necessity to maintain a balanced and fundamental safety net of wages and conditions based on the employment relationship as distinct from an intermingling of low paid employment with the social welfare safety net system. Current industrial legislation establishes that industrial safety net through the minimum wage, the national employment standards, modern awards and certain employee protections.

Governments and society continue to insist that being in work should be the principle objective and purpose of adult human activity. We are being asked to work longer in order to reduce reliance on a social welfare safety net.

The Commission's discussion papers posit whether Australia should we accept a dismantling of the industrial safety net and develop alternative protections through subsidies, tax transfers and similar mechanisms. The real danger, and nurses have seen this occur all too often, is that by intermingling the social welfare safety net with the mechanisms governing the employment relationship that the skills base and wages of sectors of employees is dragged down. This can be seen quite clearly for example, in the aged care sector where the introduction of the traineeship system saw substitution practices whereby skilled and experienced assistants in nursing were replaced with trainees with lower and subsidised wages.

In addition complexities and legal uncertainty are created as governments outsource the administration of such schemes (Witness the recently reported significant failings in the employment services industry.) The administration of Australia's system of benefit payments operated by Centrelink is breaking down as a consequence of out dated and inadequate computer systems.

Australia does not currently have the capacity to establish efficient and effective alternatives to the industrial safety net for employees. The maintenance of the safety net should remain with independent tribunals supported by robust legislation underpinned by international standards.

Those who are most reliant upon the safety net are women, either because they only receive the safety net or because they rely upon movements in the safety net to move their own wages and conditions. Any dismantling or reduction will contribute directly to a further deterioration in gender based inequity.

The Commission raises as an underlying question where a balance should lie between wage regulation and the tax and transfer system in addressing concerns about income distribution. The question is incomplete. It is not concerns about income distribution that should be addressed but the concerns as outlined in this submission and elsewhere about the gender gap in wage and income equity. Any alteration in the relationship between wages and the tax and transfer system will affect those reliant upon the minimum wage disproportionately, that is women. Any alteration of the balance that results in a reduction in the proportion of income delivered through wages will lead to a further deterioration in gender equity.

As discussed elsewhere in this submission there has been significant penetration of enterprise bargaining in certain sectors of the nursing workforce. However there are also, as pointed out, significant areas that remain award dependent. Of those areas where there are agreements, the award provides the basis upon which the agreement is built. A comprehensive occupational award as an integral part of the safety net must be maintained.

Penalty Rates

The ANMF is disappointed the Productivity Commission appears to have embraced the myth that penalty rates and related payments have “aroused a special degree of controversy”.

This myth is peddled by conservative tub thumpers, backed by small number of employer groups including AMMA and the AHA, who believe they presently have the ear of government, and the opportunity to reduce their labour costs through the removal or reduction of an employee’s legal entitlement.

These groups invariably blame the Fair Work Act and the creation of modern awards as devilish instruments that reduce workplace flexibility, push up labour costs and force employers to close their cafes and shops on weekends.

And the evidence to back up these claims? Well, none. In fact there has been a single lack of evidence to back up these consistent demands for the reform of penalty rates and related payments.

It is uncontentious to note that penalties have existed alongside awards and agreements for the entire period of industrial regulation in Australia.

In *Barrier Branch of Amalgamated Miners Association v Broken Hill Pty Company Ltd* (1909), (3 CAR commencing at p21) Justice Higgins awarded penalty payments valued at time-and-a-half of ordinary payments be made for work on the seventh day in any week, an official holiday and all time of work done in excess of the ordinary shift during each day of twenty hours’.

Higgins awarded the penalty rates, firstly as compensation to employees being made to work at inconvenient times, but secondly to act as a deterrent against ‘long or abnormal hours being used by employers’.

The rationale for penalty rates; that employees should be appropriately compensated for working long hours at inconvenient and unsociable hours, was reaffirmed almost forty years later by the Commonwealth Conciliation and Arbitration Commission. It decided that Saturday work should be paid at 125% of the base rate, and people working on Sundays should receive double-pay. (58 CAR 610 @pg. 615)

This brief overview demonstrates a long held view that penalties and related loadings are not only intended to compensate employees for working unsociable hours but they are also intended to dissuade employers from requiring employees to work unacceptably long hours.

Under the Nurses Award 2010 nurses and midwives receive standard overtime payments, shift and weekend penalties and additional payments for working on public holidays. The award also provides that nurses and midwives are to be available to be rostered for work as necessary to meet the service requirements of the health or aged care setting.

Most nurses and midwives work according to a roster with changing shift patterns and at anti-social periods day and night. Whether this be at a hospital, aged care or community setting a nurse or midwife will be on hand to ensure care is maintained , invariably working in chaotic settings for employers who operate their business on a 24 hour a day, 7 days a week basis.

As nurses and midwives are required to be at the frontline of the provision of health care they often suffer stress and other ill health effects from working not only long hours but also nonstandard hours. Their obligations as employees, coupled with their professional commitment to the care and wellbeing of their clients, results in exploitation including having to shoulder unacceptable workloads, working short staffed, double shifts and excessive overtime. This in turn leads to burnout and entrenched recruitment and retention problems in specific health and aged care settings.

Given the business model in both health and aged care it is not surprising nursing remuneration is made up of between 20% to 40 % of allowances shift loadings and penalties depending on the roster arrangements. Any reductions in these current entitlements would have a deleterious impact on the employees and the provision of care in Australia.

Deregulation of penalty rates will result in nurses and midwives losing these payments in areas where they are industrial weak. The consequence of this will be that there will be a shift in employment to those employers who continue to provide such entitlements.

The direct financial impact of reducing penalties will be significant as is evidenced in the modeling set out hereunder.

Table 1 below calculates the impact over a calendar month for registered and enrolled nurses who are full time , work ten shifts per fortnight including day , afternoon and night and work one public holiday in that month. This roster would be viewed as typical in the hospital sectors.

Based on the roster even a marginal reduction in current penalties, as set out in Scenario B, would result in significant income reduction, over \$180 per week for some employees. In Scenario C where penalties are removed completely, the loss could be as much as \$470 per week.

It is important also to note that where registered and enrolled nurses are required to work more nights, weekends and public holidays, the losses would be substantially more.

Table 1:

		Scenario A -	Scenario B -			Scenario C -		
		Current Penalty Rate as per SA Public Sector EBA 2013	Less Penalty Rates - Assumption			NO Penalty Rate - Assumption		
	Late	12.5%	10.0%			0.0%		
	Night	20.5%	15.0%			0.0%		
	Sat	50.0%	25.0%			0.0%		
	Sun	75.0%	25.0%			0.0%		
	PH	150.0%	100.0%			0.0%		
Sector: Public Acute								
classification	Full time 152hrs/28days @	\$ Total Gross Pay for 28days	\$ Total Gross Pay for 28days	\$ Gross 28-day Pay Difference (A-B)	Pay reduction % (diff/current)	\$ Total Gross Pay for 28days	\$ Gross 28-day Pay Difference (A-C)	Pay reduction % (diff/current)
RN	SA	7667.14	6920.64	746.50	9.7%	5909.76	1757.38	22.9%
EN	SA	5618.23	5071.22	547.01	9.7%	4330.48	1287.75	22.9%
RN	VIC	7105.12	6413.34	691.78	9.7%	5476.56	1628.56	22.9%
EN	VIC	5476.24	4943.06	533.18	9.7%	4221.04	1255.20	22.9%
RN	VIC MH	7351.62	6635.84	715.78	9.7%	5666.56	1685.06	22.9%
EN	VIC MH	5606.40	5060.54	545.86	9.7%	4321.36	1285.04	22.9%
RN	NSW	7921.52	7150.26	771.26	9.7%	6105.84	1815.68	22.9%
EN	NSW	5415.11	4887.88	527.23	9.7%	4173.92	1241.19	22.9%
RN	QLD	7213.58	6511.24	702.34	9.7%	5560.16	1653.42	22.9%
EN	QLD	5123.26	4624.44	498.82	9.7%	3948.96	1174.30	22.9%
RN	ACT	7467.96	6740.86	727.10	9.7%	5756.24	1711.72	22.9%
EN	ACT	5348.06	4827.36	520.70	9.7%	4122.24	1225.82	22.9%
RN	WA	8152.25	7358.52	793.73	9.7%	6283.68	1868.57	22.9%
EN	WA	5947.55	5368.48	579.07	9.7%	4584.32	1363.23	22.9%
RN	NT	7590.23	6851.22	739.01	9.7%	5850.48	1739.75	22.9%
EN	NT	5736.55	5178.02	558.53	9.7%	4421.68	1314.87	22.9%

Table 2 models the same roster arrangements and penalties for a full time Assistant in Nursing employed in the residential aged care sectors in various states and territories. In Scenario B the Assistant in Nursing would lose around \$100 per week and in Scenario C approximately \$250.

Table 2:

		Scenario A -	Scenario B -			Scenario C -		
		Current Penalty Rate as per SA Public Sector EBA 2013	Less Penalty Rates - Assumption			NO Penalty Rate - Assumption		
	Late	12.5%	10.0%			0.0%		
	Night	20.5%	15.0%			0.0%		
	Sat	50.0%	25.0%			0.0%		
	Sun	75.0%	25.0%			0.0%		
	PH	150.0%	100.0%			0.0%		
Sector: Aged Care								
classification	Full time 152hrs/28days @	\$ Total Gross Pay for 28days	\$ Total Gross Pay for 28days	\$ Gross 28-day Pay Difference (A-B)	Pay reduction % (diff/current)	\$ Total Gross Pay for 28days	\$ Gross 28-day Pay Difference (A-C)	Pay reduction % (diff/current)
AIN	SA	4003.16	3613.40	389.76	9.7%	3085.60	917.56	22.9%
AIN	VIC	4326.57	3905.32	421.25	9.7%	3334.88	991.69	22.9%
AIN	NSW	4095.84	3697.06	398.78	9.7%	3157.04	938.80	22.9%
AIN	QLD	4070.21	3673.92	396.29	9.7%	3137.28	932.93	22.9%
AIN	ACT	4095.84	3697.06	398.78	9.7%	3157.04	938.80	22.9%
AIN	WA	4245.72	3832.34	413.38	9.7%	3272.56	973.16	22.9%
AIN	NT	4003.16	3613.40	389.76	9.7%	3085.60	917.56	22.9%

In looking at the changes in Table 2 it is worth keeping in mind the ordinary hourly rate under the award is between \$18.41 and \$19.64 and for the same worker covered by an agreement between \$18.80 and \$22.64. Low wages on any criteria.

Assistants in Nursing along with many nurses and midwives who receive penalty rates are low paid. As low paid workers they are disproportionately dependent upon minimum pay rates and they use their penalty rates to top up their wages to a reasonable level. Paying employees lower penalty rates than they currently receive means that they will be significantly disadvantaged, and may need to work additional hours to receive the same income in order to make ends meet.

Further and more detailed analysis of the impact of altering current penalty rates and related payments for nurses, midwives and Assistants in Nursing is set out at Attachment 1 to this submission.

ANMF Penalty Rates Survey

Recognising the potential impact of the outcomes of this Inquiry on our members, most significantly if the Commission recommends changes to arrangements related to penalty rates, the ANMF conducted a survey of members investigating what penalty rates mean to them, the level of compensation penalty rates provide for working shift work and how shift work affects the lives of nurses and midwives.

The survey, which ran over a three-week period from 10 February – 1 March 2015, was conducted via social and digital media, primarily Facebook. The response was overwhelming, with 13,101 nurses and midwives participating across the country.

10,718 responses to the ANMF's survey ***What do your penalty rates mean to you?*** were received from nurse and midwife members across all states and territories by the Federal Office of the ANMF, with an additional 2,382 collected by the South Australian Branch of the ANMF (ANMF (SA)).

The presentation of the survey's results, included at Attachment 3 to this submission, provides an outline of ANMF members' views of shift work and its effects on their lives, and penalty rates.

Demographic data collected in the survey indicated that key features of the survey participants were consistent with the wider nursing and midwifery workforce. This included gender distribution, the age and experience of the participants, their classifications and their mode and sector of employment.

Shift work and its effects

The survey examined the frequency and types of shifts worked by participants and whether these shifts impact on their lives outside work. Almost 92% of participants reported that they currently work shift work, with the great majority working at least one shift outside Monday – Friday day shift hours weekly.

The majority of participants also reported that they work shift work because it is a condition of their employment and is therefore required by their roster. 1,553 (14.5%) participants responded that they work shift because of family reasons, while less than 10% indicated that they work shift work due to personal preference.

The majority of participants, 77%, reported differences between working Monday – Friday day shift hours and other shifts, e.g. night shifts and weekends, including less support, fewer medical, other health and ancillary staff and lower staffing levels.

90% of participants reported that these shifts affected their life outside work, most particularly their health and their family and social lives, with night shift and weekend shifts having the greatest impact for participants.

The importance of penalty rates

Most participants indicated that penalty rates compensate for the effects of shift work on their lives outside work (38.9%) or at least partially compensate for the effects of shift work (49.3%), with the great majority indicating that they would **not** continue to work shift work if penalty rates were removed or lowered (87%). Only 6.1% of participants indicated that they would continue to work shift work without penalty rates.

The survey also examined participants' intentions to continue to work shift work if penalty rates were removed or lowered by employment sector, by nursing or midwifery classification and by state or territory.

The responses by category were reasonably consistent with the national averages stated above with some minor variations across sectors, classifications and states and territories. The most notable variations were:

- responses received from AINs (Assistants in nursing) 9.6% indicating that they would continue to work shift work without penalties compared to the national average, 6.1%, and
- responses from Tasmanian nurses and midwives with 77.1% indicating that they would not continue to work shift work if penalty rates were removed or lowered, compared to the national average, 87%.

Defending Penalty Rates

An overwhelming majority of participants, 92.7%, reported that they would be prepared to take action to protect their penalty rates, this included: *signing a petition, contacting your MP, attending a rally, and stop work/strike action*. Almost 60% of participants indicated that this would include stop work or strike action.

COMMENTS ON ISSUES PAPER NO. 3

Bargaining framework

Nursing and midwifery employment conditions are in the main regulated by the Fair Work Act 2009 with the major exception being nurses employed in the public sectors in New South Wales, South Australia, Western Australia, Tasmania and Queensland and some nurses employed in the private sector in Western Australia which are regulated by the relevant state industrial bodies.

The bargaining framework as it specifically applies to public sector nurses and midwives employed under state regulation is addressed later in this submission.

Attachment 2 to this submission is a detailed report on the extent of bargaining covering nurses and midwives in each state and territory. Put briefly, enterprise agreements apply to all nurses and midwives in public and private hospitals and the vast majority employed in the residential aged care sector. In primary care (medical clinics, general practice etc.) the majority of employees are award dependent or have unregulated individual agreements.

In general terms, we consider the bargaining provisions of the Fair Work Act 2009 a major improvement over the “work choices” era and provide employees with enhanced opportunities to access the acknowledged benefits of collective bargaining.

The ANMF supports the wider range of matters that can now be included in enterprise agreements. The removal of the list of ‘prohibited content’ prescribed by the previous Workplace Relations Act has been beneficial for employees. Employees now have greater ability to assert their rights as union members, for example by being able to include provisions about contractors/agency workers and paid union training in enterprise agreements. The ‘prohibited content’ restrictions under the previous legislation undermined the ability of the parties to include items that had the potential to improve efficiency, for example in relation to the use of agency nurses.

As unions are now the default bargaining representatives for their members by virtue of paragraph 176(1) (b), the bargaining process is not delayed by unnecessary arguments about whether unions can assume this role. This gives unions the opportunity to represent and inform their members more effectively.

Multi-employer bargaining

The ANMF opposes the continued restrictions on bargaining with more than one employer and engaging in pattern bargaining (s. 409(4), s. 412). Protected industrial action cannot be taken in pursuance of a multi-employer agreement (s. 413(2)) unless the group of employers agrees to obtain a single interest authorization. Nor can industrial action be taken even if a low paid bargaining order is in place. Good faith bargaining rules do not apply even if employers agree to bargain for a multiple-employer agreement, except in the case of single interest employer authorisations (s172(5)(c)) and low paid bargaining (s229(2)).

Pattern, industry or sector wide bargaining is important in many industries, including the health industry, on sound industrial, commercial and public interest grounds. Prohibiting pattern bargaining ignores consideration of the needs of the health industry. Pattern or industry wide industrial standards are often preferable to enterprise differences because they benefit employers, employees and the community generally. There are benefits in consistent wages and working conditions or in other words pattern outcomes.

This is the case for example in the residential aged care sectors where public funds are provided and individual employers have little capacity to raise revenue. Most aged care employers lack the human resources or industrial expertise that would allow them to achieve an enterprise specific outcome that enhances productivity or improves efficiency. Where such outcomes are achieved it is invariably due to pattern outcomes across all employers in an aged care sector.

The residential aged care “No Lift Policy” illustrates this approach. This policy , which requires employers to provide resident lifting devices and to prohibit nurses and carers from lifting residents themselves , could not have been achieved on an enterprise by enterprise basis. However, with the agreement of aged care employer representatives the policy was introduced across the sector, initially in Victoria then across other states and territories.

The successful introduction of the policy improved OH&S standards, significantly lowered the incidences of back injury and led to substantial savings for the industry in Workcover and related insurance premiums.

Generally the ANMF considers that the level of bargaining should be decided by the workers involved and not dictated by the legislation. We believe the current legislation is in breach of ILO Conventions and therefore one of the objects of the Act (section 3(a)), and notes the report and recommendations of the International Labour Organisation’s Freedom of Association Committee (357th Report of the Committee on Freedom of Association, Geneva, June 2010) which recommended at paragraph 229:

(d) Taking into account its conclusions on such matters reached in previous cases concerning Australia, the Committee requests the Government to review sections 409(1) (b), 409(4) and 413(2) of the FWA, in full consultation with the social partners concerned.

Low Paid Bargaining

The introduction of a new low paid bargaining (LPB) stream into the Fair Work Act was seen as an important and historic step in the evolution of collective bargaining in Australia.

The LPB provisions recognised there are low paid sections of the workforce which, for a range of reasons, have not had access to the full benefits of collective bargaining or have substantial difficulty in bargaining at the enterprise level. Employees in these parts of the sectors with little or no capacity to bargain, risk remaining in low paid employment.

The provisions are intended to give low paid employees and their employer's access to good faith bargaining process overseen by the Commission; the capacity to bring funding agencies to the bargaining table and the opportunity to bargain at a multi- employer level. In circumstances where the parties are unable to reach an agreement, under the LPB regime the tribunal is able to arbitrate an outcome.

Section 243 of the FWA sets out the requirements to be met for the Commission to exercise its discretion to make a low paid authorisation(s) that essentially invoke the tribunal's involvement in the bargaining processes.

Unfortunately in practice the barriers under s.243 have been a bridge too far for the majority of low paid workers and their representatives.

For trade unions representing low paid workers the provisions effectively require substantial evidence in respect of each enterprise including remuneration details of the particular workers at the enterprise along with the need to provide voluminous materials on the history of bargaining at the enterprise level for each respondent employer. For most, these requirements have been considered too daunting, with little promise of a positive outcome.

The ANMF believes the process is further complicated by employer groups insisting the tribunal forensically consider all matters submitted in the proceedings. Given the LPB authorization does little more in the first instance than facilitate access to the bargaining table, ANMF submits the processes should be less onerous.

We understand to date there have only been two applications under the LPB scheme.

LPB and Aged Care Workers

In 2010 the United Voice and AWU sought LPB authorisations against residential aged care employers in a Queensland, Western Australia, South Australia and the territories. These applications were strenuously opposed by the employers, their industrial representatives and peak employer bodies. Over 30 organisations appeared, or registered an interest in the application(s).

In the hearing the unions were forced to put substantial evidence in respect of all of the enterprises, which was invariably challenged by the employers, and accordingly examined in detail by a full bench of the tribunal. The arbitral proceedings were held over a number of months.

In its decision ([2011] FWAFB 2633) while the tribunal supported the application(s) the authorisations were confined to award dependent employees despite the evidence that employees covered by agreements were also low paid. The tribunal then directed the unions to engage in enterprise bargaining with the employers over a six month period to see if progress could be made, thereby providing the employers with a further six months to avoid collective bargaining, which they duly did. We understand since that time little progress has been made and the employees languish on the minimum award terms.

LPB and Practice Nurses

In 2011 the ANMF made application for LPB authorisations in respect of employers of nurses in primary care and general medical practices.

In this matter the tribunal received unchallenged evidence that collective bargaining was nonexistent in the sector and relevant employees received minimum award conditions or alternatively had individual unregistered over award arrangements.

In rejecting all of the applications the tribunal in decision [2013] FWC 511:

- Acknowledged the ANMF had been unsuccessfully seeking collective agreements with the employers for a number of years ,

- Acknowledged the absence of collective agreements in the sector ,
- Criticised the ANMF for confining bargaining attempts to nursing staff (although the ANMF does not cover any other employees in the sector) ,
- Ruled that due to the existence of unregistered over award arrangements the employees were not low-paid,
- And in a bizarre ruling held that , in the event the authorisations were granted the employers would be drawn to the bargaining table against their will and this would make for a fractious and difficult process and therefore not in the public interest.

Notwithstanding the legislatures' best intentions it is clear that the complex requirements of the LPB scheme means that it is too difficult to reach the intended outcome of assisting low paid workers to access collective agreements.

Unfortunately, given the foregoing examples the likelihood of the LPB stream successfully facilitating access to collective bargaining for workers who have historically been disenfranchised from the bargaining system appears to be remote.

The provisions are clearly too inflexible and place too many hurdles between an application and getting to the bargaining table.

The examples also suggest there is a reluctance at least by some tribunal members to facilitating and assisting in this important process. If this be true the regulations should be amended requiring the tribunal to take a far more active and constructive involvement.

Industrial action

Suspension/termination of industrial action

The ANMF is concerned that the effect of the Fair Work Act's provisions dealing with the termination and suspension of industrial action mean that the ability of the ANMF and its members to take protected industrial action for the purposes of enterprise bargaining is severely constrained. The provisions leave nursing and midwifery employees with effectively

little right to take protected industrial action and in fact make unprotected industrial action more likely.

Particularly relevant to the ANMF is the ability of FWA to suspend or terminate protected industrial action on the grounds that it is threatening to endanger the life, personal safety or health or the welfare of the population or a part of it (section 424(1)(c)).

The ANMF notes that in relation to the internationally-recognised right to take industrial action, the International Labour Organisation's Freedom of Association Committee (357th Report of the Committee on Freedom of Association, Geneva, June 2010) stated:

224. *These indications notwithstanding, as regards the right to strike, the Committee must recall that the occupational and economic interests which workers defend through the exercise of the right to strike do not only concern better working conditions or collective claims of an occupational nature, but also the seeking of solutions to economic and social policy questions and problems facing the undertaking which are of direct concern to the workers. Furthermore, the right to strike may only be restricted or prohibited: (1) in the public service only for public servants exercising authority in the name of the State; or (2) in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population) (see Digest, op. cit., paras 526 and 576). In the light of the above-noted principles, the Committee requests the Government to provide detailed information on the application of these provisions and to review them, in consultation with the social partners, with a view to their revision, where appropriate.*

From the ANMF perspective we note two matters.

Given the nature of nurses' work inherently relates to the health or welfare of the population, any industrial action taken by the ANMF and its members may raise issues. However even if some restriction on the right to take industrial action can be justified on the basis of endangering the life, personal safety or welfare etc., we note that the evidentiary base used by the FWC in deciding these matters is often weak. For example, even where the action of the union is extremely mild and/or deliberately conscious of avoiding danger to life or health, it currently only takes a couple of examples of delay or cancellation across the whole system to induce the tribunal to terminate or suspend lawful industrial action, and even in the face of ample evidence that existing practices in for example hospitals (e.g. closure of beds and inadequate funding) may be endangering the health or welfare of patients.

In both 2007 and 2011, the Tribunal's suspension or termination of industrial action taken by nurses and midwives in the Victorian public sector shows the difficulties of nurses and midwives exercising their legitimate right to pressure employers and governments through industrial action.

There are other examples where the tribunal has terminated protected action in circumstances where the industrial action involved had an even more tenuous link to patient/resident care than, for example, the closure of hospital beds. For example, bans on activity related to aged care paperwork was found by the AIRC to be a threat to endanger the life, personal safety, health or welfare of aged care residents (*Lutheran Homes Inc. Retirement Services v ANF*, AIRC, 31 July 2003, PR935607 – note this related to then section 170MW (3) (a) of the Workplace Relations Act, but the wording is substantially the same as the existing wording).

Our analysis of the tribunals approach to the suspension or termination of industrial action under s.424 of the FWA clearly demonstrates the test that must be met for a successful application in regard to s424(d) "causing damage to the economy or part of it" is much higher than that applying to 424(c) "endangering life, health or welfare etc".

The ANMF suggests that, in these circumstances, there ought to be stronger criteria within the legislation against which to judge the impact of the industrial action. These would include:

- That the impact, delays or cancellations which are alleged to endanger the safety, health or welfare of the population are proved to be a net result of the industrial action taken and not a result of either government decisions taken independently of the industrial action or accidental factors which would probably have occurred irrespective of the industrial action; and
- That the endangering of safety, health or welfare is demonstrated by multiple examples across the system or a significant part of it and leads the tribunal to a conclusion that the danger is not isolated, is systematic and is a direct result of the industrial action.

Secondly, we note that where there is a prohibition on workers in essential services taking industrial action there are meant to be 'compensatory mechanisms' provided to ensure that those workers have access to full, independent and transparent arbitration. The ILO Committee of experts has noted:

If the right to strike is subject to restrictions or a prohibition, workers who are thus deprived of an essential means of defending their socio-economic and occupational interests **should be afforded compensatory guarantees, for example conciliation and mediation procedures leading, in the event of a deadlock, to arbitration machinery seen to be reliable by the parties concerned.** It is essential that the latter be able to participate in determining and implementing the procedure, which should furthermore provide sufficient guarantees of impartiality and rapidity; arbitration awards should be binding on both parties and once issued should be implemented rapidly and completely (ILO, 1994a, para. 164). [Emphasis added]

We note further that the International Labour Organisation Nursing Personnel Convention 1977 (ILO Convention 149) provides as follows:

Article 5:

1. Measures shall be taken to promote the participation of nursing personnel in the planning of nursing services and consultation with such personnel on decisions concerning them, in a manner appropriate to national conditions.
2. The determination of conditions of employment and work shall preferably be made by negotiation between employers' and workers' organisations concerned.
3. The settlement of disputes arising in connection with the determination of terms and conditions of employment shall be sought through negotiations between the parties or, *in such a manner as to ensure the confidence of the parties involved*, through independent and impartial machinery such as mediation, conciliation and voluntary arbitration. [Emphasis added]

In the current circumstances the ANMF has no confidence that any formal arbitration under the Fair Work Act will have the jurisdiction to deal with all relevant matters in dispute.

Given this ANMF recommend the Commission call for changes to relevant legislation to enable tribunals to arbitrate intractable bargaining disputes where one of the bargaining parties has commenced industrial action, even if such action is not protected under the Act.

Single interest employer authorisations (SIEAs)

The single interest employer authorisation (SIEA) is the only form of multi-employer bargaining during which protected industrial action is allowable. The problem with this is that rather than the workers concerned determining who is included in the multi-employer group, only the employers (and controlling third parties, e.g. government) can make an application to the Minister for a declaration pursuant to s 247 of the Act, and to the FWC for the authorisation itself.

This effectively means the employer is determining the level at which workers bargain. In addition, employees and unions/bargaining representatives have no say on the scope of bargaining.

The ANMF considers that there is no need for such a provision and that employees should be able to choose the level of bargaining they engage in. Alternatively, if the provision is retained, then either party (a group of employers or the relevant union/s or bargaining representatives) should be able to bring an application before the FWC or should be able to make submissions on the criteria that the Minister and the tribunal have to consider. The interests and views of employees and their bargaining representatives should also be added to the criteria which the Minister and the FWC must take into account in s.247 (4) and 249.

Good faith bargaining

The good faith bargaining provisions in the Fair Work Act have had a positive impact on bargaining. To some extent they have been a useful tool that unions have used in discussions with employers and, if necessary, via letters setting out concerns. Highlighting the provisions can be enough to prompt employers to, for example, respond to a log of claims or schedule a meeting. The rules provide some minimal statement as to what is *fair* bargaining.

Having said that, the provisions are limited, especially if a claim is made. Decisions made by the Fair Work Commission and its predecessors have tended to be conservative and process-oriented, although this is partly due to the limited nature of the provisions themselves. We have concerns that the provisions do not adequately address the issue of ‘surface bargaining’ where employers superficially *‘participate’* in bargaining processes (to ensure ‘compliance’) but don’t *engage* in bargaining.

In reality employers have to do the bare minimum to show that they are responding to proposals, attending meetings, etc. but there is still too much scope for employers to just go through the motions.

A tribunal decision in relation to public sector nurses in Victoria in 2012 demonstrates the limitations. Chronic delays in negotiations or unwillingness to negotiate meaningfully had been very evident in this dispute. Despite this, FWA rejected an application for a bargaining order against the employer representative (*ANF v VHIA* ([2012] FWA 285 PR518962, 10 January 2012).

This and other similar decisions illustrates the lack of pressure on employers through the legislation and the unwillingness of the tribunal to regard anything except virtually complete inaction as breaching the good faith bargaining principles. This means there is less incentive for employers to actually *reach an agreement* with bargaining representatives, thereby undermining collective bargaining and the concept of bargaining representatives [and the objects of the Act, in particular section s3(e) and (f)].

Accordingly, the ANMF considers that the good faith bargaining provisions need to be strengthened and there needs to be more emphasis on the bargaining representatives reaching agreement to rectify the problem of employers engaging in surface bargaining. In this respect we believe the New Zealand good faith bargaining regime contained in the *Employment Relations Act 2000* (set out below) should be adopted:

Duty of good faith requires parties to conclude collective agreement unless genuine reason not to:

- (1) The duty of good faith in section 4 requires a union and an employer bargaining for a collective agreement to conclude a collective agreement unless there is a genuine reason, based on reasonable grounds, not to.
- (2) For the purposes of subsection (1), **genuine reason** does not include:
 - (a) opposition or objection in principle to bargaining for, or being a party to, a collective agreement; or
 - (b) disagreement about including in a collective agreement a bargaining fee clause under Part 6B.

Strengthening good faith bargaining rules to *require* an agreement to be reached (unless exceptional reasons otherwise) would be one way to ensure that bargaining is genuine.

A related issue is that bargaining representatives should be able make good faith bargaining applications at least 120 days before the nominal expiry date of an existing agreement (s 229(a) (i)). The ANMF's experience is that where an employer wants to engage in surface bargaining, the 90 days provided by the Act is insufficient.

Majority support orders

The ANMF supports the introduction of majority support orders into the Act and considers it a worthwhile innovation. As with good faith bargaining orders, it is the experience of the ANMF that the existence of majority support orders has induced some employers to bargain where they might not have otherwise done so. While some employers initially reject an invitation to bargain with the ANMF, a letter noting the presence of the majority support provisions is sometimes enough for an employer to agree to start bargaining without the need to actually apply for the order. The provisions are therefore assisting to encourage enterprise bargaining, an object of the Act.

COMMENTS ON ISSUES PAPER 5

Bargaining with State Government Employers

The Commission's Issues Paper 5 asks: *How should WR arrangements in state and federal public services (and any relevant state-owned enterprises be regulated). In particular to what extent should WR provisions vary with the public and private status of an enterprise?*

The ANMF principle view is where appropriate the Fair Work Act should be amended using the external affairs powers of the Constitution if required, to ensure that public sector workers are provided with adequate protections in accordance irrespective of the jurisdiction or legislation that covers them.

The recent behavior of state governments in Tasmania , Victoria , New South Wales and Queensland has demonstrated that in many respects state government employees have fewer rights than those in the private and not for profit sectors.

In representing tens of thousands of nurses and midwives employed in public sector agencies the ANMF has repeatedly been witness to industrial arrangements/regulations at a state and territory that are clearly intended to governments are free to reduce employment conditions or cap agreement outcomes.

Recent examples include:

- Changing rights and entitlements to termination change and redundancy in legislation and unilaterally over-riding negotiated provisions in enterprise agreements (Queensland and Tasmania)
- Arbitrarily prescribing maximum wage increases and otherwise limiting what can be negotiated by the parties or, failing agreement, what can be arbitrated by state industrial tribunals(NSW , Queensland and Tasmania)
- Adopting bargaining frameworks in legislation that are inconsistent with their obligations under ILO Conventions and which, in some instances, provide fewer rights and entitlements to public sector workers than other workers under the Fair Work Act ('federal system' or FW Act).

We are particularly concerned that State governments (whether under the state or federal industrial systems) have in recent years prescribed arbitrary wage outcomes for bargaining across the public service and public sector, with little connection to what is affordable or without recognition of the difference between occupational groups sectors.

In recent times governments have adopted a policy of a maximum wages outcome of 2.5% per annum, unless identified and 'bankable' cost savings achieved. While this is akin to pattern bargaining by an employer, behaviour which is unlawful, it appears to be tolerated if it is pursued by government.

Increasingly state and territory governments adopt a "whole of government" approach to agreement making and require agencies to adhere to the policy. This is typically in a context where there are of a multitude of service providers in the state government funded sector which are regarded as legally separate employers but are, for all intents and purposes, branches of one organization performing the same, commonly funded service.

When the service providers do come to the bargaining table government they effectively pursue a sham process knowing they are unable to go outside government policy.

This is in effect a triangular bargaining process where the key employer representative is not at the table but seeks to control the outcome.

To address this deficiency ANMF recommends that the good faith bargaining requirements in the Fair Work Act be amended to recognize triangular bargaining and:

- require State Governments who are third party strangers who exert influence over a captive bargaining representative to adhere to good faith bargaining obligations; and
- clarify and fortify the obligations of government entities, who are third party strangers, to provide information relevant to the bargaining process and to adhere to other good faith requirements in s. 228(1) such as responding in a timely manner to proposals from employee bargaining representatives.

The failure of state/territory governments to act in good faith in bargaining with public sector workers coupled with the extremely limited arbitral powers available to federal and state tribunals is fundamentally undermining the bargaining processes and collective bargaining rights of employees.

We recommend the Commission call for changes to relevant legislation to enable tribunals to arbitrate industrial action or bargaining disputes , in respect of public sector workers , which are protracted and intractable , or where ‘surface bargaining ‘is evident.

As to the balance of right and responsibilities for public sector workers the ANMF believe there needs to be equality in the treatment of all workers consistent with views expressed in this submission.

Bargaining for Productivity

The Commission in Issues Paper 3 asks for feedback on the practical options regarding a requirement to insert “productivity” inducing clauses into enterprise agreements.

The Federation notes that there has been a longstanding process of reform and ‘continuous improvement’ within the health sector independent of the bargaining processes in play.

It is also evident that moves to contain costs in health / aged care have led to the adoption of ‘lean thinking’-styled methodologies to productivity, with the consequent treatment of nurses as mere units of labour.

The Federation is of the view that productivity measurement in the both the public and private health sectors is complex and will complicate bargaining without any significant benefit if it is made part of the bargaining framework. According to North & Hughes (2012), the adoption of simplistic approaches to productivity will be counterproductive to genuine productivity in nursing:

There is a growing recognition of nursing (and health care) as knowledge-based work (McGill Hall, 2003; Newbold, 2007; Grantham et al., 1997), by which the product (health status) is an outcome of the application of cognitive processes and knowledge-based competencies, evident in the deepening of nursing roles and expansion into medical territory. Conceptualising nursing as knowledge work challenges cost-accounting approaches to productivity improvement based on nurses as units of labour and as costs to the organisation (Moody, 2004), and places an economic value on nursing (Dall et al., 2009).

The non-routine, non-repetitive nature of nursing work involving the nurse in “cognitively thinking about, evaluating for, collaborating with, and actively serving and negotiating human health needs” (Moody, 2004, p. 101) questions the basis for patient-related nursing work being cut up into bits and distributed among substitutes, because the context for knowledge-based work is the nurse-patient interaction. Using this approach, the nurse is privileged as a capital asset, not a labour cost, to the organisation. McGill Hall (2003) advocates reframing nursing productivity “in relation to the knowledge, skill and competency embodied in the discipline of nursing” (p. 18).⁵

End

Attachment One: Penalty Rate change Analysis
Attachment Two: ANMF enterprise Agreement Report
Attachment Three: ANMF Penalty Rates Survey & Report

⁵ Nicola North Frances Hughes, (2012), "A systems perspective on nursing productivity", *Journal of Health Organization and Management*, Vol. 26 Iss 2 pp. 192 – 214, page 206

Model Ward - Staff Plan and Unit cost

Number of Beds 28

Staffing Model Ratio 1:4

+ shift coordinator on Earlys and Lates

Skill Mix 70/30

1. Nursing Staff Plan - base roster

	Shift length (hours)	Staff Plan (number of staff on roster)							Total shifts/week
		Sat	Sun	Mon	Tue	Wed	Thu	Fri	
Early	8	8	8	8	8	8	8	8	64
Late	8	8	8	8	8	8	8	8	64
Night	10	4	4	4	4	4	4	4	40

2. Converting Staff Plan to Nursing Hours per day

		Sat	Sun	Mon	Tue	Wed	Thu	Fri	Total hrs/week
70%	RN Hrs/day	117.6	117.6	117.6	117.6	117.6	117.6	117.6	823.2
30%	EN Hrs/day	50.4	50.4	50.4	50.4	50.4	50.4	50.4	352.8
	Total Nursing Hrs/day	168	168	168	168	168	168	168	1176

3. Skill Mix allocation by Day of week - base roster

		Skill Mix allocation (roster shifts) by day of week							Total hrs/week
		Sat	Sun	Mon	Tue	Wed	Thu	Fri	
Day	RN level 3, CSC	0	0	1	1	1	1	0.75	38
Early	RN level 2, ACSC	1	1	1	1	1	0	0	40
	RN Level 1	4	5	4	4	4	5	5	248
	EN/END	3	2	3	3	3	3	3	160
Late	RN level 2, ACSC	0	0	1	1	1	1	1	40
	RN Level 1	6	6	5	5	5	5	5	296
	EN/END	2	2	2	2	2	2	2	112
Night	RN Level 1	2	3	3	3	3	3	3	200
	EN/END	2	1	1	1	1	1	1	80
Total RN shifts/day (hrs/week) (excl CSC)		13	15	14	14	14	14	14	824
Total EN shifts/day (hrs/week) (excl CSC)		7	5	6	6	6	6	6	352

4. Total Staffing (Productive) costs for the unit

Note: Assumptions made based on Ward Average of RN at RN1.10 and END at END7 (SA Public Sector)

Scenario A - Current Penatly Rates, as per SA Public Sector EBA 2013

		Late 12.50%	Night 20.50%	Sat 25%	Sun 25%	PH 150%	Total \$ Cost -							Productive cost per week
							Sat	Sun	Mon	Tue	Wed	Thu	Fri	
Day	RN Level 3, CSC						0.00	0.00	410.32	410.32	410.32	410.32	307.74	1949.02
Early	RN level 2, ACSC						520.08	606.76	346.72	346.72	346.72	0.00	0.00	2167.00
	RN Level 1						1866.24	2721.60	1244.16	1244.16	1244.16	1555.20	1555.20	11430.72
	EN/END						1025.64	797.72	683.76	683.76	683.76	683.76	683.76	5242.16
Late	RN level 2, ACSC						0.00	0.00	390.06	390.06	390.06	390.06	390.06	1950.30
	RN Level 1						2799.36	3265.92	1749.60	1749.60	1749.60	1749.60	1749.60	14813.28
	EN/END						683.76	797.72	512.82	512.82	512.82	512.82	512.82	4045.58
Night	RN Level 1						1360.80	1405.51	1405.51	1405.51	1405.51	1405.51	1749.60	10137.96
	EN/END						997.15	343.30	343.30	343.30	343.30	343.30	427.35	3141.02
Total Nursing Cost							9253.03	9938.537	7086.257	7086.257	7086.257	7050.577	7376.13	54877.04

Qualification allowance excluded from the costing

Scenario B - LESS Penalty Rates

		Late 10.00%	Night 15.00%	Sat 25%	Sun 25%	PH 100%	Total \$ Cost -							Productive cost per week	Variance Current - Less penalty
							Sat	Sun	Mon	Tue	Wed	Thu	Fri		
Day	RN Level 3, CSC						0.00	0.00	410.32	410.32	410.32	410.32	307.74	1949.02	0.00
Early	RN level 2, ACSC						433.40	433.40	346.72	346.72	346.72	0.00	0.00	1906.96	260.04
	RN Level 1						1555.20	1944.00	1244.16	1244.16	1244.16	1555.20	1555.20	10342.08	1088.64
	EN/END						854.70	569.80	683.76	683.76	683.76	683.76	683.76	4843.30	398.86
Late	RN level 2, ACSC						0.00	0.00	381.39	381.39	381.39	381.39	381.39	1906.96	43.34
	RN Level 1						2332.80	2332.80	1710.72	1710.72	1710.72	1710.72	1710.72	13219.20	1594.08
	EN/END						569.80	569.80	501.42	501.42	501.42	501.42	501.42	3646.72	398.86
Night	RN Level 1						972.00	1341.36	1341.36	1341.36	1341.36	1341.36	1458.00	9136.80	1001.16
	EN/END						712.25	327.64	327.64	327.64	327.64	327.64	356.13	2706.55	434.47
Total Nursing Cost							7430.15	7518.795	6947.491	6947.491	6947.491	6911.811	6954.361	49657.59	5219.45

Qualification allowance excluded from the costing

Scenario C

NO Penalty Rate Assumption		Total \$ Cost -							Productive cost per week	Variance Current - No penalty
		Sat	Sun	Mon	Tue	Wed	Thu	Fri		
Day	RN Level 3, CSC	0.00	0.00	410.32	410.32	410.32	410.32	307.74	1949.02	0.00
Early	RN level 2, ACSC	346.72	346.72	346.72	346.72	346.72	0.00	0.00	1733.60	433.40
	RN Level 1	1244.16	1555.20	1244.16	1244.16	1244.16	1555.20	1555.20	9642.24	1788.48
	EN/END	683.76	455.84	683.76	683.76	683.76	683.76	683.76	4558.40	683.76
Late	RN level 2, ACSC	0.00	0.00	346.72	346.72	346.72	346.72	346.72	1733.60	216.70
	RN Level 1	1866.24	1866.24	1555.20	1555.20	1555.20	1555.20	1555.20	11508.48	3304.80
	EN/END	455.84	455.84	455.84	455.84	455.84	455.84	455.84	3190.88	854.70
Night	RN Level 1	777.60	1166.40	1166.40	1166.40	1166.40	1166.40	1166.40	7776.00	2361.96
	EN/END	569.80	284.90	284.90	284.90	284.90	284.90	284.90	2279.20	861.82
Total Nursing Cost		5944.12	6131.14	6494.02	6494.02	6494.02	6458.34	6355.76	44371.42	10505.62

Qualification allowance excluded from the costing

Costing for Model Ward

Rate Details

Senario A - Current Penalty

Costing - assumptions			Rate as per SA Public Sector EBA 2013					
Title	Classification	Increment Level	Ord Hrlly Rate	Late 12.50%	Night 20.50%	Sat 50%	Sun 75%	PH 150%
CSC	RN Level 3	3	51.29	57.70	61.80	76.94	89.76	128.23
ACSC	RN Level 2	5	43.34	48.76	52.22	65.01	75.85	108.35
RN Level 1	RN Level 1	10	38.88	43.74	46.85	58.32	68.04	97.20
EN/EN Dip	EN Dip	7	28.49	32.05	34.33	42.74	49.86	71.23

Hourly Rate by Day of week - current (SA Public Sector) penalty rates applies								
		Sat	Sun	Mon	Tue	Wed	Thu	Fri
Day	CSC, RN3.3	76.94	89.76	51.29	51.29	51.29	51.29	51.29
Early	ACSC, RN2.5	65.01	75.85	43.34	43.34	43.34	43.34	43.34
	RN1.10	58.32	68.04	38.88	38.88	38.88	38.88	38.88
	END7	42.74	49.86	28.49	28.49	28.49	28.49	28.49
Late	ACSC, RN2.5	65.01	75.85	48.76	48.76	48.76	48.76	48.76
	RN1.10	58.32	68.04	43.74	43.74	43.74	43.74	43.74
	END7	42.74	49.86	32.05	32.05	32.05	32.05	32.05
Night	RN1.10	68.04	46.85	46.85	46.85	46.85	46.85	58.32
	END7	49.86	34.33	34.33	34.33	34.33	34.33	42.74

Scenario B - Less Penalties

Costing - assumptions			Penalty Rates Assumption - reduction					
Title	Classification	Increment Level	Ord Hrlly Rate	Late 10.00%	Night 15.00%	Sat 25%	Sun 25%	PH 100%
CSC	RN Level 3	3	51.29	56.42	58.98	64.11	64.11	102.58
ACSC	RN Level 2	5	43.34	47.67	49.84	54.18	54.18	86.68
RN Level 1	RN Level 1	10	38.88	42.77	44.71	48.60	48.60	77.76
EN/EN Dip	EN Dip	7	28.49	31.34	32.76	35.61	35.61	56.98

Hourly Rate by Day of week - assumption based on a reduction of penalty rates								
		Sat	Sun	Mon	Tue	Wed	Thu	Fri
Day	CSC, RN3.3	64.11	64.11	51.29	51.29	51.29	51.29	51.29
Early	ACSC, RN2.5	54.18	54.18	43.34	43.34	43.34	43.34	43.34
	RN1.10	48.60	48.60	38.88	38.88	38.88	38.88	38.88
	END7	35.61	35.61	28.49	28.49	28.49	28.49	28.49
Late	ACSC, RN2.5	54.18	54.18	47.67	47.67	47.67	47.67	47.67
	RN1.10	48.60	48.60	42.77	42.77	42.77	42.77	42.77
	END7	35.61	35.61	31.34	31.34	31.34	31.34	31.34
Night	RN1.10	48.60	44.71	44.71	44.71	44.71	44.71	48.60
	END7	35.61	32.76	32.76	32.76	32.76	32.76	35.61

Scenario C - No Penalty

Costing - assumptions			Penalty Rates Assumption - reduction					
Title	Classification	Increment Level	Ord Hrlly Rate	Late 0.00%	Night 0.00%	Sat 0%	Sun 0%	PH 0%
CSC	RN Level 3	3	51.29	51.29	51.29	51.29	51.29	51.29
ACSC	RN Level 2	5	43.34	43.34	43.34	43.34	43.34	43.34
RN Level 1	RN Level 1	10	38.88	38.88	38.88	38.88	38.88	38.88
EN/EN Dip	EN Dip	7	28.49	28.49	28.49	28.49	28.49	28.49

Rates and Penalties comparison - RN and EN Levels (Public and Private Acute) and AIN (Aged Care)

Roster Assumptions:

- work full time, 10 shifts a fortnight
- work every second weekend
- work equal numbers of Earlys and Lates
- work one set of 4 nights in a roster month
- work one Public Holiday in a month
- 8hrs Early, 8 hrs Late, 10hrs Night

sample roster

Sat	Sun	Mon	Tue	Wed	Thu	Fri
X	X	L	L	E	E	E
L	E	X	X	P	L	L
E	E	PL	L	E	X	X
X	X	N	N	N	N	X

Note: E = Early, L = Late, N= Night, P = Program day off, PL = Late on PH, X = Off

	Scenario A -	Scenario B -	Scenario C -
	Current Penalty Rate as per SA Public Sector EBA 2013	Less Penalty Rates - Assumption	NO Penalty Rate - Assumption
Late	12.5%	10.0%	0.0%
Night	20.5%	15.0%	0.0%
Sat	50.0%	25.0%	0.0%
Sun	75.0%	25.0%	0.0%
PH	150.0%	100.0%	0.0%

Sector: Public Acute

classification	Full time 152hrs/28days @	\$ Total Gross Pay for 28days	\$ Total Gross Pay for 28days	\$ Gross 28-day Pay Difference (A-B)	Pay reduction % (diff/current)	\$ Total Gross Pay for 28days	\$ Gross 28-day Pay Difference (A-C)	Pay reduction % (diff/current)
RN	SA	7667.14	6920.64	746.50	9.7%	5909.76	1757.38	22.9%
EN	SA	5618.23	5071.22	547.01	9.7%	4330.48	1287.75	22.9%
RN	VIC	7105.12	6413.34	691.78	9.7%	5476.56	1628.56	22.9%
EN	VIC	5476.24	4943.06	533.18	9.7%	4221.04	1255.20	22.9%
RN	VIC MH	7351.62	6635.84	715.78	9.7%	5666.56	1685.06	22.9%
EN	VIC MH	5606.40	5060.54	545.86	9.7%	4321.36	1285.04	22.9%
RN	NSW	7921.52	7150.26	771.26	9.7%	6105.84	1815.68	22.9%
EN	NSW	5415.11	4887.88	527.23	9.7%	4173.92	1241.19	22.9%
RN	QLD	7213.58	6511.24	702.34	9.7%	5560.16	1653.42	22.9%
EN	QLD	5123.26	4624.44	498.82	9.7%	3948.96	1174.30	22.9%
RN	ACT	7467.96	6740.86	727.10	9.7%	5756.24	1711.72	22.9%
EN	ACT	5348.06	4827.36	520.70	9.7%	4122.24	1225.82	22.9%
RN	WA	8152.25	7358.52	793.73	9.7%	6283.68	1868.57	22.9%
EN	WA	5947.55	5368.48	579.07	9.7%	4584.32	1363.23	22.9%
RN	NT	7590.23	6851.22	739.01	9.7%	5850.48	1739.75	22.9%
EN	NT	5736.55	5178.02	558.53	9.7%	4421.68	1314.87	22.9%

Sector: Private Acute

classification	Full time 152hrs/28days @	\$ Total Gross Pay for 28days	\$ Total Gross Pay for 28days	\$ Gross 28-day Pay Difference (A-B)	Pay reduction % (diff/current)	\$ Total Gross Pay for 28days	\$ Gross 28-day Pay Difference (A-C)	Pay reduction % (diff/current)
RN	SA	7665.16	6918.86	746.30	9.7%	5908.24	1756.92	22.9%
EN	SA	5701.05	5145.98	555.07	9.7%	4394.32	1306.73	22.9%
RN	VIC	7262.88	6555.74	707.14	9.7%	5598.16	1664.72	22.9%
EN	VIC	5864.73	5293.72	571.01	9.7%	4520.48	1344.25	22.9%
RN	TAS	7195.83	6495.22	700.61	9.7%	5546.48	1649.35	22.9%
EN	TAS	5480.19	4946.62	533.57	9.7%	4224.08	1256.11	22.9%
RN	NSW	7998.43	7219.68	778.75	9.7%	6165.12	1833.31	22.9%
EN	NSW	5578.79	5035.62	543.17	9.7%	4300.08	1278.71	22.9%
RN	QLD	7923.50	7152.04	771.46	9.7%	6107.36	1816.14	22.9%
EN	QLD	5892.34	5318.64	573.70	9.7%	4541.76	1350.58	22.9%
RN	ACT	7982.66	7205.44	777.22	9.7%	6152.96	1829.70	22.9%
EN	ACT	5811.48	5245.66	565.82	9.7%	4479.44	1332.04	22.9%
RN	WA	8637.36	7796.40	840.96	9.7%	6657.60	1979.76	22.9%
EN	WA	5533.43	4994.68	538.75	9.7%	4265.12	1268.31	22.9%
RN	NT	7891.94	7123.56	768.38	9.7%	6083.04	1808.90	22.9%
EN	NT	5850.92	5281.26	569.66	9.7%	4509.84	1341.08	22.9%

Sector: Aged Care

classification	Full time 152hrs/28days @	\$ Total Gross Pay for 28days	\$ Total Gross Pay for 28days	\$ Gross 28-day Pay Difference (A-B)	Pay reduction % (diff/current)	\$ Total Gross Pay for 28days	\$ Gross 28-day Pay Difference (A-C)	Pay reduction % (diff/current)
AIN	SA	4003.16	3613.40	389.76	9.7%	3085.60	917.56	22.9%
AIN	VIC	4326.57	3905.32	421.25	9.7%	3334.88	991.69	22.9%
AIN	TAS	0.00	0.00	0.00	#DIV/0!	0.00	0.00	#DIV/0!
AIN	NSW	4095.84	3697.06	398.78	9.7%	3157.04	938.80	22.9%
AIN	QLD	4070.21	3673.92	396.29	9.7%	3137.28	932.93	22.9%
AIN	ACT	4095.84	3697.06	398.78	9.7%	3157.04	938.80	22.9%
AIN	WA	4245.72	3832.34	413.38	9.7%	3272.56	973.16	22.9%
AIN	NT	4003.16	3613.40	389.76	9.7%	3085.60	917.56	22.9%

Public Sector (all States and Territories) - Ordinary Rates and Penalty Rate
Individual Staff - Gross 28 days pay impact

Scenario A - Current Penalty Rate - based on SA Public Sector EBA

Agreement Title - Public Acute	Classification		Ord Hrlly Rate	Penalty Rate as per SA Public Sector EBA 2013				
				Late 12.5%	Night 20.5%	Sat 50.0%	Sun 75.0%	PH 150.0%
Nursing Midwifery SA Public Secor Agreement 2013-2016	RN Level 1	SA	38.88	43.74	46.85	58.32	68.04	97.20
Nursing Midwifery SA Public Secor Agreement 2013-2017	EN Dip	SA	28.49	32.05	34.33	42.74	49.86	71.23
Nurses and Midwives (Victorain Public Sector) (Single Interest Employers) EA	RN Level 1	VIC	36.03	40.53	43.42	54.05	63.05	90.08
Nurses and Midwives (Victorain Public Sector) (Single Interest Employers) EA	EN Dip	VIC	27.77	31.24	33.46	41.66	48.60	69.43
Victorian Public MH Services EA 2012-2016	RN Level 1	VIC MH	37.28	41.94	44.92	55.92	65.24	93.20
Victorian Public MH Services EA 2012-2017	EN Dip	VIC MH	28.43	31.98	34.26	42.65	49.75	71.08
Publi Health System Nuses' and Midwives' (state) Award 2011 (NSW)	RN Level 1	NSW	40.17	45.19	48.40	60.26	70.30	100.43
Publi Health System Nuses' and Midwives' (state) Award 2011 (NSW)	EN Dip	NSW	27.46	30.89	33.09	41.19	48.06	68.65
Queensland Health Nurses and Midwives Award - State 2012	RN Level 1	QLD	36.58	41.15	44.08	54.87	64.02	91.45
Queensland Health Nurses and Midwives Award - State 2013	EN Dip	QLD	25.98	29.23	31.31	38.97	45.47	64.95
ACT Public Sector Nursing and Midwifery EA 2011-2013	RN Level 1	ACT	37.87	42.60	45.63	56.81	66.27	94.68
ACT Public Sector Nursing and Midwifery EA 2011-2014	EN Dip	ACT	27.12	30.51	32.68	40.68	47.46	67.80
WA Health - ANF - Registered Nurse, Midwives, Enrolled (Mental Health) and	RN Level 1	WA	41.34	46.51	49.81	62.01	72.35	103.35
WA Health - ANF - Registered Nurse, Midwives, Enrolled (Mental Health) and	EN Dip	WA	30.16	33.93	36.34	45.24	52.78	75.40
Northern Territory Public Sector Nurses and Midwives' 2011-2014 EA	RN Level 1	NT	38.49	43.30	46.38	57.74	67.36	96.23
Northern Territory Public Sector Nurses and Midwives' 2011-2014 EA	EN Dip	NT	29.09	32.73	35.05	43.64	50.91	72.73

Gross 28 days pay impact per classification - calculations based on above assumptions and sample roster

Scenario A - current penalty					12.5%	20.5%	50.0%	75.0%	150.0%
Public sector	Full time 152hrs/28days	Total Gross for 28days	Ord Hrlly	Penalties	Late	Night	Sat	Sun	PH
			Rate Pay	pay					
			No. of shifts (x hrs)		5 (8hrs)	4 (10hrs)	2 (8hrs)	2 (8hrs)	1 (8hrs)
RN	SA	7667.14	5909.76	1757.38	194.4	318.82	311.04	466.56	466.56
EN	SA	5618.23	4330.48	1287.75	142.45	233.62	227.92	341.88	341.88
RN	VIC	7105.12	5476.56	1628.56	180.15	295.45	288.24	432.36	432.36
EN	VIC	5476.24	4221.04	1255.20	138.85	227.71	222.16	333.24	333.24
RN	VIC MH	7351.62	5666.56	1685.06	186.4	305.70	298.24	447.36	447.36
EN	VIC MH	5606.40	4321.36	1285.04	142.15	233.13	227.44	341.16	341.16
RN	NSW	7921.52	6105.84	1815.68	200.85	329.39	321.36	482.04	482.04
EN	NSW	5415.11	4173.92	1241.19	137.3	225.17	219.68	329.52	329.52
RN	QLD	7213.58	5560.16	1653.42	182.9	299.96	292.64	438.96	438.96
EN	QLD	5123.26	3948.96	1174.30	129.9	213.04	207.84	311.76	311.76
RN	ACT	7467.96	5756.24	1711.72	189.35	310.53	302.96	454.44	454.44
EN	ACT	5348.06	4122.24	1225.82	135.6	222.38	216.96	325.44	325.44
RN	WA	8152.25	6283.68	1868.57	206.7	338.99	330.72	496.08	496.08
EN	WA	5947.55	4584.32	1363.23	150.8	247.31	241.28	361.92	361.92
RN	NT	7590.23	5850.48	1739.75	192.45	315.62	307.92	461.88	461.88
EN	NT	5736.55	4421.68	1314.87	145.45	238.54	232.72	349.08	349.08

Assumptions:

- work full time, 10 shifts a fortnight
- work every second weekend
- work equal numbers of Earlys and Lates
- work one set of 4 nights in a roster month
- work one Public Holiday in a month
- 8hrs Early, 8 hrs Late, 10hrs Night

sample roster

Sat	Sun	Mon	Tue	Wed	Thu	Fri
X	X	L	L	E	E	E
L	E	X	X	P	L	L
E	E	PL	L	E	X	X
X	X	N	N	N	N	X

Note: E = Early, L = Late, N= Night, P = Program day off, PL = Late on PH, X = Off

Public Sector (all States and Territories) - Ordinary Rates and Penalty Rate
Individual Staff - Gross 28 days pay impact

Scenario B - LESS penalty rates-

Agreement Title - Public Acute	Classification		Ord Hrlly Rate	Penalty Rates Assumption - reduction				
				Late	Night	Sat	Sun	PH
				10.0%	15.0%	25.0%	25.0%	100.0%
Nursing Midwifery SA Public Secor Agreement 2013-2016	RN Level 1	SA	38.88	42.77	44.71	48.60	48.60	77.76
Nursing Midwifery SA Public Secor Agreement 2013-2017	EN Dip	SA	28.49	31.34	32.76	35.61	35.61	56.98
Nurses and Midwives (Victorain Public Sector) (Single Interest Employers) EA	RN Level 1	VIC	36.03	39.63	41.43	45.04	45.04	72.06
Nurses and Midwives (Victorain Public Sector) (Single Interest Employers) EA	EN Dip	VIC	27.77	30.55	31.94	34.71	34.71	55.54
Victorian Public MH Services EA 2012-2016	RN Level 1	VIC MH	37.28	41.01	42.87	46.60	46.60	74.56
Victorian Public MH Services EA 2012-2017	EN Dip	VIC MH	28.43	31.27	32.69	35.54	35.54	56.86
Publi Health System Nuses' and Midwives' (state) Award 2011 (NSW)	RN Level 1	NSW	40.17	44.19	46.20	50.21	50.21	80.34
Publi Health System Nuses' and Midwives' (state) Award 2011 (NSW)	EN Dip	NSW	27.46	30.21	31.58	34.33	34.33	54.92
Queensland Health Nurses and Midwives Award - State 2012	RN Level 1	QLD	36.58	40.24	42.07	45.73	45.73	73.16
Queensland Health Nurses and Midwives Award - State 2013	EN Dip	QLD	25.98	28.58	29.88	32.48	32.48	51.96
ACT Public Sector Nursing and Midwifery EA 2011-2013	RN Level 1	ACT	37.87	41.66	43.55	47.34	47.34	75.74
ACT Public Sector Nursing and Midwifery EA 2011-2014	EN Dip	ACT	27.12	29.83	31.19	33.90	33.90	54.24
WA Health - ANF - Registered Nurse, Midwives, Enrolled (Mental Health) an	RN Level 1	WA	41.34	45.47	47.54	51.68	51.68	82.68
WA Health - ANF - Registered Nurse, Midwives, Enrolled (Mental Health) an	EN Dip	WA	30.16	33.18	34.68	37.70	37.70	60.32
Northern Territory Public Sector Nurses and Midwives' 2011-2014 EA	RN Level 1	NT	38.49	42.34	44.26	48.11	48.11	76.98
Northern Territory Public Sector Nurses and Midwives' 2011-2014 EA	EN Dip	NT	29.09	32.00	33.45	36.36	36.36	58.18

Gross 28 days pay impact per classification - calculations based on above assumptions and sample roster

Scenario B - less penalty					10.0%	15.0%	25.0%	25.0%	100.0%	
Public Sector		Full time 152hrs/28days	Total Gross for 28days	Ord Hrlly Rate Pay	Penalties pay	Late	Night	Sat	Sun	PH
			No. of shifts (x hrs)		5 (8hrs)	4 (10hrs)	2 (8hrs)	2 (8hrs)	1 (8hrs)	
RN	SA	6920.64	5909.76	1010.88	155.52	233.28	155.52	155.52	311.04	
EN	SA	5071.22	4330.48	740.74	113.96	170.94	113.96	113.96	227.92	
RN	VIC	6413.34	5476.56	936.78	144.12	216.18	144.12	144.12	288.24	
EN	VIC	4943.06	4221.04	722.02	111.08	166.62	111.08	111.08	222.16	
RN	VIC MH	6635.84	5666.56	969.28	149.12	223.68	149.12	149.12	298.24	
EN	VIC MH	5060.54	4321.36	739.18	113.72	170.58	113.72	113.72	227.44	
RN	NSW	7150.26	6105.84	1044.42	160.68	241.02	160.68	160.68	321.36	
EN	NSW	4887.88	4173.92	713.96	109.84	164.76	109.84	109.84	219.68	
RN	QLD	6511.24	5560.16	951.08	146.32	219.48	146.32	146.32	292.64	
EN	QLD	4624.44	3948.96	675.48	103.92	155.88	103.92	103.92	207.84	
RN	ACT	6740.86	5756.24	984.62	151.48	227.22	151.48	151.48	302.96	
EN	ACT	4827.36	4122.24	705.12	108.48	162.72	108.48	108.48	216.96	
RN	WA	7358.52	6283.68	1074.84	165.36	248.04	165.36	165.36	330.72	
EN	WA	5368.48	4584.32	784.16	120.64	180.96	120.64	120.64	241.28	
RN	NT	6851.22	5850.48	1000.74	153.96	230.94	153.96	153.96	307.92	
EN	NT	5178.02	4421.68	756.34	116.36	174.54	116.36	116.36	232.72	

Assumptions:

- work full time, 10 shifts a fortnight
- work every second weekend
- work equal numbers of Earlyies and Lates
- work one set of 4 nights in a roster month
- work one Public Holiday in a month
- 8hrs Early, 8 hrs Late, 10hrs Night

sample roster

Sat	Sun	Mon	Tue	Wed	Thu	Fri
X	X	L	L	E	E	E
L	E	X	X	P	L	L
E	E	PL	L	E	X	X
X	X	N	N	N	N	X

Note: E = Early, L = Late, N= Night, P = Program day off, PL = Late on PH, X = Off

Private Acute Sector (all States and Territories) - Ordinary Rates
Individual Staff - Gross 28 days pay impact

Scenario A - Current Penalty Rate - based on SA Public Sector EBA

Agreement Title - Private Acute	Classification		Ord Hrlly Rate	Penalty Rate as per SA Public Sector EBA 2013				
				Late 12.5%	Night 20.5%	Sat 50.0%	Sun 75.0%	PH 150.0%
Ramsay Health Care (SA) & ANMF Nursing Employees EA 2014	RN Level 1	SA	38.87	43.73	46.84	58.31	68.02	97.18
Ramsay Health Care (SA) & ANMF Nursing Employees EA 2015	EN Dip	SA	28.91	32.52	34.84	43.37	50.59	72.28
Ramsay Health Care Victoria - ANF(Vic) and HSU (VIC) EA 2012	RN Level 1	VIC	36.83	41.43	44.38	55.25	64.45	92.08
Ramsay Health Care Victoria - ANF(Vic) and HSU (VIC) EA 2013	EN	VIC	29.74	33.46	35.84	44.61	52.05	74.35
Healthscope Lte - Tasmania - Nurses Agreement 2014	RN Level 1	TAS	36.49	41.05	43.97	54.74	63.86	91.23
Healthscope Lte - Tasmania - Nurses Agreement 2015	EN	TAS	27.79	31.26	33.49	41.69	48.63	69.48
Calvary Health Care Riverina Ltd and The NSW NM/ANF(NSW) Nurses Midwifery Services EA 2012-2015	RN Level 1	NSW	40.56	45.63	48.87	60.84	70.98	101.40
Calvary Health Care Riverina Ltd and The NSW NM/ANF(NSW) Nurses Midwifery Services EA 2012-2015	EN	NSW	28.29	31.83	34.09	42.44	49.51	70.73
Ramsay Health Care Australia Pty. Ltd and the QNU EA 2012-2016	RN Level 1	QLD	40.18	45.20	48.42	60.27	70.32	100.45
Ramsay Health Care Australia Pty. Ltd and the QNU EA 2012-2017	EN	QLD	29.88	33.62	36.01	44.82	52.29	74.70
Calvary Health Care - ACT Private Nursing And Midwifery Services EA 2012-2015	RN Level 1	ACT	40.48	45.54	48.78	60.72	70.84	101.20
Calvary Health Care - ACT Private Nursing And Midwifery Services EA 2012-2015	EN	ACT	29.47	33.15	35.51	44.21	51.57	73.68
Ramsay Health Care WA Registered Nurses and Midwives Agreement 2014	RN Level 1	WA	43.8	49.28	52.78	65.70	76.65	109.50
Ramsay Health Care WA Enrolled Nurses and Support Services Transition Coll	EN	WA	28.06	31.57	33.81	42.09	49.11	70.15
Darwin Private Hospital Nursing Employees 2011-2014 EA	RN Level 1	NT	40.02	45.02	48.22	60.03	70.04	100.05
Darwin Private Hospital Nursing Employees 2011-2014 EA	EN	NT	29.67	33.38	35.75	44.51	51.92	74.18

Gross 28 days pay impact per classification - calculations based on above assumptions and sample roster

Scenario A - current penalty					12.5%	20.5%	50.0%	75.0%	150.0%
Private Acute	Full time 152hrs/28days	Total Gross for 28days	Ord Hrlly Rate	Penalties pay	Late	Night	Sat	Sun	PH
			No. of shifts (x hrs)		5 (8hrs)	4 (10hrs)	2 (8hrs)	2 (8hrs)	1 (8hrs)
RN	SA	7665.16	5908.24	1756.92	194.35	318.73	310.96	466.44	466.44
EN	SA	5701.05	4394.32	1306.73	144.55	237.06	231.28	346.92	346.92
RN	VIC	7262.88	5598.16	1664.72	184.15	302.01	294.64	441.96	441.96
EN	VIC	5864.73	4520.48	1344.25	148.7	243.87	237.92	356.88	356.88
RN	TAS	7195.83	5546.48	1649.35	182.45	299.22	291.92	437.88	437.88
EN	TAS	5480.19	4224.08	1256.11	138.95	227.88	222.32	333.48	333.48
RN	NSW	7998.43	6165.12	1833.31	202.8	332.59	324.48	486.72	486.72
EN	NSW	5578.79	4300.08	1278.71	141.45	231.98	226.32	339.48	339.48
RN	QLD	7923.50	6107.36	1816.14	200.9	329.48	321.44	482.16	482.16
EN	QLD	5892.34	4541.76	1350.58	149.4	245.02	239.04	358.56	358.56
RN	ACT	7982.66	6152.96	1829.70	202.4	331.94	323.84	485.76	485.76
EN	ACT	5811.48	4479.44	1332.04	147.35	241.65	235.76	353.64	353.64
RN	WA	8637.36	6657.60	1979.76	219	359.16	350.4	525.6	525.60
EN	WA	5533.43	4265.12	1268.31	140.3	230.09	224.48	336.72	336.72
RN	NT	7891.94	6083.04	1808.90	200.1	328.16	320.16	480.24	480.24
EN	NT	5850.92	4509.84	1341.08	148.35	243.29	237.36	356.04	356.04

Assumptions:

- work full time, 10 shifts a fortnight
- work every second weekend
- work equal numbers of Earlys and Lates
- work one set of 4 nights in a roster month
- work one Public Holiday in a month
- 8hrs Early, 8 hrs Late, 10hrs Night

sample roster

Sat	Sun	Mon	Tue	Wed	Thu	Fri
X	X	L	L	E	E	E
L	E	X	X	P	L	L
E	E	PL	L	E	X	X
X	X	N	N	N	N	X

Note: E = Early, L = Late, N= Night, P = Program day off, PL = Late on PH, X = Off

Private Acute Sector (all States and Territories) - Ordinary Rates
Individual Staff - Gross 28 days pay impact

Scenario B - LESS penalty rates-

Agreement Title - Private Acute	Classification		Ord Hrlly Rate	Penalty Rates Assumption - reduction				
				Late 10.0%	Night 15.0%	Sat 25.0%	Sun 25.0%	PH 100.0%
Ramsay Health Care (SA) & ANMF Nursing Employees EA 2014	RN Level 1	SA	38.87	42.76	44.70	48.59	48.59	77.74
Ramsay Health Care (SA) & ANMF Nursing Employees EA 2015	EN Dip	SA	28.91	31.80	33.25	36.14	36.14	57.82
Ramsay Health Care Victoria - ANF(Vic) and HSU (VIC) EA 2012	RN Level 1	VIC	36.83	40.51	42.35	46.04	46.04	73.66
Ramsay Health Care Victoria - ANF(Vic) and HSU (VIC) EA 2013	EN	VIC	29.74	32.71	34.20	37.18	37.18	59.48
Healthscope Lte - Tasmania - Nurses Agreement 2014	RN Level 1	TAS	36.49	40.14	41.96	45.61	45.61	72.98
Healthscope Lte - Tasmania - Nurses Agreement 2015	EN	TAS	27.79	30.57	31.96	34.74	34.74	55.58
Calvary Health Care Riverina Ltd and The NSW NM/ANF(NSW) Nurses Midwifery Services EA 2012-2016	RN Level 1	NSW	40.56	44.62	46.64	50.70	50.70	81.12
Calvary Health Care Riverina Ltd and The NSW NM/ANF(NSW) Nurses Midwifery Services EA 2012-2017	EN	NSW	28.29	31.12	32.53	35.36	35.36	56.58
Ramsay Health Care Australia Pty. Ltd and the QNU EA 2012-2016	RN Level 1	QLD	40.18	44.20	46.21	50.23	50.23	80.36
Ramsay Health Care Australia Pty. Ltd and the QNU EA 2012-2017	EN	QLD	29.88	32.87	34.36	37.35	37.35	59.76
Calvary Health Care - ACT Private Nursing And Midwifery Services EA 2012-2016	RN Level 1	ACT	40.48	44.53	46.55	50.60	50.60	80.96
Calvary Health Care - ACT Private Nursing And Midwifery Services EA 2012-2017	EN	ACT	29.47	32.42	33.89	36.84	36.84	58.94
Ramsay Health Care WA Registered Nurses and Midwives Agreement 2014	RN Level 1	WA	43.8	48.18	50.37	54.75	54.75	87.60
Ramsay Health Care WA Enrolled Nurses and Support Services Transition Coll	EN	WA	28.06	30.87	32.27	35.08	35.08	56.12
Darwin Private Hospital Nursing Employees 2011-2014 EA	RN Level 1	NT	40.02	44.02	46.02	50.03	50.03	80.04
Darwin Private Hospital Nursing Employees 2011-2014 EA	EN	NT	29.67	32.64	34.12	37.09	37.09	59.34

Gross 28 days pay impact per classification - calculations based on above assumptions and sample roster

Scenario B - less penalty					10.0%	15.0%	25.0%	25.0%	100.0%
Private Acute	Full time 152hrs/28days	Total Gross for 28days	Ord Hrlly Rate Pay	Penalties pay	Late	Night	Sat	Sun	PH
			No. of shifts (x hrs)		5 (8hrs)	4 (10hrs)	2 (8hrs)	2 (8hrs)	1 (8hrs)
RN	SA	6918.86	5908.24	1010.62	155.48	233.22	155.48	155.48	310.96
EN	SA	5145.98	4394.32	751.66	115.64	173.46	115.64	115.64	231.28
RN	VIC	6555.74	5598.16	957.58	147.32	220.98	147.32	147.32	294.64
EN	VIC	5293.72	4520.48	773.24	118.96	178.44	118.96	118.96	237.92
RN	TAS	6495.22	5546.48	948.74	145.96	218.94	145.96	145.96	291.92
EN	TAS	4946.62	4224.08	722.54	111.16	166.74	111.16	111.16	222.32
RN	NSW	7219.68	6165.12	1054.56	162.24	243.36	162.24	162.24	324.48
EN	NSW	5035.62	4300.08	735.54	113.16	169.74	113.16	113.16	226.32
RN	QLD	7152.04	6107.36	1044.68	160.72	241.08	160.72	160.72	321.44
EN	QLD	5318.64	4541.76	776.88	119.52	179.28	119.52	119.52	239.04
RN	ACT	7205.44	6152.96	1052.48	161.92	242.88	161.92	161.92	323.84
EN	ACT	5245.66	4479.44	766.22	117.88	176.82	117.88	117.88	235.76
RN	WA	7796.40	6657.60	1138.80	175.2	262.80	175.2	175.2	350.40
EN	WA	4994.68	4265.12	729.56	112.24	168.36	112.24	112.24	224.48
RN	NT	7123.56	6083.04	1040.52	160.08	240.12	160.08	160.08	320.16
EN	NT	5281.26	4509.84	771.42	118.68	178.02	118.68	118.68	237.36

Assumptions:

- work full time, 10 shifts a fortnight
- work every second weekend
- work equal numbers of Earlys and Lates
- work one set of 4 nights in a roster month
- work one Public Holiday in a month
- 8hrs Early, 8 hrs Late, 10hrs Night

sample roster

Sat	Sun	Mon	Tue	Wed	Thu	Fri
X	X	L	L	E	E	E
L	E	X	X	P	L	L
E	E	PL	L	E	X	X
X	X	N	N	N	N	X

Note: E = Early, L = Late, N= Night, P = Program day off, PL = Late on PH, X = Off

Aged Care Sector (all States and Territories) - Ordinary Rates
Individual Staff - Gross 28 days pay impact

Scenario A - Current Penalty Rate - based on SA Public Sector EBA

Agreement Title - Aged Care	Classification		Ord Hrlly Rate	Penalty Rate as per SA Public Sector EBA 2013				
				Late 12.5%	Night 20.5%	Sat 50.0%	Sun 75.0%	PH 150.0%
Southern Cross Care (SA&NT) Inc Nursing Employees - ANMF (Aged Care) EA	AIN	SA	20.3	22.84	24.46	30.45	35.53	50.75
Southern Cross Care (VIC) Nurses and Health and Allied Services EA 2014	AIN	VIC	21.94	24.68	26.44	32.91	38.40	54.85
	AIN	TAS	0	0.00	0.00	0.00	0.00	0.00
The Southern Cross Care (NSW&ACT) EA 2013-2016	AIN	NSW	20.77	23.37	25.03	31.16	36.35	51.93
Southern Cross Care Queensland and QNU - Nurses EA 2014	AIN	QLD	20.64	23.22	24.87	30.96	36.12	51.60
The Southern Cross Care (NSW&ACT) EA 2013-2016	AIN	ACT	20.77	23.37	25.03	31.16	36.35	51.93
Regis Aged Care EBA - WA 2014	AIN	WA	21.53	24.22	25.94	32.30	37.68	53.83
Southern Cross Care (SA&NT) Inc Nursing Employees - ANMF (Aged Care) EA	AIN	NT	20.3	22.84	24.46	30.45	35.53	50.75

Gross 28 days pay impact per classification - calculations based on above assumptions and sample roster

Scenario A - current penalty						12.5%	20.5%	50.0%	75.0%	150.0%
Aged Care	Full time 152hrs/28days	Total Gross for 28days	Ord Hrlly Rate Pay	Penalties pay	Late	Night	Sat	Sun	PH	
			No. of shifts (x hrs)		5 (8hrs)	4 (10hrs)	2 (8hrs)	2 (8hrs)	1 (8hrs)	
AIN	SA	4003.16	3085.60	917.56	101.5	166.46	162.4	243.6	243.60	
AIN	VIC	4326.57	3334.88	991.69	109.7	179.91	175.52	263.28	263.28	
AIN	TAS	0.00	0.00	0.00	0	0.00	0	0	0.00	
AIN	NSW	4095.84	3157.04	938.80	103.85	170.31	166.16	249.24	249.24	
AIN	QLD	4070.21	3137.28	932.93	103.2	169.25	165.12	247.68	247.68	
AIN	ACT	4095.84	3157.04	938.80	103.85	170.31	166.16	249.24	249.24	
AIN	WA	4245.72	3272.56	973.16	107.65	176.55	172.24	258.36	258.36	
AIN	NT	4003.16	3085.60	917.56	101.5	166.46	162.40	243.6	243.60	

Scenario B - LESS penalty rates-

Agreement Title - Aged Care	Classification		Ord Hrlly Rate	Penalty Rates Assumption - reduction				
				Late 10.0%	Night 15.0%	Sat 25.0%	Sun 25.0%	PH 100.0%
Southern Cross Care (SA&NT) Inc Nursing Employees - ANMF (Aged Care) EA	AIN	SA	20.3	22.33	23.35	25.38	25.38	40.60
Southern Cross Care (VIC) Nurses and Health and Allied Services EA 2014	AIN	VIC	21.94	24.13	25.23	27.43	27.43	43.88
	AIN	TAS	0	0.00	0.00	0.00	0.00	0.00
The Southern Cross Care (NSW&ACT) EA 2013-2016	AIN	NSW	20.77	22.85	23.89	25.96	25.96	41.54
Southern Cross Care Queensland and QNU - Nurses EA 2014	AIN	QLD	20.64	22.70	23.74	25.80	25.80	41.28
The Southern Cross Care (NSW&ACT) EA 2013-2016	AIN	ACT	20.77	22.85	23.89	25.96	25.96	41.54
Regis Aged Care EBA - WA 2014	AIN	WA	21.53	23.68	24.76	26.91	26.91	43.06
Southern Cross Care (SA&NT) Inc Nursing Employees - ANMF (Aged Care) EA	AIN	NT	20.3	22.33	23.35	25.38	25.38	40.60

Gross 28 days pay impact per classification - calculations based on above assumptions and sample roster

Scenario B - less penalty						10.0%	15.0%	25.0%	25.0%	100.0%
Full time 152hrs/28days		Total Gross for 28days	Ord Hrlly Rate Pay	Penalties pay	Late	Night	Sat	Sun	PH	
			No. of shifts (x hrs)		5 (8hrs)	4 (10hrs)	2 (8hrs)	2 (8hrs)	1 (8hrs)	
AIN	SA	3613.40	3085.60	527.80	81.2	121.80	81.2	81.2	162.40	
AIN	VIC	3905.32	3334.88	570.44	87.76	131.64	87.76	87.76	175.52	
AIN	TAS	0.00	0.00	0.00	0	0.00	0	0	0.00	
AIN	NSW	3697.06	3157.04	540.02	83.08	124.62	83.08	83.08	166.16	
AIN	QLD	3673.92	3137.28	536.64	82.56	123.84	82.56	82.56	165.12	
AIN	ACT	3697.06	3157.04	540.02	83.08	124.62	83.08	83.08	166.16	
AIN	WA	3832.34	3272.56	559.78	86.12	129.18	86.12	86.12	172.24	
AIN	NT	3613.40	3085.60	527.80	81.2	121.80	81.20	81.2	162.40	

Assumptions:

- work full time, 10 shifts a fortnight
- work every second weekend
- work equal numbers of Earlys and Lates
- work one set of 4 nights in a roster month
- work one Public Holiday in a month
- 8hrs Early, 8 hrs Late, 10hrs Night

sample roster

Sat	Sun	Mon	Tue	Wed	Thu	Fri
X	X	L	L	E	E	E
L	E	X	X	P	L	L
E	E	PL	L	E	X	X
X	X	N	N	N	N	X

Note: E = Early, L = Late, N= Night, P = Program day off, PL = Late on PH, X = Off



Australian
Nursing &
Midwifery
Federation

ANMF Enterprise Agreement coverage

AGED CARE

As at November 2014, 89.7% of all aged care facilities are covered by agreements. About 84.6% of facilities have their entire nursing workforce covered by single enterprise agreements (2054 out of 2427 facilities). The coverage rate is calculated by mapping enterprise agreements to the Department of Health list of non-public sector residential aged care services.

Agreement coverage varies markedly across the State and Territories: Victoria records the highest rate of complete coverage with 550 out of 568 facilities (96.8%) completely covered by enterprise agreements. NSW also records a high level of complete coverage - 92.2% (789 out of 856) of all facilities. In both Queensland and Tasmania roughly 4 out of 5 facilities are fully covered; 83% of all Tasmanian facilities are fully covered (58 out of 70) and 80% in Queensland (342 out of 429) are fully covered. In South Australia, RNs and ENs are covered in 96.6% of facilities however in 46.6% of facilities, AINs/PCWs are not covered by enterprise agreements.

Agreement Coverage as at November 2014 (Non-public residential aged care)

Table: Percent share of facilities (services) by status of agreement coverage and State/Territory

Industrial Instrument Coverage	NSW	VIC	QLD	SA	WA	TAS	NT	ACT	AUST
Complete - Single Agreement	91.6	82	78.8	4.3	8.2	41.4	86.7	88	69.3
Complete - Multiple Agreements	0.6	14.8	0.5	45.7	62.5	41.4	13.3	0	15.4
Sub Total Complete Coverage	92.2	96.8	79.3	50	70.7	82.9	100	88	84.6
Partial - RNS & ENS	0	0	0	46.6	0.9	11.4	0	0	4.9
Partial - ENS & AINs/PCWs	0	0	0	0	1.3	0	0	0	0.1
Partial - AINs/PCWs only	0	0	0.5	0	0	0	0	4	0.1
Sub Total Partial Coverage	0	0	0.5	46.6	2.2	11.4	0	4	5.1
Agreement Coverage (Complete or Partial)	92.2	96.8	79.7	96.6	72.8	94.3	100	92	89.7
Complete Award Reliance	7.8	3.2	20.3	3.4	27.2	5.7	0	8	10.3
Total	100	100	100	100	100	100	100	100	100

Wages

(Please note all wage tables included in this document do not reflect all nursing and midwifery classifications represented in nursing classification and career structures. In relation to Registered Nurses and midwives, only the Level 1 rates are shown. All agreements contain a range of classifications beyond the RN/M level 1 structure.)

The average wage rates are based on a comprehensive mapping of 772 agreements to residential aged care facilities covered by non public sector agreements in Australia. The data

comes from the total population (100% sample) of current and most recently expired agreements. Administrative increases, (where known), have been applied to older agreements and agreements which expired before June 2013 were excluded from the sample used to calculate averages.

In terms of wages, it is interesting to note that at the commencement of the Because We Care Campaign in 2009 the average national wages gap for an RN1 between the public and aged care was around \$300 per week and it is now \$202.50.

While EBA's are now prevalent, in a small number of agreements wage levels remain close to the award, particularly for AINs

TABLE : Average wage data – November 2014

	NSW	VIC	QLD	SA	WA	TAS	NT	ACT	AUST	Award
AIN/PCW entry	18.97	20.11	19.23	19.07	20.33	18.71	18.80	20.22	19.37	18.41
AIN/PCW thereafter	20.47	20.64	20.03	19.59	20.69	19.24	20.04	20.64	20.36	19.03
AIN/PCW Cert 3 entry	20.31	20.95	20.60	19.94	21.20	19.71	19.78	22.16	20.51	19.64
AIN/PCW Cert 3 thereafter	20.70	21.46	20.99	20.44	21.52	19.77	20.45	22.68	20.96	19.64
EN min	22.85	22.03	22.75	21.86	23.44	23.29	22.17	23.56	22.56	20.00
EN max	25.46	24.77	24.95	25.02	24.81	25.65	25.75	26.63	25.17	21.04
RN level1 entry	28.42	26.13	26.35	24.09	28.59	24.95	27.48	27.64	26.82	21.39
RN level 1 thereafter	35.52	32.05	31.54	32.65	35.95	33.15	34.87	35.22	33.70	25.71

PRIVATE HOSPITALS

The ABS reports there are approximately 282 private acute hospitals in Australia. The majority (61%) operate on a 'for profit' basis while a further 29.1% are religious or charitable 'not for profit' hospitals with the remainder being considered other not for profit hospitals (bush nursing, community and memorial hospitals).

Currently there are 105 enterprise agreements covering 91.7% of private hospitals across Australia.

TABLE : Private hospitals average wage data – November 2014

	NSW	VIC	QLD	SA	WA	TAS	NT	ACT	AUST	Award
AIN/PCW min	19.89	21.09	22.50	22.21	22.94	20.24		23.00	21.13	18.41
AIN/PCW max	21.83	23.55	25.58	22.89	23.86	21.30		23.80	23.29	19.64
EN min	24.43	23.66	27.43	24.55	24.25	25.72	26.26	26.61	25.02	20.00
EN max	27.32	27.57	29.28	28.69	27.21	28.68	29.68	29.00	28.15	21.04
RN level1 entry	27.67	27.78	30.27	27.96	29.84	28.28	29.68	29.47	28.58	21.39
RN level 1 thereafter	38.94	35.43	39.62	38.05	39.30	37.14	39.27	39.83	38.24	25.71

PUBLIC HOSPITALS

All nurses and midwives employed in public sector health and mental health services are covered by respective State/Territory Enterprise Agreements negotiated between ANMF Branches and respective State/Territory authorities. In NSW the agreed wage increases and employment conditions are included in relevant State Awards.

Average wages for selected classifications are shown in the table below:

TABLE : Public hospital wage data – November 2014

	NSW	VIC	QLD	SA	WA	TAS	NT	ACT	AUST	Award
AIN/PCW min	20.56	21.47	24.82		24.51	23.74		22.89	22.85	18.41
AIN/PCW max	22.56	22.96	27.20		25.74	26.09		23.67	24.86	19.64
EN min	25.23	23.14	26.88	25.10	27.57	26.87	26.52	26.99	26.04	20.00
EN max	28.02	27.77	28.54	29.35	29.41	28.89	29.97	28.84	28.85	21.04
RN level1 entry	28.61	27.58	29.86	29.35	30.64	28.89	29.97	29.76	29.33	21.39
RN level 1 thereafter	40.17	35.15	40.17	40.04	40.32	36.95	39.66	39.75	39.03	25.71

OTHER AGREEMENT COVERAGE

Enterprise Agreements also regulate a wide range of additional areas of nursing and midwifery employment. The ANMF negotiates enterprise agreements covering nurses and midwives working in wide range of settings including: district nursing and other home care services; GP medical clinics; Blood bank services; local government; prisons; specialist medical services; diagnostic and analytical services; drug and alcohol services; schools; Bush nursing services; palliative care, health administration and community health services.



Nurses and midwives leave their families to provide care around the clock; they must - this is how the health system survives. The ANMF believes that it's only fair that nurses and midwives are reasonably compensated for working these hours through penalty rates. **But penalty rates are under review - officially.**

The Productivity Commission has commenced an Inquiry into workplace relations, the system that governs your working conditions, and penalty rates are once again on the table. **We're seeking your views so we can take them to the Government - *What do your penalty rates mean to you? Do they compensate for shift work? How does shift work affect your life?***

Please complete this short ten minute survey to help us answer these questions.

The first six questions are simple demographic questions to give us a snapshot of the workforce, the remaining questions explore your experiences of shift work and what penalty rates mean to you.

Thank you.

Email

First Name

Last Name

Postal Code

1. What is your gender?

☐

Male

☐

Female

2. What age are you?

- ☐ Under 25
- ☐ 25-39
- ☐ 40-55
- ☐ Over 55

3. What is your classification?

- ☐ Registered Nurse
- ☐ Endorsed Enrolled Nurse
- ☐ Enrolled Nurse
- ☐ Assistant in Nursing (or equivalent)
- ☐ Midwife

4. How many years have you worked in nursing/midwifery?

- ☐ Under 5 years
- ☐ 5-10 years
- ☐ 11-20 years
- ☐ 21-30 years
- ☐ More than 30 years

5. Do you work?

- ☐ Full time
- ☐ Part time
- ☐ Casual

6. What sector do you work in?

- ☐ Public
- ☐ Private
- ☐ Aged Care
- ☐ Other

If you selected other for question 6, please specify what sector you work in.

7. Do you work shift work, that is, any hours of work outside Monday – Friday day shift hours? (If no, but you have worked shift work previously, please go to question 20 to comment on your experience)

- ☐ Yes
- ☐ No

8. If yes, how often do you work a shift outside Monday – Friday day shift hours?

- ☐ Weekly ☐ Fortnightly ☐ Monthly ☐ Less than monthly

9. Why do you work shift work?

- ☐ I like shift work ☐ Primarily for family reasons ☐ It is the roster and I have no choice ☐ Other

If you selected other for question 9, please specify why you work shift work.

10. Does shift work differ from Monday – Friday day shift hours?

- ☐ Yes
☐ No

If yes, please describe how shift work differs from Monday – Friday day shift hours.

11. Does working shift work affect your life outside work?

- ☐ Yes
☐ No

12. What parts of your life are affected? (please select more than one if applicable)

- ☐ Family
☐ Social/Community
☐ Health
☐ Economic

13. Please describe how these areas of your life are affected by shift work.

14. Which shift has the most effect on your life outside work?

- ☐ Evening ☐ Night ☐ Weekend ☐ Public holiday ☐ Other

If you selected other for question 14, please specify which shift has the most effect on your life outside work.

15. Do penalty rates compensate for the effects of shift work on your life outside work?

- ☐ Yes
☐ No
☐ Partially

16. Would you continue to work shift work if penalty rates were removed or lowered?

- ☐ Yes
☐ No

17. Would you be prepared to take action to protect your penalty rates?

- ☐ Yes
☐ No

18. If yes, what action would you be prepared to take? (please select more than one if applicable)

- ☐ Sign a petition
☐ Contact your MP
☐ Attend a rally
☐ Stop work/strike action
☐ Other

If you selected other for question 18, please specify what action you would be prepared to take.

19. Would you be prepared to attend the National Day of Action, 4 March, in your state/territory to stand up for your penalty rates?

- ☐ Yes
- ☐ No

20. Please add any other comments.



21. Do you consent to the ANMF using your de-identified responses in our national submission to the Productivity Commission Inquiry?

- ☐ Yes
- ☐ No

22. Do you consent to the ANMF contacting you by email for further information if required?

- ☐ Yes
- ☐ No



What do your penalty rates mean to you?

Survey of nurses and midwives –
preliminary report



Foreword

Nursing and midwifery are not easy jobs, and rotating rosters with night and weekend shifts make those jobs even harder. But they are 24 hour a day jobs; babies don't wait to be born between 9am – 5 pm on weekdays and people get sick at all hours of the day and night.

This is why penalty rates are so important to nurses and midwives; while nothing can truly make up for everything they miss, penalty rates provide some compensation for nurses and midwives while they care for our loved ones and communities around the clock.

In our recent penalty rates survey more than 13,000 nurses and midwives and assistants in nursing told us how much penalty rates meant to them and said they would take action to defend them. On 4 March 2015 they did just that; thousands of nurses, midwives and assistants in nursing turned out across Australia at the national day of action to fight for penalty rates.

Their message to us was loud and clear:

Nurses and midwives know: sometimes we don't see our kids for four nights in a row, our health suffers, our family life suffers, we can't get involved in our community, we miss weekends, Christmas, Easter, and we miss our family and our friends. Our kids don't do weekend sport, we miss parent teacher nights, ballet performances, and seeing our parents. We miss these things – to be there for you 24/7.

If penalty rates go – then nurses and midwives will go.

Lee Thomas
Federal Secretary



Executive Summary

The Australian Bureau of Statistics reports that only 16% of the Australian workforce regularly works shift work, with the health care and social assistance industry comprising the highest proportion of shift workers within an industry. It therefore cannot be argued that Australians now routinely work across 7 days and that weekend work is a matter of choice.

With the vast majority of Australians working Monday – Friday day shift hours and enjoying family and leisure time at night and on the weekends it is only fair that those who work shift work to ensure that a service is provided to the community 24 hours a day are compensated through penalty rates.

However, in Australia there is currently considerable debate over the future of penalty rates with industry and business groups pushing for reductions in penalty rates and the Productivity Commission now investigating penalty rates and related payments as part of its Inquiry into the workplace relations framework.

This is extremely concerning for nursing and midwifery. Most nurses and midwives work according to a roster with changing shift patterns to meet the service requirements of the health care setting. This means that nurses and midwives must work all hours of the day, all days of the year across all health and aged care settings – they have no choice, this is how the health and aged care systems survive.

The Australian Nursing and Midwifery Federation (ANMF) is strongly committed to the payment of fair and reasonable penalty rates for nurses, midwives and assistants in nursing to compensate for the unsociable hours they work and to acknowledge the contribution of their skilled and dedicated work to our society.

Because of this and the recent debate over and threats to penalty rates, the ANMF conducted a survey of members investigating what penalty rates mean to them, the level of compensation penalty rates provide for working shift work and how shift work affects the lives of nurses and midwives.

The survey, ***What do your penalty rates mean to you?***, conducted from 10 February – 1 March 2015, received an overwhelming response with 13,101 nurses and midwives participating from all states and territories across the country.

The key findings of the survey showed that:

- 92% of respondents currently work shifts outside regular Monday-Friday day-shift hours;
- 90% reported that shift work affected their life outside work most particularly their health and their family and social lives, with night and weekend shifts having the greatest impact;
- The majority said penalty rates compensated for the effects of shift work on their lives outside work (38.9) or at least partially compensated for the effects of shift work on their lives (49.3%);
- 87% indicated they would stop working shift work if penalty rates were removed or lowered;
- 92.7% warned they would take action to protect their penalty rates with just over 60% indicating they would take stop work or strike action.



Introduction

In Australia there is currently considerable debate over the future of penalty rates with industry and business groups pushing for reductions in penalty rates and the Productivity Commission (PC) now investigating penalty rates and related payments as part of its Inquiry into the workplace relations framework.

The Inquiry's terms of reference indicated that the PC intends to conduct a wide ranging review of all aspects of the system assessing *the performance of the workplace relations framework, including the Fair Work Act 2009, focusing on key social and economic indicators important to the wellbeing, productivity and competitiveness of Australia and its people.*

The PC advised that, in particular, the review will assess the impact of the workplace relations framework on matters including:

- Unemployment, underemployment and job creation
- Fair and equitable pay and conditions for employees, including the maintenance of a relevant safety net
- Small businesses
- Productivity, competitiveness and business investment
- The ability of business and the labour market to respond appropriately to changing economic conditions
- Patterns of engagement in the labour market
- The ability for employers to flexibly manage and engage with their employees
- Barriers to bargaining
- Red tape and the compliance burden for employers
- Industrial conflict and days lost due to industrial action
- Appropriate scope for independent contracting.

These matters and other issues discussed in the PC's issues papers confirmed that the PC's recommendations could potentially have enormous ramifications for nurses and midwives of the Australian Nursing and Midwifery Federation (ANMF) if implemented by Government.

Recognising the potential impact of the outcomes of this Inquiry on our members, most significantly if the PC recommends changes to arrangements related to penalty rates, the ANMF conducted a survey of members investigating what penalty rates mean to them, the level of compensation penalty rates provide for working shift work and how shift work affects the lives of nurses and midwives.

The survey, which ran over a three-week period from 10 February – 1 March 2015, was conducted via social and digital media, primarily Facebook. The response was overwhelming with 13,101 nurses and midwives participating across the country. The presentation of data that follows provides an outline of ANMF members' views of shift work and its effects on their lives, and penalty rates. The survey is included for information at attachment A.



Survey responses

10, 718 responses to the ANMF's survey *What do your penalty rates mean to you?* were received from nurse and midwife members across all states and territories by the Federal Office of the ANMF, with an additional 2,382 collected by the South Australian Branch of the ANMF (ANMF (SA)). The presentation of data that follows reflects the responses received by the Federal Office of the ANMF; collation of the additional data collected by the ANMF (SA) is included at attachment B. Unsurprisingly, the outcomes of the ANMF (SA) data collation are consistent with the outcomes overall.

Figures 1-6 give a brief overview of simple demographic data collected in the survey, excluding additional data from SA as stated. Figure 1 provides details of participants by state or territory.

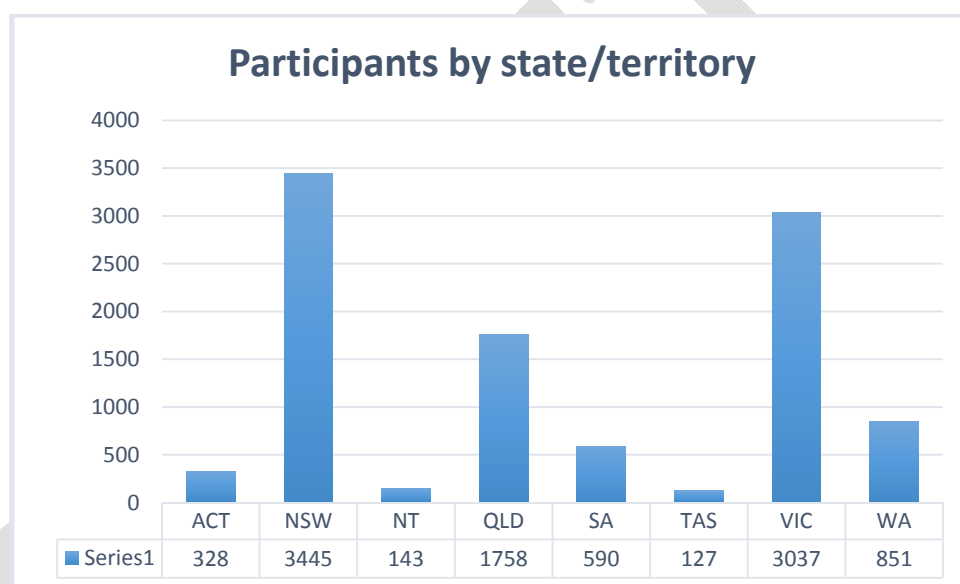


Figure 1 Participants by state/territory

The demographic data collected in the survey indicated that the key features of the survey participants were consistent with the wider nursing and midwifery workforce. This included gender distribution (with 91.5% identifying as female and 7.5% as male), the age and experience of the participants, their classifications and mode and sector of employment (see figures 2-6).

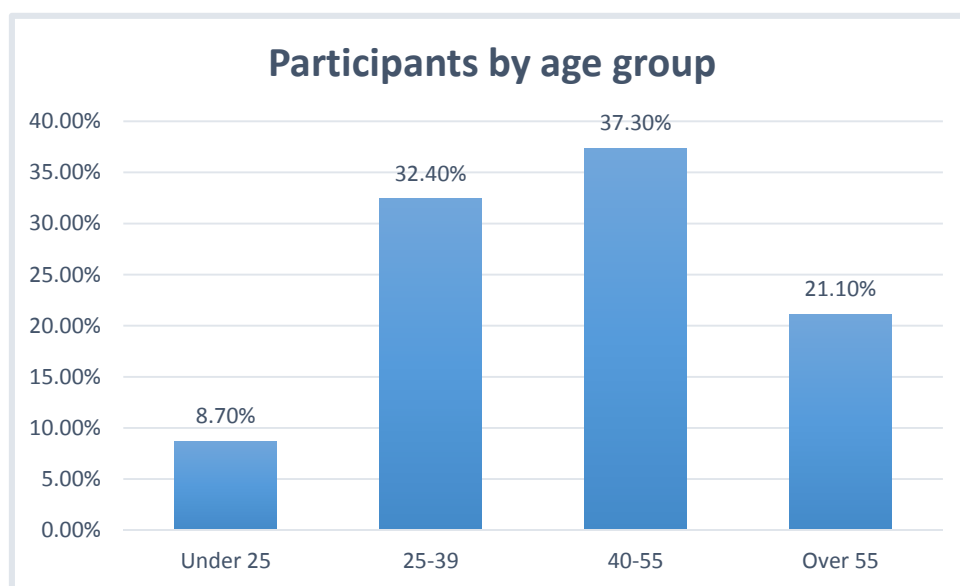


Figure 2 Participants by age

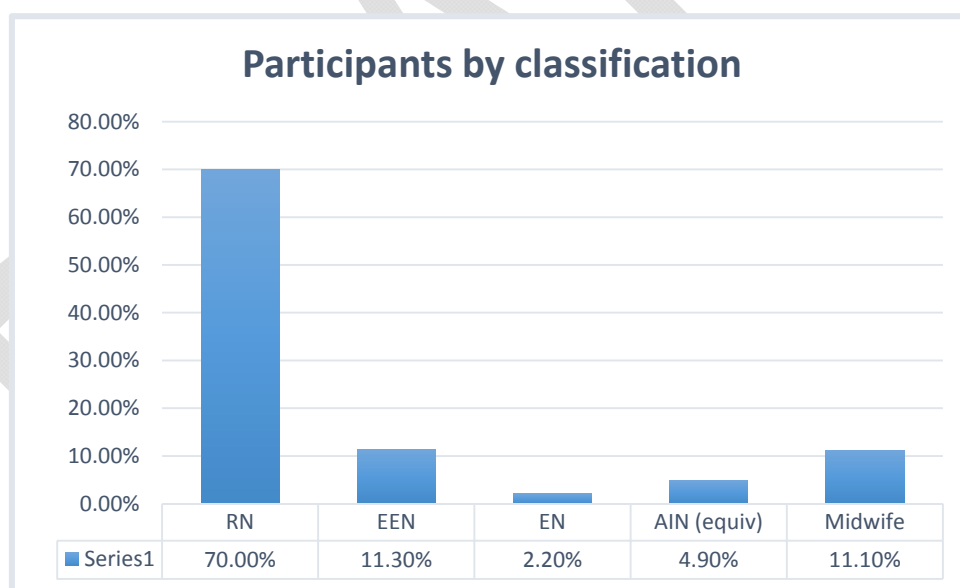


Figure 3 Participants by classification

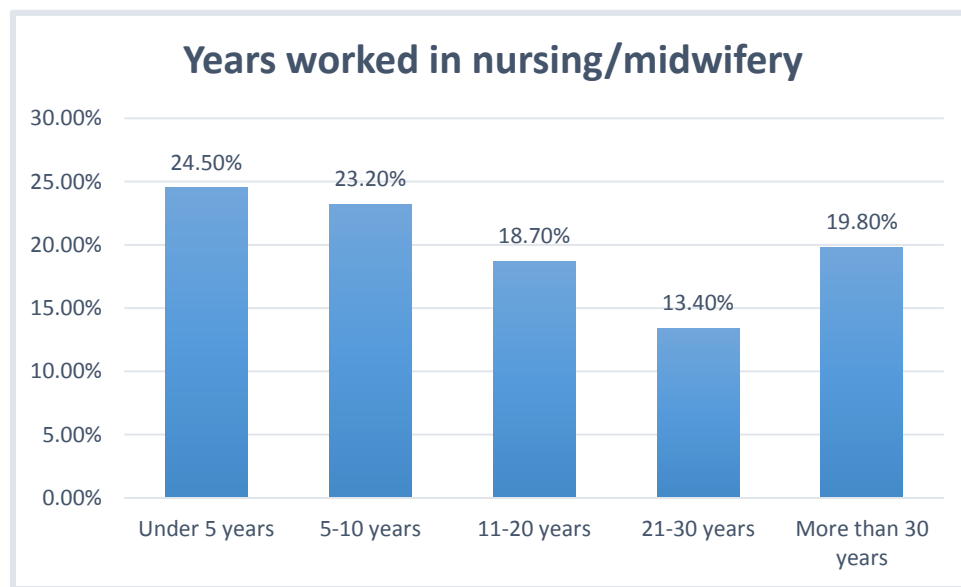


Figure 4 Years worked in nursing/midwifery

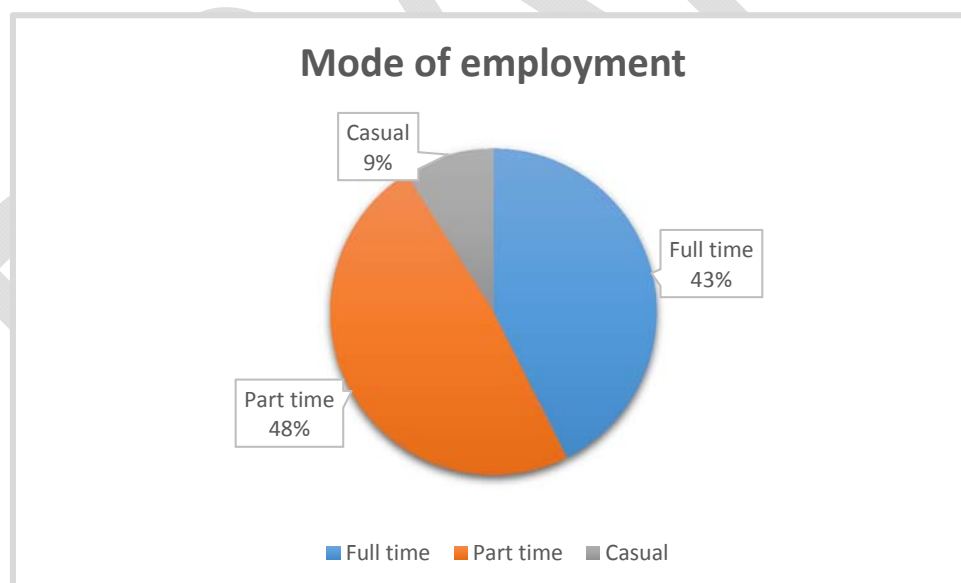


Figure 5 Respondents' mode of employment

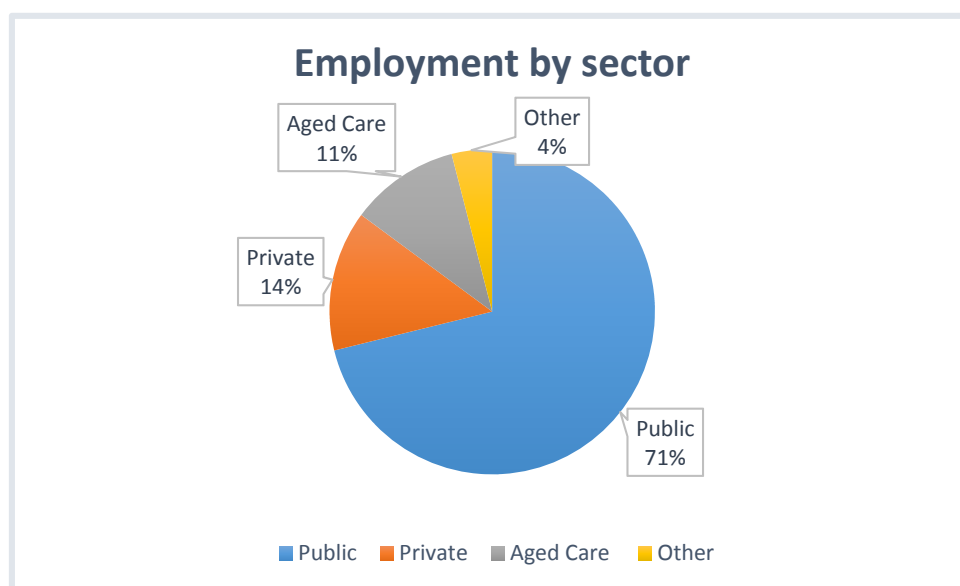


Figure 6 Respondents' sector of employment

Shift work and its effects

The data presented in figures 7-9 give an overview of the frequency and types of shifts worked by participants and whether these shifts impact on their lives outside work. Almost 92% of participants reported that they currently work shift work, with the great majority working at least one shift outside Monday – Friday day shift hours weekly (Figure 7).

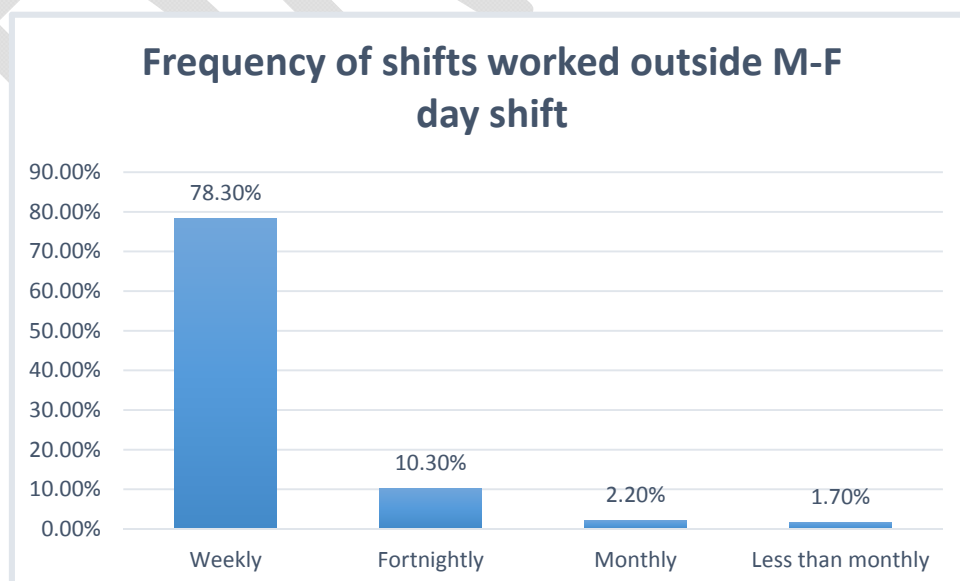


Figure 7 Respondents' frequency of shift work



The majority of participants also reported that they work shift work because it is a condition of their employment and is therefore required by their roster. 1,553 (14.5%) participants responded that they work shift because of family reasons, while less than 10% indicated that they work shift work due to personal preference.

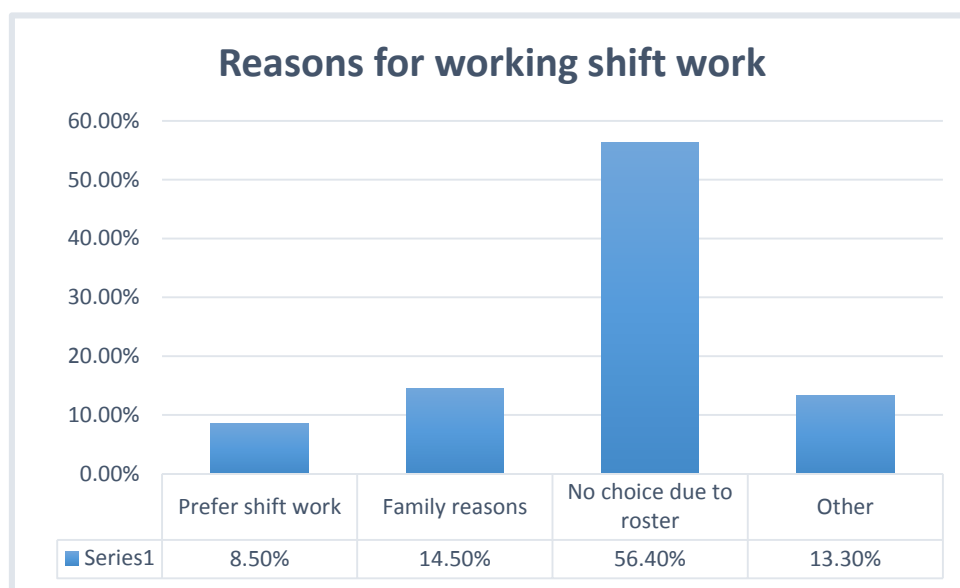


Figure 8 Respondents' reasons for working shift work

The majority of participants, 77%, reported differences between working Monday – Friday day shift hours and other shifts, e.g. night shifts and weekends, including less support, fewer medical, other health and ancillary staff and lower staffing levels.

90% of participants reported that these shifts affected their life outside work, most particularly their health and their family and social lives, with night shift and weekend shifts having the greatest impact for participants (Figure 9).

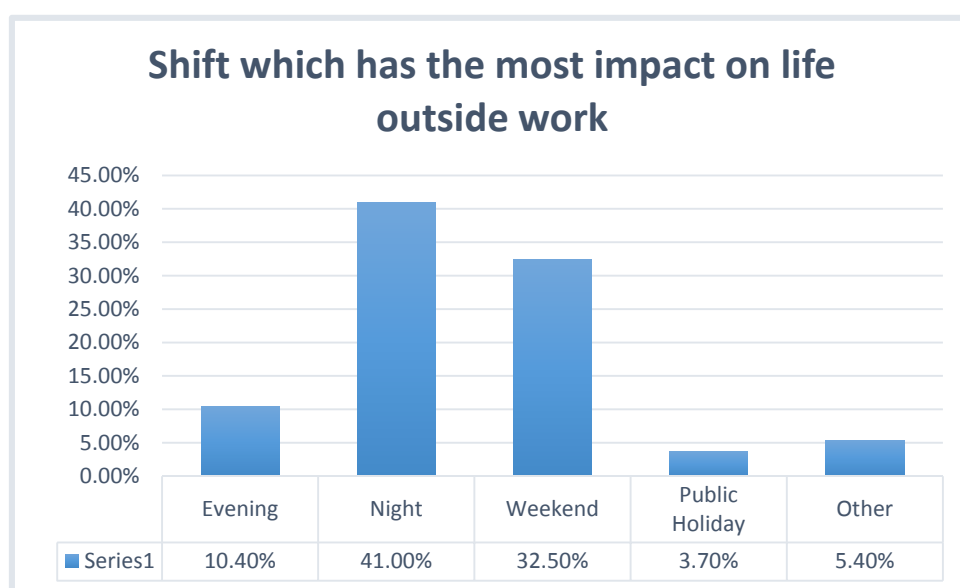


Figure 9 Shift which has the greatest impact on respondents' lives outside work

The importance of penalty rates

Most participants indicated that penalty rates compensate for the effects of shift work on their lives outside work (38.9%) or at least partially compensate for the effects of shift work (49.3%), with the great majority indicating that they would **not** continue to work shift work if penalty rates were removed or lowered (87%). Only 6.1% of participants indicated that they would continue to work shift work without penalty rates.

Figures 10-12 provide a breakdown of participant's intentions to continue to work shift work if penalty rates were removed or lowered by employment sector, by nursing or midwifery classification and by state or territory.

The responses by category were reasonably consistent with the national averages stated above with some minor variations across sectors, classifications and states and territories. The most notable variations were:

- responses received from AINs (Assistants in nursing) with 9.6% indicating that they would continue to work shift work without penalties compared to the national average, 6.1% (figure 11), and
- responses from Tasmania with 77.1% indicating that they would not continue to work shift work if penalty rates were removed or lowered, compared to the national average, 87% (figure 12).



Figure 10 Intention to continue to work shift work with penalty rates removed or lowered by sector

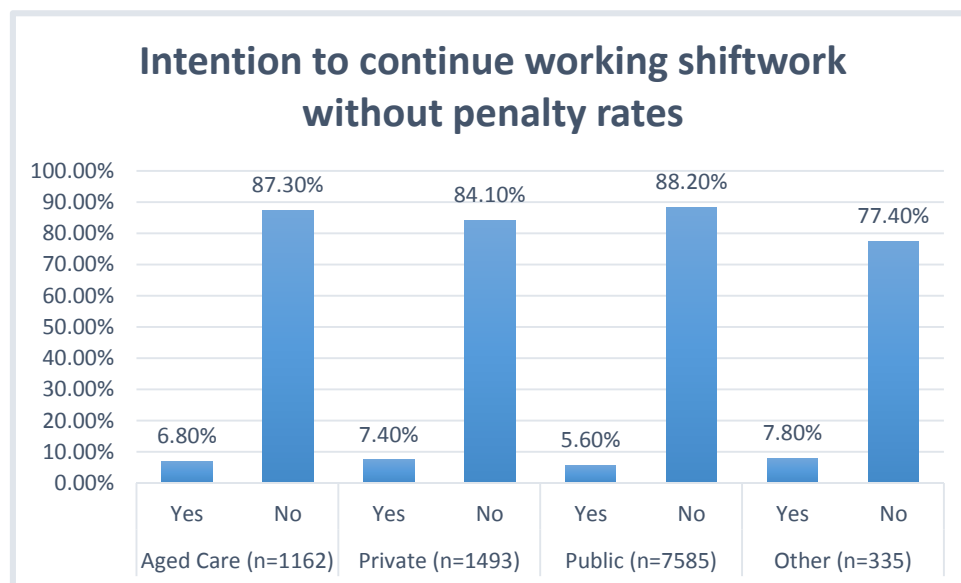


Figure 11 Intention to continue to work shift work with penalty rates removed or lowered by classification

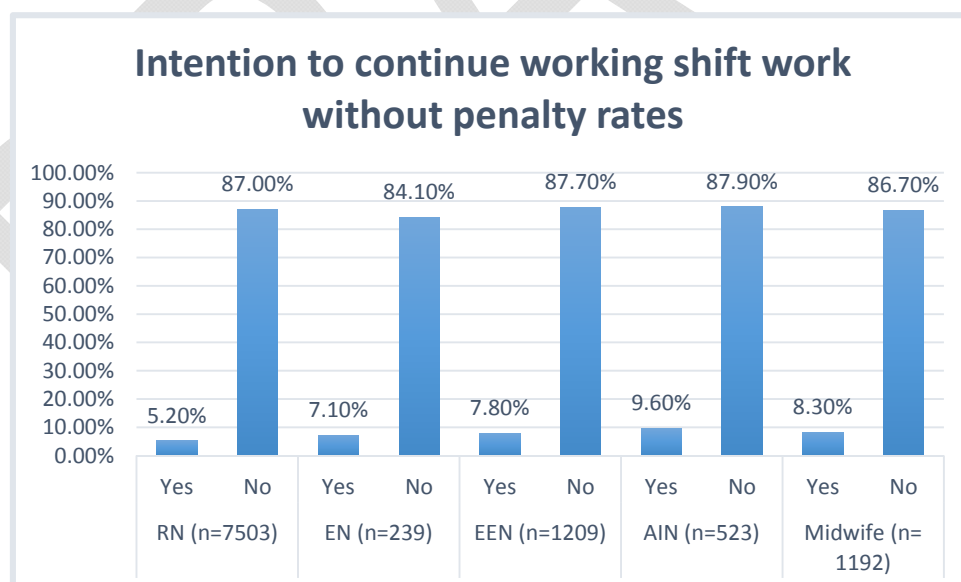
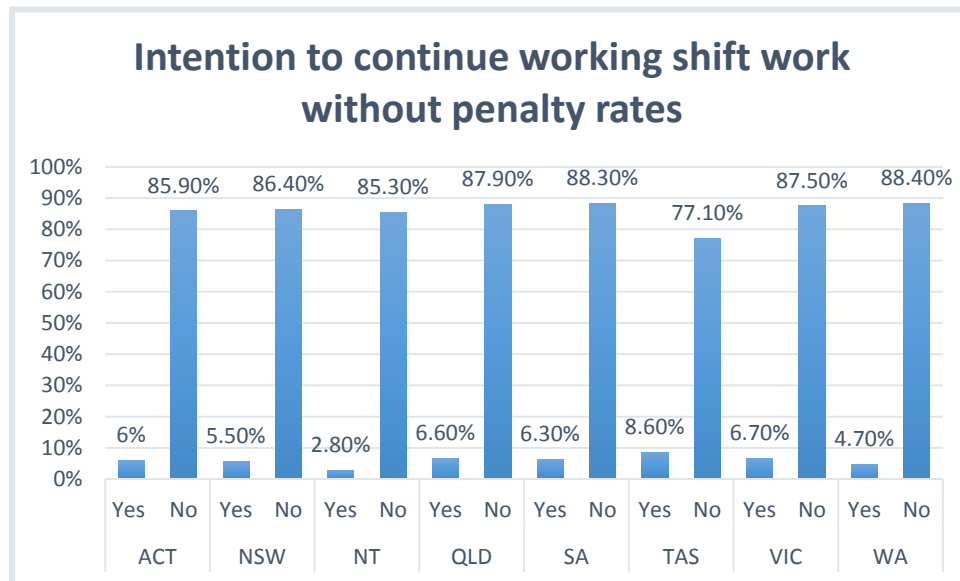




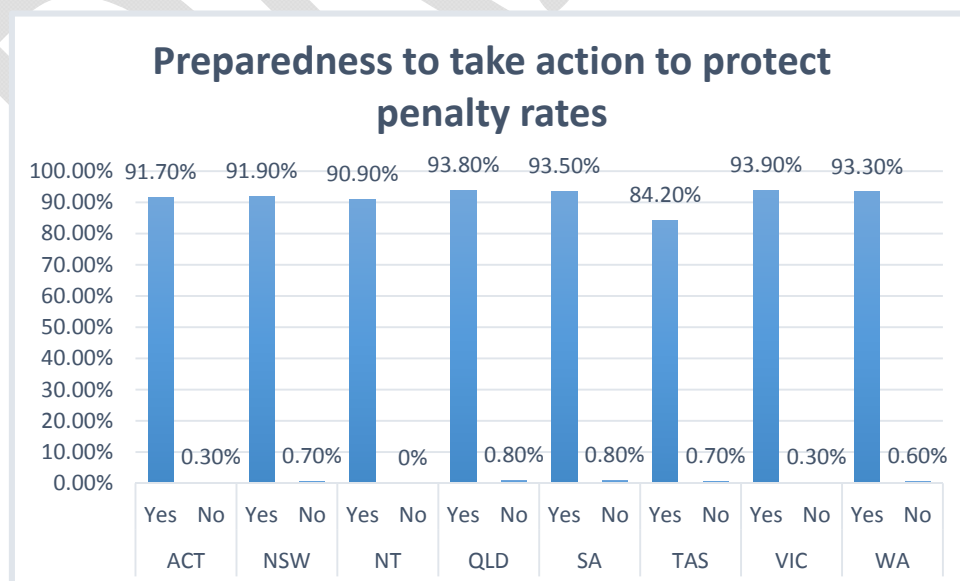
Figure 12 Intention to continue work shift work with penalty rates removed or lowered **by state/territory**



Defending Penalty Rates

An overwhelming majority of participants, 92.7%, reported that they would be prepared to take action to protect their penalty rates with almost 60% of those indicating that this would include stop work or strike action.

Figure 13 Participants prepared to take action to protect penalty rates **by state/territory**





Participants were asked what type of action they would be prepared to take to defend their penalty rates and were offered the opportunity to choose more than one option. Of those who said they would be prepared to take some form of action, 99% chose at least one option. Most indicated that they would be prepared to take more than one type of action. Figure 14 shows the results of all combinations.

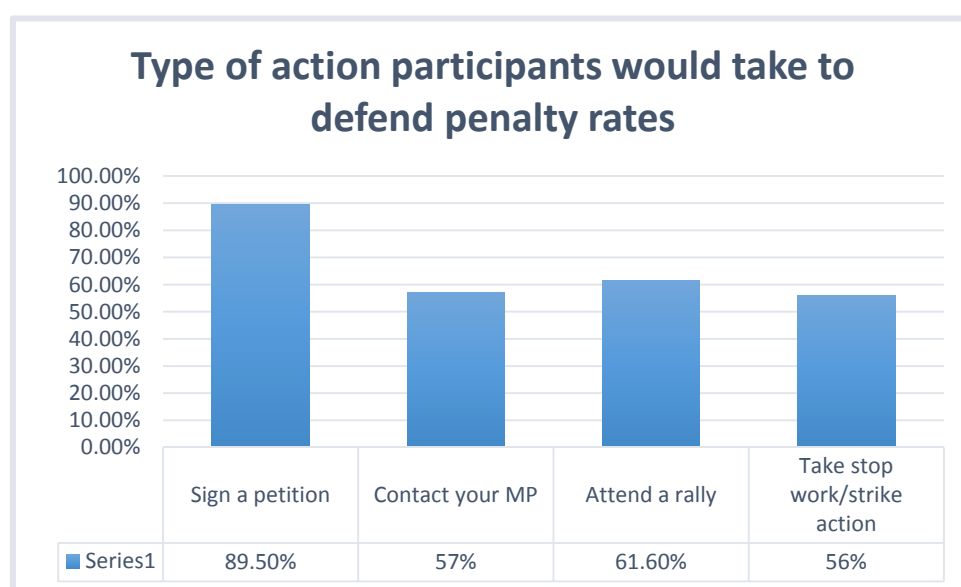


Figure 14 Type of action participants will take to defend penalty rates

Conclusion

The focus of much of the current debate on penalty rates is on the cost of the additional payments required by penalty rates to employers rather than the need for the shift work that is undertaken, the effects of shift work on those who do it and the contribution that is made to our society because of this work.

The contribution to our society that is made by the shift work of nurses and midwives is significant, with the exception of other essential and emergency service workers, it is possibly unmatched. No other health professional is required to work around the clock in the way that nurses and midwives are. It is because of the 24 hour care provided by nurses and midwives that our hospitals and health and aged care systems survive.

Nurses and midwives understand this, and that shift work is a part of the job and the career they have chosen, but it does not come without considerable, sometime unsustainable, physical and emotional cost to them and their families. Nurses and midwives described at length the physical demands and negative effects of shift work on their health, particularly because of difficulty sleeping, irregular eating habits and lack of regular exercise. These effects are well known and have been widely researched.

What perhaps is less well known, and certainly less often discussed, are the social and emotional effects of shift work. Of course, health concerns are critical, but for nurses and midwives the social



and emotional impacts of shift work on their lives could be even more influential in driving them from the workforce if penalty rates are removed or reduced.

Nurses and midwives described the enormity of the effects of shift work on their families and their social lives. They spoke of all they missed out on, from simply putting their children to bed to missing out on family Christmases and important community events. The lack of routine caused by shift work and rotating rosters means they have limited opportunities to spend quality time with their family and friends and on many occasions restricts the participation of their families in wider social activities.

There is no continuity/regularity to the roster you work, so it is much more difficult planning family time, even simple things like being home every night to cook dinner, or help with homework, or put the kids to bed become tricky. Planning for social functions is also difficult. Things that are spontaneous are virtually impossible because of shift work, it is impossible to commit to a sporting team because you cannot get a regular day off or night off each week. Working public holidays becomes a chore, when everyone else is planning weekends away or their family Christmas lunch, we have to work.

Nurses and midwives explained that because they miss out on all of these parts of life they can end up feeling disconnected, isolated and even depressed and guilty. They explained that their children, families and friends “can’t always understand why they’re not there”, family and friends “stop calling” and their “social circles become much smaller” because they have to “say no” so often. Family relationships and friendships can become strained and even dysfunctional. And because of the physical strains of shift work, they often feel ill-equipped to deal with these emotional pressures.

Shift work not only causes nurses and midwives to feel socially isolated but also professionally isolated. Thousands of nurses and midwives spoke of the additional workload and responsibility of working weekend, evening and night shifts when there are less staff, less resources and less support.

I think the public need to know that in health care, weekends and night times are often the busiest, least predictable times, with the hardest work and the least resources available.

Patients’ needs don’t differ outside regular hours so nurses become the physio’s, OT’s, speech pathologists, pharmacists and orderlies as well as providing the best nursing care available when they are stretched and less supported.

There is very much less support from medical staff and management which can be very tough when something out of the ordinary happens. We have less staff on in the afternoon & all weekend shifts and for those shifts we also have to clean & change beds as no cleaning staff work those shifts.

This is compounded by a greater risk of aggressive and violent behaviour from patients (and relatives) at times when there are less people available to manage these incidents.

Night time is less predictable - there is certainly a routine in most places but behaviours are more changeable related to activities the clients have been engaged in throughout the day, and their needs - especially if they're tired.

It is also often the time that families who may not be happy with their loved ones health condition lash out - again nurses take the brunt of this behaviour.

In short nurses and midwives found that shift work is:



unhealthy; no way to live; restrictive; constraining; stressful; hard work; difficult; isolating; disruptive; destructive; taking its toll.

Nurses and midwives described how penalty rates help to ameliorate some of these effects and provide some balance in their lives, that penalty rates are:

necessary; important; not a privilege or a bonus; fair pay back; making our pay decent; acknowledge our sacrifice; an incentive; compensation; hard fought for; respectful and supportive; non-negotiable.

It is the compensation of penalty rates that keeps the vast majority of nurses and midwives working shift work.

What makes it all tolerable is the financial and remunerative return for 24 hour continuous shift work which so importantly recognises the impositions placed on one's life by societal norms (of) Mon to Fri business hour routines.

Removal of penalty rates or even a reduction in penalty rates would see many nurses and midwives leave their profession, despite their commitment to their patients and their love for the job. This would have a devastating effect for the nursing and midwifery professions, the health system and the community.

I feel that if I lost my penalty rates I would need to reconsider my career in health. I love my job and feel that I am good at what I do but it is a hard career anyway and to struggle physically and emotionally as well as financially would be altogether too much.

I feel very strongly about keeping penalty rates for nurses working shift work. It is a very demanding job with many expectations upon nurses in their role. We must be compensated for the sacrifices we make in our own lives to ensure we make a difference to the people in our care.

People are not born to be a nurse nor are they altruistic enough to work for the pure joy of the job while being unable to pay the electricity bill or the mortgage. I for one would not work shift work without adequate reward. I would also quite happily advocate to young people to choose another profession other than nursing if our conditions become eroded.

I love nursing. I love my job working in the intensive care unit, however if penalty rates were removed, there's no way I'd work weekends or night shift without the money to compensate. I would find a job where there was no rotating roster, and I'd work Monday to Friday. It would mean leaving the public system, leaving intensive care, and putting more pressure on the already understaffed intensive care unit, no doubt leading to unsafe and inappropriate staffing levels over the weekends/nights.

I think that reducing or stopping penalty rates will have a devastating effect on the nursing profession. We already have difficulties in finding enough staff let alone enough skilled staff to cover the outside hours/weekends now, imagine what will happen when they remove the compensation/incentive. This will have a ripple-on effect, affecting the quality of care.

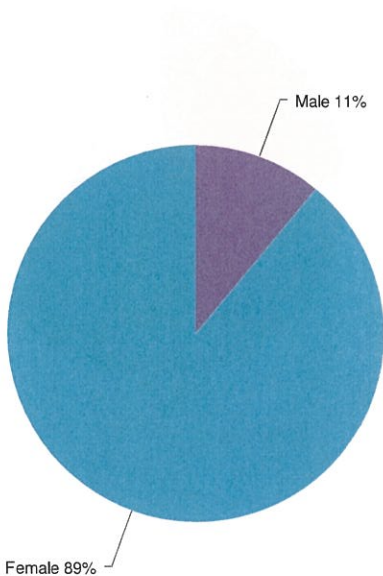
Almost 90% of nurses and midwives who participated in this survey said that they would not continue to work shift work without the compensation of penalty rates. The physical strain and the feelings of neglect for their children and their partners, and of guilt as friendships fall and families become distanced coupled with the lack of respect for their professional skills would simply be too great.

The risks of removing or reducing penalty rates for nurses and midwives are just too high, the health system would be decimated. Nurses and midwives work too hard, they give too much; they earn their penalty rates.

If penalty rates go, then nurses and midwives will go.

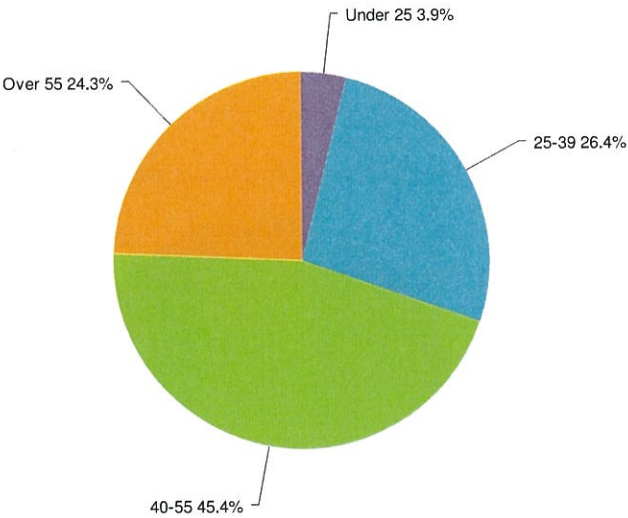
New Summary Report - 02 March 2015

2. What is your gender?



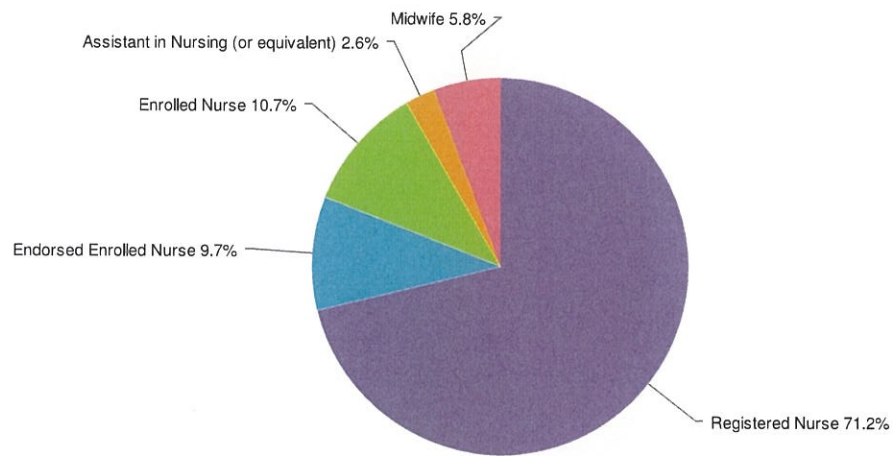
Male	11.0%		257
Female	89.0%		2,075
Total			2,332

3. What age are you?



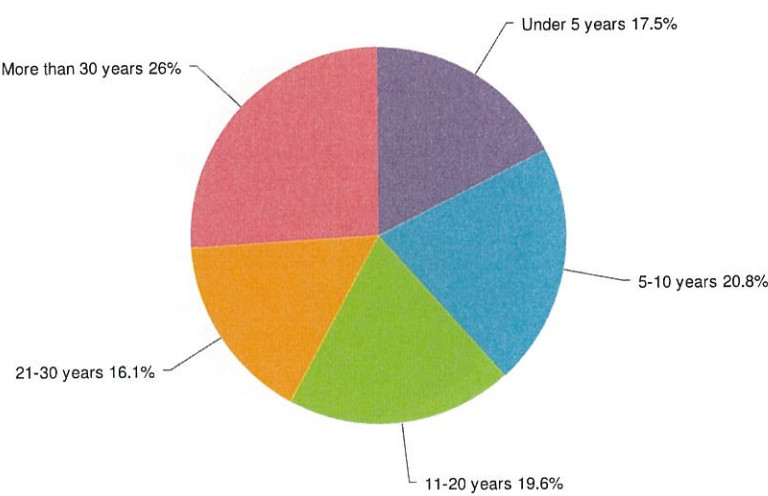
					Statistics	
Under 25	3.9%		91		Sum	57,760.0
25-39	26.4%		616		Average	34.5
40-55	45.4%		1,059		StdDev	7.2
Over 55	24.3%		568		Max	40.0
Total			2,334			

4. What is your classification?



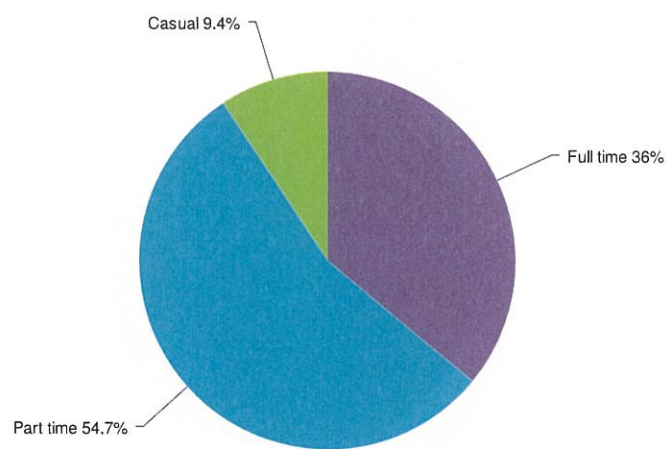
Registered Nurse	71.2%		1,663
Endorsed Enrolled Nurse	9.7%		227
Enrolled Nurse	10.7%		250
Assistant in Nursing (or equivalent)	2.6%		60
Midwife	5.8%		136
		Total	2,336

5. How many years have you worked in nursing/midwifery?



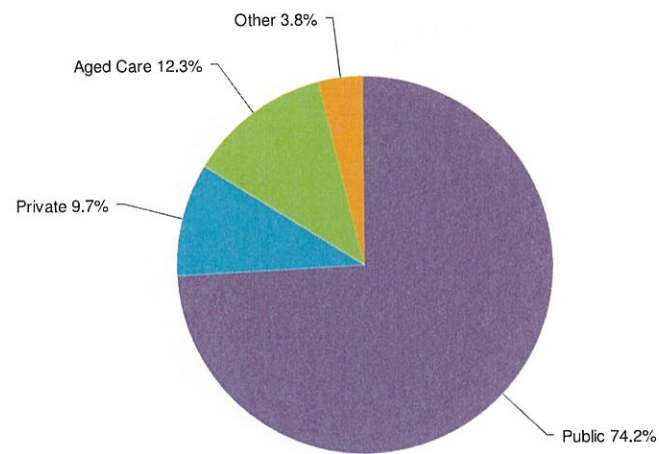
					Statistics	
Under 5 years	17.5%		410		Sum	15,358.0
5-10 years	20.8%		487		Average	11.6
11-20 years	19.6%		457		StdDev	6.4
21-30 years	16.1%		376		Max	21.0
More than 30 years	26.0%		607			
Total			2,337			

6. Do you work?



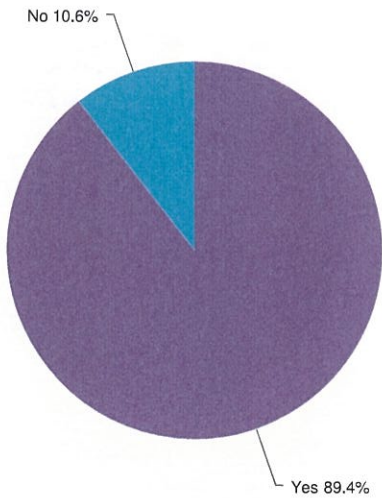
Full time	36.0%		838
Part time	54.7%		1,273
Casual	9.4%		218
Total			2,329

7. What sector do you work in?



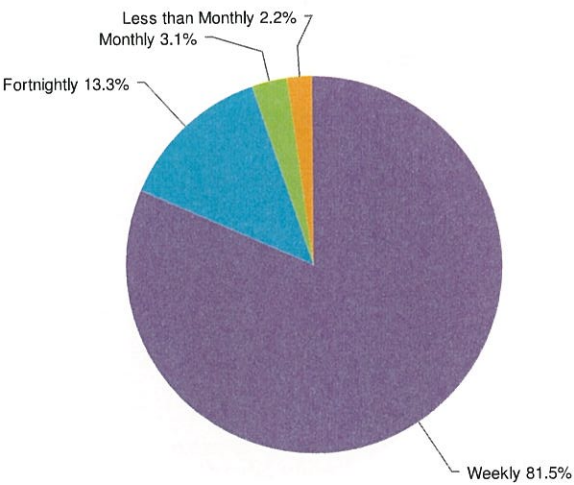
Public	74.2%		1,732
Private	9.7%		226
Aged Care	12.3%		288
Other	3.8%		89
Total			2,335

9. Do you work shift work, that is, any hours of work outside Monday – Friday day shift hours? (If no, but you have worked shift work previously, please go to question 19 to comment on your experience)



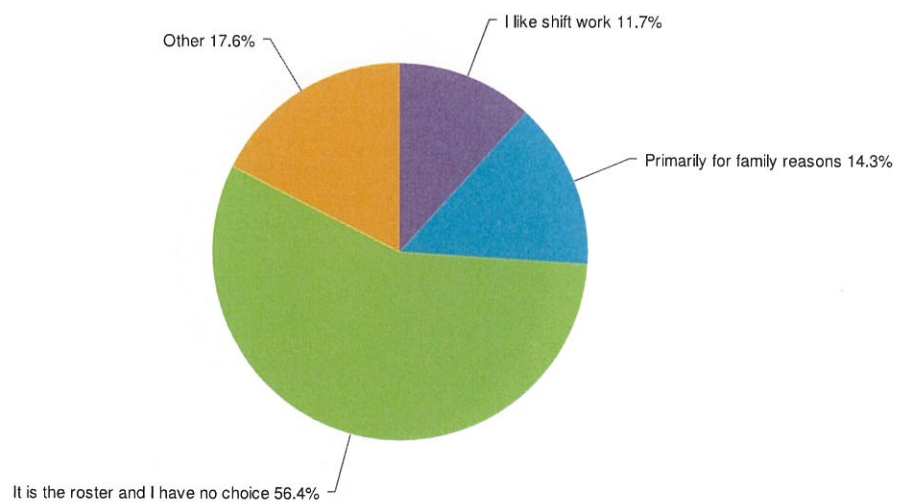
Yes	89.4%		2,072
No	10.6%		245
Total			2,317

10. If yes, how often do you work a shift outside Monday – Friday day shift hours?



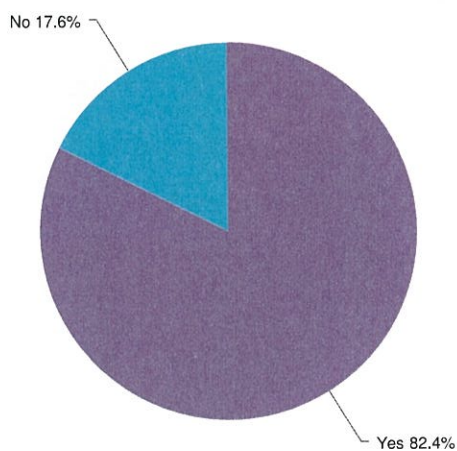
Weekly	81.5%		1,702
Fortnightly	13.3%		277
Monthly	3.1%		64
Less than Monthly	2.2%		45
Total			2,088

11. Why do you work shift work?



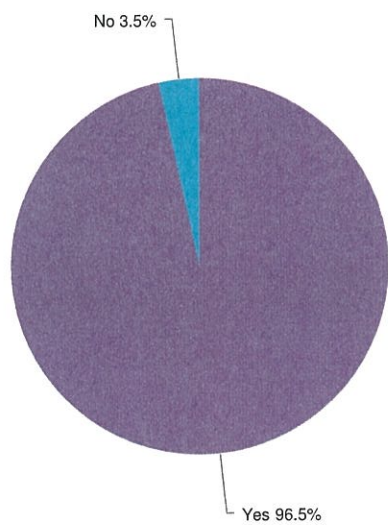
I like shift work	11.7%		244
Primarily for family reasons	14.3%		299
It is the roster and I have no choice	56.4%		1,180
Other	17.6%		368
Total			2,091

13. Does shift work differ from Monday – Friday day shift hours?



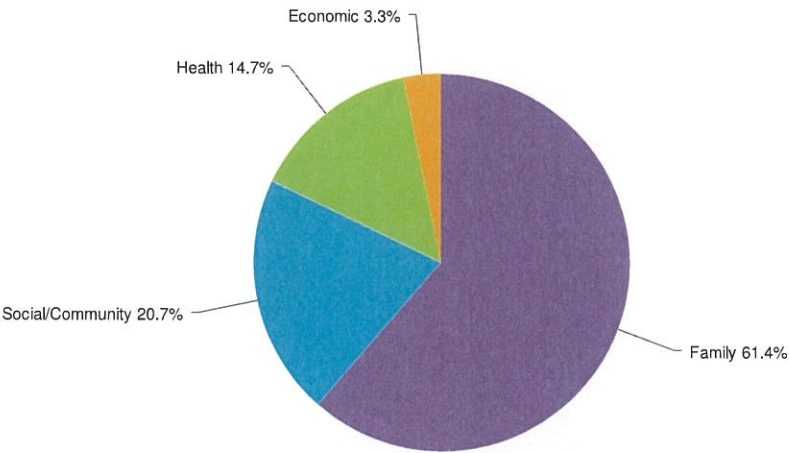
Yes	82.4%		1,729
No	17.6%		370
Total			2,099

15. Does working shift work affect your life outside work?



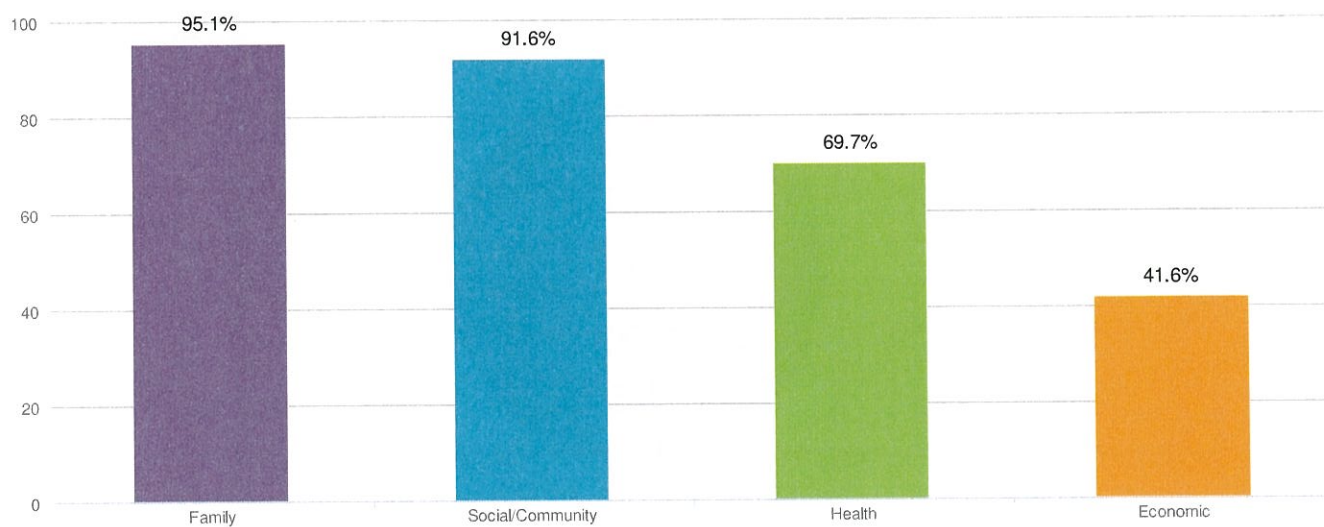
Yes	96.5%		2,034
No	3.5%		73
Total			2,107

[OLD VERSION] What parts of your life are affected? (please select more than one if applicable)



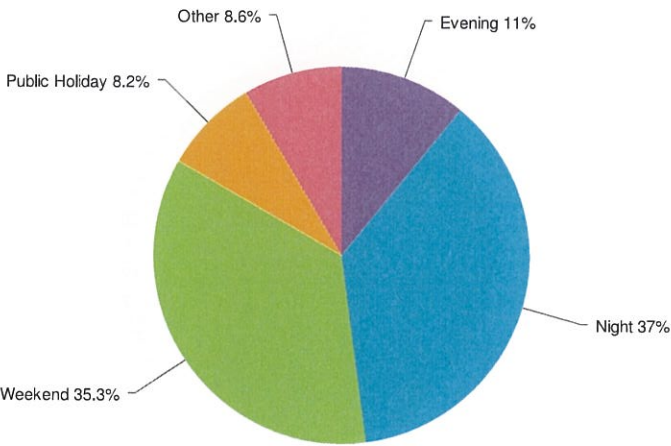
Family	61.4%		113
Social/Community	20.7%		38
Health	14.7%		27
Economic	3.3%		6
Total			184

16. What parts of your life are affected? (please select more than one if applicable)



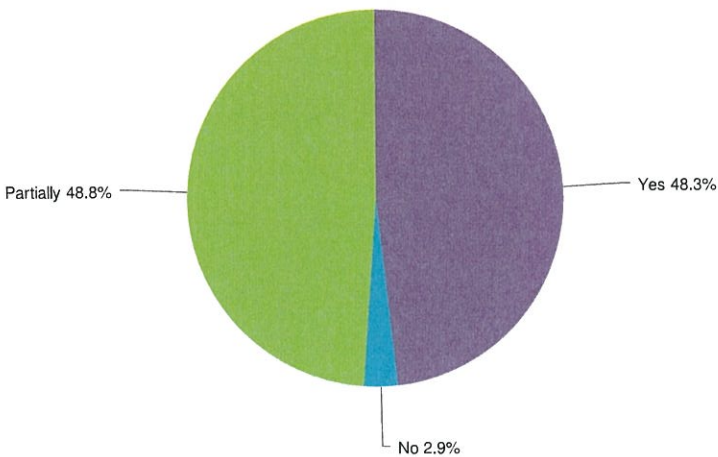
Family	95.1%		1,791
Social/Community	91.6%		1,724
Health	69.7%		1,312
Economic	41.6%		784
Total			1,883

18. [OLD VERSION] Which shift has the most effect on your life outside work?



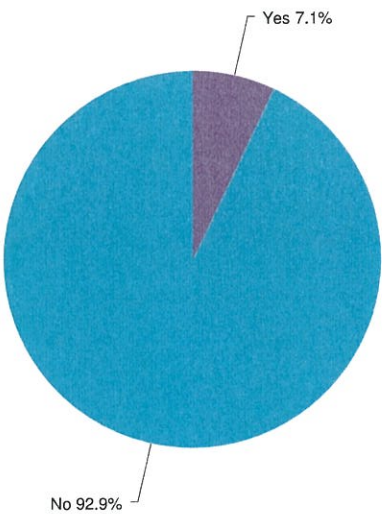
Evening	11.0%		229
Night	37.0%		773
Weekend	35.3%		739
Public Holiday	8.2%		171
Other	8.6%		179
Total			2,091

20. Do penalty rates compensate for the effects of shift work on your life outside work?



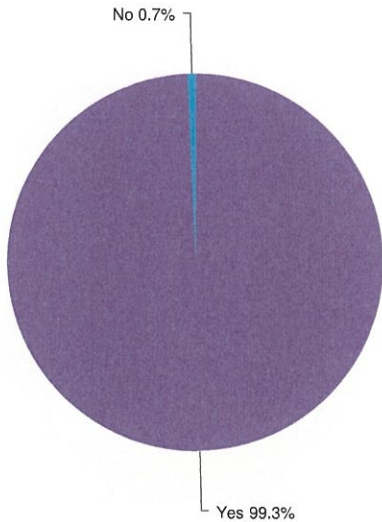
Yes	48.3%		1,116
No	2.9%		67
Partially	48.8%		1,129
Total			2,312

21. Would you continue to work shift work if penalty rates were removed or lowered?



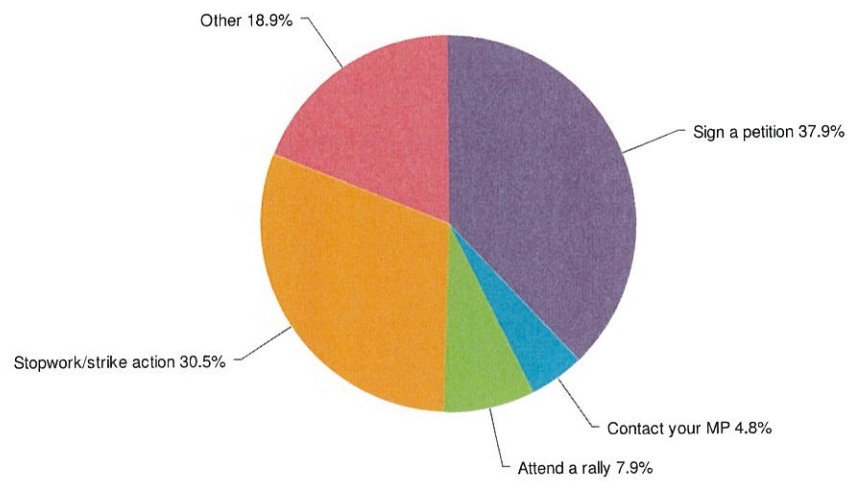
Yes	7.1%		164
No	92.9%		2,143
Total			2,307

22. Would you be prepared to take action to protect your penalty rates?



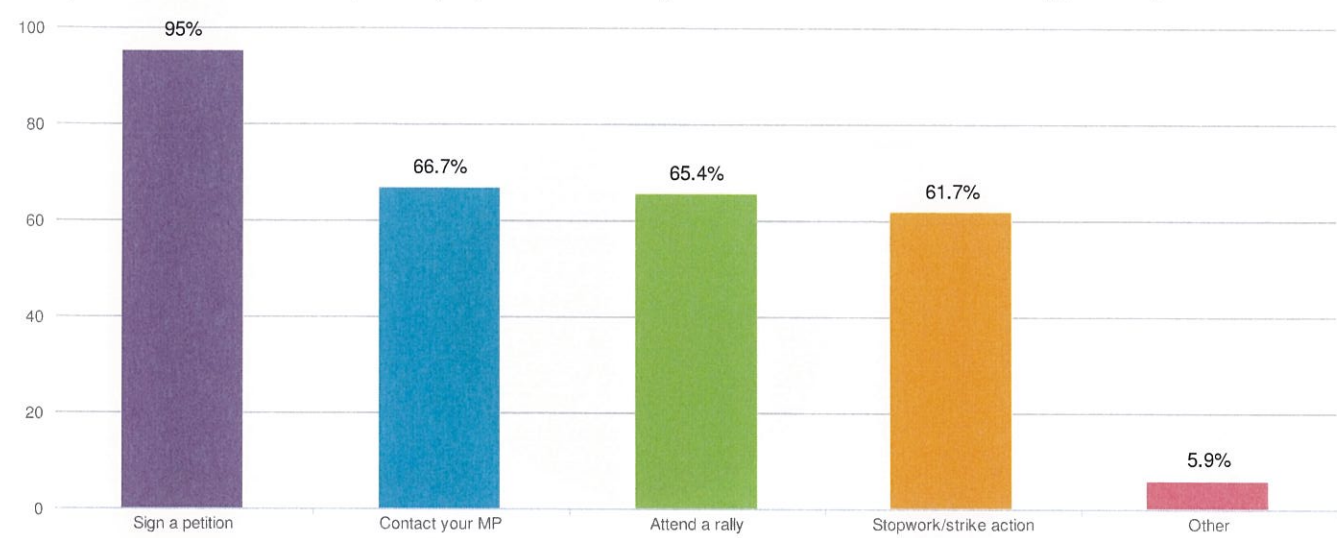
Yes	99.3%		2,307
No	0.7%		17
		Total	2,324

[OLD VERSION] If yes, what action would you be prepared to take? (please select more than one if applicable)



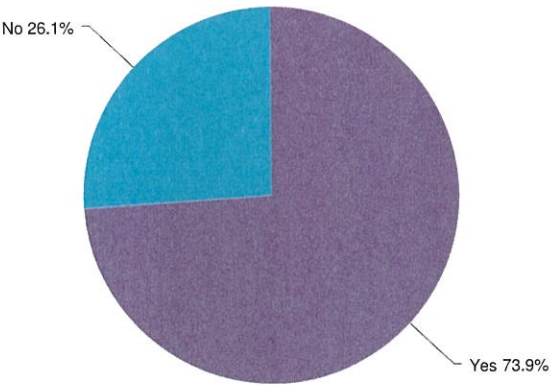
Sign a petition	37.9%		508
Contact your MP	4.8%		64
Attend a rally	7.9%		106
Stopwork/strike action	30.5%		408
Other	18.9%		253
Total			1,339

23. If yes, what action would you be prepared to take? (please select more than one if applicable)



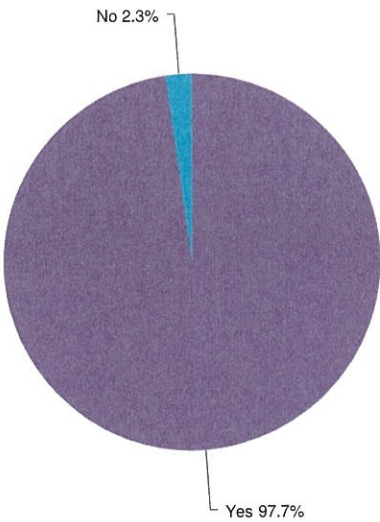
Sign a petition	95.0%		935
Contact your MP	66.7%		656
Attend a rally	65.4%		643
Stopwork/strike action	61.7%		607
Other	5.9%		58
Total			984

25. Would you be prepared to attend the National Day of Action, 4 March, in your state/territory to stand up for your penalty rates?



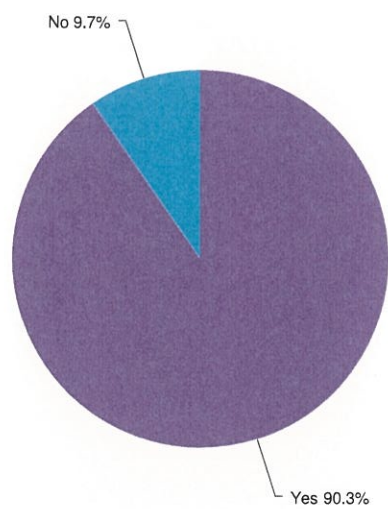
Yes	73.9%		1,690
No	26.1%		596
Total			2,286

27. Do you consent to the ANMF using your de-identified responses in our national submission to the Productivity Commission Inquiry?



Yes	97.7%		2,271
No	2.3%		53
Total			2,324

28. Do you consent to the ANMF contacting you by email for further information if required?



Yes	90.3%		2,099
No	9.7%		225
Total			2,324