

Submission by the Australian Nursing and Midwifery Federation

Variation of modern awards to include a delegates' rights term

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**Australian
Nursing &
Midwifery
Federation**



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Introduction

1. The Australian Nursing and Midwifery Federation (ANMF) is Australia's largest national union and professional nursing and midwifery organisation. In collaboration with the ANMF's eight state and territory branches, we represent the professional, industrial and political interests of more than 345,000 nurses, midwives and care-workers across the country.
2. Our members work in the public and private health, aged care and disability sectors across a wide variety of urban, rural and remote locations. We work with them to improve their ability to deliver safe and best practice care in each and every one of these settings, fulfil their professional goals and achieve a healthy work/life balance.
3. Our strong and growing membership and integrated role as both a trade union and professional organisation provides us with a complete understanding of all aspects of the nursing and midwifery professions and see us uniquely placed to defend and advance our professions.
4. Through our work with members, we aim to strengthen the contribution of nursing and midwifery to improving Australia's health and aged care systems, and the health of our national and global communities.
5. The ANMF thanks the Fair Work Commission (FWC) for the opportunity to provide a submission in response to the statement issued on 17 September 2025.¹

¹ [2025] FWC 2776.



12 month review of delegates' rights term

6. The ANMF is not supportive of the FWC undertaking a review of the operation of the delegates' rights terms that now exist across the modern award system (the standard term), either in relation to the term generally or in relation to clause 28A of the *Nurses Award 2020*. The reasons for this are threefold.
7. Firstly, the ANMF notes that the FWC has not yet considered any major test cases that might shed light on whether the standard term is operating as intended.
8. Secondly, the process for the setting of the standard term remains incomplete. The setting of the standard term was the product of proceedings initiated by the FWC on 18 January 2024.² In its statement of 28 June 2024,³ the FWC stipulated the standard term that would subsequently be inserted into all modern awards. At paragraph [7] of that statement, the FWC indicated that the '[r]easons for [the] decision [would] be issued by the Full Bench in due course.' Those reasons are yet to be handed down. The ANMF considers that it would be highly unorthodox for a review of the standard term to be conducted while the FWC's reasons remain unpublished. It is the view of the ANMF that the FWC full decision should be published before any review takes place.
9. Thirdly, the ANMF invites the FWC to give consideration to the judicial proceedings that are currently afoot in relation to the FWC's setting of the standard term. On 18 September 2024, the Mining and Energy Union filed proceedings in the Federal Court seeking judicial review of the FWC's decision.⁴ The appeal was heard by a Full Bench of the Federal Court over 17 and 18 March 2025 with the Court reserving its decision. The decision of the Court, once handed down, may have significant implications for the standard term. To commence a review of the standard term ahead of the Court's decision risks having such a review abandoned partway through by virtue of the Court potentially overriding the FWC's earlier

² [2024] FWC 150.

³ [2024] FWC 1699.

⁴ NSD1319/2024 *Mining and Energy Union v Australian Industry Group & Ors*.



decision.

10. The ANMF considers it would be preferable for all interested parties to have the benefit of the decision of the Full Bench of the Federal Court before considering the utility of a review of the standard term as it is currently formulated.