

Australian Nursing and Midwifery Federation

# SUBMISSION TO THE SENATE SELECT COMMITTEE ON JOB SECURITY

31 MARCH 2021



Australian  
Nursing &  
Midwifery  
Federation

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## INTRODUCTION

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 300,000 nurses, midwives and carers across the country.

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.

Our strong and growing membership and integrated role as both a professional and industrial organisation provide 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.

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.

The ANMF welcomes the opportunity to provide a submission to the Senate Select Committee on Job Security. For ease of interpretation, the ANMF notes the terms of reference below and addresses its submission to them in the same order.

### Terms of reference

That a select committee, to be known as the Select Committee on Job Security, be established to inquire into and report on the impact of insecure or precarious employment on the economy, wages, social cohesion and workplace rights and conditions, with particular reference to:

- a. the extent and nature of insecure or precarious employment in Australia;
- b. the risks of insecure or precarious work exposed or exacerbated by the COVID-19 crisis;
- c. workplace and consumer trends and the associated impact on employment arrangements in sectors of the economy including the 'gig' and 'on-demand' economy;
- d. the aspirations of Australians including income and housing security, and dignity in retirement;
- e. the effectiveness, application and enforcement of existing laws, regulations, the industrial relations system and other relevant policies;
- f. accident compensation schemes, payroll, federal and state and territory taxes;
- g. the interaction of government agencies and procurement policies with insecure work and the 'on-demand' economy; and
- h. any related matters.



#### a. the extent and nature of insecure or precarious employment in Australia;

1. In the health and aged care sectors insecure work can take many forms including work that is irregular with unpredictable working hours, part-time employment with minimum/low hour contracts, temporary work via an agency or nurse bank and fixed term employment arrangements. A growing area of concern is the number of workers in this sector sourcing work as “independent contractors” via on-line platforms such as Mable.
2. The Australian Bureau of Statistics (ABS) provides data on the numbers of casual employees defined as those without paid leave entitlements. The table below shows numbers broken down by specific occupational group including nursing and midwifery overall, registered nurses, enrolled nurses, nursing support and personal care workers and aged and disabled carers.
3. The latest ABS data (November 2020) in Table 1 below shows that almost 60,000 nurses, midwives and carers and 88,000 aged and disabled carers were employed as casuals.

**Table 1**

Customised report of 6291.0.55.003 - Labour Force, Australia, Detailed, Quarterly, August 2019 – November 2020 for employees by paid leave entitlements status by select occupations (modified by ANMF).

Paid leave entitlements status	Occupation (ANZSCO)	Aug-19	Nov-19	Feb-20	May-20	Aug- 20	Nov -20
<b>Employee without paid leave entitlements</b>	Midwifery and Nursing Professionals (254)	38,200	42,300	31,600	29,300	31,100	35,900
	Registered Nurses (2544)	35,300	39,200	29,700	26,800	29,000	32,500
	Enrolled and mothercraft nurses (4114)	5,400	2,200	3,600	3,300	2,000	4,100
	Nursing Support and Personal Care Workers (4233)	22,000	28,300	31,800	23,200	23,000	19,600
	Aged and Disabled Carers (4231)	70,100	80,200	81,700	80,200	87,800	87,900



**b. the risks of insecure or precarious work exposed or exacerbated by the COVID-19 crisis;**

4. Insecure and precarious workers have borne and to continue to bear the full brunt of the COVID-19 pandemic, particularly women. Academics Williamson and Foley recently highlighted some of the effects:  
*Between March and May, the pandemic's initial wave, women's employment fell by 7.6%, while men's employment fell by 5.9%. Women's working hours also declined more sharply during this period, falling 10.8% compared to 7.4% for men. These declines were largely attributed to women's disproportionate concentration in casual work in service-focused sectors heavily affected by the pandemic, namely retail and accommodation and food services.*<sup>1</sup>
5. When the COVID-19 pandemic was in its early days, government agencies such as the Australian Health Practitioner Regulation Agency (Ahpra) stated there was a need for a "surge workforce" to meet the demands of a potential explosion in patient numbers. Ahpra and its related National Boards "...announced a new pandemic sub-register to fast track the return to the workforce of experienced and qualified health practitioners".<sup>2</sup>
6. Despite this recognition of the importance of the nursing and midwifery workforce, many nurses and midwives employed by private hospitals and other private providers were stood-down in the early days of the pandemic. These employers did not genuinely consult with their workers and their unions before these stand-downs. These large health care providers had little regard for their employees' financial and emotional wellbeing.
7. Examples of this egregious behaviour include the following:
  - a. One large health care provider in South Australia cancelled all casual shifts in late March 2020. The FW Act provided no protection for these workers;
  - b. National private hospital providers around Australia threatened stand-downs; and
  - c. Private hospitals and other private health care providers directed nurses and midwives to take annual leave or other forms of leave despite this usually not being legal.
8. It was not until the end of March that the Federal Government negotiated an arrangement with private hospitals providers around Australia to ensure their continued operation.<sup>3</sup> As part of the arrangement private hospitals had to retain staff and continue to provide them with work.
9. Similarly in the public sector it was casual nurses who were the first to suffer loss of income as state governments closed "non-essential" areas of their health services without any plans for these workers. In mid-April the New South Wales Branch of the ANMF (also known as the New South Wales Nurses and Midwives' Association) reported this as a substantial concern to ANMF Federal Office.

<sup>1</sup> Sue Williamson and Meraiah Foley, 'Women, work and industrial relations in Australia in 2020' [2021] (March) *Journal of Industrial Relations* 2 <<https://doi.org/10.1177/0022185621996407>>

<sup>2</sup> Australian Health Practitioner Regulation Agency, 'Ahpra returns over 40,000 health practitioners to the temporary pandemic response sub-register to support our critical health workforce during the emergency' (Media Release, 1 April 2020) <<https://www.ahpra.gov.au/News/2020-04-01-pandemic-response-sub-register.aspx>>

<sup>3</sup> Melissa Davey, Daniel Hurst and Ben Butler, 'Australian government will pay half to integrate private hospitals into Covid-19 response', *The Guardian* (online, 31 March 2020) <<https://www.theguardian.com/australia-news/2020/mar/31/federal-government-pay-half-integrate-private-public-hospitals-covid-19-response>>



10. The pandemic has exposed the shortcomings of the employment model of many Australian employers, particularly those in aged care. The pandemic has created an environment where workers in insecure and precarious work were more exposed to COVID-19 infection due to the nature of their employment status.

11. As the Research School of Population Health College of Health and Medicine at the Australian National University highlighted:

*Those people at highest risk of acquisition of COVID-19 infection and of transferring infection between high-risk settings in Australia and internationally are workers in essential, low-paid, casual work. These people are our health care workers, personal care attendants...and others providing essential services to the community. They are those who keep our society functioning in occupations that are unable to be done remotely. These occupations bring workers into direct contact with the community, including in settings of higher COVID-19 prevalence and/or transmission risk, thus placing these workers at higher risk of COVID-19 infection.<sup>4</sup>*

12. A crucial factor in the early spread of the SARS-CoV-2 virus into aged care in Victoria was that aged care workers often work at multiple aged care facilities. They do this for a multitude of reasons but the primary one is adequate income. Until government payment schemes were established there were substantial economic barriers for these workers to engage in public health advice such as isolating when sick or quarantining while awaiting test results.

13. During the Victorian outbreak, aged care workers without access to paid leave or government payments went to work while sick in order to meeting living expenses and retain employment.<sup>5</sup> Eventually governments and the Fair Work Commission stepped in to provide support but this was piecemeal and too late. As Dayaram, Burgess and Fitzgerald pointed out in August last year:

*...these measures have been a belated band aid to a problem that should have been entirely predictable. It's the consequence of a deepening class divide in work in which hundreds of thousands of essential workers in high-risk industries are poorly paid and lack job security, guaranteed hours or sick-leave entitlements.<sup>6</sup>*

14. Similarly to Victoria, the major COVID-19 outbreaks early in the pandemic in Sydney aged care facilities (such as the one at Newmarch House) happened when workers showed up to work while infectious.<sup>7</sup> Unfortunately the lessons of Newmarch House were not learnt as the second wave engulfed Victoria.

<sup>4</sup> Australian National University Research School of Population Health College of Health and Medicine, Submission No 72 to Senate Education and Employment Legislation Committee, Parliament of Australia, *Inquiry into the Fair Work Amendment (Supporting Australia's Jobs and Economic Recovery) Act 2020*, (2021) 3 <<https://www.aph.gov.au/DocumentStore.ashx?id=17b1abf7-d507-42ee-974d-4a4b533c08d6&subId=701028>>

<sup>5</sup> James Purtill, 'Victoria Shows Coronavirus Is a Pandemic of Casual, Insecure Work,' triple j Hack, Australian Broadcasting Corporation (online, 27 July 2020) <<https://www.abc.net.au/triplej/programs/hack/coronavirus-covid-19-outbreak-linked-to-casual-insecurework/12496660>>

<sup>6</sup> Kantha Dayaram, John Burgess and Scott Fitzgerald, 'Workplace transmissions: a predictable result of the class divide in worker rights' *The Conversation* (online, 17 August 2020) <<https://theconversation.com/workplace-transmissions-a-predictable-result-of-the-class-divide-in-worker-rights-143896>>

<sup>7</sup> Matilda Boseley, 'Ten coronavirus cases at western Sydney aged care home after staff member worked while infectious', *The Guardian* (online, 15 April 2020) <<https://www.theguardian.com/world/2020/apr/15/ten-coronavirus-cases-at-western-sydney-aged-care-home-after-staff-member-worked-while-infectious>>



15. The COVID-19 pandemic exacerbated workforce issues that were already present in the residential aged care system in Australia. 30% of the residential aged care workforce works fewer hours than it would like to<sup>8</sup> and yet there are not enough staff in aged care facilities. As Professor Joseph Ibrahim highlighted:

*There were not enough workers to start with; the workforce that exists doesn't have the training for a contemporary aged care system...COVID-19 arrives and there are not enough staff, staff who don't know what they're doing, staff who haven't been trained in infection control.*<sup>9</sup>

**c. Workplace and consumer trends and the associated impact on employment arrangements in sectors of the economy including the 'gig' and 'on-demand' economy;**

16. The ANMF addresses its concerns about the use of 'on-demand' workers in the context of residential aged care facilities at item (g) below.
17. Workplace and consumer trends are increasingly moving away from providing workers with secure ongoing employment. Whilst the 'gig' and 'on-demand' economies are largely focussed on areas such as ride-share and food delivery, it is also making its presence felt in many areas of the Australian economy.
18. ANMF members work in the 'on-demand' economy largely because of the introduction of the National Disability Insurance Scheme (NDIS). The NDIS allows people with a disability to directly engage and manage their own disability support services, including nursing.
19. Through 'on-demand' apps such as Mable, nurses work as sole-contractors who are legally engaged by the person with a disability directly. These nurses have less rights than those employed by providers (including those that use apps) for a number of reasons including:
- a. Workers' compensation laws are likely to be not applicable;
  - b. They are not entitled to penalty rates for working unsociable hours, such as during the evening and on weekends; and
  - c. They are not entitled to a remedy at the Fair Work Commission if unfairly dismissed.
20. The On-demand Inquiry noted that there "...was concern and confusion about who was responsible for the health and safety of non-employee caring platform workers, especially given they may be entering and working in care recipients' homes."<sup>10</sup>
21. As the Inquiry also noted concerning health and safety laws operative in Victoria:
- For non-employee workers, this means they must take responsibility for their own health and safety; including when they are entering and working in domestic settings. It suggests they may be in a precarious and unsupported situation if something goes wrong. It was not clear to the Inquiry that this policy issue has been properly considered.*<sup>11</sup>
- This same principle is likely applicable throughout Australia where the Model WHS Acts are in operation.

<sup>8</sup> Royal Commission into Aged Care Quality and Safety (Final Report, March 2021) vol 2, 214 <<https://agedcare.royalcommission.gov.au/sites/default/files/2021-03/final-report-volume-2.pdf>>

<sup>9</sup> Sophie Cousins, 'Experts criticise Australia's aged care failings over COVID-19' (2020) 396(10259) *The Lancet* 1322, 1322 <[https://doi.org/10.1016/S0140-6736\(20\)32206-6](https://doi.org/10.1016/S0140-6736(20)32206-6)>

<sup>10</sup> Industrial Relations Victoria, Department of Premier and Cabinet, *Report of the Inquiry into the Victorian On-Demand Workforce* (Report, June 2020) [623] <<https://engage.vic.gov.au/inquiry-on-demand-workforce>>

<sup>11</sup> Ibid [625]





22. The ANMF is also concerned about the lack of training and support provided to members working in 'on-demand' models, such as Mable. Public sector nurses are entitled to professional development under their enterprise agreement or award. Under most enterprise agreements ANMF branches have negotiated with private hospitals and with many aged care providers, employers are mandated to provide professional development. For example, nurses working for Epworth Healthcare in Victoria are entitled to professional development leave and study leave.<sup>12</sup> Nurses working for St Vincent's Healthcare Australia in Queensland are entitled to up to 24 hours per year of paid education.<sup>13</sup>

**d. the aspirations of Australians including income and housing security, and dignity in retirement;**

*Superannuation issues*

23. The introduction of compulsory superannuation in 1992 for the majority of workers remains a significant achievement that continues to be the source of financial security and a dignified life in retirement for many working Australians. Unfortunately it has become apparent as the superannuation scheme matures and working lives and social norms have changed rapidly in the last decades that the benefits of superannuation are not equally accessible to all working people.
24. Women, Aboriginal and Torres Strait Island people, low income workers and those who are engaged on contracts and self-employed have not had the same opportunities to participate in superannuation schemes. The impact of this is cumulative and results in irreparable disadvantage across all aspects of working people's lives.
25. The ANMF seeks reform to the superannuation system that redresses systemic disadvantage and lack of access over the full working life of individuals and continuing into the years of retirement.
26. The ANMF's membership is predominantly female. Overall workforce data shows that 89% of registered nurses, enrolled nurses, nurse practitioners and midwives are women<sup>14</sup> and this is indicative of the composition of ANMF's membership. On this basis, the ANMF has focused on the areas of superannuation that create barriers for women accumulating adequate superannuation for a comfortable retirement.
27. As identified in the report 'A Husband is Not a Retirement Plan'<sup>15</sup>, there are many structural barriers to women participating fully in the workforce and being equally rewarded for their work: "Gender pay gaps represent a career long penalty for women which is reflected in prospective lifetime earnings."<sup>16</sup>
28. Even for women who have worked full time all their working lives, they are likely to retire with less superannuation than their male counterparts. The systemic issues that result in pay inequity must be addressed to improve all aspects of working women's lives. Issues specific to superannuation are addressed in this submission.

<sup>12</sup> Epworth HealthCare Nurses Enterprise Agreement 2016 – 2020 [2016] FWCA 8400, cl 68 <<https://www.fwc.gov.au/documents/documents/agreements/fwa/ae422324.pdf>>

<sup>13</sup> St Vincent's Health Australia (Private Hospitals) and QNMU/ANMF Nursing Enterprise Agreement 2018-2021 [2018] FWCA 7132, cl 7.3 <<https://www.fwc.gov.au/documents/documents/agreements/fwa/ae500824.pdf>>

<sup>14</sup> Australian Institute of Health and Welfare, 'Nursing and midwifery workforce 2015' (Report, 9 June 2016) <<https://www.aihw.gov.au/reports/workforce/nursing-and-midwifery-workforce-2015/contents/who-are-nurses-and-midwives>>

<sup>15</sup> Senate Economic References Committee, Parliament of Australia, 'A Husband is not a Retirement Plan': Achieving Economic Security for Women in Retirement' (Report, April 2016) <[https://www.aph.gov.au/parliamentary\\_business/committees/senate/economics/economic\\_security\\_for\\_women\\_in\\_retirement/report](https://www.aph.gov.au/parliamentary_business/committees/senate/economics/economic_security_for_women_in_retirement/report)>

<sup>16</sup> Ibid 8





29. The ANMF supports all 19 recommendations<sup>17</sup> made in the Senate Report and is dismayed that little (if anything) has been done to implement the recommendations, which were made over four years ago.
30. The ANMF considers the key reforms that must be implemented to improve retirement outcomes are:
  - a. Remove the \$450 per month threshold for the payment of superannuation
  - b. Paid superannuation on all forms of parental leave
  - c. Enable low super balances to be increased with incentives and appropriate tax concessions via an accumulation pathway
  - d. End the compulsory superannuation freeze and increase the superannuation guarantee
  - e. Make superannuation universal and payable on every dollar earned
  - f. Improved education and information
31. These reforms will benefit all working people, but will be particularly beneficial for those who have experienced systemic disadvantage in superannuation contributions, being women, Aboriginal and Torres Strait Islander people, people from CALD backgrounds and low income workers.
32. For more information on this topic please refer to the [ANMF submission to the Retirement Income Review](#).

**e. the effectiveness, application and enforcement of existing laws, regulations, the industrial relations system and other relevant policies;**

33. With regards to the effectiveness, application and enforcement of existing laws, regulation, the industrial relations system and other relevant policies the ANMF limits its comments largely to the applicable Commonwealth statutes and their associated regulations, being the:
  - a. *Fair Work Act 2009* (FW Act); and the
  - b. *Fair Work (Registered Organisations) Act 2009* (RO Act).

*Wage theft*

34. The current FW Act has no provisions that criminalise underpayments made by employers. The *Fair Work Amendment (Supporting Australia's Job and Economic Recovery) Bill 2020* (Omnibus Bill) was proposed by the Commonwealth Government to address this issue but as discussed below it fell well short of what is necessary. These provisions did not make it into the final legislation passed by the Commonwealth parliament.
35. Wage theft in Australia is widespread and successive federal governments have failed to act to address the issue. There have been numerous reports and inquiries into how rampant wage theft is in Australia, including:
  - a. *International Students and Wage Theft in Australia* (2020) which found that "Underpayment of international students was systemic and widespread"
  - b. *The Wages Crisis in Australia*, University of Adelaide Press (2018)
  - c. *Inquiry into Wage Theft in Western Australia* (2019)
  - d. *Corporate Avoidance of the Fair Work Act* (2017) in which Chapter 6 is dedicated to wage theft.

<sup>17</sup> Ibid xii-xv



36. The Omnibus Bill originally wanted to insert a new criminal offence of “dishonestly engaging in a systematic pattern of underpaying one or more employees” into the FW Act. There would have been maximum penalties of 4 years imprisonment or 5,000 penalty units for an individual and 25,000 penalty units for a body corporate. ‘Dishonest’ is defined as:
- a. dishonest according to the standards of ordinary people; and
  - b. known by the defendant to be dishonest according to the standards of ordinary people
37. The states of Queensland and Victoria already have laws to criminalise certain underpayments, including those made by employers covered by the FW Act. The Omnibus Bill proposed to override the provisions in these laws with an inferior model where securing convictions would have been more difficult and the penalties watered down.
38. For example, the *Wage Theft Act 2020* (Vic) (WT Act) defines dishonest as “dishonest according to the standards of a reasonable person.”<sup>18</sup> Unlike the proposed changes for the FW Act, the subjective knowledge of the offending under-payer of wages is irrelevant. The maximum penalty under both the Queensland and Victorian schemes is 10 years imprisonment, compared to only 4 years under the changes proposed by the Omnibus Bill.<sup>19</sup>
39. Precarious employment will not be addressed by having weak laws with respect to criminal sanctions for breaches. Ultimately, the ANMF believes that the bar for securing a conviction was set so high under the Omnibus Bill because the Commonwealth Government wanted a device to override state and territory wage theft criminalisation provisions rather than have a serious set of laws to combat wage theft.
40. Whilst it is good news for Victorian and Queensland workers that the wage theft provisions in the Omnibus Bill were dropped, for other states it now means there are no criminal sanctions for unscrupulous employers at all.

#### *Overregulation of unions*

41. Unions have been weakened by over 30 years of constant political and legislative attacks on their functions and right to exist. Indeed it was Billy McMahon in the 1970s who was the last Liberal prime minister to not establish a royal commission into trade unions.
42. The RO Act continues this trend of massive overregulation. For example, in February 2020 the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU) was fined \$445,000 for paperwork breaches of the RO Act (CEPU No. 1).<sup>20</sup> Fortunately for the CEPU’s members, on appeal this amount was substantially reduced to \$200,000 (CEPU No. 2).<sup>21</sup>

<sup>18</sup> WT Act s6(11)

<sup>19</sup> S6 of the WT Act and ss391(6A) and (7) of the Criminal Code (Qld)

<sup>20</sup> *Registered Organisations Commissioner v Communications, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia* [2020] FCA 96 (27 February 2020)

<sup>21</sup> *Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v Registered Organisations Commissioner* [2020] FCAFC 232 (22 December 2020)



43. CEPU No. 1 demonstrated the extraordinary lengths government regulators will go to in order to prosecute unions, costing unions (and ultimately their members) tens of thousands of dollars in legal fees alone. As a result of the increased scrutiny that unions face from government regulators they have to employ additional staff, often purely for the compliance function. For example, the CEPU hired a compliance officer in January 2017 solely to manage the myriad complex rules that registered organisations must contend with.<sup>22</sup>
44. The RO Act requires all office holders whose duties relate to financial management to undertake approved training within six months of taking office or obtain an exemption under s 293M of the RO Act within six months of taking office. This requirement applies even where an officer is simply moving from one role to another within the same registered organisation. This requirement means registered organisations are finding it increasingly difficult to get people to volunteer to become an office holder (most offices are not paid) and expensive as training has a cost.
45. What the above ultimately demonstrates is that unions are spending more money on compliance efforts and less on being able to do their core work of representing members. This is not unintentional. Boggling down unions in excessive paperwork makes it more difficult for unions to effectively do their jobs and diverts resources from worker-focussed activities.

#### *Casual employment*

46. The Omnibus Bill was largely unsuccessful in changing the FW Act, except with respect to casual employment. It creates a subjective basis for categorising employees as casuals in the FW Act, which is likely to increase the number of casual employees, rather than encourage employers to offer permanent work at the time of engagement. The provisions for conversion from casual to ongoing are not adequate to counter this.
47. The new definition of a “casual employee” in the FW Act overturns the Workpac decisions<sup>23</sup> and gives pre-eminence to the description of the employment as “casual” by the employer at the point of engagement. This is clearly the time when a prospective employee is not in a strong position to negotiate terms of employment, nor to dispute whether the work to be performed will in fact be genuinely casual in nature. It is wrong to suggest that the employer and employee are equals in negotiating employment terms. New section 15A of the FW Act allows the employer to designate future employment as casual, simply by stating it is so.
48. When viewed as a whole, s15A works strongly in favour of employers to allow employees to be engaged on a casual basis, whether this would be a correct characterisation or not. The exclusion of subsequent conduct in conjunction with the unequal nature of entering an employment relationship gives encouragement to employers to offer casual work at the expense of ongoing work and gives employees little scope to challenge this practice.
49. The ANMF is particularly concerned about the impact new s15A may have in the aged care sector. Consistency of care provision in residential care is an important factor in ensuring quality and safe care can be delivered; staff who are familiar to residents and who know residents are better able to care for those residents.

<sup>22</sup> *Ibid.*, at [70]

<sup>23</sup> *WorkPac v Skene* [2018] FCAFC 131 (Skene) and *WorkPac v Rossato* [2020] FCAFC 84 (Rossato)



50. New Division 4A in the FW Act concerns offers and requests for casual conversion as part of the NES. The ANMF supports casual conversion entitlements being included in the NES, but does not support the recent amendments.
51. The opportunity to convert to permanent employment only arises after 12 months of employment and is based on an assessment of work patterns over at least the preceding 6 months. At this point consideration of whether an employee has worked a regular pattern of hours on an ongoing basis can be made to determine eligibility for conversion. These provisions allow an unscrupulous employer to engage a person as a casual employee and then set a regular pattern of work that is more consistent with permanent work for a period of up to a year before conversion offers some examination of the characterisation of the pattern of work. The employer may receive the benefits of having a permanent employee without accruing the obligations associated with permanent employment.
52. While the employer is obliged to consider offering casual conversion, there remains ample scope for the employer to refuse conversion or to offer conversion. Crucially, any dispute in relation to conversion can only be dealt with by the Fair Work Commission if both the employee and employer agree to this. Such agreement currently rarely occurs with respect to dispute resolution under modern awards – we see no reason that this will be different with respect to casual conversion.

**g. the interaction of government agencies and procurement policies with insecure work and the ‘on-demand’ economy; and**

53. The ANMF addressed this issue in the context of a detailed submission to the Royal Commission into Aged Care Quality and Safety (Royal Commission).<sup>24</sup> In addition, please refer to item c above for more discussion concerning the ‘gig’ and ‘on-demand’ economy (paragraphs 16-22).
54. In the course of the COVID-19 pandemic, there was a genuine need for surge workforce to supplement existing staffing arrangements in residential aged care. This occurred when high numbers of staff were required to self-isolate or there was a significant outbreak of COVID-19 in a nursing home, for example as at Newmarch House in New South Wales and a number of facilities in Victoria.
55. The Commonwealth Government support to assist residential aged care providers in accessing qualified staff to fill vacancies that cannot otherwise be filled for short-term COVID-19 related reasons was welcomed. However, the ANMF had significant concerns about the approach adopted by the Commonwealth Government.
56. In April 2020, the Commonwealth Government implemented a scheme to provide additional staffing in aged care through the ‘on-demand’ labour hire firm Mable. The online platform was selected without the usual tender process on the basis of the emergency management provisions. The scheme offered residential aged care providers with staff to fill short-term vacancies or shortages of staff caused by the pandemic - for example staff requiring self-isolation leave via an online platform. The Government scheme funded replacement staff hired through the platform for a period of 4 weeks. The scheme also promoted the platform for other vacancies that did not meet the funding criteria. The Government allocated \$5.77 million to fund this private labour hire platform.

<sup>24</sup> ANMF, Submission ANM.0020.0001.0001 to the Royal Commission into Aged Care Quality and Safety, (July 2020) [78]-[84] <<https://agedcare.royalcommission.gov.au/system/files/2020-08/ANM.0020.0001.0001.pdf>>



57. In addition, Aspen Medical was funded up to \$15.7 million to provide additional staff in the event of a significant outbreak.
58. The ANMF is concerned with the use of ‘on-demand’ labour hire schemes for a number of reasons. In the case of both Mable and Aspen Medical, no alternative labour hire providers were funded nor offered to providers. If a provider needed to access additional staffing and receive funding, they were offered no choice of labour hire online service.
59. The Royal Commission heard extensive evidence about the risks of insecure work in aged care in relation to quality of care and the difficulties in recruiting and retaining suitably qualified and experienced staff in aged care. The ANMF is extremely concerned that the promotion of short-term labour hire staffing in aged care exacerbates those risks and problems.
60. Staff engaged through Mable are treated as “independent contractors”, which may be a legally questionable characterisation of their employment. It is up to workers who register with Mable to provide details of their qualifications and appropriate checks, such as proof of registration with Ahpra. While Mable advises checks will be conducted, this does create risk of unsuitable workers being engaged in aged care due to a lack of oversight.
61. The ANMF is also concerned that the Commonwealth Government has moved to promote this form of insecure work as an alternative to providers engaging ongoing workers directly. These would be workers who are familiar with the needs of residents, especially when there have been periods of limited access to nursing homes by families and friends. They are essential to providing quality and safe care.
62. The Royal Commission heard on multiple occasions that residents and families value aged care workers who are familiar with their loved ones’ needs and preferences for care and the evidence for the effectiveness and appropriateness of continuity of care is irrefutable.
63. Outside of changes to the FW Act, the Commonwealth Government could do substantially more to ensure that aged care operators treat their workers fairly. The Royal Commission recommended measures to encourage direct engagement of care workers, rather than through labour hire agencies. To this end, Commissioner Briggs recommended a condition of being able to provide aged care services is that providers must have policies and procedures that preference direct employment of care staff such as personal care workers and nurses. Similarly, where work is contracted to another entity, that entity should have policies and procedures that preference direct employment.<sup>25</sup>
64. ANMF members also work for the Aged Care Quality and Safety Commission (ACQSC) which is an arm of the Australian Public Service (APS). The bulk of these members work as Quality Assessors. Unfortunately, the ACQSC does not offer adequate remuneration to attract highly skilled RNs. This contributes to the significant shortfall in RN representation within its workforce.

<sup>25</sup> Royal Commission into Aged Care Quality and Safety (Final Report, March 2021) vol 1, 265 <[https://agedcare.royalcommission.gov.au/sites/default/files/2021-03/final-report-volume-1\\_0.pdf](https://agedcare.royalcommission.gov.au/sites/default/files/2021-03/final-report-volume-1_0.pdf)>



65. Late last year, the Australian Senate's Finance and Public Administration References Committee instigated an inquiry into the 'The current capability of the Australian Public Service (APS)'. The NSWNMA made a submission to this inquiry which was directly relevant to the interaction of government agencies and procurement policies with insecure work. The submission stated in part:

*The ACQSC also engages individual contractors and private providers to deliver some of its assessment functions. We are aware the ACQSC is currently seeking to procure service providers to assist them to deliver a backlog of site audits on aged care services incurred due to COVID-19 disruptions. At this stage this is being achieved through a Registrations of Interest (ROI), which on this occasion is a compulsory step towards a formal tender process.*

...

*Our members currently employed under these insecure privatised arrangements report lower terms and conditions of employment and less opportunity for professional development than their counterparts employed directly by the ACQSC. This does not create a climate to attract a highly skilled, stable, and experienced workforce necessary for public protection. Nor does it support RNs to fulfil their professional obligations in regard to their continuing professional development.<sup>26</sup>*

<sup>26</sup> New South Wales Nurses and Midwives' Association, Submission No 9 to the Senate Finance and Public Administration References Committee, Parliament of Australia, *The current capability of the Australian Public Service (APS)* (February 2021) 3-4 <<https://www.aph.gov.au/DocumentStore.ashx?id=5350b246-eec6-4c78-9348-27d698060ac6&subId=702692>>