

**From:** Chambers - Catanzariti VP  
**Sent:** Friday, 21 December 2018 9:38 AM  
**To:** 'Kyle Scott'; 'Andrew McCarthy'  
**Cc:** Chambers - Catanzariti VP  
**Subject:** Re: AM2016/31 Review of Nurses and Health Professionals and Support Services Award 2010

Dear Ms Scott and Mr McCarthy,

The attached submissions in reply have been accepted.

Kind regards,

**Colin Chang**

Associate to Vice President Catanzariti AM

**Fair Work Commission**

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**From:** Kyle Scott [mailto:Kyle.Scott@ablawyers.com.au]  
**Sent:** Thursday, 20 December 2018 11:40 AM  
**To:** Chambers - Catanzariti VP  
**Cc:** Kate Thomson  
**Subject:** RE: AM2016/31 Review of Nurses and Health Professionals and Support Services Award 2010 [ABLAW-ImanageDocs.FID135704]

Dear Associate

I refer to the above matter and to your email below regarding our clients' extension request for the filing of reply submissions.

Please find **attached**, by way of filing, a reply submission in relation to the *Health Professionals and Support Services Award 2010*. Regrettably, due to an administrative oversight we neglected to file these submissions by the deadline of close of business yesterday. We sincerely apologise for this oversight, and seek leave of the Commission to have the submission accepted for filing today.

Please do not hesitate to contact me should you wish to discuss.

Yours sincerely

**Kyle Scott**  
Associate Director  
Australian Business Lawyers & Advisors

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20 December 2018

**Our Ref:** 20140504

BY EMAIL: chambers.catanzariti.vp@fwc.gov.au

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Dear Associate

**AM2016/31: 4 YEARLY REVIEW OF MODERN AWARDS - HEALTH PROFESSIONALS & SUPPORT SERVICES AWARD**

We confirm that we act for Australian Business Industrial and the NSW Business Chamber (together, **ABI and NSWBC**) in the above proceedings.

We refer to the decision handed down by the Full Bench on 3 December 2018 in this matter ([2018] FWCFB 7350) (the **Decision**), and in particular to the directions contained at [187] of that Decision inviting interested parties to file written submissions and Draft Determinations in relation to the proposed wording of certain variations to the *Health Professionals and Support Services Award 2010* (the **Award**) as set out in the Decision.

Our clients have considered the Decision and the submissions and Draft Determinations advanced by a number of parties, and wish to provide the following submissions in reply.

**1. VARIATION TO THE SPAN OF HOURS PROVISIONS**

- 1.1 Our clients note the decision to vary and rationalise the span of hours provisions in the Award, and the proposed drafting to give effect to the variation as set out in paragraph [62] of the Decision.
- 1.2 Our clients have reviewed the submission of the Chiropractors Association of Australia (the **CAA**) filed on 5 December 2018, and generally support the proposal that there be consequential amendments to the definitions in the Award to ensure the Award operates effectively in light of the variation.
- 1.3 In relation to the submission by the Health Services Union (the **HSU**) that the variation be delayed or phased in over a period of not less than three years, our clients have had the benefit of reviewing the reply submission of the CAA dated 14 December 2018, and our clients support the reply submissions of the CAA.
- 1.4 Our clients have major concerns with the practicability of phasing-in the variation, given the nature of the variation. In our view, it is difficult to conceive how the decided variation to the

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span of hours clause could be phased-in without creating instability, confusion and a significant administrative burden to employers in the industry.

1.5 To the extent that the Full Bench is minded to consider a delayed implementation to the variation, our clients consider that a period of delay in the order of 6 months would be sufficient to allow employers and employees to make appropriate arrangements prior to the variation coming into effect. In that context, our clients would not be opposed to an implementation date of 1 July 2019.

## **2. ROSTERING**

2.1 Our clients do not oppose the proposed wording to the rostering provision as set out in paragraph [77] of the Decision.

## **3. MEAL BREAKS**

3.1 Our clients support the Draft Determination filed by the Ai Group dated 6 December 2018.

If you have any questions, please contact Kyle Scott on 02 4989 1010.

Yours sincerely



**Kyle Scott**

**Associate Director**

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

Dear Associate to Vice-President Catanzariti

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

The submission is **attached**.

Kind regards

**Andrew McCarthy** | **A/Senior Federal Industrial Officer**  
**Australian Nursing & Midwifery Federation**  
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20 December 2018

Vice President Catanzariti

Fair Work Commission

By email: [chambers.catanzariti.vp@fwc.gov.au](mailto:chambers.catanzariti.vp@fwc.gov.au)

Dear Vice President

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

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

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

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

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

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

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

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

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

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

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**ANMF Journals**

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

*Free from duty and on call*

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

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

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

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

*Meal breaks*

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

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

Yours sincerely

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

Andrew McCarthy

A/g Senior Federal Industrial Officer