



STATEMENT

Fair Work (Transitional Provisions and Consequential Amendments) Act 2009
Sch. 6A, Item 5 - Application to terminate a State reference public sector transitional award

Victorian Hospitals' Industrial Association (AM2013/33)

DEPUTY PRESIDENT GOTENCNIK
DEPUTY PRESIDENT COLMAN
COMMISSIONER LEE

MELBOURNE, 29 APRIL 2020

Health Professionals, Medical Scientists and Support Services (Victoria) State Reference Public Sector Award 2018 – outstanding matters – finalising terms

[1] This Statement deals with the outstanding matters regarding the terms of the *Health Professionals, Medical Scientists and Support Services (Victoria) State Reference Public Sector Award 2018* (Health Award) as made by the Fair Work Commission (Commission) on 4 September 2018.¹

[2] A copy of the draft Health Award will be published concurrently with this statement on the Commission's website.

Dental nurse level I and Dental nurse level II wage rates

[3] The classification definitions for Dental nurse levels I and II contained in the draft Health Award appear to cover both *trainees* and *non-trainees* in their first or second year of employment.

[4] Schedule A.12.5 of the draft Health Award provides:

“A.12.5 Dental Nurse definitions

(a) Dental nurse level I:

An employee who is either undertaking the first year of an accredited training programme, or equivalent programme, or during the first twelve months of employment not in an accredited or equivalent training programme.

(b) Dental nurse level II:

An employee who is either undertaking the second year of an accredited training programme or an equivalent training programme, or an untrained employee with twelve months of employment not in an accredited or equivalent training programme.”
(emphasis added)

¹ [\[2018\] FWCFB 5557](#)

[5] Clause 12.2(d) of the draft Health Award provides the following pay rates which have been adjusted by the award modernisation team of the Commission to factor in the annual wage review percentage increases which have been issued since the draft award was provided by the parties:

12.2(d) Dental Nurses

Grade Level	Weekly rate \$
<i>Dental nurse level I</i>	480.60
<i>Dental nurse level II</i>	546.60
<i>Dental nurse level III</i>	891.50
<i>Dental nurse level IV</i>	910.50
<i>Dental nurse level V</i>	920.60
<i>Dental nurse level VI</i>	935.10
<i>Deputy superintending dental nurse</i>	1,034.30
<i>Advanced dental technician</i>	1,074.70

[6] The wage rates specified in the draft Health Award for Dental nurse levels I and II are below the national minimum wage, which is currently \$740.80 per week.

[7] The Commission corresponded with the parties about this issue with the parties contending that these two rates should be lifted to the equivalent of national minimum wage.

[8] This proposal would appear to trigger the need to review **all rates** in the draft Health Award to ensure the rates remained properly fixed.

History of Dental nurse level I and Dental nurse level II wage rates in the draft Health Award

[9] The VHIA has submitted that the rates contained in the draft Health Award were taken from the [Victorian Public Health Sector \(Health & Allied Services Managers & Administrative Workers\) Enterprise Agreement 2016-2020](#) (Victorian Public Health Sector Agreement).

[10] The classification descriptions and rates had been included in previous versions of the Victorian Public Health Sector agreement back to the [2009-2011 version](#). The 2009-2011 version of the Victorian Public Health Sector Agreement referenced the [Health and Allied Services – Public Sector – Victoria Consolidated Award 1998](#) (1998 Award) as at 1 August 2009. The 1998 Award is the only referenced award that contains dental nurse classifications and an applicable rates table.

[11] The references to dental nurses in each version of the Victorian Public Health Sector Agreement are identical except that the Dental nurse level I and Dental nurse level II were initially referred to² as:

Dental nurse level I (<i>trainee</i>)
Dental nurse level II (<i>trainee</i>)

[12] In the next agreement³ this appears to have changed to:

Dental nurse level I (<i>trainee</i>)
Dental nurse level II

[13] The “trainee” description does not appear in the rates table in the draft Health Award.

[14] When the 1998 Award was first made it did not include rates for dental technicians or dental nurses. Rates for both employee types were inserted into the 1998 Award effective on or after 22 June 1999 following a decision of Commissioner Blair in transcript.⁴ The order giving effect to this was [R8757 issued on 14 September 1999](#). During the proceedings before Commissioner Blair, the VHIA identified the Victorian *Dental Technician Award (number 3)* as the source for these “classifications that apply to the public sector employees being dental nurses and technicians”⁵.

[15] None of above agreements or the 1998 Award provide a mechanism for how the wage rates were set or amended.

Origins of the Dental nurse trainee classifications and the basis for calculating them

[16] The Victorian Dental Technicians Conciliation and Arbitration Board issued a decision in Case No. 90/1513 on 9 October 1990 including agreed changes between FMWU (Vic Branch) and The Health Department of Victoria to the *Dental Technicians Award (Part II)*.

[17] One change contained within that decision was the introduction of a new classification scheme introducing the Dental Nurse level I and Dental Nurse level II classifications in the same terms as now contained in the draft Health Award:

“(A) DENTAL NURSE

Dental Nurse level I – An employee who is either undertaking the first year of an accredited training programme, or equivalent programme, or during the first 12 months of employment not in an accredited or equivalent trainee programme - \$152.70

² [Victorian Public Health Sector \(Health and Allied Services Managers and Administrative Officers\) Multiple Enterprise Agreement 2009-2011](#)

³ [Victorian Public Health Sector \(Health and Allied Services Managers and Administrative Officers\) Multiple Enterprise Agreement 2011-2015](#)

⁴ Given 22 June 1999

⁵ Transcript, 22 June 1999 at [14], C34130/1999

Dental Nurse level II - An employee who is either undertaking the second year of an accredited training programme, or an equivalent programme, or an untrained employee with 12 months service - \$203.60.”

[18] Part I of the *Dental Technicians Award* included a table at clause 1 for Dental Nurse trainees:

“1(iii) Trainees
(see clause 25 for Definition)

	<i>Percentage of dental nurse wage</i>	\$
1 st year	45	145.75
2 nd year	60	196.45
And thereafter the minimum wage for a Dentist’s nurse		

Notwithstanding anything elsewhere contained in this Award all employees upon reaching the age of 21 years shall be paid the minimum rate of pay for a Dentist’s Nurse.”

[19] At clause 1(i) the minimum rate of pay for a Dentist’s Nurse was set as \$327.40. It should be noted that clause 30(iii) of Part II of the *Dental Technicians Award* had a further provision for trainee dental nurses as follows:

“30(iii) Incremental payments:

Notwithstanding anything else contained in this Award, the following additional payments shall be made to:

Trainee dental nurses	\$
Under 18 years of age	23.50
At 18 years of age	30.00
At 19 years of age	34.50
At 20 years of age	39.20.”

[20] The incremental payments remained in the award until it was terminated in 2009.

Comparison of the Dental nurse level 1 and Dental nurse level 2 rates against the National Training Wage Schedule

[21] The draft Heath Award contains a National Training Wage Schedule.

[22] The Health training package is covered by Wage level B in relation to AQF certificates II and III. The relevant training course is [HLT35015 - Certificate III in Dental Assisting](#).

[23] The Victorian Government Skills Gateway identifies this course as suitable for dental nurses and entry requirements require the applicant to be already employed with 250 hours of experience.

[24] The current national minimum wage is **\$740.80**.

[25] The rates (adjusted by the award modernisation team of the Commission to factor in the annual wage review percentage increases which have been issued since the draft award was provided by the parties) in the draft Health Award are:

Dental nurse I rate	\$480.60
Dental nurse II rate	\$546.60

[26] The full-time traineeship rates in the draft Health Award (adjusted by the award modernisation team of the Commission to factor in the annual wage review percentage increases which have been issued since the draft award was provided by the parties) are:

E.5.1

(a) Wage Level B

Subject to clause **E.5.3** of this schedule, the minimum wages for a trainee undertaking a full-time AQF Certificate Level I–III traineeship whose training package and AQF certificate levels are allocated to Wage Level B by Appendix E1 are:

	Highest year of schooling completed		
	Year 10	Year 11	Year 12
	per week	Per week	per week
	\$	\$	\$
School leaver	\$332.80	\$366.50	\$424.80
Plus 1 year out of school	\$366.50	\$424.80	\$488.60
Plus 2 years out of school	\$424.80	\$488.60	\$573.10
Plus 3 years out of school	\$488.60	\$573.10	\$653.70
Plus 4 years out of school	\$573.10	\$653.70	
Plus 5 or more years out of school	\$653.70		

[27] It appears that a Dental nurse level I undertaking a **full-time** AQF Certificate Level I–III traineeship being paid the Dental nurse level I rate is lower than the Wage Level B rate in Schedule E the proposed award if they are more than:

- 4 years out of school at any age regardless of school leaving level; or
- 3 years out of school after completing year 11 or year 12 at school; or
- 2 years out of school after completing year 12 at school.

Review of the apprentice rates in the draft Health Award and the classifications they apply to

[28] It appears from the wording of the draft Health Award that apprentice rates are not intended to apply to Dental nurses.

[29] The only classification in the award to have an apprentice category is Dental Technician as follows:

“B.3.8 Dental Technician

(a) Apprentice Dental Technician

An employee who is in the process of completing an accredited trade certificate course to become a licensed Dental Technician.

(b) Dental Technician Level I

An employee who has successfully completed a trade certificate course and is a licensed Dental Technician.

(c) Dental Technician Level II

An employee who is a licensed Dental Technician and is the Technician in Charge and is either; a Dental Technician responsible for the production and quality of work of a specialist unit of the Dental Laboratory Service of the Royal Dental Hospital of Melbourne; or is responsible for the administration and efficient functioning of Dental Technician Services in an establishment other than the Royal Dental Hospital of Melbourne.

(c) Foreman Dental Technician

An employee who is a Licensed Dental Technician and is the Foreman Technician and is either; responsible to the Dental Laboratory Manager for the production and quality of work of a major section of the Dental Laboratory Service at the Royal Dental Hospital of Melbourne; or is responsible for the administration and efficient functioning of Dental Technician Services at an establishment other than at the Royal Dental Hospital of Melbourne.”

[30] In the referenced award and precursor awards, apprenticeships appear to have only applied to Dental Technicians.

Conclusion and questions for the parties

[31] As set out above, the Dental nurse levels I and level II classification wage rates in the draft Health Award appear to be significantly below the national minimum wage.

[32] The definitions of the Dental nurse level I and Dental nurse level II classifications in the draft Health Award as currently defined appear to enable an unqualified but experienced Dental nurse to be paid at the Dental nurse level I and Dental nurse Level II classification rates which are below the national minimum wage of \$740.80. This appears to allow for adult employees not undergoing any traineeship to earn below the national minimum wage.

[33] A further issue identified is that the Dental nurse level I and Dental nurse level II classification rates in the draft Health Award are not consistent with the National Training Wage Schedule at Schedule E of the draft Health Award. In relation to this we pose the following question for the parties:

- Are unqualified dental nurses employed under these classifications?

[34] The AQF Certificate Level III traineeship for Dental Assistants requires applicants to have 250 hours of work experience before they can enrol so it does appear that there is scope for employment of unqualified dental nurses. In relation to this we pose the following question for the parties:

- If the Dental nurse level I and level II (trainees) classification rate is adjusted to equal to the minimum wage or the Dental nurse level III rate, is a review of the relativities of the other wage rates in the award required?

[35] It appears the industry is moving (or has moved) from using the classification term “dental nurse” to “dental assistant”. This appears to be reflected in the translation of classifications in the current [*Victorian Public Health Sector \(Health and Allied Services, Managers and Administrative Workers\) Single Interest Enterprise Agreement 2016-2020*](#). In relation to this we pose the following question for the parties:

- Should the draft Health Award be revised to deal with this issue?

[36] To provide interested parties with an opportunity to discuss the issues raised in this statement a telephone conference will be held before Commissioner Lee. A notice of listing will be issued separately by the Commissioner’s chambers.

DEPUTY PRESIDENT

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