

FAIR WORK COMMISSION

Matter No.: AM2016/31

Four Yearly Review of Modern Awards – Health Professionals and Support Services Award

**SUBMISSION FROM DENTAL HYGIENISTS ASSOCIATION OF
AUSTRALIA - AM2016/31**

Point 1 of Directions of Vice President Catanzariti of 19 December 2019

Dental Hygienists Association of Australia Limited (“DHAA”)

Date: 28 February 2020

Lodged by:

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Introduction

1. This Submission is filed on behalf of the Dental Hygienists Association of Australia Limited (“DHAA”) in accordance with Point 1 of the Directions issued by Vice President Catanzariti on 19 December 2019.
2. As per the Directions, this Reply Submission addresses which Health Professional occupations should not be covered by the Health Professionals and Support Service Award 2010 (“HPSS Award”).
3. DHAA is the **employee representative professional association** for Dental Hygienists and Oral Health Therapists. The current DHAA membership is 1,530.

Outline of Claim

4. The DHAA’s concern is to maintain the status quo that Dental Hygienist and Oral Health Therapists are not covered by the Award.
5. DHAA relies on the content, witness evidence and materials of our previous submissions of:
 - i) 9 December 2019,
 - ii) 25 November 2019,
 - iii) 14 October 2019,
 - iv) 14 August 2019,
 - v) 31 July 2019,
 - vi) 14 March 2018,
 - vii) 11 December 2017,
 - viii) 13 June 2017,
 - ix) 22 May 2017,
 - x) 17 March 2017,
 - xi) 2 August 2016,
 - xii) 29 April 2016,
 - xiii) 5 November 2015,
 - xiv) 21 August 2015, and
 - xv) at arbitration before the Full Bench on 2 December 2019 and
 - xvi) at arbitration before the Full Bench on 11 and 12 December 2017.
 - that relate to DHAA’s position that Dental Hygienists and Oral Health Therapists should not be covered by the HPSS Award.
6. This submission addresses paragraph [28] of the Full Bench Decision [2019] FWCFB 8538 “We are mindful of s. 143(7) of the FW Act that says: (7) A modern award must not be expressed to cover classes of employees:
 - (a) Who because of the nature or seniority of their role, have traditionally not been covered by awards (whether made under the laws of the Commonwealth or the States); or
 - (b) Who perform work that is not of a similar nature to work that has been traditionally been regulated by such Awards.”¹

¹ 19 December 2019 [2019]

Section 143 (7)(a) of Fair Work Act – Who because of the nature or seniority of their role, have traditionally not been covered by awards (whether made under the laws of the Commonwealth or the States)

7. DHAA's membership is of employee Dental Hygienists and Oral Health Therapists in the public and private sectors. DHAA's membership does not include Dental Therapists. Dental Therapists have always been covered by the HPSS Award and State Awards, and are employed only in the public sector.
8. The table below is a summary comparison of the key differences between Dental Hygienists, Dental Therapists and Oral Health Therapists.

	Dental Hygienist	Dental Therapist	Oral Health Therapist
Education	2 year Advanced Diploma or 3 year Bachelors Degree	Certificate or Diploma	3 year Bachelor Degree
Current education providers	Currently TAFE SA and Griffith University	There have been no training programs for some 10 years	Currently 9 training programs in Australia
Scope of practice	Preventive only treatments (e.g. scaling, fluoride, sealants, mouthguards), including the treatment of gum disease in adults	Preventive and restorative (simple fillings) treatment and extractions in children and adolescents	Combines the role of the hygienist and therapist
Age restrictions on patients	Can treat patients of all ages	Age restricted, depending on training. Often under 25 years.	Can treat patients of all ages but may have restrictions on the age of dental therapy patients.
Employment	Traditionally work in the private sector	Traditionally work in the public sector	Working in both the private and public sectors. AHPRA data tells us that the majority work in private practice in dental hygiene roles.

Change in the Dental Industry Since 2009 and Likely Future Change – Does this Warrant a Change in HPSS Award Coverage for Dental Hygienists and Oral Health Therapists – Section 143(7)(a) and (b)

9. In 2009, with regard to consideration of award coverage for occupations in the dental industry, Dental Therapists were non-controversially included the List of Common Health Professionals in the first exposure draft of the HPSS Award. Dental Therapists have remained in the List ever since.
10. Dental Hygienists were briefly in the List and were then removed as a consequence of the successful award variation application of DHAA in October 2009, by way of the AIRC Full Bench decision in December 2009.²
11. Oral Health Therapists and Dentists have never been covered by the HPSS Award or any other Federal Award.
12. Therefore, in relation to s 143(7) of Fair Work Act, Dental Hygienists, Oral Health Therapists and Dentists have been traditionally award-free in the private sector.

² [2009] AIRC FB 948

13. As with Doctors and Dentists, professions which have been traditionally award-free in the private sector, Dental Hygienists and Oral Health Therapists in the public sector have been subject to public health service State Awards and mature (fourth and fifth) iterations of State and Federal enterprise agreements.
14. DHAA submits that for the purpose of s 143(7) of Fair Work Act, Dental Hygienists, Oral Health Therapists, Dentists and Doctors have all been traditionally award-free in the private sector because of the nature of their role.
15. The significant occupational change that has occurred since 2009 in the dental industry is the legacy nature of the profession of Dental Therapist. All dental therapy training schools are now closed. The only training in that discipline is now in a Bachelor of Oral Health.
16. Dental Therapist is the only dental profession that has always been covered by the HPSS award, and the life of that profession is now concluding.
17. The award-free profession of Oral Health Therapist has not replaced the award-covered profession of Dental Therapist.
18. The profession of Oral Health Therapist existed at the time of the making of the HPSS modern award in 2009.
19. The profession of Oral Health Therapist has not altered between 2009 and 2020 in any way in terms of duties, skills, tasks or minimum educational requirements
20. Registration numbers of Dental Therapists are steadily declining as Certificate and Diploma trained Dental Therapists are retiring.^{3 4} The table below illustrates the comparative change in registration numbers of Dental Therapists, Dental Hygienists and Oral Health Therapists between 2006 and 2019.

Occupation	2006	Increase / decrease	2019
Dental Therapist	1,380	-37%	876
Dental Hygienist	796	181%	1,442
Oral Health Therapist	410	454%	1,861

21. DHAA submits that Fair Work Commission should not make a significant variation to the Award such that two award-free occupations become covered by the HPSS Award **because** one legacy occupation – Dental Therapy – has always been covered by the HPSS Award, or because that profession is now in decline.
22. At [120] of the Full Bench decision [2018] FWCFB 7350, of 3 December 2018, the Full Bench said⁵ that the Commission dismissed the application of the CAA to remove the occupation of chiropractors from the HPSS Award because the award modernisation process did not preclude the extension of awards to work performed that is of a similar nature to work that

³ Dental Board of Australia Registrant Data, Reporting period: 01 January 2019 to 31 March 2019.

⁴ AIHW Dental Statistics and Research Series Number 53 'Dentists, specialists and allied practitioners in Australia, Dental Labour Force Collection 2006'.

⁵ [2018] FWCFB 7350, 3 December 2018.

has historically been regulated by awards. This decision is distinguishable because the same Full Bench in the same year decided to vary the same Award to exclude Dental Hygienists.⁶

23. No witness evidence has been provided to date as to why Dental Hygienists and Oral Health Therapists should be covered by the HPSS award.
24. DHAA has provided witness evidence as to why such a change should **not** be made and provided reasons why its employee members believe they would be harmed by such a change.⁷ In their evidence at arbitration in 2017, Dr Melanie Hayes and Dr Carol Tran expressed a view that Dental Hygienists and Oral Health Therapists would be harmed if Fair Work Commission quashed their award-free status.
25. DHAA re-submits witness evidence from Ms Kay Ball, Oral Health Therapist; Ms Alison Taylor, lecturer and clinical tutor in dental hygiene at TAFE Australia; Ms Susan Melrose, Dental Hygienist; Ms Christina Zerk, Dental Hygienist; and Ms Lyn Carman, Dental Hygienist. These witness statements ([Attachment 3](#)) relate to their own experience and circumstances concerning how and why they believe HPSS award coverage would be detrimental to their future wages.
26. In the 2009 Decision of the AIRC, at [3] the Full Bench stated, “it (DHAA) further submitted that award coverage of Dental Hygienists would disadvantage its members in the following ways: (a) The award would act to erode Dental Hygienists’ real high hourly wage both immediately and over time which they have maintained successfully for decades via private individual negotiations, without any industrial instrument benchmarks being used or desired; (b) The existence of the Award minimum rate of pay would be used by their employers as a benchmark to disadvantage Dental Hygienists in negotiations on remuneration; (c) The Award’s classification structure would be used to limit promotion and progression for Dental Hygienists; (d) The Award’s classification structure and low entry pay rates for graduates would significantly disadvantage new graduates in comparison to current award-free conditions.”
27. The DHAA submits that the same concerns considered and accepted by the Full Bench in 2009 continue to exist in 2020.
28. The DHAA further submits that the Dental Hygienist and Oral Health Therapist workforce is overwhelmingly female with many employees working one or two positions with different employers on a part-time basis. In such circumstances, a move to change these traditionally award-free occupations to award coverage under the HPSS Award with an associated expected major decline in their wages contravenes the Modern Awards Objective, specifically section 134(1) (c) of Fair Work Act, “*the need to promote social inclusion through increased workforce participation.*”
29. The DHAA submits that the validity of its concerns is supported by the witness statement of Mr Benjamin Marchant, ([Attachment 4](#)), who has been a registered pharmacist since 2006 and is the Victorian President of the Pharmaceutical Society of Victoria.⁸

⁶ [2009] AIRC FB 948

⁷ Witness Statement of Dr Melanie Hayes of 9 June 2017 and Witness Statement of Carol Tran of 9 June 2017 referenced in [107] and [108] of [2018] FWCFB 7350 p16.

⁸ Witness Statement of Mr Benjamin Marchant of 16 July 2019.

30. Based on his direct observation and experience, Mr Marchant states that there has been a steady decline in real wages for pharmacists since they became covered by the Pharmacy Industry Award in 2010.
31. Mr Marchant states “while the Pharmacy Industry Award sets a minimum rate, employers are treating that as a Government recommended standard rate for Pharmacist employees.”⁹ Mr Marchant posits that the application of the HPSS Award may have a similar effect on Dental Hygienists, and Oral Health Therapists.¹⁰
32. The DHAA submits a witness statement from Mr Samson Chan¹¹, a registered pharmacist and partner of Cura Pharmacy Group, which employs over forty pharmacists in Victoria. Mr Chan states, “I can confirm that all pharmacists we employed were paid above award when the Pharmacy Industry Award 2010 was introduced. Since then, there was a steady decline of pharmacist wages towards the award rate.” His witness statement demonstrates the difficulty that employers face in continuing to pay over award payments when, as stated by Mr Chan, “as employers we are able to justify (wages of employee pharmacists falling in real terms) by using the award wage as a benchmark.” (Attachment 5)

The Suppositions concerning why Oral Health Therapists were not in the List of Common Health Professionals in 2009

33. The Full Bench Decision stated at [88] that the ADOHTA submits the recognition of the occupation by the Dental Board of Australia (DBA) did not occur until after the HPSS award was made and that is why the occupation was left off the List. There has been no evidence provided by ADOHTA to support this assertion in relationship to the List and ADOHTA has not participated in these proceedings at arbitration.
34. None of the extensive materials on the AIRC archive site of the AM2008/13 award modernization process of the HPSS award from 2008-2010¹² provide support for ADOHTA’s view that the omission of Oral Health therapist from the List was related to recognition by the Dental Board, or indeed any other reason.
35. ADOHTA state in their submission of 28 February 2017¹³ that “Oral health therapists have been a recognised profession since 2000 after the University of Queensland developed the Bachelor of Oral Health (BOH) course.” DHAA supports this submission. In 1998, the first Bachelor of Oral Health degree program was offered by University of Queensland/ Queensland University of Technology. In 2002, Adelaide University offered its first Bachelor of Oral Health degree program, then Griffith University (2004) and University of Melbourne (2005) did the same. In 2005, University of Newcastle offered a Bachelor of Oral Health. In 2006 the University of Sydney and Latrobe University also offered a Bachelor of Oral Health as did Charles Sturt University in 2008. By 2009, Oral Health Therapist was a recognised working degree-qualified and registered occupation in every state and territory of Australia. ^{14 15}

⁹ Ibid

¹⁰ Ibid

¹¹ Witness Statement of Mr Samson Chan of 30 July 2019.

¹² <http://www.airc.gov.au/awardmod/fullbench/industries/awardmodindustry.cfm?award=health>

¹³ Ibid

¹⁴ AIHW Dental Statistics and Research Series Number 53 ‘Dentists, specialists and allied practitioners in Australia, Dental Labour Force Collection’ 2006 and 2011.

¹⁵ Oral Health Therapy Programs in Australia and New Zealand, Edited by Annetta K L Tsang, The University of Queensland. Pp 17-25.

36. ADOHTA state in their submission of 28 February 2017¹⁶, “The New South Wales Dental Board recognised Oral Health Therapists as a separate division in 2008.” DHAA accept this submission.
37. ADOHTA state, “At the introduction of the National Registration and Accreditation Scheme in 2010, Oral Health Therapists were only registered by one State Dental Board.” DHAA refutes this statement. Graduates of the Oral Health Therapy course were recognised by the State and Territory dental boards for registration in the categories of Dental Hygienist and Dental Therapists. By recognition of their qualifications for registration, the dental boards were recognising Oral Health Therapists.¹⁷
38. ADOHTA also state, “.... and so were not automatically transitioned by the Dental Board of Australia (DBA) as a stand-alone profession.” This statement is not correct. The Dental Board of Australia did recognise the occupation of oral health therapy because it was pre-existing in New South Wales, as ADOHTA stated in their submission.
39. There appears to an inference that Oral Health Therapists were only recognised and working as such in New South Wales. This is not the case, so the inference is false.
40. The Oral Health Therapist was a recognised, working, registered occupation in every State and Territory of Australia in 2009. We refer in particular to the Australian Government’s Australian Institute of Health and Welfare’s “Dental Labour Force Collection 2006” referenced below.
41. DHAA submits that the inferred correlation that has been made, without evidence, that the profession was “new” or “emerging” in 2009 is false.
42. ADOHTA states in their submission, “OHT’s are employed in the public sector, education and research as well as in private practice. In all areas other than private practice, they are covered by relevant awards and in Queensland, New South Wales, South Australia and Victoria the OHT category is specifically named.”
43. DHAA submits that Oral Health Therapists working in education and research have been covered by AM2014/229 the *Higher Education Industry Academic Staff Award 2010*. Dental hygienists, dentists, and Oral Health Therapists are covered by this award by virtue of the sector they are working in, their teaching duties and their research requirements.
44. DHAA submits the following evidence demonstrates that the occupation of Oral Health Therapist was and had been a known occupation in 2009 and for many years before that time:
 - 44.1.1 The Health (Drugs and Poisons) Regulation 1996 Chapter 4 Poisons: section 248B(1) refers to authorizing Oral Health Therapists to administer specific S2 and S3 poisons. This was a Queensland Regulation – Reg 414 of 1996 made under the Health Act 1937.¹⁸ ([Attachment 6](#))

¹⁶ Ibid

¹⁷ AIHW Dental Statistics and Research Series Number 53 ‘Dentists, Specialists and Allied Practitioners in Australia, Dental Labour Force Collection’ 2006.

¹⁸ Queensland Regulation – Reg 414 of 1996 made under the Health Act 1937.

- 44.1.2 The Poison and Therapeutic Goods Amendment (Oral Health Therapists) Regulation 2007, Schedule 1 (1) to (4) refers to authorizing Oral Health Therapists to possess and be supplied with local anaesthetics.¹⁹ ([Attachment 7](#))
- 44.1.3 The NSW Dental Practice Regulation 2004 - Reg 7a (now repealed) prescribed Oral Health Therapist as a prescribed class of dental auxiliary for the purposes of the Dental Practice Act 2001.²⁰ ([Attachment 8](#))
- 44.1.4 The NSW Dental Practice Amendment (Oral Health Therapists) Regulation 2007 under the Dental Practice Act 2001. This 2007 Regulation amended the Dental Practice Regulation 2004 to provide for Oral Health Therapists by prescribing Oral Health Therapists as a class of dental auxiliary for the purposes of registration under the Dental Practice Act 2001 (the Act), and authorised activities for Oral Health Therapists who are registered under the Act and the qualifications that are necessary qualifications for registration as an Oral Health Therapist under the Act.²¹ ([Attachment 9](#))
- 44.1.5 The Australian Government's Australian Institute of Health and Welfare's "Dental Labour Force Collection 2006" ([Attachment A](#)) published in 2011 states in relation to the Australian dental labour force in 2006, "The allied practitioner proportion of 23% was made up of therapists (9%), prosthetists (7%), hygienists (5%) and Oral Health Therapists (2%). The overall picture is one of small changes in the decade to 2006, with some evidence that the main areas of growth are in the allied practitioner component. Between 2003 and 2006, Oral Health Therapists (OHTs) became much more prominent, a trend that is likely to continue."²²
- 44.1.6 The allied dental practitioner surveys collected data in 2006 on OHTs in five states (excluding Tasmania, ACT and NT.)²³ Under Methods, the study states "all allied personnel registered with the dental board in each State/Territory were surveyed." The survey was administered in conjunction with registration renewal and with assistance from the state/territory dental boards and/or health departments.²⁴
- 44.1.7 The Australian Government's Australian Institute of Health and Welfare, "Dental Workforce 2011" study shows the existence of 397 registered Oral Health Therapists in 2006, 651 in 2009 and 1,108 in 2011.²⁵ (see [Attachment B](#))
- 44.1.8 The witness statement of Ms Kay Ball describes that she has been working as an Oral Health Therapist for 14.5 years (para 3). Ms Ball states (para 4) that since her graduation in December 2004 from Queensland University with a Bachelor of Applied Science (Oral Health) (para 2), her employers, her colleagues and her have described her profession and her job as an Oral Health Therapist.²⁶
- 44.1.9 In her witness statement, Ms Alison Jane Taylor states at paragraph 4 that she knows from her own professional experience that the occupation of Oral Health Therapist existed in 2009 and before then. Ms Taylor states that she worked as

¹⁹ Poison and Therapeutic Goods Amendment (Oral Health Therapists) Regulation 2007, Schedule 1 (1) to (4) p3.

²⁰ The NSW Dental Practice Regulation 2004 - Reg 7a.

²¹ The NSW Dental Practice Amendment (Oral Health Therapists) Regulation 2007 under the Dental Practice Act 2001 p1.

²² Balasubramanian, M and Teusner, DN, Australian Government's Australian Institute of Health and Welfare's "Dental Labour Force Collection 2006" AIHW Dental Statistics and Research Series, Number 53, 2011 p viii

²³ Ibid p35

²⁴ Ibid p35.

²⁵ Balasubramanian, M and Teusner, DN, Australian Government's Australian Institute of Health and Welfare's "Dental Workforce 2011" Cat. No. HWL 50, 2011 p 5.

²⁶ Witness statement of Kay Ball

a Clinical Tutor in the Bachelor of Oral Health program at the University of Adelaide from 2004 – 2017. She states that for the duration, graduates of the program were called Oral Health Therapists.²⁷

Section 143 (7)(a) of Fair Work Act The 2018 New South Wales Award

45. At [120] in their Decision, the Full Bench state that the occupations of Dental Therapist, Dental Hygienist and Oral Health Therapist are all covered by a recent Award of the Industrial Relations Commission of New South Wales – *Health Employees Oral Health Therapists (State) Award 2018*.²⁸
46. A New South Wales Award was made at the same time which also covered Dentists employed by the public sector. This award is called the *Health Employees Dental Officers (state) award 2017*.²⁹ (Attachment 10)
47. The DHAA submits that the existence of a new public sector State award should have no relevance to a consideration of coverage of the HPSS award.
48. This is because the status quo remains unchanged since 2009 that some dental professionals in the public sector are covered by state awards. All other Dental Hygienists, Oral Health Therapist and Dentists working clinically in the private sector remain award-free.
49. The same occupations in the public sector were and still are possibly covered by a State Award applying only to the public sector and in some cases, a mature iteration of a State or Federal enterprise Agreement. For example, in Victoria, the Victorian Public Health Sector (Dental Therapists, Dental Hygienists and Oral Health Therapists') Enterprise Agreement 2018-2022 [2019] FWCA 1399 is negotiated between the CPSU and the Victorian Hospitals' Industrial Association (VHIA). This Federal Agreement covers Dental Hygienists, Oral Health Therapists and Dental Therapists.
50. This Agreement and its previous iterations do not reference the HPSS Award in relation to coverage of Dental Therapists, nor is the HPSS Award referenced for the purposes of the Better Off Overall Test as per s186(2)(d) of Fair Work Act.
51. Another example of long-term EBA coverage of dental professionals in the public sector is the South Australian Modern Public Sector Enterprise Agreement; Salaried Employees 2017, File No. 372. This State Agreement negotiated between the PSA division of CPSU and SA Dental does not reference any State award, including for Dental Therapists.
52. Therefore, a new suite of NSW state awards covering all dental professionals does not warrant a change in coverage of the HPSS award by including Dental Hygienists or Oral Health Therapists.

²⁷ Witness statement of Alison Jane Taylor

²⁸ [2018] FWCFB 7350

²⁹ 1 July 2017, Health Employees Dental Officers (State) Award 2017, Case No 194489 of 2017, Industrial Relations Commission of NSW, Chief Commissioner Kite, 4 July 2017.

Section 143(7)(b) - Dental Hygienists and Oral Health Therapists compared to Dentists/Doctors versus Dental Therapists

53. At Attachment 1, DHAA submits witness evidence from Dr Carol Tran, Oral Health Therapist, National Vice-President and Queensland Director of DHAA.
54. Dr Tran states in her witness statement that as an Oral Health Therapist, her daily duties are significantly more similar to a private sector Dentist than to a public sector Dental Therapist. She says that Oral Health Therapists provide a fee-for-treatment service and are remunerated on clinical performance and revenue generated.
55. Dr Tran's evidence is that the duties, tasks, functions and skills of an Oral Health Therapist are to provide debridement, oral hygiene instruction, periodontal assessments and diagnosis, oral health education and counselling, maintain healthy implants, gums and teeth, supportive orthodontic procedures, examinations and fillings on people of a diverse age group, extractions of primary teeth, and to take intra and extra oral radiographs.
56. Dr Tran's evidence is that, by way of contrast, the duties, tasks, functions and skills of a Dental Therapist are to conduct examinations, fillings, extractions, and pulp treatments on primary school-aged children and provide x-rays. Dental Therapists are predominately employed in the public sector and are remunerated based on years of employment and/or hold a managerial position rather than being employed based on clinical performance.
57. Dr Tran's evidence is that there is a significant difference in duties, tasks, functions and skills between an Oral Health Therapist and a Dental Therapist. This includes the requirement in the private sector for a much broader skill than is required in public sector dentistry.
58. Dr Tran's evidence, based on her direct professional experience as a practitioner and her knowledge as Vice President and Queensland Director of DHAA, is that the duties, tasks, functions and skills of an Oral Health Therapist are much more closely aligned to a Dentist than to a Dental Therapist because Oral Health Therapists are reviewed on their clinical performance, patient retention rate, revenue production, treatment plan acceptance and patient satisfaction. The same principles that apply to an Oral Health Therapists, Dental Hygienists and Dentists do not apply to Dental Therapists, as Dental Therapists perform an entirely different role.
59. Dr Tran's evidence, relying on her own professional experience and informed by Manski R.J, Macek, M.D., Carper KV, Cohen LA, Vargas C. "*Dental Service Mix among Working-Age Adults in the United States, 1999 and 2009*," *Journal of Public Health Dental* 2014; 74; 102-109 ([Attachment 1](#)) is that 65% of a Dentist's day-to-day job is spent performing provide preventive dentistry procedures. Dr Tran's evidence based on her own experience and knowledge of her profession is that 80% of an Oral Health Therapist's job is to provide preventive dentistry procedures (such as scale and cleans, examinations and oral health counselling) to patients. An Oral Health

Therapist is reviewed on the same metrics as a private sector dentist and performs largely the same clinical procedures as Dentists do, and is therefore significantly more similar to a Dentist in function, duties, tasks and performance metrics, compared to a public sector Dental Therapist.

60. Dr Tran's evidence is that employee Dentists in the private sector do not hold managerial positions and neither do private sector Dental Hygienists or Oral Health Therapists. All three dental professions are employed as practitioners to provide clinical care for their patients. Therefore, in relation to section 143(7)(a) of Fair Work Act, Oral Health Therapists and Dental Hygienists perform work that is similar in nature and seniority to a traditionally award-free private sector Dentist, and very dissimilar to award-covered Dental Therapists.

Summary

61. Dental Hygienists and Oral Health Therapists should not be covered by the Health Professionals and Support Services Award.
62. There is no change in the dental industry since 2009 which justifies a change in award coverage. The significant change is a continuing, permanent decline in numbers of Dental Therapists (who have always been covered by the HPSS Award). That occupation is now a "legacy" profession. It is not logical to default to the award coverage position of the legacy profession.
63. Witness evidence supports DHAA members' unchanged strong position evinced in its application to AIRC in 2009 that award coverage poses significant and permanent harm to Dental Hygienists and Oral Health Therapists. They see a future where their incomes would dwindle inexorably towards the minimum rates of pay in the Award. DHAA submits witness evidence that this deleterious effect occurred with Pharmacists' incomes after award coverage occurred, under the Pharmacy Industry Award.
64. The existence of State public sector awards or mature iteration Federal public sector enterprise agreements should not alter the status quo of coverage by the HPSS Award. The status quo is that those not covered by State public sector awards or the Higher Education Industry Award 2010, are award-free. This means that all Dental Hygienists and Oral Health Therapists in the private sector, other than those working in Universities and TAFES are award-free.
65. With regard to the Modern Award Objective and section 134(1) (f), DHAA submits that the best interests of the dental industry are served by maintaining the status quo that Dental Hygienists, Oral Health Therapists and Dentists are not covered by the Health Professionals and Support Services Award.
66. Dental Hygienists and Oral Health Therapists are overwhelmingly female with many employees working one or two positions with different private sector employers on

a part-time basis. DHAA submits that a decision to change these traditionally award-free occupations to award coverage with an associated expected major decline in their wages contravenes the Modern Awards Objective, specifically section 134(1) (c) of Fair Work Act, *“the need to promote social inclusion through increased workforce participation.”*

67. By virtue of section 143(7)(b), Dental Hygienists and Oral Health Therapists should remain award-free because the duties, functions, tasks, remuneration and responsibilities of a Dental Hygienist and Oral Health Therapist are much more closely aligned to that of a traditionally award-free Dentist than to a traditionally award-covered Dental Therapist.



Katrina Murphy for
Dental Hygienists Association of Australia Limited
28 February 2020

Attachments

Attachment 1.....Witness Statement of Dr Carol Tran, Oral Health Therapist of 27 February 2020 and attached article:

Manski R.J., Macek, M.D., Carper K.V., Cohen L.A., Vargas C. *“Dental Service Mix Among Working-Age Adults in the United States, 1999 and 2009”*
Journal of Public Health Dental 2014; 74; 102-109.

Attachment 2.....Witness Statements of

- Ms Michelle Kuss, Dental Hygienist, of 27 February 2020
- Ms Cheryl Dey, Dental Hygienist, of 28 February 2020
- Ms Amy McDermott, Dental Hygienist, of 28 February 2020.

Attachment 3.....Witness Statements of:

- Ms Kay Ball, Oral Health Therapist, of 16 June 2019;
- Ms Alison Taylor, lecturer and clinical tutor in dental hygiene at TAFE Australia, of 19 June 2019;
- Ms Susan Melrose, Dental Hygienist, of 26 June 2019;
- Ms Christina Zerk, Dental Hygienist, of 24 June 2019;
- Ms Lyn Carman, Dental Hygienist, of 30 July 2019.

Attachment 4.....Witness Statement of Mr Benjamin Marchant of 16 July 2019

Attachment 5.....Witness Statement of Mr Samson Chan, Registered Pharmacists, of 30 July 2019

- Attachment 6..... Queensland Regulation – Reg 414 of 1996 made under the Health Act 1937
- Attachment 7..... Poison and Therapeutic Goods Amendment (Oral Health Therapists)
Regulation 2007, Schedule 1(1) to (4)
- Attachment 8..... The NSW Dental Practice Regulation 2004 - Reg 7a
- Attachment 9..... The NSW Dental Practice Amendment (Oral Health Therapists) Regulation
2007 under the Dental Practice Act 2001 p1
- Attachment 10..... Health Employees Dental Officers (State) Award 2017
- Attachment A..... Balasubramanian, M and Teusner, DN, Australian Government’s Australian
Institute of Health and Welfare’s “Dental Labour Force Collection 2006”
AIHW Dental Statistics and Research Series, Number 53, 2011
- Attachment B..... Balasubramanian, M and Teusner, DN, Australian Government’s Australian
Institute of Health and Welfare’s “Dental Workforce 2011” Cat. No. HWL 50,
2011.