



Commissioner Roe

Fair Work Commission

11 Exhibition Street

Melbourne Victoria 3000

Email: “ Chambers.Roe.c@fwc.gov.au “

Re: Award Stage - 4 Year Review of Modern Awards

MATTER – AM2014/204

Health Professionals and Support Services Award 2010

[MA 00027]

**Response on behalf of the Australian Dental Association
(ADA) Inc. by Wentworth Advantage Pty Ltd**

Written comments in reply to the Proposal of the HSU (dated 25 April 2016) and the Further Report to the Full Bench by Commissioner Roe (dated 26 April 2016) in the above named Award.

Date: 3 May 2016

1. GENERAL

- 1.1 Again Wentworth Advantage Pty Ltd (**Wentworth Advantage**) is acting on behalf of the Australian Dental Association Inc. National Office (**ADA Inc.**) in the 2014/16 Modern Award Review proceedings relating to the *Health Professionals and Support Services Award* (HPSS Award) and the ADA has participated substantially in discussions and negotiations in order reach consensus in the HPSS Award Review.
- 1.2 These are comments being made in accordance with the request of Commissioner Roe, issued and dated on the 26 April 2016 in respect of the further seeking consensus on particular outstanding Items before going to the Full Bench.
- 1.3 This responses should be read in conjunction to the ADA's previous submission response dated 23 March 2016 – which was emailed to all parties on that date. The current ADA position will be the along the same lines as the comments made in the 23 March 2016 response unless otherwise stated in the Response.

2. RESPONSE TO THE PROPOSAL OF HEALTH SERVICES UNION – (HSU)

2.1 The HSU Covering letter dated 25 April 2016

- 2.1.1 The ADA concurs with the Response from the Private Hospitals Industry Employers Association (PHIEA) dated 28 April 2016 on page 3 where the following is stated –

“ Whilst only in the cover letter, and not the main body of the proposal, it should be noted that on page 1- item D the word ‘not’ has been omitted in error. The sentence reads:

D. 18.4 Clarification that the shift penalties are paid in addition to weekend, public holiday or overtime rates.

Clearly, this should read:

D. 18.4 Clarification that the shift penalties are NOT paid in addition to weekend, public holiday or overtime rates. “

- 2.1.2 The ADA further concurs that the clause numbering and lettering in the HSU's proposal to do with clause - “ 6.3 *Part-time Employment*” should be (a), (b), and (c) – this is also stated in the PHIEA 's response on page 3.

2.2 The HSU's alternate package proposal

- 2.2.1 Again to reiterate the points already made by the ADA particularly in it's submission of 23 March the ADA has spent considerable time in good faith in negotiations with the particular parties and the HSU over the past four months in relation to the Span of Hours issues of Clauses 8.2(a) and 8.2(b) in the current Exposure Draft which are now referred to as Clauses 8.1 (a) -(e) in the HSU's

latest proposal. However, again in the interest of helping other health professionals and in order to provide a further compromise arrangement on certain matters to do with the span of hours the ADA is suggesting the following amended clauses. These ADA amended clauses reflect the point as we have stated before that dental practices don't generally start until 7.30am and very often go well past 6.00pm in the evening this is why dental practices have a carve out in the HPSS Award. These amended clauses are based upon the HSU's clause numbering in their alternate package -

"Part 3—Hours of Work

8. Ordinary hours of work and rostering

8.1 Ordinary hours and roster cycles

(a) Span of hours—day worker

Ordinary hours of work for a **day worker** are worked between ~~6.00~~
7.30am and ~~6.00pm~~ 7.30 pm, Monday to Friday.

(b) A **shiftworker** is an employee who is regularly rostered to work their ordinary hours of work outside the span of hours of a day worker as defined in clause 8.1(a).

(c) The ordinary hours of work for a full-time employee will be:

(i) 38 hours per week; or

(ii) 76 hours per fortnight; or

(iii) 152 hours over 28 days.

(d) The shift length or ordinary hours of work per day will be a maximum of 10 hours exclusive of meal breaks.

(e) The hours of work will be continuous, except for meal breaks. Except for the regular changeover of shifts, an employee will not be required to work more than one shift in each 24 hours.

Part 5—Penalties and Overtime

18. Penalty rates and shiftwork

18.1 Weekend penalties

(a) For all ordinary hours worked between midnight Friday and

midnight Sunday, a full time or part time employee will be paid **150%** of the minimum hourly rate applicable to their classification and pay point.

- (b) A casual employee who works on a ~~Saturday or Sunday~~ **Weekends** will be paid **175%** of the minimum hourly rate applicable to their classification and pay point for all time worked, but will not be paid the casual loading of **25%**.

18.2 Public holidays

Payment for public holidays is in accordance with clause 23.1.

18.3 Shift Work

- (a) For the purposes of this clause:

- (i) **Afternoon shift** means any shift commencing not earlier than 12.00 noon and finishing after ~~6.00~~ 7.30 pm on the same day; and
- (ii) **Night shift** means any shift commencing on or after ~~6.00~~ 7.30 pm and finishing before 7.30 am on the following day.

- (b) **Shift penalties**

- (i) Where an employee works a rostered afternoon shift between Monday and Friday, the employee will be paid a loading of 12.5% of their minimum hourly rate.
- (ii) Where an employee works a rostered night shift between Monday and Friday, the employee will be paid a loading of 15% of their minimum hourly rate.
- (iii) The provisions of this clause do not apply where an employee commences their ordinary hours of work after 12.00 noon and completes those hours at or before ~~6.00~~ 7.30 pm on that day.

- (iv) The shift penalties prescribed in this clause will not apply to shiftwork performed by an employee on Saturday, Sunday or public holiday where the extra payment prescribed by clause ~~16~~ 18.1 — ~~Saturday and Sunday work~~ Weekend Penalties and clause ~~18~~ 23 — Public holidays applies.

19. Overtime rates

19.1 Overtime is paid in the following circumstances:

- (a) Where a full time employee:
- (i) works in excess of their ordinary hours;
 - (ii) works in excess of 10 ordinary hours per shift;
- (b) Where a part time employee:
- (i) works in excess of their ordinary hours, except where agreement has been reached in accordance with clauses 6.3(c); and/or
 - (ii) works in excess of 10 ordinary hours per shift; ~~and/or~~
 - (iii) works in excess of an average of 38 hours per week, or 76 ordinary hours in a fortnight or 152 ordinary hours in a four week period.
- (c) Where a casual employee:
- (i) works in excess of 10 ordinary hours per shift; and/or
 - (ii) works in excess of 38 ordinary hours per week.

19.2 An employee who works overtime shall be paid the following rates based on the minimum hourly rate for their employment classification:

- (a) Monday to Saturday - 150% for the first two hours and 200% thereafter;
- (b) Sunday - 200%;
- (c) Public Holidays - 250%;
- (d) Overtime rates under this clause will be in substitution for and not cumulative upon the penalties and loadings prescribed in clause 18 – Penalty rates and shiftwork, **Clause 23 Public Holidays** and the casual loading in clause 6.4(e).

19.3 Each day or shift (as relevant) stands alone

2.3 Other aspects of the HSU Proposal

Clause 6 - "Types of Employment" clause and Clauses 9.1 and 9.2 - Breaks have been dealt with previously in the ADA comments on 23 March 2016 and these still apply to agree with that proposed by Commissioner Roe.

3. COMMITMENT FROM THE ADA

As previously mentioned in our submissions the ADA has already been available to and has partaken in substantial negotiations and discussions and will continue to do so in order to possibly limit the matters that will need to go before a Full Bench for hearing. Furthermore the ADA reserves the right to make further submissions in relation to any of the above matters of the 4 Year HPSS Award Review if it deems it appropriate to do so into the future.

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