

**SUBMISSION TO
FAIR WORK COMMISSION**

**MATTER NO:
AM 2014/204 – HEALTH PROFESSIONAL AND SUPPORT SERVICES AWARD 2010 (MA 000027)**

**FEBRUARY 2015
SUBMISSION IN REPLY IN RELATION TO
EXPOSURE DRAFT – HEALTH PROFESSIONALS & SUPPORT SERVICES AWARD 2014**

**SUBMISSION BY:
PRIVATE HOSPITAL INDUSTRY EMPLOYER ASSOCIATIONS**

**Australian Day Hospital Association
Australian Private Hospitals Association
Australian Private Hospitals Association – South Australia
Australian Private Hospitals Association – Victoria
Australian Private Hospitals Association – Tasmania
Catholic Health Australia
Private Hospitals Association of Queensland
Private Hospitals Association of New South Wales
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This reply submission comments solely on technical issues raised by stakeholders in relation to the *Exposure Draft Health Professionals and Support Services Award 2014* and which are of direct relevance to the private hospital industry. For ease of reference, PHIEA has summarised relevant key points from stakeholder submissions and noted the PHIEA position in a separate column.

No commentary has been provided at this point on proposals by the parties in respect of proposed amendments; however PHIEA reserves the right to participate in ongoing discussions, conferences and hearings in relation to any applications to vary the Health Professionals and Support Services Award.

SUMMARY TABLE

SUBMISSIONS LODGED IN RELATION TO TECHNICAL ISSUES IDENTIFIED IN EXPOSURE DRAFT – HEALTH PROFESSIONALS AND SUPPORT SERVICES AWARD 2014

ORGANISATION	ISSUE RAISED	PRIVATE HOSPITAL INDUSTRY EMPLOYER ASSOCIATIONS RESPONSE
HSU	<p><u>GENERAL COMMENTS</u></p> <p>Supersession Clause</p> <ul style="list-style-type: none"> Supports proposed wording in clause 1.2. Whilst not considering it necessary, would not oppose PHIEA suggestion to include the Award Review matter number in the clause for added clarity. <p>Inclusion of NES Summaries</p> <ul style="list-style-type: none"> Welcomes inclusion of NES summaries although questions how copies of the award will be made available to employees or how an employee can ask for a copy of the Award and NES <p>Inclusion of Index of Facilitative Provisions</p> <ul style="list-style-type: none"> Adopts ACTU submission in relation to the new facilitative provisions <p>Inclusion of Payslip Provisions</p> <ul style="list-style-type: none"> Welcomes the additional provision requiring employers to provide payslips. 	

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HSU (Continued)	<p>Inclusion of examples to clarify the operation of provisions</p> <ul style="list-style-type: none"> • HSU welcomes inclusion of examples in annotated versions of awards and willing to work with parties to develop appropriate examples. <p>Inclusion of Ordinary Hourly rates</p> <ul style="list-style-type: none"> • Notes that when awards do not include allowances or loadings that are paid for all purposes some Exposure Drafts mix the terms. Terminology should be consistent throughout. <p>Inclusion of Summary Wage Tables</p> <ul style="list-style-type: none"> • Notes award rates are minimum wage rates only and that employees may be entitled to higher rates of pay as part of their contract of employment. <p>List of provisions that do not apply to casual employees</p> <ul style="list-style-type: none"> • Highlights that provisions in predecessor Victorian public and private sector awards varied markedly and notes the warnings made by the AMWU that industry and award specific considerations were relevant to the establishment of casual loadings. • Not convinced it is necessary to insert a standardised clause purporting to identify the entitlements covered or not but supports ACTU position that any consideration by the FWC to include a standard clause should not be considered without a rigorous examination of entitlements and if it is to be considered, should be dealt with as part of the part time/casual common issue proceedings. <p><u>HP & SS EXPOSURE DRAFT SPECIFIC</u></p> <p>Coverage</p> <ul style="list-style-type: none"> • Considers the list of common health professionals in Schedule B to be an indicative list and not an exhaustive list. 	<ul style="list-style-type: none"> • PHIEA also willing to work with parties to develop appropriate examples • Agree – terminology should be consistent throughout. • Agree • PHIEA notes that the Commission has since advised that this will not be included • Disagree. Contrary to PHIEA's initial submission, following discussion with other

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HSU (Continued)	<p>Casual Employment</p> <ul style="list-style-type: none"> • Considers minimum engagements for casuals must be worked consecutively. <p>Heat Allowance</p> <ul style="list-style-type: none"> • Not aware of anyone receiving this allowance, however does not consider the provision should be removed at this point. <p>Overtime</p> <ul style="list-style-type: none"> • Clarification if each day stands alone: Considers it possible to be paid overtime for hours worked beyond a 10 hour roster as well as hours worked beyond an average of 38 hours a week within the pay cycle. • Considers intent of the award is clear that casuals are entitled to overtime for hours worked beyond a 10 hour day – also entitled to overtime if hours worked in the pay period was in excess of average of 38 hours per week • Casual employees to be paid overtime rates on their minimum hourly rate <p>Inclusion of Summary Wage Tables</p> <ul style="list-style-type: none"> • Term 'ordinary' is not defined • Notes award rates are minimum wage rates only and employees may be entitled to higher rates of pay as part of their contract of employment. 	<p>employer parties we are now of the view that the list should be exhaustive and not indicative.</p> <ul style="list-style-type: none"> • Agree • Disagree – unless any party can demonstrate that someone is receiving this allowance it should be considered obsolete and be deleted. • For a 24/7 business it needs to be each shift which stands alone – not each day • Agree • Agree

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<p>AFEI</p> <p>AFEI (Continued)</p>	<p><u>GENERAL COMMENTS</u></p> <ul style="list-style-type: none"> • Considers that the outcome of the decision of the Full Bench in [2014] FWCFB 9412 should flow to all modern awards in the 4 yearly review including Health Professionals and Support Services Award 2014. • Notes the decision to publish a 'legal instrument' without NES summaries or payslip requirements and an 'annotated version' of each award, developed in consultation with relevant parties, which will contain appropriate NES summaries and links to legislation, however AFEI would like the Commission to reconsider whether it is appropriate to adopt the same approach to the inclusion of summaries of the operation of award terms and wages as that adopted in respect of the NES and payslips. • AFEI is of the view that all summaries/examples should be included in the annotated instrument rather than the legal instrument <p><u>HEALTH PROFESSIONALS & SUPPORT SERVICES AWARD – SPECIFIC</u></p> <p>Clause 3.1 – Coverage</p> <ul style="list-style-type: none"> • Notes that the Exposure Draft refers to clause 11 with respect of coverage of employees under the award and that the current award refers to the classification structure in Schedule B of the award. AFEI is of the view that the reference to the classification structure in the Schedule is a clearer reference. <p>Clause 15.2 (a) (iii) – Heat Allowance</p> <ul style="list-style-type: none"> • Cannot state that the clause is obsolete but unaware of ongoing relevance and supports the removal of clauses that have no relevance. 	<ul style="list-style-type: none"> • Agree • Agree • Agree • Agree • PHIEA considers that unless any party can demonstrate that someone is receiving this allowance it should be considered obsolete and be deleted.

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AGED CARE EMPLOYERS	<p>Clause 15.2(a) - Wage related allowances – Heat Allowance</p> <ul style="list-style-type: none"> Aged Care Employers submit that the provisions of clause 15.2(a) are obsolete in that they are not aware of any instance where its provisions have actually applied. <p>Clause 18.4 - Penalty rates and Shiftwork</p> <ul style="list-style-type: none"> Consider that it is not at all clear that casual employees have any entitlement under Clause 18.4 to the 115% loading. Clause 18.4 is only triggered where an employee is a “shiftworker”. Casual employees have no ordinary hours of work under the Award in respect of day work or shift work, hence they cannot be said to be a “shiftworker” under the Award (see clauses 6.4(b) and 8.1(b)). Proposed some amended clauses <p>Clause 19 - Overtime rates “each day stands alone”</p> <ul style="list-style-type: none"> Considers that the natural, plain and ordinary meaning of the words “ordinary hours on any day” are sufficient to confirm that each day for overtime purposes already stands alone under the Award. <p>Clause 19 - Overtime rates and casual employees</p> <ul style="list-style-type: none"> Considers casual employees are entitled to overtime where their ordinary hours of work per day exceed 10 or where their hours per week exceed 38. Casual employees should be the same as full time employees in respect of ordinary hours being “an average of 38 hours per week, in a fortnight or four week period” 	<ul style="list-style-type: none"> Agree Agree clause wording is not clear PHIEA defers comment at this stage as discussion is occurring between the parties For a 24/7 business this needs to be ‘each shift stands alone’. Agree – provided the clause specifies ‘an average’ of 38 per week. Agree

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AGED CARE EMPLOYERS (Continued)	<ul style="list-style-type: none"> The rate of pay payable to a casual receiving overtime rates should be consistent with the approach adopted in <i>Award Modernisation</i> (2009) 181 IR19 (at 54, [150]: “the correct approach is to separate the calculations and then add the results together”). 	<ul style="list-style-type: none"> Agree. PHIEA defers comment at this stage on the clause amendments proposed by the Aged Care Employers as discussion is continuing between the parties.
AUSTRALIAN DENTAL ASSOCIATION	<p>Clause 2.2 – Facilitative Provisions</p> <ul style="list-style-type: none"> Considers table does not represent the facilitative provision found in clause 6.3 (c) – part time employment (terms of agreement may be varied and recorded in writing) and considers it should be included as an agreement between an employer and an individual <p>Clause 2.4 – Allowances – Heat Allowance</p> <ul style="list-style-type: none"> Considers the clause to be obsolete and should be deleted 	<ul style="list-style-type: none"> Agree Agree
CHIROPRACTORS ASSOCIATION OF AUSTRALIA	<p>Schedule 1 – Definitions</p> <ul style="list-style-type: none"> Absence of a definition for ‘ordinary hours’ and the interchangeable use of that term throughout the Exposure Draft and in particular in clauses 8 (Ordinary hours of work and rostering); 18 (Penalty rates and shift work) and 19 (Overtime rates) has led to uncertainty. Definition of a ‘shiftworker’ and the entitlements of shiftworkers are not clear <p>Clause 18.4</p> <ul style="list-style-type: none"> Unclear in some circumstances whether and when a shift work loading applies 	<ul style="list-style-type: none"> Agree Agree Agree

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ABI & NSW BUSINESS CHAMBER	<p><u>GENERAL COMMENTS</u></p> <ul style="list-style-type: none"> Assumed that the Full Bench Decision [2014] FWCFB 9412 of 23 December in relation to general drafting and technical issues common to Group 1 Awards will flow through to all Modern Award and therefore no further submissions in relation to the issues noted that in decision. <p>HEALTH PROFESSIONALS AND SUPPORT SERVICES AWARD – Specific Schedules B & C</p> <ul style="list-style-type: none"> Considers that the list is indicative and not an exhaustive or all-inclusive list and that the clause should remain as it currently is. <p>Clause 18.4</p> <ul style="list-style-type: none"> Considers that the casual loading in this award is not ‘all purpose’ and therefore should not be treated as compounding when determining the rate of pay for weekends, public holidays or shift work. Notes that the drafting in the Exposure Draft is problematic in that it would lead to a significant increase in the calculation of casual wages. In response to the issue raised by the Ombudsman, for reasons outlined in its submission, ABI does not consider the clause to be ambiguous and as such submits that 18.4 should remain as it currently is. Notes that there appears to be difficulty in understanding whether the Shiftwork and penalties should apply at the same time. Notes that in line with long established principle, the highest applicable rate applies to the work of the day and a penalty should never be applied to a penalty unless the instrument expressly provides otherwise. 	<ul style="list-style-type: none"> Agree Disagree. Contrary to PHIEA’s initial submission, following discussion with other employer parties we are now of the view that the list should be exhaustive and not indicative Agree Defer comment at this stage as discussion occurring between the parties. Agree – highest applicable rate applies and a penalty should not be applied to a penalty unless expressly

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		provided for.
AUSTRALIAN INDUSTRY GROUP	<p><u>GENERAL COMMENTS</u></p> <ul style="list-style-type: none"> Notes that many of the general drafting and technical issues have been determined by the Commission in its December decision - [2014] FWCFB 9412 and that further proceedings have been scheduled to deal with the definitions of “all-purposes’ and ‘ordinary hourly rate’ Agrees with the Full Bench’s adoption of the principle that awards should be worded to require that penalties be calculated on the minimum award rate in circumstances where there are no all-purpose allowances in the award – however notes that this approach does not appear to have been adopted in all exposure drafts. Concerned that the inclusion of the term ‘ordinary hourly rate’ may suggest that penalties are to be applied to over-award payments as an award obligation which would be inconsistent with the safety net nature of awards. <p>HEALTH PROFESSIONALS AND SUPPORT SERVICES AWARD – SPECIFIC</p> <p>Clause 3.1 – Coverage</p> <ul style="list-style-type: none"> Words in clause 3.1 of the exposure draft differ from the corresponding clause (4.1) of the existing award. Clause 3.1(a) refers readers to the classifications listed in Schedule A whereas clause 3.1 (b) refers readers to the classifications listed in clause 11. Clause 11 sets out the minimum wages for health professional employees whereas schedule A sets out the classification definitions. Clause 3.1 (b) should be amended to refer to A.2 of Schedule A. <p>Clause 23 – Public Holidays</p> <ul style="list-style-type: none"> Notes that consistent with the FWC decision to remove NES summaries, the second and third sentences in clause 23.1 and clause 23.2 should be removed. 	<ul style="list-style-type: none"> Agree Agree Agree Agree

