

IN THE FAIR WORK COMMISSION

**Four yearly review of modern awards
Annualised Wage Arrangements
AM2016/13**

SUBMISSIONS OF THE HEALTH SERVICES UNION

1. The Health Services Union ('HSU') makes these submissions in accordance with the decision issued by the Full Bench of the Fair Work Commission on 23 December 2019 ('the Decision').¹
2. The Decision invited further submissions from the Ai Group and submissions in reply from HSU on the issue of '*whether the classifications of Health Professional Levels 1-3 perform managerial or supervisory duties and whether there is any other rationale for an annualised wage arrangements provision to apply to these classifications.*'²
3. These submissions are in reply to Ai Group's submissions dated 31 January 2020, in relation to the Health Professional and Support Services Award (HPSS Award).
4. We continue to rely on the following previous submissions of the HSU in this matter:
 - a. Submissions of the Health Services Union, dated 19 March 2018
 - b. Submissions of the Health Services Union, dated 27 March 2019
 - c. Further Submissions of the Health Services Union, dated 1 August 2019
5. The essence of Ai Group's submissions appears to be that the Full Bench's decision of 27 February 2019,³ (the February 2019 decision) and of 20 February 2018 (the February 2018 decision)⁴ inadvertently limited the application of annualised wage arrangements to managerial and supervisory employees.⁵

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¹ [2019] FWCFB 8583.

² [2019] FWCFB 8583, [10].

³ [2019] FWCFB 1289

⁴ [2018] FWCFB 154

⁵ Submissions of Ai Group, 31 January 2020, [78] - [81].



6. With respect, AI Group's interpretation of these decisions is plainly wrong and should not be accepted.
7. It is clear that AI Group's original application to vary the HPSS Award intended to capture all health professional levels. But AI Group's application was rejected by the Full Bench in the February 2018 decision. Parties were then invited to make submissions on whether Model Clauses 3 and 4 should be inserted into the HPSS Award.⁶
8. AI Group are inaccurate in stating that '*[t]he HSU's submission of 19 March 2018 opposed allowing an annualised wage arrangement clause to apply to any employee covered by the HPSS Award*'.⁷
9. While the HSU's primary position was that annualised wage arrangements should not be introduced into the Award, we submitted that if such arrangements were introduced, they should be restricted to managerial and supervisory employees. The following is an extract from the HSU's submission:

In its decision in this matter, the Full Bench has invited parties to provide feedback on the appropriateness of Model Clauses 3 and 4 in relation to the classes of employees encompassed by the Ai Group's claim. While we do not agree, as indicated above, that annualised salary provisions should be introduced into the HPSS Award at all, we are especially opposed to the provisions being applied to all levels of health professional employees, which the AIG claim sought to do.

As the HSU expressed in its oral submissions, health professionals are not 'professionals' in the same way that the term is used in other awards, or when referring to other industries or professions. Level 1 health professional employees under the HPSS Award are recent graduates, some of whom are still provisionally qualified, and may be undertaking clinical placements before being able to register with the Australian Health Practitioners Regulatory Agency (AHPRA). Level 2 employees still require supervision by senior employees. Level 3 employees may not have any managerial or supervisory responsibilities.

*We submit that it is only Level 4 health professional employees under the HPSS Award that could appropriately be described as 'managerial and supervisory-level employees'. Despite this, Level 4 health professional employees have not previously had annualised wage arrangements in the awards that covered them, and as such, it remains inappropriate to introduce them now.*⁸

10. HSU's alternative submission was then summarised in the February 2019 decision as follows:

In the alternative, with respect to managerial and supervisory-level employees, the HSU submitted that any annualised wage arrangements provision should be confined

⁶ [2018] FWCFB 154, [141]-[142]

⁷ Submissions of AI Group, 31 January 2020, [80]

⁸ Submissions of HSU, 19 March 2018, [16]-[18]



*to Level 4 health professional employees under the award since only they could properly be described as managerial and supervisory-level employees.*⁹

11. It is clear from this extract, and from the submissions of the HSU, that the question of whether and how to limit the application of an annualised wage provision for health professionals, and what is meant by '*managerial and supervisory level employee*' had become a live issue in this matter, at least by the time of the February 2019 decision.
12. Additionally, the HSU's submission of 19 March 2018 addressed the issue of how the term '*professional employees*' was misconstrued by AI Group in their application and submissions, as can be read from the extract above.
13. AI Group's claim, therefore, that its own submission of 10 April 2019 '*inadvertently*' omitted a reference to '*professional employees*' and inadvertently supported a narrower application of the model annualised wage clause should be rejected.
14. The HSU's submissions of 19 March 2018 and the February 2019 decision clearly discussed limiting the annualised wage arrangements to 'managerial and supervisory' employees. AI Group had these submissions and decision before them, and cannot now say that they were not aware of the issue of whether to limit the clause to managerial and supervisory employees at the time of writing its submissions in April 2019.
15. In paragraphs [87] – [93], AI Group make a number of assertions as to why Health Professionals at Levels 2 and 3 should be considered to perform managerial or supervisory roles. These assertions would not be accepted.
16. We note that AI Group has led no evidence in any of its submissions, nor pointed to any examples of health professional employees that should be covered by the proposed clause. It is not clear whether AI Group represents any health professional employers. Its argument that the annualised wage arrangement clause should apply to all levels of health professionals appears to be argued on the basis of selective and forced interpretations of the Award rather than any real-world examples.
17. AI Group argue that Health Professional - Level 2 employees '*engage in some level of supervision*'.¹⁰ AI Group's basis for this claim is clause B.2.2 of the Award. But the reference to '*supervision of discipline specific students*' appears to refer to clinical supervision of students training within a specific health professional discipline. It does not appear to refer to supervision in the managerial sense.
18. AI Group assert that Health Professionals at Levels 2 and 3 have a '*high level of independence*' and therefore '*should be afforded the capacity to enter into an annualised salary arrangement*'.¹¹ AI Group has led no evidence of this, and it is not clear what they base this assertion on. Additionally, AI Group mistakenly conflate exercising *independence* in a role with managing or supervising staff. Clearly these are not the

⁹ February Decision, [2019] FWCFB 1289, [4]

¹⁰ Submissions of AI Group, 31 January 2020

¹¹ Submissions of AI Group, 31 January 2020, [90].



same. It does not follow that employees exercising '*independence*' are managers or supervisors.

19. Finally, AI Group's assertion that Level 1 Health Professional employees should access annualised wage arrangements because they are '*professionals*' is based on a flimsy understanding of what the term '*professional*' means in a health professional context, and should be rejected.

Health Services Union
23 February 2020

