

To: Chambers - Catanzariti VP <Chambers.Catanzariti.VP@fwc.gov.au>

Cc: AMOD <AMOD@fwc.gov.au>

Subject: Matter AM2016/ 31 HPSS Award Review - submission from the Aust Dental Assoc'n (ADA)

ATTN : - To the AMOD Team and to Ms Alyce Lia – Associate to VP Catanzariti

Please find attached the Australian Dental Association (ADA) complying with the Directions of 18 May 2020 and the additional extension granted by VP Catanzariti on 26 May 2020. On this occasion the submission is from the ADA only it is attached in both “word” and “pdf” formats. Further please find attached the “pdfed” letter from the HSU (unable to provide in “word” form) to the ADA dated 15 May 2020 seeking additional information on certain ADA evidence that was previously provided. Additionally there is also attached a response back to the HSU on behalf of the ADA submitted by Mr Bruce Miles Counsel for the ADA – that too is in both “word” and “pdf” form.

Thank you for your attention in this matter, this has also been Cc'ed to AMOD.

Regards,

David Wilkinson

HPSS Dental Award Review Matters - Manager

Ph: 0439 191 764

To: **Ms Rachel Liebhaber**
National Industrial Officer - HSU National Office

We refer to your letter dated 15 May 2020 concerning the review of the HPSS Award AM2016/31 and the witness statements of Eithne Mary Irving of 14 October 2019 and 23 May 2017. The ADA responds as follows:

- 1) In relation to paragraph 17 of the 23 May 2017 Statement, we note that this affidavit has already been read in these proceedings and Ms Irving was cross examined in relation to this affidavit. The ADA continue to rely upon this paragraph.
- 2) In relation to paragraph 24 of Ms Irving's 2019 statement, Ms Irving advises that:
 - a) The ADA does not have a separate category of membership for employee dentists and does not maintain any data concerning the number or proportion of the ADA's membership that are employee dentists. The services provided by the ADA to its members includes access to a help desk on HR matters. The advice provided by the help desk includes issues in relation to contracts, including contracts of employment, however the ADA does not maintain data as to the employment status of the person making an enquiry. The ADA does not assess the nature of dentists contractual arrangements to determine whether they are properly characterised as employees or independent contractors, nor as to whether the dentist is employed by a corporation in which the dentist has a substantial ownership interest.
 - b) The ADA regularly consults with its membership in a variety of different ways. A member may raise any issue of concern with the ADA at any time. During Ms Irving's 9 years of service with the ADA she can recall one member who has asked why dentists are not covered by an award.
 - c) The ADA has a biennial meeting of its members which has a forum specifically to raise any issue of concern to members, most recently in 2019. In the last 10 years no member has asked whether dentists are covered by an award nor suggested dentists should be covered by an award.
 - d) The ADA has an Employed Dentists Working Party to provide advise and assistance to Federal Executive and Federal Council on matters relevant to dentists who are employees, whether in the private or public sector. Each branch of the ADA appoints an employed dentist to represent their peers across that branch. The working party typically meets twice per year, most recently on 18 May 2020 and 25 November 2019. At the meeting held on 18 May 2020 Ms Irving

raised the issue of whether dentists who were employees wished to be covered by an award. The Employed Dentists Working Party was unanimously opposed to dentists being covered by an award given their current employment arrangements and were concerned that an award rate may be used to lower the rates paid to dentists who are employees.

- e) The ADA has a Recent Graduates Advisory Panel to provide advice and assistance to Federal Executive and Federal Council on matters relevant to dentists who have less than five years experience since graduation. Each branch appoints a recent graduate as a member and typically meets twice per year, most recently on 1 May 2020 and 30 September 2019. While the Recent Graduates Advisory Panel discusses many matters of concern to recent graduates, including financial arrangements, no member of the panel has asked whether dentists are covered by an award nor suggested that dentists should be covered by an award.
- f) The ADA conducts a membership survey every 3 years, most recently in 2019. The ADA did not include a specific question on whether dentists should be covered by an award as that has not been raised as an important issue for dentists who are employees through the processes referred to above. The survey did include an open comment section in which the member could raise any issue of concern to them. No member asked whether dentists are covered by an award nor suggested dentists should be covered by an award.
- g) The ADA conducts surveys of graduates, most recently in 2019. As with the general membership survey, this did not include a specific question but did include an open comment section and no graduate asked whether dentists are covered by an award nor suggested that dentists should be covered by an award.
- h) The ADA has conducted a large number of webinars concerning issues arising from covid-19, including finance and HR matters. While there have been numerous questions on a wide variety of matters, no member asked whether dentists are covered by an award nor suggested dentists should be covered by an award.

As there are no documents that answer the description requested by the HSU, for the reasons set out above, there is nothing to be produced.

Regards

Bruce Miles
Frederick Jordan Chambers
TEL: 02 9229 7396 , E-mail: bruce.miles@fjc.net.au

4 YEARLY REVIEW OF MODERN AWARDS – HEALTH PROFESSIONALS AND SUPPORT SERVICES AWARD 2010

HSU's objections to evidence

Australian Dental Association's response

Para	Passage	HSU's objection	ADA's response	Ruling
Statement of Eithne Mary IRVING, 23 May 2017				
17	Entire paragraph	Conclusion, opinion.	<p>This evidence has already been given in these proceedings on 12 December 2017 – PN1656-1678.</p> <p>This evidence is unchallenged, in 2017 or subsequently in these proceedings.</p>	
Statement of Eithne Mary IRVING, 14 October 2019				
24	Third sentence	Hearsay, basis not disclosed	<p>This evidence has already been given in these proceedings on 2 December 2019 – PN89-94.</p> <p>Hearsay is not a basis for objection where the Commission has the discretion to inform itself as it considers appropriate (s 590) and is not bound by the rules of evidence (s 591).</p> <p>The basis has been disclosed to the HSU in correspondence.</p> <p>The HSU is able to challenge the weight to be given to the evidence in such way as it sees fit.</p>	

4 YEARLY REVIEW OF MODERN AWARDS – HEALTH PROFESSIONALS AND SUPPORT SERVICES AWARD 2010
HSU's objections to evidence

Friday, 15 May 2020

David Wilkinson
Australian Dental Association

By Email: DWilkinson@myadvantage.com.au

Dear Mr Wilkinson,

AM2016/31 – Request for documents

I refer to the witness statements of Eithne Mary Irving of 14 October 2019 and 23 May 2017 filed by the Australian Dental Association (**ADA**) in relation to the proceedings AM2016/31.

I am writing to request data and any other material necessary to enable us to understand and test the bases for certain parts of the witness statements you have filed. Your early response to our request will assist us to determine the scope of any objections, may expedite or remove the need for any cross-examination, and may avoid further delay arising from calls for documents during cross-examination and will assist the Full Bench to perform its task of informing itself about the matter.

In particular, we request the following data and information referred to in paragraph 24 of Ms Irving's 2019 statement:

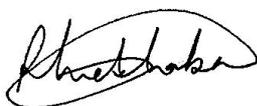
- any data concerning the number or proportion of the ADA's membership that are employee dentists;
- results of any survey that has been conducted of employee members on the question of award coverage.

We intend to object to paragraph 17 of the 23 May 2017 Statement on the basis that it is an opinion and submission. We suggest that the ADA not press the paragraph. If you press the paragraph we intend to cross-examine Ms Irving.

Would you please let us have your response as soon as possible and in any event no later than 4pm, Monday 18 May 2020. If there is any objection to this request, and/or if you are unwilling to provide all of the material sought, we place you on notice that we may then raise this issue with the Full Bench at short notice and request that notices to produce be issued the items sought. Our proposal for production is designed to avoid that approach becoming necessary.

Copies of the requested documents can be supplied to the undersigned in electronic format by email. We should be happy to discuss any concern you may have about this request, or the arrangements for production. Please do not hesitate to telephone me should you wish to discuss this correspondence further.

Yours sincerely,



Rachel Liebhauer
National Industrial Officer

