

HEALTH PROFESSIONALS AND SUPPORT SERVICES AWARD 2010 (AM2016/31)

SUBMISSIONS DATED 14 DECEMBER 2018

Filed on behalf of: The Chiropractors' Association
of Australia (National) Limited
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1. INTRODUCTION

- 1.1. The Chiropractors' Association of Australia (National) Limited (**CAA**) makes these submissions in response to the submissions made by the Health Services Union dated 7 December 2018 (**HSU Submissions**).
- 1.2. The HSU Submissions are pursuant to the decision of the Full Bench of the Fair Work Commission dated 3 December¹ modifying cl 24 – Span of Hours in the *Health Professionals and Support Services Award 2010* (**Award**).
- 1.3. The Decision modified cl 24 of the Award such that the ordinary hours of work for private medical, dental, pathology, physiotherapy, chiropractic and osteopathic practices are between 7.30am to 9.00pm from Monday to Friday, rather than between 6am and 6pm from Monday to Friday.
- 1.4. The HSU Submissions argue that the Decision would result in an increase in the number of hours workers covered by the Award would be required to work without receiving penalty rates. The HSU Submissions propose that to minimise the detriment to these worker's the variation in the span of hours should be phased in over a period of not less than three years.
- 1.5. The CAA opposes the HSU's proposal to phase in this variation on the following grounds:
 - 1.5.1. the additional regulatory burden and employment costs on business that would be imposed; and
 - 1.5.2. the practical difficulty of a staggered implementation of the variation.

¹ 4 yearly review of modern awards – *Health Professionals and Support Services Award 2010* [2018] FWCFB 7350 (**Decision**).

2. Additional regulatory burden

- 2.1** The Full Bench found that modifying the span of hours for private medical dental, pathology, physiotherapy, chiropractic and osteopathic practices was required to achieve the modern award objectives.
- 2.2** In particular, given that an overwhelming proportion of these practices regularly operate outside the current span of hours, the Full Bench recognised in the Decision that the current span places an unsustainable financial burden on businesses seeking to provide services to their patients during the required hours.
- 2.3** While this may in some cases result in an employee earning less overall, the effect on employees will be minimal given the Award contains overtime triggers for employees working above 38 hours per week for full-time workers, or above their agreed number of hours for part-time employees, and allows for employees who regularly work outside the span of hours to receive a shift loading.
- 2.4** In making the Decision, the Full Bench balanced a consideration of the impact of the change on employees with the needs of businesses and found that in this case, the circumstances justified the change in span of hours.
- 2.5** Given the this is the case, it promotes the modern award objectives to implement the change to span of hours immediately and with full effect.

3. Practical difficulties of implementation

- 3.1** In its submission, the HSU has not provided draft determinations of how the transitional approach to the implementation of the variation may be applied. The HSU Submissions refer to the Full Bench's Penalty Rates Decision² where a change to penalty rates was phased in over a span of three years, but fail to acknowledge the distinguishing features of that decision.

² *4 yearly review of modern awards – Penalty Rates* [2017] FWCFB 1001; *4 yearly review of modern awards – Penalty Rates – Transitional Arrangements* [2017] FWCFB 3001.

- 3.2** First, the phasing in the variation of a monetary benefit is significantly more straightforward than phasing in variations to the day-to-day operations of a business, such as a change in span of hours. The latter type of change has broad ranging impacts on the operation of a business beyond the calculation of overtime and may affect rostering and staffing decisions generally.
- 3.3** If the variation were to be phased in, it is not clear how this could be done other than varying ordinary the ordinary span of hours for the businesses affected every year for the next three years. It is not reasonable to expect a business to manage the long-term uncertainty and administrative burden of this kind of transition over a period of three years.
- 3.4** This is particularly so given that the majority of the members of our client, and private clinics generally, are small or micro private businesses with limited capacity to manage administrative and regulatory burdens, rather than large public entities.
- 3.5** Furthermore, the decision to phase in changes to penalty rates in the Retail Award over a period of 3 years was referable to parallel changes in wage growth and other economic changes that would ameliorate the change in penalty rates. There is no equivalent factor to justify the phasing in of the variation in span of hours over a 3-year period. This appears to be an arbitrary period put forward by the HSU.
- 3.6** The purpose of our original submissions was to increase certainty in the operation of the Award both for employers and employees, and to assist the members of our client to address community needs. An unnecessarily long transitional period undermines these objectives.

4. Take home pay order

- 4.1** Notwithstanding our above submissions, where the Full Bench requires additional safeguards to employee entitlements, there are mechanisms available to ensure that no employee is worse off, including by instituting a take-home pay order such that existing employees receiving penalty rates for work outside the current span of hours will continue to receive the same penalty rates.
- 4.2** Alternatively, the Full Bench could consider implementing a shorter transitional period of 6-12 months so there is minimal disruption to businesses affected by the variation.