



FAIR WORK COMMISSION

Matter No.: AM2016/31

Four Yearly Review of Modern Awards – Health Professionals and Support Services Award

**OUTLINE OF RESPONSE TO THE MATERIAL FILED PURSUANT TO POINT 1 OF DIRECTIONS,
INCLUDING ANY OBJECTION TO THE ADMISSION OF EVIDENCE WITH REASONS.**

Dental Hygienists Association of Australia Limited (“DHAA”)

Date: 14 August 2019

Lodged by:

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1. This Response is filed on behalf of the Dental Hygienists Association of Australia Limited (**DHAA**) in accordance with the Directions issued by Vice President Catanzariti on 20 June 2019.
2. DHAA relies on its submission of 31 July 2019.
3. DHAA is the **employee** representative professional association for Dental Hygienists and Oral Health Therapists, with 1,530 members.
4. DHAA has emailed Vice President Catanzariti's Chambers today (14 August 2019) supporting the Australian Dental Association's request to the Vice President to alter the Directions' dates in light of correspondence the ADA received from the Health Services Union (HSU) and other matters.
5. Therefore, in this brief outline of response, DHAA intends to provide a summary of its concerns with the submission of the Health Services Union, filed on 7 August 2019.
6. DHAA reserves its rights to make further responses to the Health Services Union's submission.
7. In Paragraph 13, page 3 of the Health Services' Union submission to Fair Work Commission dated 14 August 2019, the HSU state, "all three occupations of oral health therapist, dental therapist and dental hygienist should be **expressly** (*my emphasis*) be covered by the award, and this is necessary to meet the modern awards objective, and that this need is also relevant to meeting s 134(1)(g) which is the need to ensure a simple, easy to understand, stable awards system."
8. This view is contrary to the Union's previously expressed view at Paragraph 30, page 6 of the same submission (7 August 2019) and in all of its previous submissions that the List of Common Health Professionals should be **indicative** to meet the **same** modern award objective.
9. The DHAA disputes the HSU's argument in Paragraphs 18 – 21, pages 3 - 4 of their submission that medical physicists and IVF counsellors, notwithstanding they are **not** listed in Schedule C of the Health Professionals and Support Services Award are "considered" to be covered by the Award by virtue of their inclusion in the content of two Form F17s.
10. In accordance with Fair Work Commission Rules 2013 (Rule 24) Employers and unions must sign statutory declarations, Form F17 and F18 when they make application for approval of an enterprise agreement by Fair Work Commission. The documents are highly detailed and must be free from error, as Fair Work Commission relies on them to discharge its duties under Division 4 of Fair Work Act, including section 193 relating to passing the Better Off Overall test for each award covered employee.
11. Part of the content of the Form F17 is whether there are any award-covered employees covered by the proposed enterprise agreement. If so, the employer must state what the award/s are and whether each award-covered employee is better off overall compared to the award they are covered by.

12. With regard to the Victorian Public Health Sector (Medical Scientists, Pharmacists and Psychologists) Single Enterprise Agreement 2017 – 2021 cited by HSU, several but not all of the health occupations are indeed covered by the Health Professionals and Support Services Award, so the Form F17 is indeed correct.
13. This is because there is no requirement in the Form F17, nor in the Fair Work Regulations to specifically identify award-free employees. The HSU does not identify the statutory or regulatory source or caselaw to support their assertion with regard to a Form F17 being proof positive of award coverage of a particular occupation. Accordingly, DHAA reserves its rights to respond to any such detail when and if HSU provides it.
14. The Health Services Union assert that because the HPSS award is listed as the award to be used for the BOOT test for the award covered employees covered by that enterprise agreement, this “shows” (para 20, page 4) award coverage.
15. DHAA refutes the HSU’s argument that Fair Work Commission “considers” (paragraph 21. Page 4) that occupations not listed in Schedule C of the HPSS Award but covered by the enterprise agreements cited by the HSU (paras 20 and 21, page 4) e.g. Medical Physicists are therefore automatically covered by the Health Professionals and Support Services Award.
16. Similarly, DHAA refutes the assertion in para 21, page 4 of the HSU’s submission, that the reference to the Health Professionals and Support Services Award in the Form F17 for the Melbourne IVF Counsellors Enterprise Agreement 2017 “shows that IVF Counsellors are considered by both Fair Work Commission as well as the employer and union parties to be covered by the Award.”
17. DHAA submits that the HSU’s conclusion is false. It may show that the statutory declarations provided to Fair Work Commission on which Fair Work Commission relied to apply the BOOT test and approve the enterprise agreement, are inaccurate.
18. DHAA submits that the HSU’s conclusion in paragraph 31, page 6 has no basis. It states that if the list was exhaustive, then Medical Physicists and IVF counsellors would miss out on being compared to the award in the BOOT test “significantly diminishing their minimum wage rates and ability to bargain.” It is a question of fact whether these two occupations are covered by that award or not. DHAA submits that neither Medical Physicists or IVF Counsellors are covered by the Health Professionals and Support Services Award.
19. DHAA relies on its previous submissions with regard to the changing nomenclature argument set out by the HSU in paragraphs 22-24, pages 4-5. It is the role of the union which has coverage by virtue of its rules, to vary an award if nomenclature of an occupation becomes particularly problematic.
20. For example, with regard to the HSU’s statement in paragraph 24, page 4 that the nomenclature of the occupation of Cardiac Technologist has evolved since 1991, presumably the responsible Union or employer/s has had more than sufficient time to lodge an award variation application under ss 157-160 of Fair Work Act. DHAA submits that the HSU’s submission conflates changing position title nomenclature with changing occupation nomenclature. There is a significant difference between the two.

21. The DHA relies on its submission of 31 July 2019, with regard to HSU's submission at paragraphs 5-11 at pages 2-3 regarding the relevance of the NSW public sector awards to default coverage of currently award-free dental hygienists and oral health therapists under the Health Professionals and Support Services Award. The DHA submits that the existence of a new public sector State award should have no relevance to a consideration of coverage of the HPSS award. This is because the status quo remains unchanged since 2009 that some dental professionals in the public sector are covered by state awards. All other Dental Hygienists, Oral Health Therapist and Dentists working clinically in the private sector remain award free.
22. The DHA consistent position representing employees is that the best interests of the dental industry are served by maintaining the status quo that Dental Hygienists, Oral Health Therapists and Dentists are not covered by the Health Professionals and Support Services Award.

Evidence:Rosemary Kelly

Ms Kelly asserts in her witness statement dated 7 August 2019 that there is a direct assumed causal correlation between HPSS award coverage and the act of Fair Work Commission approving an enterprise agreement application supported by an apparently inaccurate Form F17. DHA submits that Ms Kelly provides no evidence to support her view.

DHA will address this issue in cross examination of Ms Kelly.

Alex Leszczynski

DHA has no objection to Mr Leszczynski's witness statement.

DHA will require Mr Leszczynski for cross examination, including with regard to his expressed views on sonographers' wages, in particular his posited corollary of future wage outcomes for dental hygienists and oral health therapists, if they were to be covered by the Health Professionals and Support Services Award.



**Katrina Murphy for
Dental Hygienists Association of Australia Limited**

14 August 2019

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