

**SUBMISSION TO
FAIR WORK COMMISSION**

Matter No:

AM2016/8

4 YEARLY REVIEW OF MODERN AWARDS

PAYMENT OF WAGES

AUGUST 2019

SUBMISSION IN RESPONSE RE:

***PROPOSAL BY ANMF TO AMEND THE MODEL TERM IN THE NURSES AWARD REGARDING
PAYMENT ON TERMINATION OF EMPLOYMENT***

**SUBMISSION BY
PRIVATE HOSPITAL INDUSTRY EMPLOYER ASSOCIATIONS**

**Australian Private Hospitals Association
Australian Private Hospitals Association – South Australia
Australian Private Hospitals Association – Tasmania
Australian Private Hospitals Association – Western Australia
Australian Private Hospitals Association – Victoria
Catholic Health Australia
Day Hospitals Australia
Private Hospitals Association of Queensland
Private Hospitals Association of New South Wales**

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PARTIES TO THIS SUBMISSION

- [1] This brief submission is being lodged on behalf of the Private Hospital Industry Employers' Associations (PHIEA) which includes: Australian Private Hospitals Association (APHA), the Private Hospitals Association of Queensland (PHAQ), APHA – South Australia; APHA – Victoria; APHA – Tasmania, Private Hospitals Association of New South Wales, Private Hospitals Association of Western Australia, Catholic Health Australia and Day Hospitals Australia. These organisations collectively represent approximately 95% of licensed private hospital beds in Australia and in addition, represent approximately 90% of all Free-Standing Day Hospitals.

BACKGROUND

- [2] On 26 July 2019, a Full Bench decision was handed down in relation to the 4 yearly review of Modern Awards – Payment of wages [2019] FWCFB 5146.

Paragraph 2 of this decision noted that:

[2] In a Decision [1](#) issued on 17 July 2018 (the July 2018 decision), we finalised the payment of wages on termination of employment model term and expressed the provisional view that the 86 modern awards which were silent in respect of the time period within which termination payments are to be made should be varied to include the model term. The model term is set out below:

X. Payment on termination of employment

(a) The employer must pay an employee no later than 7 days after the day on which the employee's employment terminates:

(i) the employee's wages under this award for any complete or incomplete pay period up to the end of the day of termination; and

(ii) all other amounts that are due to the employee under this award and the NES.

(b) The requirement to pay wages and other amounts under paragraph (a) is subject to further order of the Commission and the employer making deductions authorised by this award or the Act.

Note 1: Section 117(2) of the Act provides that an employer must not terminate an employee's employment unless the employer has given the employee the required minimum period of notice or "has paid" to the employee payment instead of giving notice.

Note 2: Paragraph (b) allows the Commission to make an order delaying the requirement to make a payment under clause X. For example, the Commission could make an order delaying the requirement to pay redundancy pay if an employer makes an application under section 120 of the Act for the Commission to reduce the amount of redundancy pay an employee is entitled to under the NES.

Note 3: State and Territory long service leave laws or long service leave entitlements under s.113 of the Act, may require an employer to pay an employee for accrued long service leave on the day on which the employee's employment terminates or shortly after. [2](#)

[3] At paragraph [46] concerning the Nurses Award the Full Bench noted:

[46] The ANMF raised an issue about the current entitlements in the Nurses Award 2010 (Nurses Award) being more favourable than the model term. Clause 18.3 of the Nurses Award 2010 provides as follows:

'When notice of termination of employment has been given by an employee or an employee's services have been terminated by the employer, payment of all wages and other monies owing to an employee will be made to the employee.'

[47] The award currently provides for 'payment of all wages and other moneys owing to an employee' and the ANMF submits that this is a more favourable entitlement than the model term. The ANMF propose the following amendments to the model term to address their concerns:

X Payment on termination of employment

(a) The employer must pay an employee no later than 7 days after the day on which the employee's employment terminates:

(i) the employee's wages ~~under this award~~ owing for any complete or incomplete pay period up to the end of the day of termination; and

(ii) all other amounts that are due to the employee, including under this award and the NES.

(b) The requirement to pay wages and other amounts under paragraph (a) is subject to further order of the Commission and the employer making deductions authorised by this award or the Act.

[48] The proposed amendments are supported by HSU and UV.

*[49] Any submission opposing the variation proposed by the ANMF should be filed by **4 pm on 21 August 2019**. Submissions in reply should be filed by **4pm on 25 September 2019**. This matter will be determined on the papers unless an interested party requests an oral hearing by **4pm on 21 August 2019**.*

RESPONSE

PHIEA agrees with the ANMF that the current entitlements in the *Nurses Award 2010* regarding payment on termination of employment are more favourable than the model term, and therefore would have no objection if the model term were to be amended in the Nurses Award as proposed by the ANMF and noted above in paragraph [47] of the Full Bench Decision of 26 July 2019.

[END OF SUBMISSION]