

**SUBMISSION TO  
FAIR WORK COMMISSION**

**In Relation to:**

***ADDITIONAL COMMON ISSUES***

**Response to ACTU Outline Claims in respect of**

**Domestic Violence Leave  
Family Friendly Work Arrangements**

**Re: D No: 134/2014**

**D No: 135/2014**

**NOVEMBER 2014**

**SUBMISSION BY  
PRIVATE HOSPITAL INDUSTRY EMPLOYER ASSOCIATIONS**

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

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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 include: Australian Day Hospital Association, 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 and Catholic Health 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.

## **RESPONSE**

- [2] In his statement of 1 October 2014 [2014] FWC 6904, Justice Ross President, noted that the Commission was seeking the views of interested persons as to whether the matters noted in paragraphs 9 to 12 of the statement should be dealt with as common issues.
- [3] This response is limited to the matters outlined in paragraph 12 namely the ACTU's outline claims in respect of:
- A domestic violence clause that relates to leave
  - A family friendly work clause that supplements NES rights.

### **Domestic Violence Clause that relates to Leave**

- [4] The ACTU is seeking variations to all Awards to insert specific provisions in relation to family and domestic violence which would include 10 days paid domestic violence leave and a right to request a change in working arrangements.
- [5] Since 1 July 2013, Requests for Flexible Work Arrangements under the NES have been expanded to specifically include:
- Employees who are experiencing violence from a member of their family or
  - who provides care or support to a member of their immediate family or household, who requires care or support because they are experiencing violence from their family

As such we consider that this aspect of the ACTU claim is adequately covered by the NES.

- [6] The introductory paragraph on the Fair Work Commission Website – Common Issues page states:

*Common issues are generally proposals for significant variation or change across the award system, such as applications which seek to change a common or core provision in most, if not all, modern awards.*

- [7] The ACTU claim seeks provision for 10 days domestic violence paid leave, specifically to enable employees to attend court appearances and related appointments, seek legal advice and make re-location arrangements. The claim also

includes a range of process and procedural elements which would impose significant new obligations on employers.

- [8] The ACTU claim is not seeking to 'change a common or core provision' but rather to introduce a new entitlement to 10 days paid leave which is not currently a common provision in most, if not all, modern awards.
- [9] Given that access to various categories of paid and unpaid leave which include parental leave; annual leave; personal/carer's leave; compassionate leave; community service and long service leave, form part of the National Employment Standards (NES), the Private Hospital Industry Employer's Associations consider that any proposal to introduce a new category of leave – such as domestic violence – should be an NES matter involving a change to the Fair Work Act and as such we consider that it should not be considered a common issue for the purposes of this current review of Modern Awards.
- [10] Should the Fair Work Commission consider there is a jurisdictional issue to address, PHIEA would respectfully suggest that this occur in advance of any proceedings to consider the merits of the claim.

#### **ACTU Claim re: Family Friendly Work Arrangements**

- [11] The Private Hospital Industry Employers' Association (PHIEA) consider that the ACTU claim in relation to Family Friendly Work Arrangements during pregnancy or upon return to work from parental or adoption leave, should not be considered as a common issue as the provisions contained within the NES already offer an appropriate safety net.
- [12] An employer may only refuse such a request on 'reasonable business grounds'. Without limiting what are reasonable business grounds, section 65 (5A) (a) – (e) of the *Fair Work Act* provide some examples which are all legitimate reasons why an employer may not be able to accommodate a particular request.
- [13] The ACTU claim seeks to significantly increase the NES requirement of 'reasonable business grounds' as the only grounds for refusal, to a requirement for employers to demonstrate that they have considered all relevant circumstances and then may only refuse the request on 'serious countervailing business grounds'. This, together with the other claim elements would be contrary to the Modern Awards objective particularly in relation to the following provisions:
- s.134 (1) (d) – the need to promote flexible modern work practices and the efficient and productive performance of work
  - s.134 (1) (f) – the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden
  - s. 134 (1) g) – the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia

PHIEA is of the view that this matter is adequately covered by the NES and should not be considered as a common issue.

**End of Submission**