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5 May 2016

Commissioner Roe
Fair Work Commission
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MELBOURNE VIC 3001

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Dear Commissioner,

AM2014/204 - 4 YEARLY REVIEW OF THE HEALTH PROFESSIONALS AND SUPPORT SERVICES AWARD 2010 (HPSS AWARD) – RESPONSE TO HSU PROPOSAL DATED 25 APRIL 2016

We refer to the above matter and the further report to the Full Bench dated 26 April 2016 (**Report**) requesting, amongst other things, that the parties provide a response to the HSU proposal and what matters, if any, in this group of issues they continue to press as a result.

The Chiropractors' Association of Australia (National) Limited (**CAA**) responds as follows:

New clause 8.1 – Ordinary hours and roster cycles (span of hours)

The CAA **does not agree** to the proposal in its current form. The CAA is particularly concerned that this proposal does not obviate its concerns surrounding the definition of a “shiftworker” nor does it reflect the “normal” operating hours of most health employers covered by the HPSS Award.

As the CAA has previously made clear, chiropractic practices (like other private health practices) perform work outside of traditional business hours (i.e. on weeknights and on weekends) and the CAA submits that the span of hours ought to reflect industry practice.

Further, the CAA notes that historically a shiftworker has been someone employed in an enterprise in which shifts are continuously rostered 24 hours a day for 7 days a week and who works those shifts. The CAA also notes its previous objections to the use of the term “regularly rostered” to define a shiftworker.

In the CAA’s view, the definition contained in clause 8.1(b) of the HSU proposal should be revised.

As the CAA has previously submitted, the issue with the definition lies with the fact that the HPSS Award covers both private practices and hospitals/inpatient facilities. The major difficulty with the HPSS Award covering both private practices and hospitals/inpatient facilities is that they are distinct and have very different needs.

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The CAA has previously proposed that this issue could be resolved by expanding the definition of “private medical, dental and pathology practice” in the HPSS Award to include other private health practices such as allied health practices. This proposal, which was the subject of much discussion, is set out below. The CAA remains supportive of this proposal and indicates its preference that this proposal be adopted by the parties. Please note that the original proposal was amended through discussions to rename the definition “private clinics”. We have also included revised text in blue below.

Schedule I – Definitions

private medical, dental and pathology practice-clinics means the practice of any medical practitioner, such as medical centre, general practice, specialist practice, family practice, medical clinic, dental practice, pathology practice, *medical imaging practices (other than 7-day practices), private health practices including allied health practices such as chiropractic, physiotherapy, osteopathy or podiatry practices, traditional and complementary medicine practice, and women’s health centre or a multi-disciplinary practice*, but does not include ~~medical imaging practices inpatient care, hospitals or hospices~~

In the alternative, the CAA would support the HSU proposal, subject to the amendments set out below.

8. Ordinary hours of work and rostering

8.1 Ordinary hours and roster cycles

(a) Span of hours—day worker

- (i) *The ordinary hours of work for a **day worker** ~~are worked~~ may be worked between 6.00 am and 6.00 pm, Monday to Friday.*
- (ii) *The span of hours may be altered by up to two hours at either end of the spread, by agreement between an employer and the employee or employees concerned.*
- (iii) *Notwithstanding clause 8.1(a)(i), a day worker may work ordinary hours of work on weekends and public holidays but such work must be paid at the rates set out in clauses 18.1 – Weekend penalties and clause 23 – Public holidays (as applicable).*

(b) *A **shiftworker** is an employee who is ~~regularly rostered to work~~ shifts as defined in clause 18.3 – Shift work. ~~their ordinary hours of work outside the span of hours of a day worker as defined in clause 8.1(a).~~*

(c) *The ordinary hours of work for a full-time employee will be:*

- (i) 38 hours per week; or
- (ii) 76 hours per fortnight; or
- (iii) 152 hours over 28 days.

(d) *The shift length or ordinary hours of work per day will be a maximum of 10 **ordinary** hours exclusive of meal breaks.*

(e) *An accrued day off (ADO) system of work may be implemented*

where a full time employee works no more than 19 days in a four week period of 152 hours.

- (f) Each employee must be free from duty for not less than:
 - (i) two full days in each week;
 - (ii) four full days in each fortnight; or
 - (iii) eight full days in each 28-day cycle.
- (g) Where practicable days off referred to in clause 8.1(f) must be consecutive.
- (h) ~~The hours of work will be continuous, except for meal breaks.~~ Except for the regular changeover of shifts, an employee will not be required to work more than one shift in each 24 hours.

18.3 Shift Work

.....

(c) The span of hours over which shifts may be worked may be altered by up to two hours at either end of the span, by agreement between an employer and the employee or employees concerned.

Clause 9 – Breaks

The CAA **agrees** to the proposal.

Clause 18.1 – Weekend penalties

The CAA **agrees** to the proposal to delete “day worker” in the heading of clause 18.1 and the proposal to replace the term “day worker” with “full or part time employee” in clause 18.1(a), subject to clarification that shiftwork penalties do not apply when weekend or public holiday penalties apply (in accordance with the discussions at the conference before Commissioner Roe on 4 February 2016 and which appears in this HSU proposal at clause 18.3).

Clause 18.2 – Weekend work in private medical imaging seven day practices

The CAA **does not comment** on the proposal to delete clause 18.2 (weekend work in private medical imaging seven day practice) as it does not affect the CAA.

New clause 18.3 – Shift work

The CAA **agrees** to the proposal in substance. However, the CAA notes that the following amendments should be made to this clause to ensure that the clause is clear and uses language consistent with the exposure draft.

18.3 Shift Work

(a) For the purposes of this clause:

(i) **Afternoon shift** means any shift commencing ~~not earlier than~~ **on or after** 12.00 noon and finishing after 6.00pm on the same day; and

(ii) **Night shift** means any shift commencing on or after 6.00pm and finishing before 7.30am on the following day.

(b) **Shift penalties**

(i) Where an employee works a rostered afternoon shift between Monday and Friday, the employee will be paid a loading of 12.5% of ~~their~~ **the** minimum hourly rate **applicable to their classification and pay point for all ordinary hours worked in that shift.**

(ii) Where an employee works a rostered night shift between Monday and Friday, the employee will be paid a loading of 15% of ~~their~~ **the** minimum hourly rate **applicable to their classification and pay point for all ordinary hours worked in that shift.**

(iii) The provisions of this clause do not apply where an employee commences their ordinary hours of work **at or** after 12.00 noon and completes those hours at or before 6.00pm on that day.

(iv) The shift penalties prescribed in this clause will not apply to shiftwork performed by an employee on **a** Saturday, Sunday or public holiday where the extra payment prescribed by clause ~~16 – Saturday and Sunday work~~ **18.1 – Weekend penalties** and clause ~~18~~ **23 – Public holidays** applies.

The CAA also notes that this proposal should also make clear that shiftwork penalties are not cumulative upon the casual loading and include the variation proposed by the CAA above in respect to altering the span of hours.

Clause 19 – Overtime

The CAA **agrees** to the proposal.

Subject to acceptance of the amendments proposed by the CAA in this response, the CAA will not continue to press claims in relation to any of items 12A, 17, 18, 19, 23, 26, 27, 27A or 42.

If you have any queries, please contact Joanna Bandara on (03) 9611 0196.

Yours faithfully,



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