

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

SUBMISSIONS DATED 5 DECEMBER 2018

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1. INTRODUCTION

The Chiropractors' Association of Australia (National) Limited (**CAA**) makes these submissions pursuant to the invitation made by the Fair Work Commission (**Commission**) in its decision dated 3 December 2018¹ relating to the *Health Professionals and Support Services Award 2010 (HPSS Award)*.

These submissions support and address the Commission's proposed variation to the span of hours contained in clause 24 of the HPSS Award.²

For completeness, however, the CAA also confirms its support of amendments proposed by the Commission to clauses in the HPSS Award dealing with:

- 1.1 rostering;³
- 1.2 weekend penalties for shift workers;⁴ and
- 1.3 meal breaks.⁵

2. SPAN OF HOURS - SUBMISSION

2.1 The CAA wholly supports the rationalisation of the span of hours provision proposed by the Commission.

2.2 The CAA submits that the variation proposed by the Commission resolves the issues identified by the CAA in its previous submissions because the usual trading hours for the chiropractic industry are encompassed in such a span.

2.3 The CAA refers to and relies upon:

- 2.3.1 its written submissions dated 13 February 2018 (**13 February Submissions**), 17 March 2017 (**17 March Submissions**), reply submissions dated 22 May 2017 (**22 May Reply Submissions**) and 9 March 2018 (**9 March Reply Submissions**);

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

² Decision, [62].

³ Decision, [77].

⁴ Decision, [160].

⁵ Decision, [185].

- 2.3.2 its oral submissions made on 11 December 2017 (see Transcript of Proceedings 1055480 at paragraphs PN1042 to PN1065); and
- 2.3.3 Exhibits CAA1 (Statement of Matthew William Fisher dated 17 March 2017), CAA2 (Statement of Matthew William Fisher dated 22 May 2017), CAA3 (Draft Determination), CAA4 (Schedule 2 to the CAA Submissions, Summary of Award Coverage and Tables) and CAA5 (Letter from the Fair Work Ombudsman dated 1 June 2012).
- 2.4 In those submissions and reply submissions, the CAA has (amongst other things) proposed that a span of hours covering “private practices” is an effective mechanism to achieve the modern award objectives.
- 2.5 The CAA agrees with the proposed wording contained at paragraph [62] of the Decision but notes that clause 3 of the HPSS Award contains a definition of “private medical, dental and pathology practice”. The predominant purpose of this definition appears to be in relation to defining what constitutes a private medical, dental or pathology practice for the purposes of clause 24.
- 2.6 The CAA submits that the definition in clause 3 of the HPSS Award for “private medical, dental and pathology practice” should be amended or removed in light of the insertion of clause 24 (in the terms proposed by the Commission at paragraph [62] of the Decision).
- 2.7 It is the CAA’s submission that it is important that the HPSS Award is drafted in simple and easy to understand ways that make it clear what span of hours applies in a given situation (and thus what the appropriate rates of pay and shift work triggers are). The CAA submits that the proposed variation will ensure that the HPSS Award is simple and easy to understand, which weighs in favour of granting the proposal.⁶
- 2.8 Draft determinations are contained in Attachment 1 to these submissions.

⁶ Consistent with the modern award objective contained in section 134(1)(g) of the *Fair Work Act 2009* (Cth)

ATTACHMENT 1 – DRAFT DETERMINATION – OPTION 1 (REMOVAL OF DEFINITION IN CLAUSE 3)

PRXXXX

FAIR WORK COMMISSION

DRAFT DETERMINATION

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards—*Health Professionals and Support Services Award 2010*
(AM2016/31)

HEALTH PROFESSIONALS AND SUPPORT SERVICES AWARD 2010

[MA000027]

Health Professionals and Support Services

[MEMBERS]

[LOCATION, DATE]

4 yearly review of modern awards.

A. Further to the Full Bench decision issued by the Fair Work Commission on 3 December 2018, the above award is varied by deleting the definition of “private medical, dental and pathology practice” in clause 3.1.

DRAFT DETERMINATION – OPTION 2 (AMENDING DEFINITION IN CLAUSE 3)

PRXXXX

FAIR WORK COMMISSION

DRAFT DETERMINATION

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards—*Health Professionals and Support Services Award 2010*
(AM2014/204)

HEALTH PROFESSIONALS AND SUPPORT SERVICES AWARD 2010

[MA000027]

Health Professionals and Support Services

[MEMBERS]

[LOCATION, DATE]

4 yearly review of modern awards.

A. Further to the Full Bench decision issued by the Fair Work Commission on 3 December 2018, the above award is varied by amending the definition of “private medical, dental and pathology practice” in clause 3.1 to:

*private medical, dental, pathology, **physiotherapy, chiropractic and osteopathic practice** means the practice of any medical practitioner, such as medical centre, general practice, specialist practice, family practice, medical clinic, dental practice, pathology practice, **physiotherapy practice, chiropractic practice, osteopathic practice** and women’s health centre, but does not include medical imaging practices, hospitals or hospices.*