



Osteopathy Australia Submission

regarding 4 yearly review:

MA000027 – HEALTH PROFESSIONALS AND SUPPORT
SERVICES AWARD 2010

Submitted by:

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1. INTRODUCTION

1. Osteopathy Australia makes this submission relating to the Health Professionals and Support Services Award 2010 (HPSS Award). I would like to acknowledge that this submission was crafted with careful review of similar professions such as physiotherapy and chiropractic, both of which share similar interests to osteopaths.

1.2 Osteopathy Australia's goals for participating in this review are to ensure that the HPSS Award reflects the interests of both its employer and employee members by making sure the award is unambiguous, caters to the way the industry operates and does not continue to place uncompetitive obligations on osteopathic clinics compared to other health professions.

2. BACKGROUND: OSTEOPATHY & OSTEOPATHY AUSTRALIA

2.1 Osteopathy is a form of manual therapy that has significant scope overlap with physiotherapy and chiropractic. Osteopaths are primary contact health practitioners and offer services for the treatment or management of many health conditions.

2.2 Osteopaths are highly trained. To become a registered osteopath in Australia, a candidate must have studied an accredited Double-Bachelors or Masters Osteopathy program conducted at a university within Australia, or have completed an accredited program overseas that satisfies the requirements set by the Osteopathy Board of Australia (Board), which sits within the Australian Health Practitioner Regulation Agency (AHPRA). Once registered, osteopaths are required to adhere to strict and extensive educational requirements and standards.

2.3 Osteopaths are subject to the Health Practitioner Regulation National Laws (variously enacted in each state and territory). Other professions that are subject to the national laws include dental, medical, medical radiation practice, occupational therapy, physiotherapy, Chinese medicine, podiatry, nursing and midwifery, pharmacy and psychology.

2.4 Registrant data compiled by the Board shows that the osteopathic profession is growing. As at 31 December 2016, there were approximately 2200 registered Osteopaths in Australia.

2.5 Many people utilise osteopathic services although, since such services are not always funded through Medicare, administrative data regarding the use of such services is difficult to obtain. In 2016, Osteopathy Australia estimates over 4 million occasions of service were provided by osteopaths.

2.6 Most osteopathic practices will also engage assistants, who are responsible for all clerical and support tasks in relation to patients and the practice (including appointments, general patient welfare, report typing, billing and specialised practice functions).

2.7 Osteopathy Australia is the peak body representing osteopaths. Osteopathy Australia was formed in 1955.

2.8 Osteopathy Australia represents over 1800 members (accounting for 84% of the practicing profession) and is the largest osteopathic body in Australia.

2.9 Osteopathy Australia is unusually positioned in that it represents both employers and employees. The Osteopathy Australia membership consists of osteopaths, student members, business owners (including standalone practices, small, medium and large private practice groups; as well as multidisciplinary practices). However, it should be noted that osteopathic practices are

predominantly small businesses and frequently do not employ dedicated human resources professionals.

2.10 Osteopathy Australia takes a leading role in advocating the views of Australian osteopaths to public policy decision-makers. It works with its members to understand their needs across various elements of their practices, which includes the industrial needs of members and (where relevant) their employees.

3. AWARD MODERNISATION

3.1 Osteopathy Australia was not involved in the formulation of the HPSS Award.

3.2 The osteopathic industry has been operating under the HPSS Award since 2010 without having had any proper input into key terms of the Award, such as the span of hours, which was adopted from various industrial instruments (many of which were specific to hospital work) without examining the features and characteristics of the osteopathic industry.

3.3 Prior to the introduction of the HPSS Award the industry had previously operated in a very different and much more flexible manner. This review is the first real opportunity for the osteopathic industry to have substantive input into appropriate award terms for the industry.

3.4 Osteopathy Australia submits that the proposed change below is necessary to achieve the modern award objectives, and is a change of obvious industrial merit.

4. HPSS AWARD – SPAN OF HOURS AND THE OSTEOPATHIC INDUSTRY

4.1 Clause 24 – Span of Hours

4.1.1 The span of hours in clause 24 varies depending on the type of health practice involved.

4.1.2 Clause 24.1 (which applies to osteopathic practices) provides that: “Unless otherwise stated, the ordinary hours of work for a day worker will be worked between 6.00 am and 6.00 pm Monday to Friday.”

4.2 Osteopathy industry practice

4.2.1 The osteopathy industry is characterised by the following:

4.2.1.1. Prior to the modern award osteopaths were effectively award free and osteopathy employees were not entitled to evening or weekend penalties;

4.2.1.2. Prior to the modern award assistants in osteopathy practices were largely covered by general clerical awards;

4.2.1.3. The industry is dominated by private clinic small business employers;

4.2.1.4. Most of these businesses operate outside of traditional business hours to accommodate working patients, including on evenings and Saturdays; and

4.2.1.5. Shift work as it is traditionally understood (i.e. where shifts are continuously rostered 24 hours a day for 7 days a week) is not a feature of the industry.

4.2.2 The hours of operation for osteopathic practices are largely similar across the industry with most hours set to accommodate working patients. Osteopathy Australia’s review of practice websites highlights the majority of clinics operated outside the span of hours contained in the HPSS Award.

4.3.3 Most osteopathic practices are open Monday to Friday largely between the hours of 7.00am and 8.00pm and Saturday between the hours of 7.00am and 5.00pm.

4.3 Limitations of HPSS Award Clause 24.1 as it applies to osteopathy

4.3.1 Modern awards should reflect the trading hours of the relevant industry. The HPSS Award does this to a limited extent in the various spans contained in clause 24.

4.3.2 The Commission is required to consider whether the award being reviewed provides a “relevant” minimum safety net of terms and conditions. The Full Bench has held that the term “relevant” is “intended to convey that a modern award should be suited to contemporary circumstances.”

4.3.3 It is Osteopathy Australia’s position that the span of hours in the HPSS Award applicable to the osteopathic industry (i.e. Clause 24.1) does not provide a fair and relevant minimum safety net of terms and conditions for those in the industry because:

4.3.3.1. The span of hours in clause 24.1 does not reflect the usual operating hours of the osteopathic industry, which is largely driven by patient demand;

4.3.3.2. There is an inherent unfairness in the different span of hours in the HPSS Award for similar primary care professions, such as those covered by Clause 24.2, 24.3 and 24.4 of the Award;

4.3.3.3. Osteopaths are being inappropriately captured by the shift worker provisions of the HPSS Award, when they are clearly not working “shifts”. This has led to uncertainty, increased employment costs, greater regulatory burden and is unfair because it overcompensates such employees; and

4.3.3.4. There is confusion as to what the appropriate rate of pay is for employees who work outside of the current span provided for in clause 24.1, which is inconsistent with the need to provide a simple and easy to understand modern award system. This confusion arises because its members have difficulty properly characterising work after 6pm from Monday to Friday and on Saturdays as either overtime or as triggering a shift work loading.

4.3.4 Therefore, it is Osteopathy Australia position that the current span of hours is not suited to the contemporary circumstances prevailing in the osteopathic industry and as such is not “relevant”. This weighs in favour of the Commission granting the variation highlighted in Section 5.

4.3.5 It should be noted that s.134(1)(g) of the Act requires the Commission to consider the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards.

4.4 General limitations of the HPSS Award

4.4.1 Correspondence from the Fair Work Ombudsman identified that the HPSS Award:

- does not clearly identify when overtime applies;
- does not state whether or not overtime calculations are on a daily or weekly basis;

- does not clearly state whether casual employees are entitled to overtime;
- does not clearly state the interaction between the casual loading and overtime;
- does not clearly state when penalties apply; and
- includes references to penalties in clauses which do not prescribe any penalty rates.

4.4.2 Osteopathy Australia shares this view and wishes to emphasise the importance of ensuring that the HPSS Award makes it clear when overtime or other penalty rates are payable.

5. PROPOSED VARIATION TO HPSS AWARD, CLAUSE 24

5.1 Osteopathy Australia proposes to amend HPSS Award, Clause 24, to reflect current osteopathic practice. This could be done, for example, by:

EITHER amending Clause 24.2 to: “Private medical, dental, **osteopathic**, and pathology practices”

OR inserting:

“24.5 Osteopathy practices

The ordinary hours of work for a day worker will be worked between 7.30 am and 9.00 pm Monday to Friday and between 8.00 am and 4.30 pm on Saturday.”

5.2 The proposed variation is intended to:

- Provide for ordinary hours of work on a Saturday (which will be compensated in accordance with clause 26.1 of the HPSS Award); and
- Shift the commencement and finishing time for ordinary hours during the week. This will have the effect of slightly expanding the number of ordinary hours contained in the span of hours from Monday to Friday.

6. CONCLUSION

6.1 As noted above as noted, the operating hours of osteopathic practices are largely dictated by the needs of patients to access care outside of their own usual working hours. It is Osteopathy Australia’s view that within this context, it is necessary and appropriate that osteopathic practices should be enabled to provide these services at times that are convenient to the community.

6.2 Osteopathy Australia supports the view of the Fair Work Ombudsman that it is important to ensure that the HPSS Award makes it clear when overtime or other penalty rates are payable.

6.3 In conclusion, the proposed variation is necessary to ensure that the HPSS Award, together with the NES, provides a “fair and relevant” minimum safety net for the osteopathic industry while removing anti-competitive components of the Award.