

Fair Work Commission

Matter: AM2016/31

4 Yearly Review of modern awards – Initial Submission complying with Directions by Vice President Catanzariti of 20 June 2019 for the

Health Professionals and Support Services (HPSS) Award Review

Submissions on behalf of the Australian Dental Association (ADA)

by Wentworth Advantage Pty Ltd

1. The Australian Dental Association (**ADA**) has been an active participant in the proceedings leading to the making of the *Health Professionals and Support Service Award 2010* (HPSS Award), as well as proceedings in the:
 - (a) 2 yearly review of the HPSS Award in [AM2012 / 133 and others]; and
 - (b) the Four Yearly Review of the HPSS Award in [AM2016 / 31] (Four Yearly Review of the HPSS Award).
2. In proceedings before the Fair Work Commission in relation to this matter, a question was asked by the Fair Work Ombudsman as to whether it was intended that the List of Common Health Professionals (**the List**) in Schedule C was intended to be indicative or exhaustive.
3. Prior to this, it is believed that all interested parties to the HPSS Award had operated on the understanding that the List was exhaustive.
4. In December 2017 and contrary to the previous understanding, the Health Services Union (**HSU**) asserted that Schedule A and B of the HPSS Award should be amended to clarify that the List contained in Schedule C is currently an indicative list and is not an exhaustive list. The HSU therefore sought to vary the HPSS Award to make that clear.

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5. The Australian Dental and Oral Health Therapist's Association Inc. (ADOTHA) submitted in February 2017 that regardless of whether the list was exhaustive or indicative that Oral Health Therapist should be included in the List.
6. The ADA, along with a number of other parties have opposed those claims.
7. The ADA's position in those proceedings was that:
 - (a) the coverage of the HPSS Award is clear and unambiguous;
 - (b) in respect of health professionals, the coverage of the HPSS Award is exhaustive and confined to the occupations contained in the List;
 - (c) as a consequence, Dental Hygienist and Oral Health Therapist are not covered by the HPSS Award currently; and
 - (d) Dentists (including Specialist Dentists) are not covered by the HPSS Award, nor was it the intention of any interested party to the HPSS Award when it was made that they would be covered.
8. On 20 June 2019, the Full Bench made it clear that despite whether the List was indicative or exhaustive currently, it wished to hear from interested parties as to whether the List should be indicative or exhaustive for the future. In addition, the Full Bench asked interested parties to address the FWC on whether the occupations of Dental Hygienists or Oral Health Therapist should be covered by the HPSS Award.
9. The ADA maintains that for the future there is no need to change the current status quo, as the HPSS Award is operating appropriately and to its intended coverage.
10. As a consequence, it is the ADA's position that if an interested party wishes to amend the coverage of the HPSS Award to include a health professional occupation that are not contained in the List (whether directly or indirectly), that party is obliged to advance a merit argument "*...accompanied by probative evidence...*" in support of the proposed variation and accordance with the requirements of the *Fair Work Act 2009* (Cth). This position was made clear by the Full Bench in the Decision - *4 Yearly Review of Modern Awards : Preliminary Jurisdictional Issues* [2014] FWCFB 1788 .

11. Considering the above as a further consequence, the ADA will file submissions and provide witness evidence and other material where necessary, to respond to those interested parties who assert that the HPSS Award should be varied directly or indirectly to either cover “indicative” health professionals or in the alternative, Dental Hygienists or Oral Health Therapist.

David Wilkinson

Manager – Award Review Matters

Wentworth Advantage Pty Limited

on behalf of the **Australian Dental Association Inc.**

Dated: 31 July 2019