



4 yearly review of modern awards

Health Professionals and Support Services Award 2010

(AM2016/31)

Submission in accordance with Directions issued 19 December 2019

1. In accordance with Directions issued 19 December 2019 and For Mention hearing 28 January 2020, the Australian Medical Association identifies itself as an interested party.
2. Referring to Directions at Item 1, we submit Medical Practitioners (Doctors) employed in the private sector must be listed as an occupation not covered by the Health Professionals and Support Services Award (HPSS Award).
3. We submit our concurrence with Catanzariti VP remarks: *"in relation to doctors..., they're actually out (of the HPSS Award)"*¹.
4. There is nothing implicit, or express, suggestive that our submission is made because the meaning of a "Health Professional" occupation could otherwise mean Medical Practitioner. We only make submission because the effluxion of time may well cause some confusion and that certainty and clarity is achieved via an exclusionary list.
5. We submit *ejusdem generis* (the, 'of the same kind') Rule should be applied. The Rule prevents discretion to extend the general words of a list beyond the obvious character (of the same kind) described by the list. We submit, Doctors do not fit into being off the same kind as the HPSS Award Schedule C job title list.
6. We request Health Services Union (HSU) Statement (our **Enclosure 1**) be admitted into evidence². We agree with the HSU Statement. We submit the absence of doctor coverage is uncontroversial industry common sense as evidenced by the HSU's preparedness to make the statement it did.
7. The following replicates Enclosure 1 for convenience [HSU, 3 September 2019]:

"This correspondence arises from the HSU's consultation with Australian Medical Association Limited in relation to the above matter.

The AIRC Decision of 23 January 2009, [2009] AIRCFB 50, in relation to the award modernisation process, stated as follows:

¹ PN450 - AM2016/31 Transcript of Proceedings, Monday, 2 December 2019

² The HSU statement, as published by the FWC – 4 yearly review documents, HPSS Award 9 September 2019, and referred to at PN447 *ibid* appears to not have been formally accepted into evidence.



[78] *The exposure draft of the Health Professionals and Support Services Industry and Occupational Award 2010 is a generic exposure draft to cover professional and technical classifications together with clerical and administrative classifications. We have sought, in the salary structure and level of salaries, to accommodate all health professionals (except doctors and nurses) employed in both the health industry and industry generally. [Emphasis added]*

Given the above, it is the HSU's view that the Health Professional and Support Services Award was never intended to cover doctors. We do not seek to extend coverage under the HPSS Award to doctors in these proceedings".

8. We submit, because the HSU Statement has the express effect of varying the HSU's original Application, the Full Bench's Decision³ arising from the Application was similarly limited in its consequence. Because, at hearing, Doctors are already expressly excluded from the Application, and because the Decision makes no alternative proposition, Doctors are, we submit, excluded automatically from being implicated by the Decision.
9. We submit a policy intention relevantly arises from s.134(1)(d), *Fair Work Act (Cth.) 2009* (FW Act). Specifically, that is, an Objective when making a modern award is to "promote flexible modern work practices". We submit, the policy is for a modern awards to capture new trends in employment due to technology, compliance, business practice or market demand. Doctors are long settled group; not a new trend requiring a modernisation response via the review process. Further, we submit, Doctors are not capable of capture by the Full Bench's reasons for decision at paragraph 27⁴.
10. In addition, we submit, that for private sector Doctors and given their professional class, when taking into account the s.134(1) FW Act Objective for a "fair and relevant minimum safety net" the Full Bench should be satisfied there is no warrant to enliven its sub section (2) power.
11. We submit there is distinction between Doctors working in the private sector as being one of the "traditional" parallel Doctor sectors (traditionally not Award covered) from the other "traditional" parallel of Doctors working in the public sector. The public sector tradition, we submit, have their actual rates and conditions traditionally governed through registered collective instruments that are now in their (up to) fifth iteration depending on jurisdiction⁵.

³ 19 December 2019 [2019] FWCFB 8358

⁴ *Ibid*

⁵ "Traditionally" not covered by an Award also has a meaning arising from FWCFB transcript at [78] to exclude Doctors from HPSS Award coverage (referring to para 7 of this submission).



12. We submit, the Full Bench is limited, by virtue of s.143(7) of the FW Act, to not allow the HPSS Award to cover private sector Doctors and instead expressly exclude Doctors. That is, Doctors in the private sector are, because of their nature, not a professional class “traditionally” covered by Awards. The existence of the Medical Practitioners Award (MP Award) has definitively demarcated the meaning of traditional Doctor award coverage in the private sector. The Full Bench has settled that *“the (MP) Award is not to apply to medical practitioners generally”*⁶.

For and behalf of the Australian Medical Association Limited

⁶ At para 28 *Vahid Sedighi Gourabi v Westgate Medical Centre* [2019] FWCFB 3874

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Subject: AM2016/31 - HPSS Award

AMA ENCLOSURE 1

**Four yearly review of modern awards
Health Professional and Support Services Award
AM2016/31**

Dear Associate,

This correspondence arises from the HSU's consultation with Australian Medical Association Limited in relation to the above matter.

The AIRC Decision of 23 January 2009, [2009] AIRCFB 50, in relation to the award modernisation process, stated as follows:

[78] The exposure draft of the Health Professionals and Support Services Industry and Occupational Award 2010 is a generic exposure draft to cover professional and technical classifications together with clerical and administrative classifications. We have sought, in the salary structure and level of salaries, to accommodate all health professionals (except doctors and nurses) employed in both the health industry and industry generally. [Emphasis added]

Given the above, it is the HSU's view that the Health Professional and Support Services Award was never intended to cover doctors. We do not seek to extend coverage under the HPSS Award to doctors in these proceedings.

Kind Regards,

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HSU National acknowledges the Traditional Owners and Elders past and present across Australia. We acknowledge the Wurundjeri people of the Kulin Nation, the Traditional Owners of the lands on which our office is located.