

Your ref AM2018/12 - Aboriginal Community Controlled
Health Services Award 2010

Our ref AUSN117-869617 (JZLB)

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18 September 2019

Dear Associate

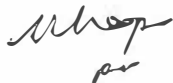
**FOUR YEARLY REVIEW OF MODERN AWARDS
ABORIGINAL COMMUNITY CONTROLLED HEALTH SERVICES AWARD 2010
FAIR WORK COMMISSIONS PROCEEDING NUMBER: AM2018/12**

We refer to the Directions issued by Deputy President Gostencnik on 7 August 2019
(Directions).

In accordance with directions 3 and 4 of the Directions, please find enclosed our client's
outline of submissions dated 18 September 2019.

Should you have any queries in relation to the above, please do not hesitate to contact
Naomi Cooper, Senior Associate on +61 2 8215 5992.

Yours sincerely



Justin Le Blond
Partner
for Kennedys

Kennedys offices, associations and cooperations: Australia, Argentina, Belgium, Bermuda, Brazil, Chile, China, Colombia, Denmark, England
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Puerto Rico, Russian Federation, Scotland, Singapore, Spain, Sweden, Thailand, United Arab Emirates, United States of America.

To Associate, Deputy President Gostencnik
Cc AMOD Team

Kennedys

Submissions

File no. AUSN117-869617 (JZLB)
Date 18 September 2019

Fair Work Commission
Modern Award Review

AM2018/12

**Outline of submissions concerning the *Aboriginal Community
Controlled Health Services Award 2010 (Award)***

Prepared by Kennedys (Australasia) on behalf of



- 1 These further submissions are made by the National Aboriginal and Torres Strait Islander Health Worker Association Limited (ACN 138 748 697) (**NATSIHWA**), in answer to the submissions from the Australian Medical Association (**AMA**) dated 28 August 2019 (**AMA Submissions**), pursuant to the directions issued by Deputy President Gostencnik on 7 August 2019 (**Directions**).
- 2 We adopt the definitions used previously in NATSIHWA's Outline of Submissions dated 18 June 2019 (**June Submissions**).
- 3 In making these submissions, NATSIHWA relies on the June Submissions, its oral submissions at the hearing before the Full Bench on 25 and 26 July 2019 (**Oral Submissions**), and its outline of further submissions dated 9 August 2019 .
- 4 As previously indicated, NATSIHWA seeks that coverage of the Award be extended to include A&TSIHWs and A&TSIHPs working in private practice (**Coverage Claim**).
- 5 In response, the AMA has submitted that:
 - 5.1 award coverage for private medical practice relevantly arises under the HPSS Award;
 - 5.2 coverage in the HPSS Award is a live issue, and that question needs to be resolved first; and
 - 5.3 it may be appropriate for NATSIHWA and/or NACCHO to consider intervening or making an HPSS Award variation application.¹
- 6 NATSIHWA denies that A&TSIHWs and A&TSIHPs in private practice are covered by the HPSS Award. NATSIHWA submits that A&TSIHWs and A&TSIHPs are not covered by any other award, including the HPSS Award, because of the unique requirements of their profession. NATSIHWA relies on

¹ AMA Submissions.

its submissions in the June Submissions and the Oral Submissions in this regard.²

7 Further, NATSIHWA says that it is inappropriate for A&TSIHWs and A&TSIHPs in private practice to be covered by the HPSS Award (as opposed to the Award), because of the unique cultural requirements underlying their profession. Specifically, it is a key requirement of the A&TSIHW and A&TSIHP profession that these workers must:

7.1 identify as A&TSI;

7.2 provide health care in a culturally safe manner; and

7.3 have the specific relevant qualifications that have been developed by A&TSI people for the A&TSI people.

8 If A&TSIHWs and A&TSIHPs in private practice were covered under the HPSS Award, none of these essential, fundamental cultural requirements would be accounted for in their classifications.

9 In addition, if A&TSIHWs and A&TSIHPs in private practice were covered under the HPSS Award, they would be denied access to other A&TSI-specific benefits that are available to A&TSIHWs and A&TSIHPs working in ACCHSs, such as ceremonial leave and bilingual qualification allowance.³

10 Accordingly, NATSIHWA submits that it is not appropriate for NATSIHWA to either intervene in the current review of the HPSS Award (AM2016/31) (**HPSS Award Review**), or to make an application to vary coverage of the HPSS Award to include A&TSIHWs and A&TSIHPs in private practice.

11 Based on our understanding of the HPSS Award Review, the live issue around coverage in the HPSS Award appears to be limited to the following questions:

² Paragraphs 42 to 47 of the June Submissions; [Transcript](#) of proceedings dated 25 July 2019 at PN17-PN18, PN123, PN135-PN314 (especially PN306-PN314).

³ Paragraphs 54 and 55 of the June Submissions.

- 11.1 whether the occupations of Dental Hygienist and Oral Therapist should be covered by the HPSS Award; and
 - 11.2 whether the List of Common Health Professionals contained in Schedule C of the HPSS Award should be indicative or exhaustive (together, the **HPSS Coverage Issues**).
- 12 By reason of paragraphs 6 to 8 above, the determination of the HPSS Coverage Issues are not relevant to the Coverage Claim.
 - 13 Further, interested parties have been on notice of NATSIHWA's intention to make the Coverage Claim since at least 6 March 2015. It has been open to the AMA to take issue with the Coverage Claim at any time, including during the extensive consultation process conducted during around 2017. However, the AMA has failed to raise any concern about the Coverage Claim until this time.
 - 14 In these circumstances, NATSIHWA submits that it is inappropriate for the determination of the Coverage Claim to be deferred until the resolution of HPSS Coverage Issues.
 - 15 NATSIHWA notes the AMA submission "that the ACCHS Award should fairly reflect the essential role the ATSI Health Workers and Health Practitioners have in community controlled health services."
 - 16 The Commission has asked interested parties to advise whether a further oral hearing is required (order 4 of the Directions). NATSIHWA does not consider that a further oral hearing is required at this time.

KENNEDYS

18 September 2019