SUBMISSION TO

FAIR WORK COMMISSION

Matter No:

AM2014/196 and AM2014/197 – 4 Yearly Review of Modern Awards – Common Issue

PART TIME AND CASUAL EMPLOYMENT

5 August 2016

SUBMISSION BY
PRIVATE HOSPITAL INDUSTRY EMPLOYER ASSOCIATIONS

Australian Day Hospital Association
Australian Private Hospitals Association
Australian Private Hospitals Association – South Australia
Australian Private Hospitals Association – Victoria
Australian Private Hospitals Association – Tasmania
Catholic Health Australia
Private Hospitals Association of Queensland
Private Hospitals Association of New South Wales
Private Hospitals Association of Western Australia

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Background

[1] In its October 2015 submissions, the ACTU attached a number of witness statements and expert reports it had commissioned and made a number of sweeping statements regarding the general growth of casualisation but without specific reference to particular industries - as such implying that widespread and potentially inappropriate use of casuals was endemic across all industries.

[2] Unlike some employer groups who were seeking to amend current awards to introduce greater flexibility provisions in relation to part time and casual employees, The Private Hospital Industry Employers' Associations (PHIEA) did not seek to change the existing provisions in either the Nurses or Health Professionals and Support Services Awards, being of the view that in relation to part time and casual employee provisions, the existing clauses provided both an adequate safety net for employees and sufficient flexibility for employers to manage fluctuating staffing demands and therefore were not in need of amendment. Whilst not making a separate application, both the ANMF & HSU are party to the ACTU common claim which includes the Nurses and Health Professionals and Support Services Awards.

[3] PHIEA's reply submission of 22 February 2016 was lodged with the intent of providing some background information to assist Commissioners in their understanding of the private hospital industry when considering the ACTU's common claim in relation to 4-hour minimum engagement periods for part time and casual employees and the right of casual conversion.

Data used in the submission was obtained from a representative sample of hospitals, however given its commercially sensitive nature and the fact that our submission was merely providing background information, no attempt was made to seek consent to disclose the identity of the hospitals providing it. Similarly, we included some deidentified comments from a focus group of Directors of Nursing - these were opinions expressed in relation to the potential impacts on their organisations should the ACTU be successful in its common claim.

[4] In June 2016, the ANMF lodged a submission with the Fair Work Commission regarding the PHIEA submission of 22 February 2016 in which it states:

The ANMF submits that paragraphs 7-16, 20-26, 42-44, 46-49 and 52-56 of the PHIEA submission make factual assertions for which there is no foundation in the evidence either adduced by PHIEA or any other party.

Further, paragraphs 17-19, 28-37 and 61 and the charts referred to therein contain no information identifying the source of the data and there is no basis on which the matters dealt with can be tested.

For these reasons, the ANMF submits that the above paragraphs should be treated as conjecture and entirely disregarded.

The Aged Care Employers in their own February 2016 submissions supported many of the statements made by PHIEA but the ANMF has stated that any comments made by the Aged Care Employers which rely on PHIEA's submissions should similarly be disregarded.

Links to the two submissions are provided below:

https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/common/am2014196-197-sub-phiea-220216.pdf

https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/common/am2014196-197-sub-anmf-100616.pdf

RESPONSE TO ANMF OBJECTION OF 10 JUNE 2016

In response to the ANMF's correspondence of 10th June 2016, PHIEA would make the following comments in relation to the noted paragraphs from the PHIEA submission of 22 February 2016.

Paragraphs 7-16

[5] Paragraph 6 includes a table containing amalgamated data extracted from *AIHW Hospital Statistics 2013-14* and *ABS Private Hospitals 2013-14* with the key statistic of note being the difference between the public and private hospital sectors in the number of FTE Salaried Medical Officers – 37,086 or 13% of the total public sector workforce, versus just 1,243 or 2% of the total private hospital workforce.

Self-evidently this is a significant difference worthy of some explanation and the subsequent paragraphs outline how the medical model in acute private hospitals differs from public facilities, and the resultant impact that this has on occupancy and associated staffing demands. PHIEA considers that the ABS data provides relevant evidence and that these paragraphs in explanation are therefore valid. In the attached statement, Mr Alan Cooper, makes reference to fluctuating activity levels as a consequence of Visiting Medical Officer leave periods at paragraphs [8] to [10].

Paragraphs 17-19

[6] Paragraphs 18 and 19 include charts of actual data from a deidentified hospital, detailing total inpatient days per month and part time and casual work hours per month. The inpatient days demonstrate reduced occupancy in the key holiday months of December, January and April.

The activity data provided by Mr Cooper in Appendix 2 of his attached statement – *Comparison of Activity & Hours Worked – 2015 FY* shows a similar pattern of reduced bed days for December, January and April. We believe this provides supporting evidence to our earlier submission that the inability to control when Visiting Medical Officers take leave results in periods of significantly reduced occupancy, requiring hospital managers to utilise the essential flexibilities which currently exist within the health related awards to manage their staffing requirements.

Paragraphs 20-26

[7] These paragraphs relate to competence and confirm that not every nurse is competent in all things and therefore when delegating a task to a nurse, it is essential that the nurse has the appropriate skills to undertake the tasks competently.

In response to the ANMF's statement that '*factual assertions have been made by PHIEA in these paragraphs for which there is no foundation in the evidence'*, PHIEA would highlight that the Nursing and Midwifery Board of Australia's *Code of Professional Conduct for Nurses in Australia* contains the following paragraph under:

Conduct Statement 1 - Nurses practise in a safe and competent manner.

"Nurses are aware that undertaking activities not within their scopes of practice may compromise the safety of persons in their care.
These scopes of practice are based on each nurse's education, knowledge, competency, extent of experience and lawful authority."

The Nursing and Midwifery Board of Australia acknowledges that a nurse's scope of practice will vary from one nurse to the next based on each nurse's education, knowledge, competency, extent of experience and lawful authority.

[8] The variety of specialties a nurse or midwife can work within are many, including but not limited to; Intensive Care, Coronary Care, Emergency, Maternity & Neonatal, Paediatrics, Anaesthetics, Operating Theatre, Post-Operative Recovery, Medical, Surgical, Renal, Rehabilitation; Oncology, Palliative Care & Mental Health. PHIEA has confirmed in its submission how important it is that a replacement nurse has the appropriate skills and experience for the area to which they are to be deployed.

The ANMF's assertion that there is no foundation in the evidence, seems to imply that the ANMF believes that any nurse can undertake all tasks that may be required of a nurse in any setting, at any time, with complete competence. If this is the point being made by the ANMF, PHIEA strongly disagrees.

[9] **Paragraph 23** simply confirms the percentage of a full time permanent nursing employee's available time in a year which will not be worked, but allocated to annual leave i.e. 190 hours or 228 hours if the employee is a shift worker. The hours stated are factual and contained within the *Nurses Award 2010*

[10] **Paragraph 24** states that unexpected absenteeism, both paid and unpaid, averaged 3.5% of available working time for permanent employees in the example hospital. This equates to an average of 8 days per annum for a full-time employee once allowances are made for annual leave.

PHIEA acknowledges that for reasons of commercial sensitivity, the identity of the hospital cannot be disclosed, however in support of the validity of the data provided in the PHIEA submission, it is of note that the *Australian Public Service Commission State of the Service Report 2014 – 2015* advises that on average, public servant absenteeism (made up of sick and carer's leave), is 11 days per annum. The average of 8 days per annum in the example hospital we have referred to, is less than this Australian Public Service average.

[11] **Paragraph 25** advises that if the employee accrues a day off (ADO), this day on average will be taken once in each 4-week cycle. A provision concerning ADOs is contained within the *Nurses Award 2010* at Clause 21.3

21.3 *An accrued day off (ADO) system of work may be implemented via an employee working no more than 19 days in a four-week period of 152 hours.*

[12] **Paragraph 26** discusses the need to fill available shifts with either part time or casual staff who have the same skills as the person who is being replaced. The need to have a broad base of nursing skills within the casual pool explains why the headcount of casuals may appear high in the sample data provided, but this is not reflected in the percentage of hours worked by casual nurses. The reason for this is because wherever possible, private hospital employers will give their part time employees first preference to elect to work any additional hours that may be required.

In the attached statement, Mr Cooper provides data from his facility demonstrating both additional hours worked by part time nurses and the low percentage of hours worked by casual employees.

Paragraphs 28 – 37 – staffing data

[13] These paragraphs relate to the sample data PHIEA obtained from the industry relating to headcounts of Full Time, Part Time and Casual nursing staff vs the hours worked by each of these employee categories. The point we were demonstrating was that because a casual pool needs to include a broad base of differing nursing skills, the casual headcount may appear high (22.9%), but that the relevant metric is hours worked, which for casual nurses across the sample group of 42.3% of the private hospital industry, was very low at 7.4%.

Appendix 1 of Mr Cooper's statement – *Comparison of Activity and Hours Worked – 2015 FY* provides data from his facility of the low percentage of total hours worked by casual employees.

Paragraphs 42 – 44; 46-49 & 52-55

[14] In the PHIEA submission of 22 February 2016, the above paragraphs provided some commentary on the implications for the private hospital industry if employees had an automatic right to convert to permanent employment after 6 months and featured some deidentified comments from a sample group of Directors of Clinical Services.

These paragraphs are addressed in the attached statement of Mr Cooper on pages 2-4 and at paragraph [12] of his statement, he concurs with the sample group comments.

Paragraph 56

[15] The ANMF has cited paragraph 56 as lacking factual evidence, however this paragraph makes reference to the *Exemplar Nursing Occupational Award 2008,* a document drafted by the ANMF and submitted during the making of the Modern Awards. The paragraph highlights that this document did not contain any minimum engagement periods for part time staff and that the minimum engagement period for casuals was only 2 hours. Significantly, this ANMF draft document reflected provisions in the majority of nursing awards at the time, provisions which subsequently were incorporated in the *Nurses Award 2010.* This *Exemplar Nursing Occupational Award 2008,* was publicly available on the Commission's website during the making of the Modern Awards.

Concluding Comments

[16] As previously stated, the Private Hospital Industry Employers' Associations (PHIEA) did not seek to change the existing provisions in either the Nurses or Health Professionals and Support Services Awards, being of the view that in relation to part time and casual employee provisions, the existing clauses provide both an adequate safety net for employees and sufficient flexibility for employers, to manage fluctuating staffing demands. Our submission of 22 February 2016 was lodged on the basis of providing an overview of the implications associated with introducing the changes proposed by the ACTU and supporting Unions within the Private Hospital industry.

PHIEA remains of the view that this information is highly relevant when considering the common matters of part-time and casual employment in work environments that are not common such as within Private Hospitals, where occupancy and patient acuity are variable, and staffing to optimise patient safety is paramount.

[17] PHIEA strongly disputes the assertions made by the ANMF in its submission of 10 June 2016 that the nominated paragraphs should be disregarded. We sincerely hope that comments

made in our submissions relating to the Part Time & Casual Employment Common Issue will be taken into consideration in determining whether or not the Nurses and Health Professionals & Support Services Awards should be amended from their current wording to incorporate the ACTU common claim.

[18] There is no historical precedent for casual conversion clauses or 4-hour minimum engagement periods for part time and casual employees within the Nurses and Health Professionals and Support Services Awards and we have not seen evidence of any 'exceptional circumstances' having occurred since the Modern Awards were established.

[19] As stated at paragraph [62] of our submission of 22/2/2016 – PHIEA believes that the changes proposed by the ACTU would extend the Modern Award's responsibility to provide a fair and relevant safety net (together with the NES) into the realm of imposing extra costs, reducing productivity, reducing flexibility and increasing regulatory burden on employers and therefore, we believe would be contrary to the modern award objective.

The statement of Mr Alan Cooper forms part of this submission

END OF SUBMISSION

FAIR WORK COMMISSION

Matter No. AM2014/196 & AM 2014/197
Fair Work Act 2009

s.156 – 4 Yearly Review of Modern Awards

4 Yearly Review of Modern Awards – Common Issues – Casual and Part Time Employment

STATEMENT OF ALAN D. COOPER

Chief Executive Officer, Friendly Society Private Hospital, Bundaberg

[1] My name is Alan Cooper and my current position is Chief Executive Officer of the Friendly Society Private Hospital, Bundaberg – a position I have held since 1998. The Friendly Society Private Hospital is a 143 bed regional facility providing a comprehensive range of medical and surgical services, including coronary care and obstetrics.

[2] I am a Registered Nurse (RN) and Fellow of the Australian College of Nursing (FACN). My other professional qualifications include: Masters in Business Administration (MBA); Graduate of the Australian Institute of Company Directors (GAICD); Bachelor of Business (Health Administration) (BBus Hth Admin); and Diploma in Applied Science (Nursing Education) (Dip App Sc Nursing Ed).

[3] I am the current President of the Private Hospitals Association of Queensland (PHAQ), Board Member of the Australian Private Hospitals Association (APHA) and Board Member of Bundaberg Health Promotions. I have worked in the public and private hospital sectors in Queensland and NSW in both clinical and executive roles and have significant experience as a nurse and healthcare executive, in addition to my roles as a representative of industry bodies both in Queensland and throughout Australia.

[4] This statement addresses the relative impact of the casual conversion and part time and casual minimum engagement period claims proposed by the ACTU and supported by the ANMF, and provides support for some of the statements made in the PHIEA submission of 22 February 2016 which were objected to by the ANMF in its reply submission of 10 June 2016. Links to both submissions are provided below.

https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/common/am2014196-197-sub-phiea-220216.pdf

https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/common/am2014196-197-sub-anmf-100616.pdf

The paragraph numbers noted in the section headings of this statement refer to the paragraph numbering in the PHIEA submission of 22 February 2016.

PARAGRAPH 26

[5] I concur with the Statement made by the PHIEA in paragraph 26 of its submission of 22/2/2016. In our facility, first preference to elect to work additional hours that may be required is offered to our current part time employees. This is reflected in the low number of hours currently worked by casual nurses in our facility. In the 2015 financial year, a total of 5069 casual hours were worked by nurses for the entire period, which equates to approximately 9.5 hours per week for each of our casual nursing employees. During the same period, the majority of our part time employees worked in excess of their contracted hours (*Appendix 1 – Extract from Summary of Actual Vs Contracted Hours for Nurses 2015 FY*). This is a direct reflection of our commitment to offer part time employees first preference for any additional hours and to fill available shifts with staff who have the same skills to ensure quality and continuity of care to our patients.

PARAGRAPHS 28-37

[6] *Appendix 2 – Comparison of Activity & Hours Worked* aids in highlighting our facility's commitment to maximising the engagement of permanent staff and demonstrates that our organisation does not use casuals in a manner that departs from the proper purpose and intention of casual employment. As can be seen in *Appendix 2,* the hours worked by our casual workforce equates to 3.72% of our productive hours for that period, and the casual hours of our Nursing staff equates to 0.95%.

Both figures form a very small part of our total hours worked within the facility. Our full time and part time employees worked 96.28% of our productive hours for that period. These statistics also support the information provided in *Appendix 1* to demonstrate a commitment to offer part time employees first preference for any additional hours and available shifts.

[7] Given the fluctuation in our activity, and the required rapid response rate, our nurses are actually requesting that we implement a larger casual pool to offer additional flexibility, while also offering further professional support.

PARAGRAPHS 42-49

[8] Appendix 2 - *Comparison of Activity & Hours Worked* highlights the relationship between hospital occupancy and activity and the utilisation of casual employees. As can be seen from both the table and the graph, there is a consistent pattern and relationship, both with casual hours and corresponding activity. This can also be said with regard to casual hours and holiday periods for our Visiting Medical Officers (VMOs) over the same period.

The relationship between casual hours and facility activity is a direct one. That is to say, as activity increases so does the number of casual hours worked in that month. As there are fluctuations in activity and the permanent employees are already working up to and beyond their minimum contracted hours, casual employees provide the key interface between

periods of high activity, availability of permanent staff and satisfying clinical and operational requirements.

[9] The relationship between casual employment and activity is also demonstrated through the variance in casual hours during VMO leave periods. The number of weeks of leave taken varies between VMOs at our facility, and as independent contractors and not employees, they are at liberty to take as much leave as they desire at the times most suitable to them.

[10] This fluctuation in occupancy and activity is difficult to control and forecast and as such, requires flexibility with staffing. It could be assumed that when occupancy drops, so does the requirement for casuals but this is not necessarily the case. During these quieter periods, such as school holidays, permanent staff are encouraged to take advantage of their accrued leave to spend time with their families. Even if the facility is relatively quiet, it is still required to be fully operational with the appropriate skill mix of staff.

It is during these periods that there is again a reliance on the flexibility of casual employees to ensure operational requirements are met and adequate workforce numbers and skill sets are maintained. This is reflected in the data for the months of November to March and June 2015.

[11] I acknowledge that our organisation has an Enterprise Agreement in place and consequently any changes to the part time and casual provisions would not impact on our organisation immediately, however there are private hospitals and day hospitals which do not have Enterprise Agreements.

Using our facility as an example and assuming we did not have an Enterprise Agreement in place, if the Award was changed to introduce the automatic right of a casual employee to elect to transition to permanent employment after a 6-month period, the resulting inability for our workforce to be able to contract when required would compromise the financial viability of the facility. In the event of this occurring, we would be required to stand-down permanent employees, including potentially standing down the newly appointed permanent employees, which is an undesirable outcome for all parties as it impacts job security.

[12] I also concur with the de-identified comments from the sample group contained in Paragraphs 47 to 49 of the PHIEA submission of 22/2/2016. Having worked in and with numerous hospitals of varying sizes, I can confidently state that this feedback is consistent throughout private hospitals in Queensland and Australia. Any reduction in the current flexibilities available to private hospitals would place economic and operational restrictions on the ability to increase the number of casual or part time employees to meet variable operational requirements.

[13] Our facility makes the very best efforts it can to offer additional hours to our current team members. However, in the event that our existing employees cannot cover the shifts we

need, or do not have the specific skills we need, it is imperative that we have the flexibility to increase our workforce with the appropriate staff, to ensure that quality patient care is not compromised. Our current casual and part time workforce are not always available to work the shifts we require and this has the potential to jeopardise adequate fatigue management. This further demonstrates our need and desire to increase our casual pool as required for the benefit of our current workforce.

PARAGRAPHS 52-55

[14] Under our current industrial agreements, the minimum engagement period for casual nurses is two (2) hours and support staff, three (3) hours. The minimum engagement period of 2 hours for our casual nurses is invaluable to our facility in the delivery of training and mandatory competencies. If this minimum engagement period were to be increased to 4 hours, it would in effect double our expenses for staff development and training and have financial repercussions to our operations. Alternatively, we would need to reduce the frequency of the training and development opportunities to make it more affordable.

[15] From my experiences and the information presented as part of this Statement, I strongly consider the casual conversion claims and 4-hour minimum engagement periods proposed by the ACTU and supported by the ANMF, to be extremely prescriptive and would significantly affect current workforce flexibility which is an essential requirement in our tightly-managed activity-based private hospital industry. As demonstrated by the information presented in this Statement, the very nature of our industry and medical model of care, necessitates flexibility to accommodate operational requirements and ensure the highest quality patient care can be provided.

[16] As an 'Employer of Choice' we are required to display flexibility and offer family and lifestyle friendly working options to attract and retain quality employees. The existing part time and casual employee provisions in the Nurses Award, and the Health Professionals and Support Services Awards provide an adequate safety net for employees and sufficient flexibility for both employees and employers to manage our ever-changing activity, lifestyle and staffing requirements. Significant changes to these provisions would not only affect our bottom line from an operational perspective, but also remove or minimise some of the current flexibilities which our employees both benefit from and enjoy.

Appendix 1 - Extract from Summary of Actual vs Contracted Hours for Nurses 2015 FY and *Appendix 2 – Comparison of Activity and Hours Worked – 2015 FY* form part of this statement.

SIGNED:  DATE: 03.08.2016

APPENDIX 1

EXTRACT FROM SUMMARY OF ACTUAL vs CONTRACTED HOURS FOR NURSES 2015 FY

	HRS WORKED	CONTRACTED HRS	VARIANCE
Employee 1	1802.75	1500	302.75
Employee 1	534	200	334
Employee 1	1932	400	1532
Employee 1	2284	1200	1084
Employee 1	924	900	24
Employee 1	3522	1600	1922
Employee 1	1789.25	1500	289.25
Employee 1	2762.5	1200	1562.5
Employee 1	3867	1400	2467
Employee 1	2364	1600	764
Employee 1	672.25	600	72.25
Employee 1	1708.25	1500	208.25
Employee 1	2527	1800	727
Employee 1	2162.5	400	1762.5
Employee 1	1373.25	1200	173.25
Employee 1	2780	800	1980
Employee 1	1558.75	1400	158.75
Employee 1	1800.5	1800	0.5
Employee 1	1133	800	333
Employee 1	2734.5	1000	1734.5
Employee 1	1260	400	860
Employee 1	1745	1600	145
Employee 1	1751.5	1400	351.5
Employee 1	574.25	500	74.25
Employee 1	3588.5	1600	1988.5
Employee 1	1937.25	1900	37.25
Employee 1	2976.25	1800	1176.25
Employee 1	1045.75	1280	-234.25
Employee 1	1897.5	1600	297.5
Employee 1	1658	1600	58
Employee 1	1504.5	600	904.5
Employee 1	1617.5	1500	117.5
Employee 1	1300	576	724
Employee 1	585	576	9
Employee 1	1174	720	454
Employee 1	515.5	512	3.5
Employee 1	423.25	380	43.25
Employee 1	139.5	64	75.5
Employee 1	58	128	-70
Employee 1	744	900	-156
Employee 1	4009	1800	2209
Employee 1	2127.75	1200	927.75
Employee 1	621.25	600	21.25
Employee 1	3606	1800	1806
Employee 1	1728.25	1600	128.25
Employee 1	1823.75	1800	23.75
Employee 1	1616.5	1600	16.5
Employee 1	1600	1600	0
Employee 1	2216.5	500	1716.5
Employee 1	2176.75	1500	676.75
Employee 1	3575.75	1600	1975.75
Employee 1	1906.75	1600	306.75
Employee 1	1464.75	575	889.75
Employee 1	1821.5	1800	21.5
Employee 1	2459	560	1899
Employee 1	1832.75	1800	32.75

APPENDIX 2

COMPARISON OF ACTIVITY & HOURS WORKED – 2015 FY

	Jul-14	Aug-14	Sep-14	Oct-14	Nov-14	Dec-14	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	TOTAL
Bed days	3393	3280	3391	3430	3331	2791	2894	3116	3272	2763	3413	3100	38174
Prod hrs	45831.92	44526.45	44786.34	46018.44	45109.15	39382.65	40369.9	45001.63	48879.87	42007.93	47401.48	46614.65	535930.4
All Cas	1638.75	1325.75	1481.75	1559.75	1640.5	1653.75	1479.75	1649	1947	1609.75	1916	2021.3	19923.05
Nurse Cas	271.25	312.25	378.75	418.25	416.75	383.5	397	580	557.5	242.5	611	500.25	5069
All Cas	3.58%	2.98%	3.31%	3.39%	3.64%	4.20%	3.67%	3.66%	3.98%	3.83%	4.04%	4.34%	3.72%
Nurse Cas	0.59%	0.70%	0.85%	0.91%	0.92%	0.97%	0.98%	1.29%	1.14%	0.58%	1.29%	1.07%	0.94%