

1 June 2020

AM2016/31

4 YEARLY REVIEW OF MODERN AWARDS – HEALTH PROFESSIONALS AND SUPPORT SERVICES AWARD 2010

Directions of Vice President Catanzariti 18 May 2020 Item 2

Dental Hygienists Association of Australia (DHAA)

Responses to Health Services Union Schedule of Objections to evidence filed 25 May 2020

The Dental Hygienists Association of Australia (DHAA) submits that the Health Services Unions (HSU)'s objections to DHAA's evidence may be summarised as follows:

- a) Relevance
- b) Conclusion
- c) Opinion
- d) Opinion (basis not disclosed)
- e) Speculation

The HSU has not submitted that any of the evidence prejudices their position. The Full Bench stated in the 4 Yearly Review of Modern Awards – Penalty Rates, "this is not an *inter partes* proceeding, it is a review. Consistent with the nature of the Review, public contributions and submissions have been invited as part of the process conducted by the Commission"¹ As such, since DHAA is representing in this matter exactly the same interests as the HSU, namely the interests of all Australian employees who are Dental Hygienists or Oral Health Therapists,

¹ See the Statement made by the Full Bench: [2016] FWCB 285, 15 January 2015.

DHAA submits that the opinions of those professionals on the impact of award coverage should be accepted as evidence by the Full Bench, consistent with the Full Bench’s comment at [21] in the Penalty Rates case² that “given the nature of the review, and subject to natural justice considerations, the Commission may use relevant information and material as it sees fit.” DHAA submits that the absence of economic qualifications does not render a highly experienced health professional unfit to express a reliable, and therefore informative, view on the likely impact of a significant change in their terms and conditions.

DHAA submits that the approach taken by the Full Bench in the 4 yearly review of Modern awards – Textile, Clothing, Footwear and Associated Industries Award 2010 (AM2014/91) with regard to the evidence of Ms M O’Neil, National Secretary of the TCFUA is a useful precedent for these proceedings on which occupations should be covered by the HPSS award. Ms O’ Neil’s evidence was admitted in those proceedings, subject to submissions as to weight.³

The Full Bench decision stated [at 39] that Ms O’Neil’s evidence was “based on her lengthy experience as an officer of the TCFU in various capacities.”⁴ The Full Bench stated [at 40] that “we accept that Ms O’Neil’s evidence was informed by her long involvement in the TCF industry and a depth of understanding of the industry arising from that experience.”⁵ DHAA submits that the same approach should be taken to the evidence of Ms Cheryl Dey, President of DHAA, and Dr Carol Tran, Vice President of DHAA for the same reasons, set out in further detail in the table below.

DHAA refutes in its entirety that the evidence which goes to the ability of the witnesses to know the difference between the duties of private sector oral health therapists and public sector therapists is “opinion.” It is submitted as expert evidence, and it is factual.

In the interests of minimising the number of witnesses to be cross-examined on 11 June 2020, DHAA is prepared to concede to some of the objections of the HSU, provided that the specific sentences of the witness statements are treated as a submission. The sentences with regard to which DHAA is prepared to make this concession are indicated by “*submission*” in the evidence table below.

For the same reasons of expediency, DHAA is prepared to have the witness statements of Benjamin Marchant and Samson Chan, treated as submissions in their entirety.

² [2016] FWCFB 965 page 4

³ [2015] FWCFB 2831 page 10

⁴ Ibid page 11

⁵ Ibid

HSU Objections and DHAA Responses to Statement of Dr Carol TRAN, 27 February 2020

Para	Passage objected to by HSU	Nature of HSU Objection	HSU Submission	DHAA Response
4	Entire paragraph	“Relevance, conclusion, opinion”	“Dr Tran has no identified qualification in labour markets or economics. In the absence of such expertise, Dr Tran’s opinion should not be admitted as to the likely effect of award coverage upon rates of pay. If the paragraph is disallowed, that will obviate the need to cross-examine the witness as to that evidence.”	No qualification in labour economics is necessary for an informed view on likely trends. Not purporting to be expert economic evidence. View is based on knowledge as Vice President of DHAA.
5	Entire paragraph	“Relevance, conclusion, opinion”	“As per 4 above”	As above.
8	Entire paragraph	“Opinion/Submission”		Disputed in full. Dr Tran is a PHD qualified expert in dental hygiene and lectured at the University of Queensland in dentistry and oral health for six years. As such, Dr Tran is entirely qualified to know in detail the difference in duties between a private sector clinician and a public sector dental therapist.

HSU Objections and DHAA Responses to Statement of Dr Carol TRAN, 27 February 2020				
Para	Passage objected to by HSU	Nature of HSU Objection	HSU Submission	DHAA Response
10	Second sentence	“Opinion, basis not disclosed”	“No expert basis (study or experience) is disclosed to support Dr Tran’s view as to the duties performed by other health professionals.”	This information is provided on the basis of expert opinion and is fully within the province of Dr Tran’s expertise re her qualification and six years lecturing at UQ in dentistry and oral health.
11	Entire paragraph	“Opinion”	“No expert basis is disclosed to support Dr Tran’s view as to the duties performed by other health professionals.”	As above. Dr Tran does have the requisite qualifications and expertise to make this statement as evidence.
12	Entire paragraph	“Opinion”	“The review and remuneration of dentists is not a subject matter in which Dr Tran has the disclosed expertise to express the opinion in the paragraph.”	As above. Dr Tran does have the requisite qualifications and expertise to make this statement as evidence.
13	Entire paragraph and reference	“Relevance”		The relevance of the article referred to by Dr Tran is to illustrate her evidence that the duties of an oral health therapist are more similar to a dentist than to a dental therapist.

HSU Objections and DHAA Responses to Statement of Dr Carol TRAN, 27 February 2020				
Para	Passage objected to by HSU	Nature of HSU Objection	HSU Submission	DHAA Response
14	Entire paragraph	“Opinion”	“The review of dentists is not a subject matter in which Dr Tran has the disclosed expertise to express the opinion in the paragraph.”	As above. The information is within the purvey or her professional knowledge and experience.

HSU Objections and DHAA Responses to Statement of Michelle KUSS, 27 February 2020				
Para	Passage objected to by HSU	Nature of HSU Objection	HSU Submission	DHAA Response
4	Entire paragraph	“Relevance, conclusion, opinion”	“Ms Kuss has no identified qualification in labour markets or economics. In the absence of such expertise, Ms Kuss’s opinion should not be admitted as to the likely effect of award coverage upon rates of pay. If the paragraph is disallowed, that will obviate the need to cross-examine the witness as to that evidence.”	No qualification necessary in labour economics for an informed view on likely trends. Not purporting to be expert economic evidence. View is based on knowledge as Treasurer of DHAA and office-holding involvement in the dental industry including currently member of AHPRA Registration and Notification committee.

HSU Objections and DHAA Responses to Statement of Michelle KUSS, 27 February 2020				
Para	Passage objected to by HSU	Nature of HSU Objection	HSU Submission	DHAA Response
5	Entire paragraph	“Relevance, conclusion, opinion”	“As per 4 above”	As above.
8	Entire paragraph	“Opinion/Submission”		Ms Kuss has widespread experience in the dental industry. The specific differences in duties between a public sector dental therapist and private sector Dental Hygienist or Oral Health Therapist is common knowledge to practitioners in the industry.
10	Entire paragraph	“Opinion, basis not disclosed”	“No expert basis (study or experience) is disclosed to support Ms Kuss’s view as to the duties performed by public sector dental therapists.”	As above.
11	Entire paragraph	“Opinion”	“No expert basis is disclosed to support Ms Kuss’s view as to the duties performed by Oral Health Therapists.”	As above.
12	Entire paragraph	“Opinion”	“The review and remuneration of dentists is not a subject matter in which Ms Kuss has the disclosed expertise to express the opinion in the paragraph.”	Submission.

HSU Objections and DHAA Responses to Statement of Michelle KUSS, 27 February 2020				
Para	Passage objected to by HSU	Nature of HSU Objection	HSU Submission	DHAA Response
15	Entire paragraph	“Opinion, basis not disclosed”	“The review and remuneration of dentists or the duties of public sector dental therapists are not subject matter about which Ms Kuss has the disclosed expertise to express the opinion in the paragraph.”	Submission.

HSU Objections and DHAA Responses to statement of Cheryl Louise DEY, 28 February 2020				
Para	Passage objected to by HSU	Nature of HSU Objection	HSU Submission	DHAA Response
4	Entire paragraph	“Relevance, conclusion, opinion”	“Ms Dey has no identified qualification in labour markets or economics. In the absence of such expertise, Ms Dey’s opinion should not be admitted as to the likely effect of award coverage upon rates of pay. If the paragraph is disallowed, that will obviate the need to cross-examine the witness as to that evidence.”	No qualification in labour economics is necessary for an informed view on likely trends. Not purporting to be expert economic evidence. View is based on knowledge as President of DHAA for last two years, and former Treasurer of DHAA for six years and ten years in total on various DHAA Committees, and Ms Dey’s experience in dental industry in general.

HSU Objections and DHAA Responses to statement of Cheryl Louise DEY, 28 February 2020				
Para	Passage objected to by HSU	Nature of HSU Objection	HSU Submission	DHAA Response
5	Entire paragraph	“Relevance, conclusion, opinion”	“As per 4 above”	As above
8	Entire paragraph	“Opinion”	“No expert basis (study or experience) is disclosed to support Ms Dey’s view as to the duties performed by public sector dental therapists.”	The difference in duties is common knowledge. As such Ms Dey is entirely qualified and sufficiently experienced, given her roles in the dental industry and the duties of her roles, to know in detail the difference in duties between a private sector clinician a public sector dental therapist.
10	Entire paragraph	“Opinion, basis not disclosed”	“No expert basis (study or experience) is disclosed to support Dey’s view as to the duties performed by public sector dental therapists.”	As above
11	Entire paragraph	“Opinion”	“No expert basis is disclosed to support Ms Dey’s view as to “public sector dentistry”.	As above.
12	Entire paragraph	“Opinion”	“The review and remuneration of dentists is not a subject matter in which Ms Dey has the disclosed expertise to express the opinion in the paragraph.”	Submission based on experience.

HSU Objections and DHAA Responses to statement of Cheryl Louise DEY, 28 February 2020				
Para	Passage objected to by HSU	Nature of HSU Objection	HSU Submission	DHAA Response
15	Entire paragraph	“Opinion, basis not disclosed”	“The review and remuneration of dentists or the duties of public sector dental therapists are not subject matter about which Ms Dey has the disclosed expertise to express the opinion in the paragraph.”	Submission based on experience.

HSU Objections and DHAA Responses to Statement of Amy McDERMOTT, 28 February 2020				
Para	Passage objected to by HSU	Nature of HSU Objection	HSU Submission	DHAA Response
4	Entire paragraph	“Relevance, conclusion, opinion”	“Ms McDermott has no identified qualification in labour markets or economics. In the absence of such expertise, Ms McDermott’s opinion should not be admitted as to the likely effect of award coverage upon rates of pay. If the paragraph is disallowed, that will obviate the need to cross-examine the witness as to that evidence.”	Submission
5	Entire paragraph	“Relevance, conclusion, opinion”	“As per 4 above”	Submission

HSU Objections and DHAA Responses to Statement of Amy McDERMOTT, 28 February 2020				
Para	Passage objected to by HSU	Nature of HSU Objection	HSU Submission	DHAA Response
8	Entire paragraph	"Opinion/Submission"	"No expert basis (study or experience) is disclosed to support Ms McDermott's view as to the duties performed by public sector dental therapists."	Submission however the difference is common knowledge.
10	Entire paragraph	"Opinion, basis not disclosed"	"No expert basis (study or experience) is disclosed to support Ms McDermott's view as to the duties performed by public sector dental therapists."	Submission
11	Entire paragraph	"Opinion"	"No expert basis is disclosed to support Ms Ms McDermott's view as to "public sector dentistry".	Submission
12	Entire paragraph	"Opinion"	"The review and remuneration of dentists is not a subject matter in which Ms McDermott has the disclosed expertise to express the opinion in the paragraph."	Submission
15	Entire paragraph	"Opinion, basis not disclosed"	"The review and remuneration of dentists or the duties of public sector dental therapists are not subject matter about which Ms McDermott has the disclosed expertise to express the opinion in the paragraph."	Submission

HSU Objections and DHAA Responses Statement of Kay BALL, 16 June 2019				
Para	Passage objected to by HSU	Nature of HSU Objection	Submission of HSU	DHAA Response
9	Entire paragraph	"Speculation"		Submission
10	Entire paragraph	"Speculation"		Submission
11	Entire paragraph	"Speculation"		Submission
12	Entire paragraph	"Conclusion/Opinion/Submission"		Submission
13	Entire paragraph	"Speculation"		Submission
15	Entire paragraph	"Opinion"		Submission
16	Entire paragraph	"Opinion"		Submission
17	Entire paragraph	"Opinion/Speculation"		Submission
18	Entire paragraph	"Opinion"		Submission
19	Entire paragraph	"Opinion"		Submission

HSU Objections and DHAA Responses to Statement of Alison TAYLOR, 19 June 2019				
Para	Passage objected to by HSU	Nature of HSU Objection	HSU Submission	DHAA Response
6	Entire paragraph	"Speculation/Opinion"		Submission
7	Entire paragraph	"Speculation/Opinion"		Submission
8	Entire paragraph	"Opinion"		Submission

HSU Objections and DHAA Responses to Statement of Susan MELROSE, 26 June 2019				
Para	Passage objected to by HSU	Nature of HSU Objection	HSU Submission	DHAA Response
7	Entire paragraph	"Speculation"		Submission
8	Entire paragraph	"Speculation"		Submission
9	Entire paragraph	"Speculation"		Submission
10	Entire paragraph	"Opinion/Submission"		Submission
11	Entire paragraph	"Speculation"		Submission
13	Entire paragraph	"Opinion/Relevance"		Submission
14	Entire paragraph	"Speculation/Opinion"		Submission

HSU Objections and DHAA Responses to Statement of Susan MELROSE, 26 June 2019				
Para	Passage objected to by HSU	Nature of HSU Objection	HSU Submission	DHAA Response
15	Entire paragraph	“Opinion/Speculation”		Submission
16	Entire paragraph	“Opinion”		Submission
17	Entire paragraph	“Opinion”		Submission

HSU Objections and DHAA Responses to Statement of Christina ZERK, 24 June 2019				
Para	Passage objected to by HSU	Nature of HSU Objection	HSU Submission	DHAA Response
7	Entire paragraph	“Speculation”		Submission
8	Entire paragraph	“Speculation”		Submission
9	Entire paragraph	“Speculation”		Submission
10	Entire paragraph	“Opinion/Submission”		Submission
11	Entire paragraph	“Speculation”		Submission
13	Entire paragraph	“Opinion/Relevance”		Submission
14	Entire paragraph	“Speculation/Opinion”		Submission

HSU Objections and DHAA Responses to Statement of Christina ZERK, 24 June 2019				
Para	Passage objected to by HSU	Nature of HSU Objection	HSU Submission	DHAA Response
15	Entire paragraph	“Opinion/Speculation”		Submission
16	Entire paragraph	“Opinion”		Submission
17	Entire paragraph	“Opinion”		Submission

HSU Objections and DHAA Responses to Statement of Lyn CARMAN, 30 July 2019				
Para	Passage objected to by HSU	Nature of HSU Objection	HSU Submission	DHAA Response
9	Second sentence	“Speculation”		Submission
10	Entire paragraph	“Opinion”		Submission
11	Entire paragraph	“Speculation”		Submission
13	Entire paragraph	“Opinion/Speculation”		Submission
14	Entire paragraph	“Speculation/Opinion”		Submission
15	Entire paragraph	“Opinion/Speculation”		Submission
16	Entire paragraph	“Opinion”		Submission

HSU Objections and DHAA Responses to Statement of Lyn CARMAN, 30 July 2019				
Para	Passage objected to by HSU	Nature of HSU Objection	HSU Submission	DHAA Response
17	Entire paragraph	“Opinion”		Submission
18	Entire paragraph	“Opinion”		Submission

HSU Objections and DHAA Responses to Statement of Benjamin MARCHANT, 16 July 2019				
Para	Passage objected to by HSU	Nature of HSU Objection	HSU Submission	DHAA Response
All	Entire statement	“Opinion, basis not disclosed Relevance Speculation”		<p>The relevance of the Mr Marchant’s statement is to give evidence of the adverse consequence of award coverage of pharmacists on their real wage. Pharmacists. Pharmacists were award free until 2010 and are now covered by an award. The purpose of the statement is to draw a comparison between the real wage outcome of pharmacists after award coverage to what may also occur with dental hygienists and oral health therapists.</p> <p>DHAA is prepared for the witness statement to be treated as a public interest submission</p>

HSU Objections and DHAA Responses to Statement of Samson CHAN, 30 July 2019				
Para	Passage objected to by HSU	Nature of HSU Objection	HSU Submission	DHAA Response
All	Entire statement	“Relevance Speculation”		<p>The relevance of Mr Chan’s statement is to give evidence of the adverse consequence of award coverage of pharmacists on their real wage. Pharmacists were award free until 2010 and are now covered by an award. The purpose of the statement is to draw a comparison between the real wage outcome of pharmacists after award coverage to what may also occur with dental hygienists and oral health therapists.</p> <p>DHAA is prepared for the witness statement to be treated as a public interest submission.</p>

**Filed by Katrina Murphy, KMIR on behalf of Dental Hygienists Association of Australia,
1 June 2020.**

katrina@kmir.com.au

(0419) 325 954