

HEALTH PROFESSIONALS AND SUPPORT SERVICES AWARD 2010 (AM2016/31)

SUBMISSIONS DATED 13 FEBRUARY 2018

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1. INTRODUCTION

The Chiropractors' Association of Australia (National) Limited (**CAA**) makes these submissions pursuant to Directions made by the Fair Work Commission (**Commission**) dated 21 December 2017 relating to the *Health Professionals and Support Services Award 2010 (HPSS Award)*.

The CAA refers to and relies on:

- 1.1 its written submissions dated 17 March 2017 (**CAA Submissions**) and reply submissions dated 22 May 2017 (**CAA Reply Submissions**);
- 1.2 its oral submissions made on 11 December 2017 (see Transcript of Proceedings 1055480 at paragraphs PN1042 to PN1065); and
- 1.3 Exhibits CAA1 (Statement of Matthew William Fisher Dated 17 March 2017), CAA2 (Statement of Matthew William Fisher Dated 22 May 2017), CAA3 (Draft Determination), CAA4 (Schedule 2 to the CAA Submissions, Summary of Award Coverage and Tables) and CAA5 (Letter from the Fair Work Ombudsman Dated 1 June 2012).\

The CAA proposes a variation to clause 24 – Span of Hours¹ to include a span of hours specific to chiropractic practices (**Variation 1A**). In short, the proposed variation is intended to provide for ordinary hours of work on a Saturday (which will be compensated via a Saturday loading in accordance with clause 26.1 of the HPSS Award) and shift the commencement and finishing time for ordinary hours during the week to 7.00am to 8.00pm. This will have the effect of slightly expanding the number of ordinary hours contained in the span of hours on Monday to Friday (by one additional hour).

To be clear, however, the CAA supports rationalising the span of hours provision to two separate spans, such as a span that applies to facilities which provide care on a 24/7 basis and one which applies to private practice (e.g. by expanding the current definition of “private medical, dental and pathology practice” to encompass all private practices) or all private allied health practices. This is set out in the alternative variation to the span of hours (**Variation 1B**).

The CAA also proposes several variations to address ambiguities in the HPSS Award (**Variation 2**).

¹ Note this is clause 8 in the Revised Exposure Draft.

The Variations are set out in Attachment 1.

2. BACKGROUND, AWARD COVERAGE HISTORY & AWARD MODERNISATION

We refer to and repeat paragraphs 2.1 to 2.13, 3.1 to 3.2 and 4.1 to 4.3 of the CAA Submissions and our oral submissions, particularly at paragraphs PN1044, PN1045, PN1052 and PN1053.

3. LEGAL FRAMEWORK

3.1 We refer to and repeat paragraphs 5.1 to 5.11 of the CAA Submissions and our oral submissions, particularly at PN1042 to PN1053.

3.2 It is the Commission's function to ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions, and in doing so must take into account the considerations set out in section 134(1)(a) to (h) of the *Fair Work Act 2009* (Cth) (**Act**).

3.3 However, while the considerations in section 134(a) to (h) inform the evaluation of what might constitute a "fair and relevant minimum safety net of terms and conditions" they do not necessarily exhaust the matters that the Commission might properly consider to be relevant to that standard.² The Commission is entitled to conceptualise those criteria by reference to the potential universe of relevant facts, relevance being determined by implication from the subject matter, scope and purpose of the Act.³

3.4 It is appropriate for the Commission to have regard to the historical context as well as the contemporary context in exercising its function.⁴

4. SUBMISSIONS TO VARY THE SPAN OF HOURS PROVISION IN ACCORDANCE WITH PROPOSED VARIATION 1A

We refer to and repeat paragraphs 6.1 to 6.8 of the CAA Submissions, 2.2 to 2.5 of the CAA Reply Submissions and our oral submissions generally.

These submissions can be summarised as follows:

4.1 Section 134(1) – "fair and relevant"

Relevance

4.1.1 The Commission is required to consider whether the award being reviewed provides a "relevant" minimum safety net of terms and conditions. The Full Bench has held that the term "relevant" is "intended to convey that a modern award should be suited to contemporary circumstances."⁵

4.1.2 Furthermore, the Explanatory Memorandum to the *Fair Work Bill 2009* states:

² *Shop, Distributive and Allied Employees Association v The Australian Industry Group* [2017] FCAFC 161, [48].

³ *Ibid*, [49].

⁴ *Ibid*, [60].

⁵ *4-yearly review of modern awards – Penalty Rates* [2017] FWCFB 1001, [37].

“In ensuring that the minimum safety net of terms and conditions is relevant, it is anticipated that FWA will take account of changes in community standards and expectations, and that the terms and conditions will be tailored (as appropriate) to the specific industry or occupation covered by the award.”⁶

- 4.1.3 The uncontested evidence in this case demonstrates that most chiropractic practices open Monday to Friday largely between the hours of 7.00am and 8.00pm and Saturday between the hours of 7.00am and 2.00pm (and are not operating only within the limited span currently contained in the HPSS Award). In other words, these are the contemporary circumstances that prevail in the chiropractic industry.
- 4.1.4 Practice operating hours are largely dictated by the needs of patients to access care outside of their own usual working hours, accordingly, within this context it is necessary and appropriate that chiropractic practices should be better enabled to provide these services at times that are convenient to the community. These are the community standards and expectations that apply.
- 4.1.5 It is axiomatically the case that most modern awards reflect the trading hours of the relevant industry and in fact the HPSS Award also does this (to an extent) by the various spans contained in clause 24. However, the span of hours provision is not properly tailored to the chiropractic industry. We refer to paragraphs 4.9.5 and 4.12 of these submissions.
- 4.1.6 The current span of hours provided in clause 24.1 is not suited to the contemporary circumstances prevailing in the chiropractic industry and as such is not “relevant” and this weighs in favour of the Commission granting the variation sought.

Fairness

- 4.1.7 The Commission is also required to consider whether the award being reviewed provides a “fair” safety net of terms and conditions. The Full Bench has held that “fairness” in this context is “to be assessed from the perspective of the employees and employers covered by the modern award in question”.⁷
- 4.1.8 The CAA submits that the HPSS Award operates unfairly on both chiropractic employers and employees compared to other employers and employees also covered by the HPSS Award.
- 4.1.9 Relevantly, the span of hours for chiropractic practices contained in clause 24.1 of the HPSS Award is significantly more limited than the span of hours currently applying in other arguably equivalent allied health professions, including:
- (a) “private medical, dental and pathology practices” where under clause 24.2 of the HPSS Award, ordinary hours can currently be worked between 7:30am and 9pm Monday to Friday and between 8am and 4:30pm on Saturday; and

⁶ See paragraph 518.

⁷ *4 yearly review of modern awards – Penalty Rates* [2017] FWCFB 1001, [37].

- (b) “physiotherapy practices” where under clause 24.4 of the HPSS Award, ordinary hours can also currently be worked on Saturdays.
- 4.1.10 As, prior to the modern award, chiropractors were effectively award-free, there was no span of hours that applied and such chiropractors could work ordinary hours outside of traditional business hours, such as on evenings and weekends, without any penalties applying.
- 4.1.11 Similarly, the ordinary hours of work for chiropractic assistants (who were generally covered by pre-modern clerks awards) formerly included Saturdays in most jurisdictions. In fact, when considering the span of hours prescribed by the various clerical pre-modern awards (which was included in Table 5 of Schedule 2 to the CAA Submissions), it is immediately apparent that clause 24.1 of the HPSS Award has a much different and often smaller span of hours than was provided for in most of the applicable pre-modern awards with respect to clerical workers in the chiropractic industry.
- 4.1.12 Despite this (and presumably because the issue of the operating hours for chiropractic practices was not specifically considered in the award modernisation process) chiropractic practices were included in the general span of hours contained in the HPSS Award.
- 4.1.13 This had the consequence of converting a day worker (in the chiropractic industry) who is regularly rostered to work past 6pm and/or on Saturdays into a shiftworker, which has resulted in two significant anomalies:
- (a) firstly, it treats all shiftwork the same and an employee who works the majority (or all) of their hours outside of the span of hours for a day worker is compensated in exactly the same way as an employee who works the majority of their hours within the span of hours for a day worker (e.g. an employee who works from 12.00pm to 6.15pm is entitled to the same rate of pay as an employee who works from 6pm to 12.15am). There must be a much greater disutility experienced by an employee working most or all their hours outside of the general span; and
- (b) secondly, it disentitles employees in the chiropractic industry working on a Saturday to receive a Saturday loading (because they are not day workers), which means that a chiropractic employee could receive less pay than another employee covered by the HPSS Award whilst performing similar work (e.g. support services) and during the same hours (e.g. 8am to 12pm on a Saturday), which is plainly unfair (and also inconsistent with the pre-modern award position as it applied to most chiropractic assistants).
- 4.1.14 In addition, many non-chiropractic employers covered by the HPSS Award are not required to pay shift loadings to employees who work beyond 6.00pm because their span of hours is tailored to their industry and therefore covers evening work. It seems illogical and unfair that chiropractic employers are having to pay shift loadings to employees who work in what would be considered normal trading hours for the chiropractic profession (in circumstances where other health practices covered by the HPSS Award do not). In this regard, chiropractic employers are at a distinct

disadvantage as compared to other private health practices, like private medical, dental and pathology practices, whose ordinary hours include hours beyond 6.00pm during the week.

4.1.15 Although the unfair cost consequences associated with the current span is obviously an issue, there is also the additional regulatory burden associated with calculating specific payments owed to an employee for working shift work. Notably, this is also relevant to the Commission's consideration of whether the HPSS Award meets the objective in s. 134(1)(f). Prior to the introduction of the HPSS Award, shift work was not a feature of the chiropractic industry and employers were not, generally speaking, required to administer shift work loadings. In other words, there is a greater regulatory burden imposed on employers because of the current limited span of hours contained in clause 24.1. This is unfair because many other employers are not required to pay and therefore administer shift work loadings despite that their operating hours are effectively the same (or very similar) to those of chiropractic employers.

4.1.16 Accordingly, the HPSS Award does not meet the modern award objective to provide a "fair" minimum safety net because it operates unfairly on chiropractic employers compared to other employers covered by the award, both in terms of its cost consequences and the additional regulatory burden associated with calculating shift work loadings. It also operates unfairly on chiropractic employees in terms of their remuneration.

4.1.17 The variation proposed would largely resolve these unfairnesses which weighs in favour of the Commission granting the variation sought.

4.2 Section 134(1)(a) - Relative living standards and the needs of the low paid

4.2.1 It is probable that the effect of this variation will be to reduce the incidence of shift work penalties within the chiropractic industry which may impact on some "low paid" workers. Conversely, Saturday loadings will be payable for the first time and it is also probable that the variation will result in a greater demand for labour in the evenings.

4.2.2 Accordingly, the CAA accepts that whilst there may be an impact on the "low-paid", that impact may ultimately be neutral. In any event, this factor alone is not determinative and does not preclude the Commission from making the variation sought. Furthermore, it ought to be relevant that no evening/shift work penalties apply to private medical, dental and pathology practices and private medical imaging practices, where the span of hours is even later than the span being sought by the CAA. That is, the impact on the "low paid" can theoretically be no greater than that which is experienced by support staff in these other professions.

4.3 Section 134(1)(b) - The need to encourage collective bargaining

4.3.1 The uncontested evidence in this case is that the overwhelming majority of businesses within the chiropractic industry are small or micro businesses. As a matter of logic, collective bargaining is

unusual in the context of such businesses (moreover, there is a legislative prohibition on making an enterprise agreement with a single employee)⁸.

4.3.2 Furthermore, no evidence has been submitted that establishes that the variation would run contrary to the need to encourage collective bargaining.

4.3.3 The CAA does not consider that the inclusion of the variation itself nor its application would act as a disincentive to employers or employees in collective bargaining. There remains scope for parties to negotiate a different span of hours appropriate to the individual enterprise if needs be. This is a neutral consideration in this matter.

4.4 Section 134(1)(c) - The need to promote social inclusion through increased workforce participation

The objective behind s.134(1)(c) may be met by the variation sought, however, the variation proposed would at the very least not run contrary to the need to promote social inclusion through increased workforce participation. This is a neutral consideration in this matter.

4.5 Section 134(1)(d) - The need to promote flexible modern work practices and the efficient and productive performance of work

Except to the extent that the variation proposed potentially encourages chiropractic employers to engage employees to perform work in the evenings/Saturdays (which may be preferred by those, for example, with carer or parental responsibilities), the variation proposed does not promote flexible modern work practices and the efficient and productive performance of work. This factor is a neutral consideration in this matter.

4.6 Section 134(1)(da) - The need to provide additional remuneration

4.6.1 The Full Bench has made clear that in assessing “the need to provide additional remuneration” to employees working in the circumstances identified in ss.134(1)(da)(i) to (iv), the Commission must have regard to a range of matters, including:

- (a) the impact of working at such times or on such days on the employees concerned (i.e. the extent of the disutility);
- (b) the terms of the relevant modern award, in particular, whether it already compensates employees for working at such times or on such days; and
- (c) the extent to which working at such times or on such days is a feature of the industry regulated by the particular modern award.⁹

4.6.2 The Full Bench rejected the notion that section 134(1)(da) *required* that additional remuneration be paid for working in the circumstances prescribed.¹⁰

⁸ See section 172(6) of the Act.

⁹ *4 yearly review of modern awards – Penalty Rates* [2017] FWCFB 1001, [45], [190].

4.6.3 Extent of the disutility

- (a) The CAA accepts that there is a disutility associated with working on a Saturday and in the evening. However, it is our submission that the extent of the disutility for those in the chiropractic industry is unlikely to be any greater than experienced by employees in the private medical, dental and pathology industries and the private medical imaging industry (and insofar as the variation relates to Saturdays, the physiotherapy industry).
- (b) In the experience of CAA members, it is not uncommon for employees in the chiropractic industry to prefer evening/Saturday work (for example, as a parent wanting to work flexibly at night/Saturdays to enable his/her partner to care for the child or to enable school drop-offs).¹¹

4.6.4 Compensation already provided

- (a) The minimum wage rates in the HPSS Award do not already compensate employees for working on weekends or evenings.
- (b) If the variation is granted, employees would be entitled to receive “additional remuneration” in the form of a Saturday loading (being 150% of the relevant minimum hourly rate). That is, insofar as the Commission is required to consider the need to provide additional remuneration to those employees working on a Saturday, this factor will be met if the Variation is made.
- (c) The CAA accepts that the variation has the effect of possibly reducing the earnings of employees who regularly work beyond 6.00pm, Monday to Friday as these employees will no longer be deemed “shiftworkers” and therefore will not be entitled to a shiftwork loading (for shifts finishing between 6.00pm and 8.00am), although it seems that chiropractic employees have been inappropriately captured by the shiftworker provisions and this has operated unfairly on employers.
- (d) If the Commission wishes to attach some weight to this factor, the CAA notes that this issue is not determinative and it does not prohibit the Commission from making the change sought, particularly given that fair compensation for the disutility associated with working on Saturdays will be made.

4.6.5 Feature of the Industry

- (a) The uncontested evidence in this case demonstrates that work after 6.00pm on Monday to Friday and on Saturdays is a common feature of the chiropractic industry.
- (b) Furthermore, these hours are dictated by the needs of patients to access care outside of their own usual working hours. It is the CAA’s submission that within this context it is necessary and

¹⁰ *ibid* [194].

¹¹ See further, Table 2 of Schedule 2 to the CAA Submissions, which indicates that employees’/practitioners’ need for flexible evening/weekend shifts was the third most important factor in determining opening hours.

appropriate that chiropractic practices should be enabled to provide these services at times that are convenient to the community.

- (c) The CAA seeks only that which is readily offered to other health businesses, namely the opportunity to work ordinary hours during what would be considered typical operating hours – and with the same cost consequences. While it is acknowledged that additional compensation was not previously paid to chiropractors prior to the introduction of the HPSS Award, such compensation was common in the clerical pre-modern awards, which is also set out in Table 2 of Schedule 2 of the CAA Submissions. In other words, unlike the shift work loading, the CAA accepts that it is appropriate for a Saturday penalty to apply.

4.6.6 The CAA submits that on balance the variation supports the need to provide additional remuneration, or insofar as it does not support the need to provide additional remuneration, it is appropriate to make the variation sought given the need for patients to access health services and that evening work is a common feature of the industry.

4.7 Section 134(1)(e) - The principle of equal remuneration for work of equal or comparable value

4.7.1 Any increases or reductions in the remuneration of employees in the chiropractic industry as a result of the variation to the span of hours would apply equally to men and women workers. As such, s.134(1)(e) is a neutral consideration in this matter.

4.8 Section 134(1)(f) – the likely impact on business, including on productivity, employment costs and the regulatory burden

4.8.1 Section 134(1)(f) requires the Commission to “take into account the likely impact of any exercise of modern award powers ‘on business, including’ (but not confined to) the specific matters mentioned”.¹²

4.8.2 The objective of the modern award was not intended to increase costs for employers but the inclusion of chiropractic practices under the general span of hours and the consequential application of the shift work provisions has certainly had this effect. Furthermore, as the chiropractic industry is dominated by small and micro business, the viability of practices is sensitive. It can be difficult for practices to absorb additional wages and compliance costs. Chiropractors operate on a fee-for-service basis. Increased costs have either to be passed onto patients (which may inflate the cost of healthcare and affect healthcare affordability) or absorbed in the margins (which for small and micro businesses may not always be possible).

4.8.3 The variation sought would have the effect of rectifying the issue of the shift work loading being inappropriately paid to chiropractic employees (so that only chiropractic employees that work beyond 8.00pm would be entitled to the shift work loading). This would have a beneficial impact on the employment costs of business and this therefore weighs in favour of granting the variation.

¹² 4 yearly review of modern awards – Penalty Rates [2017] FWCFB 1001, [218].

4.8.4 Moreover, the CAA submits for many businesses there has been a consequential regulatory burden of calculating specific payments owed to an employee for working shift work (which can be particularly burdensome where the employee works a mixture of day work and shift work). This burden is also arguably greater for such industries like the chiropractic industry because it is dominated by small and micro business who usually do not employ dedicated human resource professionals.¹³ The variation would reduce the regulatory burden on business and accordingly this factor also weighs in favour of granting the variation.

4.9 Section 134(1)(g) – The need to ensure a simple, easy to understand, stable and sustainable modern award system

4.9.1 The CAA submits that its inclusion under the general span of hours contained in clause 24.1 of the HPSS Award has caused confusion as to the appropriate rate of pay for chiropractic employees that work on weekends and evenings. A fact which has also been recognised by the Fair Work Ombudsman.¹⁴

4.9.2 Any uncertainties that exist in the various penalty rates provisions (or those they interact with) presents a potential compliance issue for chiropractic employers and there is a real risk of employees unwittingly being either underpaid or overpaid these entitlements.

4.9.3 It is the CAA's submission that it is important that the HPSS Award is drafted in simple and easy to understand ways that make it clear what the appropriate rates of pay are. The CAA submits that the proposed variation will go some way to address the confusion that exists in relation to pay rates (e.g. the appropriate rate of pay for a worker prior to 6pm on a Saturday) and the need to ensure modern awards are simple and easy to understand, which weighs in favour of granting the proposal.

4.9.4 The CAA refutes the HSU's assertion that the HPSS Award is ambiguous because it contains multiple spans.

4.9.5 Many awards provide span of hours provisions that vary according to the industry or sub-industry covered by the award. We refer to paragraph 4.12 of these submissions.

4.10 Section 134(1)(h) - The likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy

The variation sought is unlikely to have economy-wide impacts and this is a neutral consideration in this matter.

4.11 Historical context

¹³ See for example, Survey of Members 2017, question 6 – 95.55% of respondents indicated they did not employ a dedicated human resources manager in their clinic.

¹⁴ See for example, Letter from the Fair Work Ombudsman dated 11 April 2014, *FWO Research for Modern Award Review on base rates of pay, overtime and penalties*, Appendix F, p.47.

4.11.1 The Commission may have regard to the historical context and the historical context in this case is compelling, particularly the uncontested evidence that:

- (a) prior to the introduction of the modern award, chiropractors were essentially award-free and most businesses operated outside of traditional business hours including evenings and Saturdays to accommodate working patients. Chiropractors were not entitled to evening or weekend penalties and shift work was not a feature of the industry;
- (b) prior to the introduction of the modern award, chiropractic assistants were largely covered by general clerical awards and the majority of these provided for ordinary hours on Saturdays; and
- (c) at the time of making the award, a span of hours was adopted from various industrial instruments (many of which were specific to hospital work) without any consideration of the features and characteristics of the chiropractic industry.

4.11.2 As noted, the adoption of the current span of hours has been problematic for the chiropractic industry in several significant ways, including that it has led to increased employment costs, imposed greater regulatory burdens on business and created confusion with respect to rates of pay. These issues are compounded by the fact that the industry is dominated by micro and small business employers, whose margins are sensitive and who usually do not employ dedicated human resource professionals.¹⁵

4.12 Other Industries

There is nothing unusual or confusing about an award which attempts to meet the needs of its varied subsectors, including for example:

- 4.12.1 clauses 27, 33, 45, 55, 61, 67 and 73 of the *Broadcasting, Recorded Entertainment & Cinemas Award 2010*;
- 4.12.2 clause 25.1 of the *Clerks – Private Sector Award 2010*;
- 4.12.3 clause 21 of the *Dry Cleaning & Laundry Industry Award 2010*;
- 4.12.4 clause 27 of the *General Retail Industry Award 2010*;
- 4.12.5 clause 30 of the *Graphic Arts, Printing & Publishing Award 2010*;
- 4.12.6 clauses 26, 32 and 45 of the *Live Performance Award 2010*;
- 4.12.7 clause 20 of the *Marine Tourism & Charter Vessels Award 2010*;
- 4.12.8 clause 31 of the *Meat Industry Award 2010*;

¹⁵ See for example, Survey of Members 2017, question 6 – 95.55% of respondents indicated they did not employ a dedicated human resources manager in their clinic.

4.12.9 clauses 37, 53 and 61 of the *Vehicle Manufacturing, Repair, Services & Retail Award 2010*;

4.12.10 clauses 10, 30 and 34 of the *Victorian State Government Agencies Award 2010*;

4.12.11 clause 28 of the *Wine Industry Award 2010*.

4.13 Conclusion

The proposed variation is necessary to ensure that the HPSS Award, together with the NES, provides a “fair and relevant” minimum safety net for the chiropractic industry. In short, if the Variation is granted, the HPSS Award will achieve the modern award objectives because:

4.13.1 it will reflect standard chiropractic operating hours and so is a more “relevant” minimum safety net of terms and conditions;

4.13.2 it will make the award “fair” for employers and employees by:

(a) ensuring chiropractic employees are remunerated for working in the evening or on a Saturday at rates that are consistent with other employees covered by the HPSS Award;

(b) ensuring chiropractic employees are entitled to an appropriate penalty for working on a Saturday (which is also relevant in assessing whether the award meets the need to provide additional remuneration to employees working on weekends);

(c) removing the disadvantage suffered by chiropractic employers in having to administer and pay shift loadings to employees who work in what would be considered normal trading hours for the chiropractic profession (in circumstances where other health practices covered by the HPSS Award do not).

4.13.3 it will likely reduce the employment costs of business by:

(a) only providing a shiftwork loading for chiropractic employees that work beyond 8.00pm (rather than 6.00pm) which is less common within the industry;

(b) removing the confusion associated with the appropriate rates of pay for work on a Saturday and reducing the costs of (incorrectly) applying overtime rates;

4.13.4 it will likely reduce the (unfair) regulatory burden suffered by chiropractic employers in having to administer and calculate shift work loadings;

4.13.5 it will make the award simpler and easier to understand by removing the confusion associated with pay rates for working evenings, weekends and overtime.

5. SUBMISSION TO VARY THE FURTHER REVISED EXPOSURE DRAFT OF THE HPSS AWARD – TECHNICAL ASPECTS

We refer to and repeat paragraph 7 of the CAA Submissions and our oral submissions, particularly PN1062. These variations appear to be unopposed.

6. CONCLUSION

For the reasons outlined in this submission, the CAA's proposals to vary clause 24.1 (span of hours) of the HPSS Award, and clauses 8.1 (ordinary hours), 18.1 (weekend penalties for day workers), 18.4 (shiftworker penalties) and 19.1 (overtime) should be accepted and the variations made.

For completeness we note the CAA seeks in the alternative, that if the Commission is instead minded to rationalise the span of hours provision to two separate spans, such as one span applies to facilities which provide care on a 24/7 basis and the other applies to private practice, the variation set out in Variation 1B.

ATTACHMENT 1 – VARIATION 1A, VARIATION 1B and VARIATION 2

VARIATION 1A

PRXXXX

FAIR WORK COMMISSION

DRAFT DETERMINATION

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards—*Health Professionals and Support Services Award 2010*
(AM2014/204)

HEALTH PROFESSIONALS AND SUPPORT SERVICES AWARD 2010

[MA000027]

Health Professionals and Support Services

[MEMBERS]

[LOCATION, DATE]

4 yearly review of modern awards.

A. Further to the Full Bench decision issued by the Fair Work Commission on [date], the above award is varied as follows:

1. By adding new clause 24.5:

24.5 Chiropractic practices

In chiropractic practices, the ordinary hours of work for a day worker may be worked within the following span of hours:

Day	Span of hours
Monday to Friday	7:00am to 8:00pm
Saturday	7:00am to 2:00pm

ALTERNATIVE - VARIATION 1B

PRXXXX

FAIR WORK COMMISSION

DRAFT DETERMINATION

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards—*Health Professionals and Support Services Award 2010*
(AM2014/204)

HEALTH PROFESSIONALS AND SUPPORT SERVICES AWARD 2010

[MA000027]

Health Professionals and Support Services

[MEMBERS]

[LOCATION, DATE]

4 yearly review of modern awards.

A. Further to the Full Bench decision issued by the Fair Work Commission on [date], the above award is varied as follows:

1. By adding new clauses 24.1 and 24.2 and deleting clauses 24.3(a) and 24.4 (and consequential amendments):

24.1 Span of hours for 24/7 operations

The ordinary hours of work for a day worker are worked between 6.00 am and 6.00 pm, Monday to Friday.

24.2 Span of hours for private medical, dental, pathology and health practice

The ordinary hours of work for an employee in a private medical, dental, pathology and health practice are worked between:

Day	Span of hours
Monday to Friday	7:30am to 9:00pm
Saturday	8:00am to 4:30pm

24.3 Private medical imaging – 7 day practices

Where the work location of a **private medical imaging** practice services patients on a seven day a week basis, the ordinary hours of work for an employee at that location will be between 7.00 am and 9.00 pm Monday to Sunday. Work performed on a Saturday will be paid at the rate of time and

a quarter of the employee's ordinary rate of pay instead of the loading prescribed in clause 26— Saturday and Sunday work. Work performed on a Sunday will be paid at the rate of time and a half of the employee's ordinary rate of pay instead of the loading prescribed in clause 26.

2. By amending the definition of "private medical, dental and pathology practice" in clause 3.1 to:

private medical, dental, pathology and health practice means the practice of any medical practitioner, such as medical centre, general practice, specialist practice, family practice, medical clinic, dental practice, pathology practice, medical imaging practices (other than 7-day practices), health practices including chiropractic, physiotherapy, osteopathy, podiatry, traditional and complementary medicines, and women's health centre or a multi-disciplinary practice, but does not include inpatient care, hospitals or hospices.

VARIATION 2

PRXXXX

FAIR WORK COMMISSION

DRAFT DETERMINATION

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards—*Health Professionals and Support Services Award 2010*
(AM2014/204)

HEALTH PROFESSIONALS AND SUPPORT SERVICES AWARD 2010

[MA000027]

Health Professionals and Support Services

[MEMBERS]

[LOCATION, DATE]

4 yearly review of modern awards.

A. Further to the Full Bench decision issued by the Fair Work Commission on [date], the above award¹⁶ is varied as follows:

1. By replacing clause 18.1 with:

18.1 Weekend penalties – day worker¹⁷

Except in the case of private medical seven-day imaging practices, work performed by a day worker on a Saturday or Sunday in accordance with clause 8.2 will be paid at the rate of 150% of the minimum hourly rate applicable to their classification and pay point.”

2. By amending clause 8.1 to:

Clause 8.1 Ordinary hours

The ordinary hours of work for a full-time employee are an average of 38 hours per week, 76 hours in a fortnight, or 152 hours in a four-week period...”

3. By amending clause 19.1 to:

Clause 19.1 Overtime is paid in the following circumstances:

¹⁶ Clauses in this determination refer to the Revised Exposure Draft.

¹⁷ Note, however, paragraphs 7.3.11 to 7.3.17 of the CAA’s Submissions and the need to resolve the ambiguity of weekend penalties for shiftworkers.

(a) Where a full time employee:

- (i) works in excess of ~~their ordinary hours~~ 38 ordinary hours per week, 76 ordinary hours per fortnight or 152 ordinary hours per four-week period;
- (ii) works in excess of 10 ordinary hours per shift; or
- (iii) other than a shiftworker, works outside the relevant span of hours set out in clause 8.2; or

(a) Where a part time employee:

- (i) works in excess of their ordinary hours, except where agreement has been reached in accordance with clauses 6.3(c); and/or
- (ii) works in excess of 10 ordinary hours per shift; and/or
- (iii) works in excess of an average of 38 ordinary hours per week, or 76 ordinary hours in a fortnight or 152 ordinary hours in a four-week period;
- (iv) other than a shiftworker, works outside the relevant span of hours set out in clause 8.2; or ...”

4. By amending clause 18.4 to:

18.4. Shiftwork penalties

Where the ordinary rostered hours of work of a shiftworker finish between 6.00 pm and 8.00 am or commence between 6.00 pm and 6.00 am, the employee will be paid 115% of their minimum hourly rate of pay applicable to their classification and pay point for the entire shift.