

FAIR WORK COMMISSION

Title of Matter:	Four yearly review of modern awards
Section:	s.156 -4 yearly review of modern awards
Subject:	Health Professionals and Support Services Award 2010
Matter Number:	AM2016/31

**SUBMISSIONS ON BEHALF OF THE AUSTRALIAN DENTAL
PROSTHETISTS ASSOCIATION LTD**

1. The Australian Dental Prosthetists Association Ltd (**ADPA**) makes these submissions in response to the Direction issued by Vice President Catanzariti on 17 September 2019.

Background

2. The ADPA is the single and national peak body representing dental prosthetists who are both employers and employees in Australia.
3. Generally, dental prosthetists work as independent practitioners in the assessment, treatment, management and provision of removable dentures and flexible removable mouthguards used for sporting activities. Dental prosthetists work in a professional relationship with other dental practitioners as part of the overall dental team.
4. Dental prosthetists are registered nationally with the Dental Board of Australia, the same board that registers dentists, dental specialists, dental hygienists, dental therapists and oral health therapists. Dental prosthetists (along with these other dental professionals) are subject to registration requirements and are also subject to the same guidelines and codes of practice as other members of the dental team.

5. The ADPA currently has 700 members nationally, representing approximately 56% of practicing dental prosthetists in Australia. Additionally the ADPA also represents non practising and retired dental prosthetists as our members.
6. ADPA was recently advised by Eithne Irving, the Deputy CEO and General Manager of Policy of the Australian Dental Association Inc. (**ADA Inc.**) and David Wilkinson from Wentworth Advantage (who is representing ADA Inc. in these proceedings) that the Heath Services Union of Australia (**HSU**) has advised the ADA Inc. that dental prosthetists in private practice are already covered by the *Health Professionals and Support Services Award 2010* (**HPSS Award**). In addition, we understand that the HSU believes that Schedule C in the HPSS Award which contains the List of Common Health Professionals is 'indicative' only.
7. The HSU's position came as a great surprise to the ADPA.

The ADPA's position in these proceedings

8. The ADPA has always been of the understanding that in the private sector, dental prosthetists are award free. The ADPA submits that dental prosthetists should remain award free in the future.
9. The position the HSU is adopting in these proceedings is of great concern for ADPA and its members
10. The ADPA has filed, along with these submissions, a witness statement of Ms Jenine Anne Bradburn, who is the National President of the ADPA.
11. Ms Bradburn has attested in her witness statement at paragraph 21, that during her time with the ADPA in an executive capacity, she not been approached by any of our members wishing to be covered by the HPSS Award or any other award. Ms Bradburn also attests that to the best of her knowledge, neither the Chief Executive Officer of the ADPA or the current Board members of the ADPA have been approached by member prosthetists wishing to be covered by the HPSS Award or any other award.
12. As a consequence, the Board of the ADPA passed a resolution that it supports the view that the list of common health professionals in Schedule C of the HPSS Award should be exhaustive, not indicative, which would have

the effect that dental prosthetists are not covered by the HPSS Award, because they are not on the list of occupations specified in the HPSS Award.

13. Given the significance of this matter to dental prosthetists, the ADPA has entered into a joint brief with the ADA Inc. for Counsel to represent the interests of the ADPA and its members in these proceedings.
14. The ADPA has also filed, along with these submissions, a copy of the detailed submissions which have been prepared by Counsel on behalf of both the ADPA and the ADA Inc. in this matter.



Jeremy Irvine FGIA
Chief Executive Officer
Australian Dental Prosthetists Association

14 October 2019

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**SUBMISSIONS BY THE AUSTRALIAN DENTAL ASSOCIATION
AND THE AUSTRALIAN DENTAL PROSTHETISTS ASSOCIATION**

A. Background

The Australian Dental Association

1. The Australian Dental Association Inc. is the peak professional membership organisation representing Dentists. Its members include the great majority of practicing dentists, around 73%, with 53% of members being self employed, 22% as employees and 25% identifying as contractors. Its members also include dentistry students and retired dentists.

The Australian Dental Prosthetists Association

2. The Australian Dental Prosthetists Association is the single and national peak body representing dental prosthetists who are both employers and employees in Australia. The Australian Dental Prosthetists Association currently has 700 members nationally, representing approximately 56% of practising dental prosthetists in Australia.

Profile of dentists and dental prosthetists

3. Health professionals are highly regulated and both dentists and dental prosthetists are required to be registered with the Dental Board of Australia.

	Dentists	Dental prosthetists
Registered practicing 2019	17,208 ¹	1,234 ¹
Registered practicing 2017	16,244 ²	1,236 ²
Average age	42.8 ³	49.9 ⁴
Average weekly hours	36.1 ³	38.9 ⁴
% female	41.8% ³	15.2% ⁴
Principal role only in the public sector	11.2% ³	10.8% ⁴

4. Generally, dental prosthetists work as independent practitioners in the assessment, treatment, management and provision of removable dentures and flexible removable mouthguards used for sporting activities. Dental prosthetists work in a professional relationship with other dental practitioners as part of the overall dental team.
5. Dentists and dental prosthetists are registered nationally with the Dental Board of Australia, the same board that registers other dental professionals such as dental hygienists, dental therapists and oral health therapists. These dental professionals are subject to registration requirements and are also subject to the guidelines and codes of practice in relation the conduct of their profession.

¹ Table 3.1, general and specialists Dental Board of Australia [Registrant data: 1 April 2019 to 30 June 2019](#). Does not include those with multiple registrations.

² Table 3.1, general and specialists Dental Board of Australia [Registrant data: 1 April 2017 to 30 June 2017](#). Does not include those with multiple registrations.

³ Department of Health [Dentists 2017 Factsheet](#).

⁴ Department of Health [Dental prosthetists 2017 Factsheet](#).

B. THE CLAIMS

6. There are two substantive matters remaining before the Commission in relation to the *Health Professionals and Support Services Award 2010*:
 - a. whether the occupations of Dental Hygienist and Oral Health Therapist should be covered by the Award; and
 - b. whether the List of Common Health Professionals contained in Schedule C of the Award should be indicative or exhaustive.
7. In relation to the second question, the Full Bench expressed a preliminary view that *"it is undesirable to constrain the coverage by reference to an inflexible list of occupations, the names of which and/or work performed may change over time as advances in the health profession occur."*⁵
8. There is no application to vary the coverage of the Award. The nature of the question assumes that the two extremes are alternatives when that is not necessarily the correct conclusion. It follows that in answering the question, the Commission should consider two subsidiary matters, being :
 - i. Who, in the Commission's view, is the Award intended to cover or not cover; and
 - ii. Do the terms of the Award make that sufficiently clear, or do the current terms require clarification in this respect?
9. The position of the Australian Dental Association and the Australian Dental Prosthetists Association is that the list of Common Health Professionals contained in Schedule C of the Award is and should remain exhaustive in that :
 - a. the Award has never been intended to cover professions that are not listed, such as dentists and dental prosthetists, whose work is of a different nature to those listed;
 - b. there is no application to extend the coverage of the Award, nor any evidence to support such an extension;

⁵ *Re Health Professionals and Support Services Award 2010* [2018] FWCFB 7350 at 113.

- c. most, but not all of the titles in Schedule C of the Award are static, reflecting the titles and duties that are protected under the Health Practitioner Regulation National Law, being restricted to registered practitioners; and
- d. while the HSU attempt to cast their approach to Schedule C of the Award as being indicative, in reality their approach is that the list in the schedule is irrelevant.

C. PRINCIPLES

10. The principles to be adopted in relation to the conduct of a 4 yearly review are now well established, having been set out in the following decisions of a full bench of the Commission:

- a. Preliminary Jurisdictional Issues Decision;⁶
- b. Annual Leave Decision;⁷ and
- c. Penalty Rates Decision.⁸

11. These principles may be summarised as follows:

- a. The Commission must take into account the objects of the Act set out in s.3 and the object of Part 2-3 as expressed in s.134,⁹ and relevant provisions of the Act;¹⁰
- b. The Review is conducted on the Commission's own motion, it is not constrained by the terms of a particular application and may vary a modern award in whatever terms it considers appropriate, subject to its obligation to accord interested parties procedural fairness and the application of relevant statutory provisions;¹¹
- c. Where a significant change is proposed it must be supported by a submission which addresses the relevant legislative provisions and be

⁶ Preliminary Jurisdictional Issues Decision [\[2014\] FWCFB 1788](#) at [19]-[27].

⁷ Annual Leave Decision [\[2015\] FWCFB 3406](#) at [11]-[38].

⁸ Penalty Rates Decision [\[2017\] FWCFB 1001](#) at [95]-[141], [162]-[165], [230]-[270].

⁹ Annual Leave Decision [\[2015\] FWCFB 3406](#) at [24].

¹⁰ Penalty Rates Decision [\[2017\] FWCFB 1001](#) at [105].

¹¹ Penalty Rates Decision [\[2017\] FWCFB 1001](#) at [110].

accompanied by probative evidence properly directed to demonstrating the facts supporting the proposed variation;¹²

- d. Each of the matters set out in paragraphs 134(1)(a) to (h) must be treated as a matter of significance in the decision-making process;¹³
- e. There is a degree of tension between some s.134 considerations. The Commission's task is to balance the various considerations and ensure that modern awards, together with the NES, provide a fair and relevant minimum safety net of terms and conditions;¹⁴
- f. In the context of s.134, the expression 'a fair and relevant minimum safety net of terms and conditions' includes that :
 - i. fairness is to be assessed from the perspective of the employees and employers covered by the modern award in question;¹⁵
 - ii. 'relevant' is intended to convey that a modern award should be suited to contemporary circumstances;¹⁶
 - iii. the award safety net is of a protective nature.¹⁷
- g. The party seeking a variation must demonstrate that the modern award, if varied as proposed, would only include terms to the extent necessary to achieve the modern awards objective. What is "necessary" in a particular case is a value judgment based on an assessment of the s.134 considerations having regard to the submissions and evidence directed to those considerations;¹⁸
- h. In the review the Commission will proceed on the basis that prima facie the modern award being reviewed achieved the modern awards objective at the time that it was made.¹⁹

¹² Preliminary Jurisdictional Issues Decision [\[2014\] FWCFCB 1788](#) at [23].

¹³ Annual Leave Decision [\[2015\] FWCFCB 3406](#) at [18].

¹⁴ Annual Leave Decision [\[2015\] FWCFCB 3406](#) at [20].

¹⁵ Penalty Rates Decision [\[2017\] FWCFCB 1001](#) at [117].

¹⁶ Penalty Rates Decision [\[2017\] FWCFCB 1001](#) at [120].

¹⁷ Penalty Rates Decision [\[2017\] FWCFCB 1001](#) at [121]-[128].

¹⁸ Annual Leave Decision [\[2015\] FWCFCB 3406](#) at [23].

Penalty Rates Decision [\[2017\] FWCFCB 1001](#) at [136].

¹⁹ Preliminary Jurisdictional Issues Decision [\[2014\] FWCFCB 1788](#) at [24].

- i. Previous Full Bench decisions should generally be followed,²⁰ but there may be cogent reasons for not doing so, including changes in the legislative context, the extent of evidence and submissions and the absence of detailed reasons in a previous decision;²¹
- j. It is not necessary to demonstrate a “material change in circumstances” since the making of the modern award. Although it is not a condition precedent, a material change may warrant the variation of a modern award;²²
- k. The Review must be conducted by reference to the particular terms and the particular operation of each particular award rather than by a global assessment based upon generally applicable considerations;
- l. If a variation to minimum wages is sought, the effect of ss.135, 156(3) & (4) is that such a variation can only be made if the Commission is satisfied that the variation is justified by work value reasons.²³

D. Background and evidence

- 12. Health practitioners are regulated by the Health Practitioner Regulation National Law, which is the Schedule to the *Health Practitioner Regulation National Law Act 2009* of Queensland²⁴ and is given effect to by each of the states and territories.
- 13. The *Health Practitioner Regulation National Law* defines the health profession at clause 5. This is followed by a broader definition of health service which would include various services included in the Schedule C list.
- 14. Various titles and duties are protected under the Health Practitioner Regulation National Law, being restricted to registered practitioners.
- 15. The Award was made as part of the award modernisation process. The award modernisation request made by the Minister for Employment and Workplace

²⁰ Preliminary Jurisdictional Issues Decision [\[2014\] FWCFCB 1788](#) at [27].

²¹ Preliminary Jurisdictional Issues Decision [\[2014\] FWCFCB 1788](#) at [27].

²² Penalty Rates Decision [\[2017\] FWCFCB 1001](#) at [230]-[264].

²³ Penalty Rates Decision [\[2017\] FWCFCB 1001](#) at [244].

²⁴ [Health Practitioner Regulation National Law Act 2009 \(Qld\)](#).

Relations pursuant to s.576C(1) of the then *Workplace Relations Act 1996* relevantly set out the objects of that process being :

1. *The aim of the award modernisation process is to create a comprehensive set of modern awards. As set out in section 576A of the Act, modern awards:*
 - (a) *must be simple to understand and easy to apply, and must reduce the regulatory burden on business; and*
 - (b) *together with any legislated employment standards, must provide a fair minimum safety net of enforceable terms and conditions of employment for employees; and*
 - (c) *must be economically sustainable and promote flexible modern work practices and the efficient and productive performance of work; and*
 - (d) *must be in a form that is appropriate for a fair and productive workplace relations system that promotes collective enterprise bargaining but does not provide for statutory individual employment agreements; and*
 - (e) *must result in a certain, stable and sustainable modern award system for Australia.*
2. *The creation of modern awards is not intended to:*
 - (a) *extend award coverage to those classes of employees, such as managerial employees, who, because of the nature or seniority of their role, have traditionally been award free. This does not preclude the extension of modern award coverage to new industries or new occupations where the work performed by employees in those industries or occupations is of a similar nature to work that has historically been regulated by awards (including State awards) in Australia;*
 - (b) *result in high-income employees being covered by modern awards;*
 - (c) *disadvantage employees;*
 - (d) *increase costs for employers;*
 - (e) *result in the modification of enterprise awards. This does not preclude the creation of a modern award for an industry or occupation in which enterprise awards operate. However section 576V of the Act provides that a modern award is to be expressed not*

*to bind an employer who is bound by an enterprise award in respect of an employee to whom the enterprise award applies.*²⁵

16. The Australian Dental Association and the Australian Dental Prosthetists Association rely upon the evidence previously given by Ms Eithne Irving and have filed with these submissions statements of :
- a. Ms Eithne Irving updating various matters given the passage of time since her previous statement was filed; and
 - b. Ms Jenine Bradburn addressing matters specific to dental prosthetists.

E. Is Schedule C of the Award indicative or exhaustive

17. The issue concerns the coverage of the Award. In this respect the Award relevantly provides:

4.1 *This industry and occupational award covers:*

(a) *employers throughout Australia in the health industry and their employees in the classifications listed in clauses 14—Minimum weekly wages for Support Services employees and 15—Minimum weekly wages for Health Professional employees to the exclusion of any other modern award;*

(b) *employers engaging a health professional employee falling within the classification listed in clause 15.*

...

4.8 *Where an employer is covered by more than one award, an employee of that employer is covered by the award classification which is most appropriate to the work performed by the employee and to the environment in which the employee normally performs the work.*

18. The classifications in clause 15 are defined in Schedule B Classification definitions which provides:

B.2 Health Professional employees—definitions

A list of common health professionals which are covered by the definitions is contained in Schedule C—List of Common Health Professionals.

²⁵ Award modernisation Amended request ([consolidated version](#)).

19. The Full Bench has previously referred to some of the pertinent background to the publishing of the exposure draft and the making of the Award,²⁶ with reference to:
- a. comments by the Full Bench of the IRC in publishing the draft;²⁷
 - b. submissions from APESMA;
 - c. submissions from the ACTU;²⁸
 - d. supporting submissions from the Ai Group in respect to scientists;²⁹ and
 - e. the apparent absence of any decision or statement issued by the AIRC in publishing the final Award, including whether the schedule was intended to be indicative or exhaustive.
20. The Full Bench expressed a preliminary view that it was undesirable for it to constrain the coverage of the Award by reference to an inflexible list of occupations, the names of which and/or work performed may change over time as advances in the health profession occur.
21. Schedule C lists some 52 health professionals. there are a handful of other common health professionals, in addition to Dental Hygienists and Oral Health Therapists referred to earlier, who are regulated by the *Health Practitioner Regulation National Law* that are not listed in Schedule C, being:
- a. Aboriginal and Torres Strait Islander Health Practitioner or Allied Health Practitioner
 - b. Dentist;
 - c. Dental prosthetist;
 - d. Medical practitioner;
 - e. Midwife;
 - f. Nurse;
 - g. Optometrist;

²⁶ Health Professionals and Support Services Award 2010 [\[2018\] FWCFB 7350](#) at [109]-[114].

²⁷ Award Modernisation Statement [\[2009\] AIRCFB 50](#) at [78] and [81].

²⁸ [ACTU Submission - 13 February 2009](#) at 228-233.

²⁹ [Ai Group Submission - 13 February 2009](#) at 262-266.

- h. Optician; and
 - i. Paramedic.
22. Whilst the HSU claims that health professionals are changing, these professions cannot be said to have emerged since 2010, to have changed titles, or to have been so uncommon as to not warrant mentioning.
23. Instead, the proper inference is that these health professionals were not overlooked, but rather have been deliberately omitted as they are not covered by the Award.
24. Some of the occupations regulated by the *Health Practitioner Regulation National Law*, but not included in the Schedule C list are, to the extent that they are award covered, would appear to be covered by other awards, including :
- a. Aboriginal Community Controlled Health Services Award 2010 [[MA000115](#)] discussed at paragraph 33 below
 - b. Medical Practitioners Award 2010 [[MA000031](#)] discussed at paragraph 36 below;
 - c. Nurses Award 2010 [[MA000034](#)] discussed at paragraph 35 below; and
 - d. Ambulance and Patient Transport Industry Award 2010 [[MA000098](#)].

The proper construction of the Award

25. When interpreting a specific clause contained in an industrial instrument, regard must be had to the ordinary and natural meaning of that clause and the terms of the industrial instrument must be read in the context of the clause and in the context of the entire instrument. The well settled principles in relation to the construction of an award were summarised by the Full Court of the Federal Court in *Short v FW Hercus Pty Ltd* where Burchett J stated:

The context of an expression may this be much more than the words that are its immediate neighbours. Context may be extended to the entire document of which it is a part, or to other documents with which there is an association. Context may also include, in some cases, ideas that gave rise to an expression in a document from which it has been taken. When the expression was transplanted, it may have brought with it some of the

*soil in which it once grew, retaining a special strength and colour in its new environment. There is no inherent necessity to read it as uprooted and stripped of every trace of its former significance, standing bare in alien ground. True, sometimes it does stand as if alone. But that should not be just assumed, in the case of an expression with a known source, without looking at its creation, understanding its original meaning, and then seeing how it is now used.*³⁰

26. The other well known enunciation of the principles of award interpretation is in *Kucks v CSR Limited*,³¹ where Madjwick J stated:

It is trite that narrow or pedantic approaches to the interpretation of an award are misplaced. The search is for the meaning intended by the framer(s) of the document, bearing in mind that such framer(s) were likely of a practical bent of mind: they may well have been more concerned with expressing an intention in ways likely to have been understood in the context of the relevant industry and industrial relations environment than with legal niceties or jargon. Thus, for example, it is justifiable to read the award to give effect to its evident purposes, having regard to such context, despite mere inconsistencies or infelicities of expression which might tend to some other reading. And meanings which avoid inconvenience or injustice may reasonably be strained for. For reasons such as these, expressions which have been held in the case of other instruments to have been used to mean particular things may sensibly and properly be held to mean something else in the document at hand.

*But the task remains one of interpreting a document produced by another or others. A court is not free to give effect to some anteriorly derived notion of what would be fair or just, regardless of what has been written into the award. Deciding what an existing award means is a process quite different from deciding, as an arbitral body does, what might fairly be put into an award. So, for example, ordinary or well-understood words are in general to be accorded their ordinary or usual meaning.*³¹

Different language indicates a different approach.

27. Fundamental to the question of coverage arising from clause 4.1 of the Award are the classifications referred to, but not defined in clauses 14 and 15.

Instead the classifications are defined in Schedule B to the Award which is divided into 2 parts. Those provide for classification definitions for:

- a. Support Services employees (set out in paragraph B.1 of the Award); and
- b. Health Professional employees (set out in paragraph B.2 of the Award).

³⁰ *Short v FW Hercus Pty Ltd* [1993] FCA 51; (1993) 40 FCR 511 at 518.

³¹ *Kucks v CSR Limited* [1996] IRCA 166; (1996) 66 IR 182 at 184.

28. As noted at paragraph 18 above, in relation to health professionals, Schedule B at B.2 identifies the list as being “A list of common health professionals **which are covered by the definitions**” (emphasis added). At no time is the word ‘indicative’ used in the Award in relation to Health Professionals.
29. This is in contrast to the language of Schedule B at B.1, in relation to Support Services employees, where each of the levels identifies the requisite experience, responsibility and supervision at the level, followed by a list of indicative roles at that level. It should be noted there is no list of common support services employees.

History to the making of the Award.

30. The Australian Dental Association has previously made detailed submissions on the making of the Award and relies upon those submissions.³² The history set out therein reinforces the proposition that dentists and dental prosthetists were not overlooked in the process of making the Award and their omission is not accidental, but rather a the result of a deliberate policy choice.

Approach of the Commission on previous occasions

31. The HSU acknowledges that the Award was explicitly intended not to cover doctors and nurses,³³ by reference to the AIRC award modernisation decision publishing an exposure draft of the award.³⁴
32. The HSU are properly acknowledging the intention of the decision, however they omit any reference to how that intention was put into effect. Neither the exposure draft nor the Award make any reference to doctors or nurses or their exclusion from the Award.
33. The Award was made by a full bench on 3 April 2009 as part of stage 2 of the award modernisation process.³⁵ On 25 September 2009 the same full bench published exposure drafts of stage 4 awards, including the draft Aboriginal

³² Submissions of the Australian Dental Association [filed on 9 June 2017](#) at paragraphs 39 to 65.

³³ Email from the Health Services Union to the Commission [dated 3 September 2019](#).

³⁴ Award Modernisation Statement [\[2009\] AIRCFB 50](#) at [78].

³⁵ Award Modernisation [\[2009\] AIRCFB 345](#) at [78].

Community Controlled Health Services Award 2010. In relation to occupational coverage, the full bench stated:

*[126] In making the exposure draft we have largely adopted the draft provided by the National Aboriginal Community Controlled Health Organisation (NACCHO). One significant departure from NACCHO's draft is that we have not included coverage of doctors, nurses or dentists. We have previously made a Medical Practitioners Award 2010 and a Nurses Award 2010 to comprehensively cover doctors and nurses. For reasons previously given, we consider that those occupations are best covered by the separate occupational awards already made. **We have not to date made any award for dentists and the lack of any significant award coverage for the profession leads us to the conclusion that dentists should not be included in the draft award.**³⁶ (emphasis added)*

34. This contemporaneous statement by the same Full Bench, supports the inference that the omission of dentists from the List of Common Health Professionals contained in Schedule C of the Award was not an oversight but rather the result of a deliberate decision by the Commission that they were not covered by the Award.
35. Clause 4 of the Award deals with coverage in a way that is consistent with other modern awards that excludes employees covered by an award whose classification is more appropriate. The Nurses Award, an occupational award, is clearly the more appropriate classification for a nurse or midwife.
36. The HSU has previously asserted that there is an occupational award for doctors.³⁷ This assertion however is ill founded. At first blush, the coverage clause of the Medical Practitioners Award appears to be an occupational award. Turning however to the definition of medical practitioner indicates that it is limited:

***medical practitioner** means a person who is employed as a medical practitioner in hospitals, hospices, benevolent homes, day procedure centres, aboriginal health services, community health centres, the Red Cross Blood Service, the South Australian Institute of Medical and Veterinary Science, the Victorian Cytology Service or the Victorian Institute of Forensic Medicine.*³⁸

³⁶ Award Modernisation: Stage 4 [\[2009\] AIRCFB 865](#) at [126].

³⁷ Email from the HSU to the Australian Dental Association 12 August 2019.

³⁸ Medical Practitioners Award 2010 [\[MA000031\]](#) at clause 3.1.

37. This approach to the application of the Medical Practitioners Award has been confirmed in a full bench decision of this Commission in *Gourabi v Westgate Medical Centre*. There was no question that Dr Gourabi was a medical practitioner in the ordinary sense of the expression, however he was not covered by the Medical Practitioners Award because of the special and narrower definition which evinces “*a clear intention that the Award is not to apply to medical practitioners generally*”.³⁹
38. It follows that doctors were not excluded from coverage of the Award due to coverage by an occupational award. Instead the only way that the Full Bench gave effect to their decision to exclude doctors from coverage of the Award was by not including them in the schedule.
39. Whilst the earlier full bench decision refers to various submissions prior to the making of the Award, it does not specifically address the HSU submissions. The HSU draft award was wide ranging seeking to cover all health professionals, including not only nurses, medical practitioners, dentists, dental prosthetists and optometrists, but also included both oral health therapists and dental hygienists.⁴⁰
40. The Full Bench of the AIRC in publishing the exposure draft, by and large did not accept the approach that the HSU had advocated, not only making separate awards for nurses and medical practitioners, but omitting from the exposure draft the well known common health professionals of dentists, dental prosthetists and optometrists. They Full Bench included dental hygienists but omitted oral health therapists.
41. The response of the HSU was to submit that Occupational Therapist and Diversional Therapist were accidentally omitted from the exposure draft.⁴¹ Tellingly, there was no submission that the omission of dentists, dental prosthetists, optometrists and oral health therapists was an oversight.

³⁹ *Gourabi v Westgate Medical Centre* [2019] FWCFB 3874 at [28].

⁴⁰ Paragraph 66 Supplementary submissions of the HSU, page 100 of [Annexures A-J to the Submissions of the Australian Dental Association](#).

⁴¹ Exposure Drafts – further submissions of the HSU, page 253 of [Annexures A-J to the Submissions of the Australian Dental Association](#).

42. The clear and unavoidable inference is that the Full Bench of the AIRC in making the Award did not intend for it to cover those common health professionals that had been omitted.
43. The correctness of this approach is highlighted by the approach of the Full Bench in removing dental hygienists from the coverage of the award. There can be no doubt that the Commission had decided that Dental Hygienists should be excluded from the coverage of the Award. This was not achieved by a variation to the coverage clause, nor by adding a clause excluding Dental Hygienists. Instead the Commission simply deleted them from the Schedule, thereby removing Dental Hygienists from the Award coverage.⁴²
44. The HSU do not address this issue in any way. It is not apparent how the HSU say that their interpretation of the Award is consistent with the orders of the Commission.
45. The Full Bench has previously agreed with the inherent logic of the Ai Group submission that if the Schedule were not exhaustive, the decision made by the AIRC would be "superfluous".⁴³
46. While the Commission has decided to reconsider the position in relation to Dental Hygienists and Oral Health Therapists in light of developments in the health profession, such reconsideration does not take away from the force of the submission that the Schedule was intended to be exhaustive, not merely in relation to the omission of dental hygienists.

Common titles

47. The HSU assert that the Award could be avoided and undermined merely by changing the title of an employee, such as from "remedial masseur" to "massage therapist".
48. To use the well known phrase, "*The parties cannot create something which has every feature of a rooster, but call it a duck and insist that everyone else recognise it as a duck.*"⁴⁴

⁴² Health Professionals and Support Services Award [PR991493](#) 24 December 2009.

⁴³ Health Professionals and Support Services Award 2010 [\[2018\] FWCFB 7350](#) at [114].

49. The HSU's argument seeks to suggest that the only alternative to the HSU's entirely unconstrained interpretation is to take a narrow or pedantic approach to the interpretation of the Award, an approach that has been consistently been rejected.⁴⁵
50. The proper approach to the application of award classifications was conveniently summarised by a Full Bench of the Australian Industrial Relations Commission in *Brand v APIR Systems Limited*,⁴⁶

[12] Much of the argument advanced on Mr Brand's behalf in the appeal was directed at whether his employment was within the incidence of the award. As we have indicated above, even if his employment was within the incidence of the award, his application was not within jurisdiction unless he was employed in one of the award classifications.

*[13] We note that the Commissioner adopted and applied a test based on the principal purpose for which the applicant was employed. She relied upon the Full Bench decision in *Carpenter v Corona Manufacturing Pty Ltd* in that respect.⁴⁷ An analysis of the authorities referred to in that case shows that industrial courts and tribunals have at different times adopted different formulations of the test to be applied in determining whether the work of an employee or group of employees is within a particular occupation or classification. One formulation requires that the question should be decided by reference to the major and substantial employment of the employee.⁴⁸ Another formulation requires that the principal purpose or purposes of the employment be identified.⁴⁹ In some cases the formulations have both been referred to.⁵⁰ In one case a Full Bench of the Commission held that the principal purpose formulation was a refinement of the major and substantial employment formulation.⁵¹ A Full Court of the Federal Court of Australia, without reference to other authorities, adopted a test based on whether the employees were "engaged substantially" in the duties of the relevant occupation.⁵²*

⁴⁴ *Re Porter* [1989] FCA 226; (1989) 34 IR 179 at [13] p. 184 per Gray J; *On Call Interpreters & Translators Agency Pty Ltd (ACN 006 272 760) v Commission of Taxation (No 3)* [2011] FCA 366; (2011) 279 ALR 341 at [192] per Bromberg J.

⁴⁵ *Kucks v CSR Limited* [1996] IRCA 166; (1996) 66 IR 182 at 184.

⁴⁶ *Brand v APIR Systems Limited* PR938031 (unreported 16 September 2003).

⁴⁷ PR925731 at para [9] [(2002) 122 IR 387].

⁴⁸ *Ware and O'Donnell Griffin (Television Services) Pty Ltd* [1971] AR (NSW) 18.

⁴⁹ *Merchant Service Guild of Australia v J Fenwick & Co Pty Ltd* (1973) 150 CAR 99 at 101-2.

⁵⁰ *Comdox (No. 272) Pty Ltd t/as Ronald Stead Golf v Dawson* (1993) 49 IR 458 at 462; *Logan v Otis Elevator Co Pty Ltd*, Unreported, Industrial Relations Court of Australia (Moore J) 20 June 1997.

⁵¹ *Re The Australian Workers' Union Construction, Maintenance and Services (WA Government) Award 1987* 1991/12 CAR 68 at 72.

⁵² *Federated Tobacco Workers Union of Australia v Amalgamated Metal Workers Union and another* (1988) 29 IR 263 at 275.

[14] *In this appeal both parties accepted that the "principal purpose" formulation as stated in Carpenter v Corona Manufacturing Pty Ltd should be applied. We are content to decide this application on that basis. We should add, however, that we are satisfied that whichever of the formulations referred to might be applied, in this case the result would be the same.*

51. After referring to this passage in *Brand*, the Full Bench majority (Acton SDP and Simpson C) in *Australasian Meat Industry Employees Union v Teys Australia Beenleigh Pty Ltd*⁵³ said:

[85] *In Brand and each of the cases cited in this extract from Brand, whether it is a "principal purpose", "major and substantial" or "engaged substantially" formulation that is adopted, **it is the work of the employee that is considered relevant in that regard.***⁵³
(emphasis added)

52. The Australian Dental Association and the Australian Dental Prosthetists Association submit that, on the well settled authorities, the adoption of an uncommon title would not take away from the fact that the duties and qualifications remained the same.
53. Using the example previously cited, the question of award coverage for a person with the title of child life therapist is properly answered by considering whether the duties and qualifications of the position are substantially the same as those of a play therapist.

Schedule is not indicative of dentists, dental prosthetists or others

54. While the HSU attempt to cast their approach to Schedule C as being indicative, there is nothing of substance in their submissions as to how the Schedule "indicates" dentists, dental prosthetists or optometrists. There is relevantly nothing new about the industry, nothing new about the occupations, nor can it be said that the work is of a similar nature to work performed by those health professionals listed in Schedule C.
55. In reality the approach of the HSU is that the Schedule C List of Common Health Professionals is superfluous and irrelevant.

⁵³ *Australasian Meat Industry Employees Union v Teys Australia Beenleigh Pty Ltd* [2014] FWCFB 5643; 245 IR 170.

The modern awards objective

56. In conducting the review the Commission is required to take into account the modern awards objective, which is to ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions.
57. Turning to the specific matters in s134(1):
- (a) in relation to the health professions that have been omitted from Schedule C, there is no evidence that dentists or dental prosthetists have low relative living standards or can in any way be described as low paid. It is of particular note that the median starting salary of a graduate dentists was \$78,300 was significantly greater than that applying to a Health Professional Level 1 at that time.⁵⁴ Put simply there is no evidence of dentists or dental prosthetists being paid less than they would receive if they were covered by the Award;
 - (b) the biggest impediment to collective bargaining is that most dentists are engaged in small dental practices. There is no evidence that would suggest that having these professions covered by an award would increase the extent of collective bargaining;
 - (c) there is no evidence that would suggest that having these professions covered by an award would have any positive impact on the extent of workforce participation and social inclusion; (d) one of the concerns of the Australian Dental Association and the Australian Dental Prosthetists Association is that if their employee members were covered by an award, the imposition of time based remuneration would discourage the flexible modern work practices and the efficient and productive performance of work that currently exist in these professions;
 - (da) the data published by the Department of Health for dentists⁵⁵ and dental prosthetists⁵⁶ shows that the professions are not generally working excessive hours. While irregular or unpredictable hours are a genuine

⁵⁴ Annual Wage Review 2015–16: Health Professionals and Support Services Award 2010 [PR579789](#).

⁵⁵ Department of Health [Dentists 2017 Factsheet](#).

⁵⁶ Department of Health [Dental prosthetists 2017 Factsheet](#).

issue for some employees in the health industry, there is no evidence of any significant level of casual employees in these professions. Similarly the evidence in this matter in relation to the span of hours indicates that these professions are not generally working unsocial hours or shiftwork;

- (e) given the significant differential between the Award rates and the earnings of dentists and dental prosthetists, having these professions covered by an award would not appear to assist in furthering the principle of equal remuneration for work of equal or comparable value
- (f) The likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and
- (g) once the Commission has determined who, in its' view, the Award is intended to cover, it must consider the need to ensure a simple, easy to understand, stable and sustainable modern award system. This is a consideration that is addressed by considering whether the terms of the Award make the coverage sufficiently clear, or whether the current terms require clarification in this respect;
- (h) while the oral health of Australians is an important issue, the question of award coverage appears unlikely to give rise to any likely impact on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.

The award modernisation request

58. A related consideration arises from the terms of the award modernisation request, in particular that the professions of dentists and dental prosthetists have traditionally been award free because of the nature of their role.

59. As the Full Bench said in 2009, there was no significant award coverage for the profession of dentists.⁵⁷ The same is true of the profession of dental prosthetists. Whilst there were exceptions, principally involving employees in

⁵⁷ Award Modernisation: Stage 4 [\[2009\] AIRCFB 865](#) at [126].

the public sector, representing a small percentage of the profession, and in Tasmania in relation to dental mechanics.⁵⁸

60. This is not a new industry nor can dentists and dental prosthetists be said to be new occupations.
61. Their work is not of a similar nature to any of the health professionals listed in Schedule C.
62. The other concern of the Australian Dental Association is that if the profession was covered by the Award, it would be to the disadvantage of their employee members. This concern is that, far from acting as a safety net, the stipulation of an Award rate of pay for dentists may in fact reduce the remuneration of the profession by suggesting that a fair and reasonable wage is significantly less than those employees are currently receiving.
63. The Australian Dental Prosthetists Association has always been of the understanding that in the private sector, dental prosthetists are award free and its position, put on behalf of its employee members is that dental prosthetists should remain award free in the future.
64. The position the HSU is adopting in these proceedings directly affects many employee members of Australian Dental Prosthetists Association and is of great concern for the association and its members.
65. The Commission should place significant weight on the views of those employees, as expressed through their professional associations.

The proper approach is that the schedule is exhaustive

66. For the reasons set out above, the Commission should properly conclude that the Award was not intended to cover dentists, dental prosthetists nor the other common health professionals omitted from Schedule C.

⁵⁸ Statement of Ms Jenine Bradburn on 14 October 2019 at [19].

Are the terms of the Award sufficiently clear?

67. As noted above, having satisfied itself as to who the Award was intended to cover, it must consider the need to ensure the Award is simple and easy to understand.
68. In terms of the example of the role of a Play Therapist, the evidence was to the effect that the title of Child Life Therapist. It would be proper and appropriate for the Commission to amend Schedule C to include Child Life Therapist.
69. Given the time, energy and resources spent on addressing this issue, it is apparent that clarity in relation to Schedule C can only assist in ensuring that the Award is simple and easy to understand.
70. The Australian Dental Association and the Australian Dental Prosthetists Association submit that this could be achieved by an opening paragraph to the schedule along the lines that:

This Award applies to those health professionals whose duties and qualifications are the same or substantially the same as the common titles for those professionals in the following list.

F. Dental hygienist and Oral Health Therapist

71. Neither the Australian Dental Association nor the Australian Dental Prosthetists Association have members who are registered exclusively as dental hygienists or oral health therapists.
72. Members of the Australian Dental Association work in a professional relationship with dental hygienists or oral health therapists such that the Australian Dental Association is able to assist the Commission by reference to relevant information.
73. The submission of ADOHTA that the recognition of the occupation of Oral Health Therapist by the Dental Board of Australia occurred after the award was made in 2010⁵⁹ is factually unsound. As is discussed at paragraph 77 below, the occupation existed prior to the making of the Award in 2009 and as noted

⁵⁹ *Re Health Professionals and Support Services Award 2010* [2018] FWCFB 7350 at 117.

at paragraph 38 above the HSU explicitly sought that the Award include Oral Health Therapists.⁶⁰

NSW State award coverage

74. The Full Bench noted that in 2018 the NSW Industrial Relations Commission made an award covering the occupations Dental Therapist, Dental Hygienist and Oral Health Therapist.⁶¹ Despite the suggestion in the year, the Australian Dental Association and the Australian Dental Prosthetists Association agree with the submission of the HSU,⁶² that there is little that is new in the award, in that it falls within a long history of award coverage within the NSW public service, commencing with the 2008 award,⁶³ which was replaced in 2012,⁶⁴ and again in 2017.⁶⁵
75. The 2008 award itself replaced the Public Hospital Dental Therapists (State) Award 2005.⁶⁶ The principle difference being the addition of Oral Health Therapist, defined in the way already noted by the Full Bench.⁶⁷
76. The public sector has traditionally had much more extensive award coverage. In NSW, for example all employees up to and including the executive officers of the public service were covered by industrial awards until 1989.⁶⁸
77. Dental hygienists and dental therapists are distinct occupations, having existed for more than 90 year. Dental hygienists were predominantly engaged in the School Dental Service.⁶⁹

⁶⁰ Paragraph 66 Supplementary submissions of the HSU, page 100 of [Annexures A-J to the Submissions of the Australian Dental Association](#).

⁶¹ *Health Employees Oral Health Therapists (State) Award 2018* [\(2019\) 384 NSW Industrial Gazette 624](#).

⁶² Submissions of the HSU [filed on 8 August 2019](#) at paragraphs 6 to 10.

⁶³ *Health Employees Oral Health Therapists (State) Award 2008* [\(2009\) 368 NSW Industrial Gazette 414](#).

⁶⁴ *Health Employees Oral Health Therapists (State) Award 2012* [\(2012\) 373 NSW Industrial Gazette 168](#).

⁶⁵ *Health Employees Oral Health Therapists (State) Award 2017* [\(2018\) 382 NSW Industrial Gazette 277](#).

⁶⁶ *Public Hospital Dental Therapists (State) Award 2005* [\(2006\) 357 NSW Industrial Gazette 977](#).

⁶⁷ *Re Health Professionals and Support Services Award 2010* [\[2018\] FWC FB 7350](#) at 122.

⁶⁸ *Public Sector Management (Executives) Amendment Act 1989*, Schedule 1 at 42J.

⁶⁹ Oral Health Therapy Programs in Australia and New Zealand (2010), Annexure 11 to the statement of Ms Eithne Irving on 14 October 2019.

78. The NSW Commission did not create the role of Oral Health Therapist. Instead it arose in practices in Western Australia since 1971, South Australia in 1980 and with impetus from a 1993 inquiry in the United Kingdom. This was formalised initially through a diploma in Oral Health Therapy in Victoria in 1996 and then a Bachelor of Oral Health in 1998 in Queensland.⁶⁹
79. Given the highly regulated nature of the Health Profession, it could not arise from industry practice. At the time the regulation of the health profession was conducted by each State and Territory passed their own laws in relation thereto.⁷⁰
80. Whilst it is true to say that oral health therapists can practice as a dental therapist or dental hygienist, Satur describes them as being “*more broadly educated professionals than their tightly regulated predecessors*” and that “*They are educated to synthesise and apply knowledge to complex problems, understand and apply technology in more complex ways and to have well-developed research, communication and cultural sensitivity skills in keeping with the contemporary health professional role.*”⁶⁹

G. Conclusion

81. For the reasons set out in these submissions, the Commission should conclude that Schedule C is exhaustive in the sense that the Award was not intended to cover common professionals who had been omitted from the schedule, such as dentists and dental prosthetists.



BRUCE MILES

Frederick Jordan Chambers

14 October 2019

⁷⁰ Eg [Dental Practice Amendment \(Oral Health Therapists\) Regulation 2007](#) NSW.

IN THE FAIR WORK COMMISSION

Matter No: AM2016/31 formerly AM2014/204

Re: Health Professionals and Support Services Award 2010

WITNESS STATEMENT OF JENINE ANNE BRADBURN

DATED 14 OCTOBER 2019

1. My full name is Jenine Anne Bradburn. I am the National President of the Australian Dental Prosthetists Association (**ADPA**). I have held this position for nearly two years. I have been an executive member of the ADPA NSW board since 1996.
2. I am a registered dental prosthetist (registration number: DEN0001051655). A copy of an extract confirming my registration number as a dental prosthetist is annexed to this statement and marked **Annexure 1**. The extract confirming my registration number is contained at page 6 of this statement.
3. I run my own dental prosthetics business in Castle Hill. I also teach as a casual teacher for the Advanced Diploma of Dental Prosthetists through TAFE NSW at the Sydney Dental Hospital.

Background

4. In my position as President, I am responsible for:
 - (a) chairing the Board of the ADPA;
 - (b) staffing matters at the ADPA;
 - (c) liaising with industry associations and health departments in each Australian state and territory;

Lodged by:
Australian Dental Prosthetists Association

Telephone: 1300 232 462

Address for Service:
C/O Wentworth Advantage Pty Ltd
Suite 7, Level 3, North Tower, Chatswood Central
1-5 Railway Street
CHATSWOOD, NSW 2067

Fax: (02) 8448 3299

Email: DWilkinson@myadvantage.com.au

- (d) liaising with the Dental Board of Australia (**Dental Board**), the Dental Council of Australia, and the organisations delivering training to prospective dental prosthetists; and
- (e) advocating on behalf of dental prosthetists generally, both in Australian and internationally.

Australian Dental Prosthetists Association

- 5. The ADPA is the single, peak professional body representing dental prosthetists in Australia. The ADPA's purpose is to advance, improve, support and foster the interests, development and status of dental prosthetists and to increase awareness and recognition of the profession across all sectors of society.
- 6. On 1 July 2016, the national and state and territory associations representing dental prosthetists merged to create the ADPA.
- 7. The ADPA represents both dental prosthetists who are employees and dental prosthetists who are employers.
- 8. The ADPA currently has 700 members nationally, representing approximately 56% of practicing dental prosthetists in Australia. Additionally the ADPA also represents non practicing and retired dental prosthetists as our members

The profession of dental prosthetics

- 9. According to statistics published by the Dental Board, as at 30 June 2019 there are 1,274 registered dental prosthetists in Australia. Thirty of these dental prosthetists are non-practising. A copy of these statistics are annexed to this statement and marked **Annexure 2**. The registrations statistics referred to in this paragraph are set out at page 13 of this statement.
- 10. Dental prosthetists work as independent practitioners in the assessment, treatment, management and the provision of removable dentures, implant retained overdentures and flexible removable mouthguards used for sporting activities. Dental prosthetists work in a professional relationship with other dental practitioners as part of the overall dental team.
- 11. Dental prosthetists must be registered with the Dental Board. Dental prosthetists are subject to the same guidelines and codes of practice as other members of the dental profession.

12. Dental prosthetists typically possess the following qualifications:

- (a) a Diploma of Dental Technology and an Advanced Diploma of Dental Prosthetics, offered through a number of providers (including TAFE NSW and RMIT University);
- (b) a dual qualification of a Bachelor of Dental Technology and a Bachelor of Dental Prosthetics;
- (c) a qualification of a Bachelor of Dental Prosthetics; or
- (d) in some cases, a Master of Dental Prosthetics.

12.2 According to the most recent ADPA statistics from the ADPA member survey, approximately 75% of the ADPA's members possess an Advanced Diploma of Dental Prosthetics or above.

A copy of the *ADPA Member Survey 2018* is annexed to this statement and marked **Annexure 3**. The statistics referred to in this paragraph are set out at page 23 of this statement.

13. Dental prosthetists have independent status from dentists. Members of the ADPA work:

- (a) running their own independent denture clinics;
- (b) subcontracting for other dental prosthetists and/or dentists;
- (c) in private denture clinics or dental practices as an employee (ranging from small clinics / practices to work in corporate firms such as large dental conglomerates and health funds;
- (d) in the public health sector; or
- (e) in a combination of the above.

14. According to the most recent ADPA statistics from the ADPA member survey, the breakdown of its members is as follows:

- (a) 71% are employers in private practice;
- (b) 7.6% are employees working in private practice;

- (c) 6.9% work in the public sector;
- (d) 5.5% work as a subcontractor in private practice; and
- (e) 9% work in a mix of the above or under some other arrangement.

The statistics referred to in this paragraph are set out at page 25 of this statement.

Dental prosthetists in the private and public sectors and award coverage

15. The vast majority of dental prosthetists work in the private sector. According to statistics published by the Commonwealth Department of Health in the *Dental Prosthetists Fact Sheet*, in 2017:
- (a) 10.8% of dental prosthetists reported working their principal role in the public sector;
 - (b) 67.2% reported working their principal role in solo private practice;
 - (c) 19.1% reported working their principal role in a group private practice; and
 - (d) the balance of 2.9% work in education and remaining work settings.

A copy of the *Dental Prosthetists Fact Sheet* is annexed to this statement and marked **Annexure 4**. The statistics referred to in this paragraph are set out at page 30 of this statement.

16. To my knowledge, dental prosthetists in the private sector have not historically been covered by any award, as there has not been a classification in the awards to cater for them, except for Tasmania.
17. There is an award in New South Wales that covers dental prosthetists in the public sector known as the *Health Employees Dental Prosthetists and Dental Technician (State) Award 2019*. A copy of this award is annexed to this statement and marked **Annexure 5**. A copy of the award referred to this paragraph can be found at page 33 of this statement.
18. In Tasmania, the *Dentists Award 2007* formerly applied to 'dental mechanics' until award modernisation. In this state, there is a higher proportion of dental prosthetists working in public sector employment than in other states and territories, due to the structure of the state health system. In Tasmania, as with in all other states historically, dental prosthetists were traditionally known as dental mechanics and they initially had no qualification at all. Most

were trained on the job. A copy of this award is annexed to this statement and marked **Annexure 6**. A copy of the award referred to this paragraph can be found at page 39 of this statement.

19. Given that only 7.6% of dental prosthetists in the private sector work as employees, it is difficult for the ADPA to accurately ascertain what the average starting salary of dental prosthetists is. However, from my experience in the dental industry and through my role at the ADPA, I am confident that dental prosthetists are in demand and command salaries well in excess of minimum award entitlements.

Views of the dental prosthetists on being covered by an award

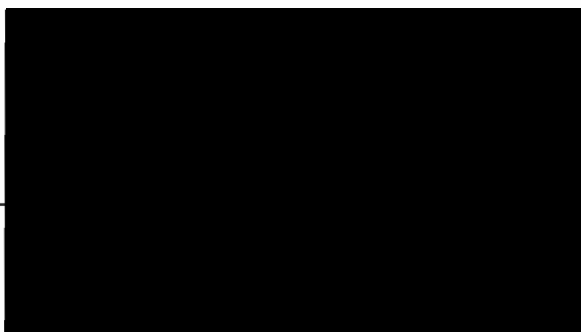
20. During my time with the ADPA in an executive capacity, I have not been approached by any of our members wishing to be covered by the *Health Professionals and Support Services Award 2010 (HPSS Award)* or any other award. To the best of my knowledge, neither the Chief Executive Officer of the ADPA or the current Board members of the ADPA have been approached by member prosthetists wishing to be covered by the HPSS Award or any other award.
21. I was recently advised by Mr David Wilkinson of Wentworth Advantage (who has been acting on behalf of the Australian Dental Association Inc. in these proceedings) that the Health Service Union had advised Mr Wilkinson that it was their view that the HPSS Award covers (or the HSU was looking for it to cover) dental prosthetists. This has certainly never been my understanding nor the desire of the members of ADPA. A copy of the email from the Health Services Union to Mr Wilkinson is annexed to this statement at page 75 and marked **Annexure 7**. The relevant email referred to in this paragraph is contained at page 75 and 78 of this statement.
22. On 8 October 2019, the Board of the ADPA passed a resolution that it supported the view that the list of common health professionals in Schedule C of the HPSS Award should be exhaustive, not indicative, which would have the effect that dental prosthetists are not covered by the HPSS Award because they are not on the list of occupations specified in the HPSS Award.

Title of dental prosthetist

9. The title 'dental prosthetist' has been around for a number of decades. It is protected under the *Health Practitioner Regulation National Law*. There is also reference to these titles in

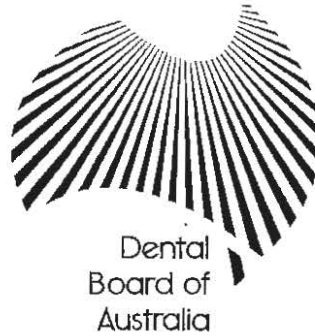
legislation. I do not expect that there will be any change to these titles in the foreseeable future.

Signature: _____



Date: 14 October 2019

ANNEXURE 1



Dental Board of Australia
Copy of Certificate of Registration

This is to certify that

Ms Jenine Anne Bradburn

Registration Number: DEN0001051655

is a registered

Dental Practitioner - Dental Prosthetist

with General Registration

Notations

Nil

Conditions

Nil

Undertakings

Nil

For the period 01/12/2018 to 30/11/2019

This copy has been produced directly from the public register by the registrant

Australian Health Practitioner Regulation Agency
GPO Box 9958 in your capital city.

The information on this certificate was accurate at the time of printing. For the latest information on this registration please check the online register at www.ahpra.gov.au

ANNEXURE 2

Dental Board of Australia Registrant data

Reporting period: 01 April 2019 to 30 June 2019

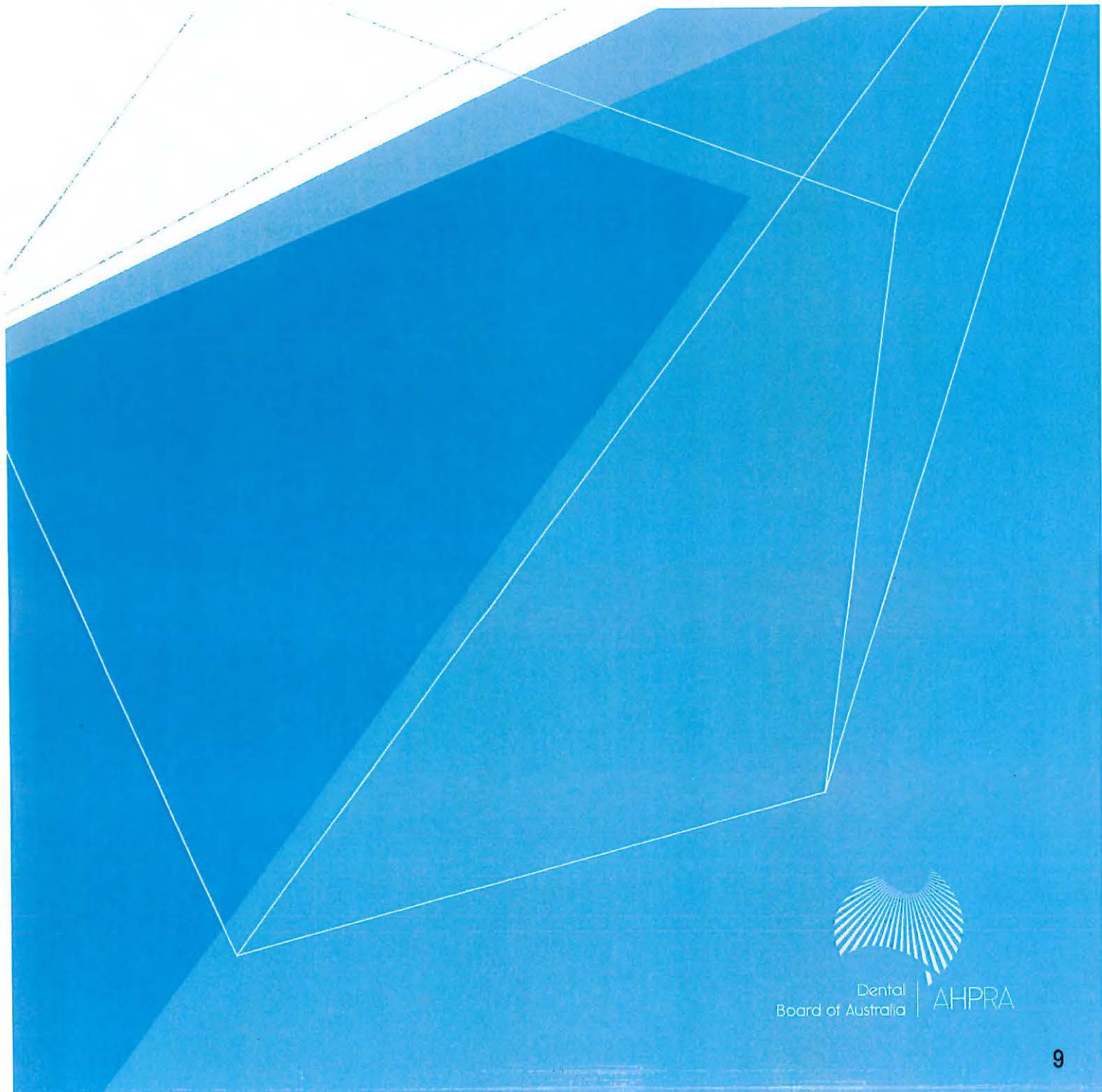


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Introduction

The functions of the Dental Board of Australia (the Board) include:

- registering dentists, students, dental specialists, dental therapists, dental hygienists, oral health therapists and dental prosthetists
- developing standards, codes and guidelines for the dental profession
- handling notifications, complaints, investigations and disciplinary hearings
- overseeing the assessment of overseas trained practitioners who wish to practise in Australia, and
- approving accreditation standards and accredited courses of study.

The Board's functions are supported by the [Australian Health Practitioner Regulation Agency](#) (AHPRA). For information about legislation governing our operations see AHPRA's Legislation & Publications at www.ahpra.gov.au/Publications

The Board has analysed its registration data and produced a number of statistical breakdowns about registrants to share with the profession and community. The Board shares these breakdowns regularly. For more information on dental registration, please see the Board's website: www.dentalboard.gov.au/Registration.aspx

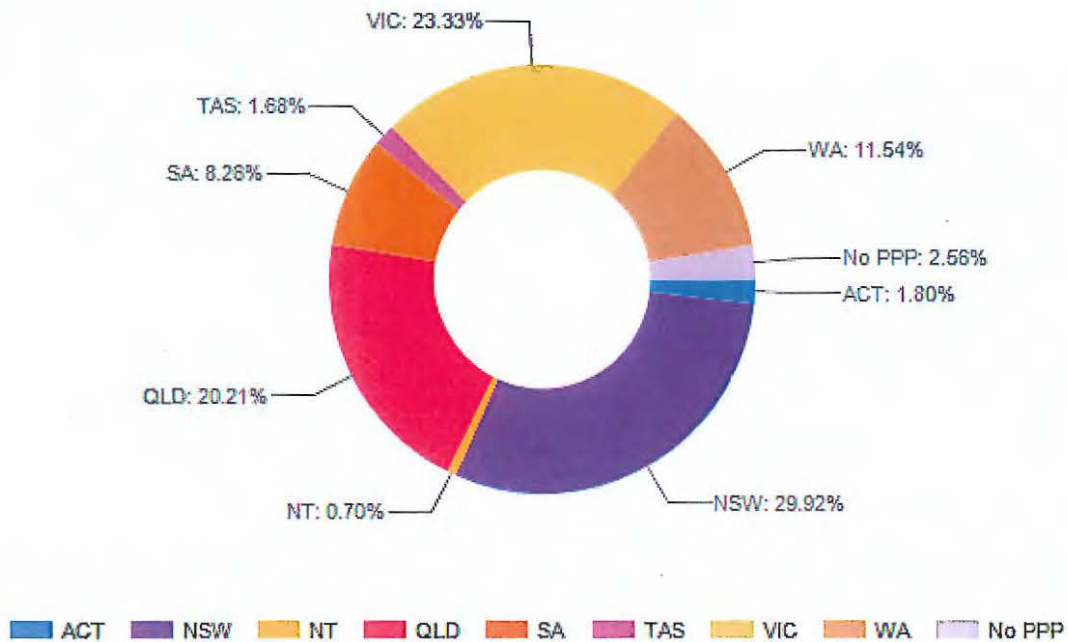
For more information on medical registration, please see the Board's website: <http://www.medicalboard.gov.au/Registration.aspx>

Registration type

Table 1.1 Dental practitioners - registration type by state or territory

Registration types	Registration subtypes	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	No PPP	Total
General		379	6,419	160	4,368	1,766	367	4,961	2,475	397	21,292
General and Non-practising					1						1
General and Specialist		41	501	4	334	147	30	437	186	40	1,720
Specialist		1	9		6	4		11	8	9	48
Limited	Postgraduate training or supervised practice		6		6	2		4	5		23
	Public interest										
	Teaching or research		9		17	5		3	6		40
Non-practising		7	156	2	65	35	2	120	58	161	606
Total		428	7,100	166	4,797	1,959	399	5,536	2,738	607	23,730

Table 1.2 Dental practitioners - percentage by principal place of practice



Registration divisions

Table 2.1 Dental practitioners - division(s) by state or territory

Division	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	No PPP	Total
Dental Hygienist	42	398	9	155	296	21	240	264	26	1,451
Dental Hygienist and Dental Prosthetist		2		1						3
Dental Hygienist and Dental Prosthetist and Dental Therapist		1					1			2
Dental Hygienist and Dental Therapist	7	65	4	131	61	3	124	57	1	453
Dental Hygienist and Dental Therapist and Dentist				1						1
Dental Hygienist and Dental Therapist and Oral Health Therapist		7		6	5		8	1		27
Dental Hygienist and Dentist		2		2			2			6
Dental Hygienist and Oral Health Therapist		15	1	4	1		1	5		27
Dental Prosthetist	14	402	7	275	68	46	361	88	3	1,264
Dental Prosthetist and Dental Therapist							1			1
Dental Prosthetist and Dentist							3			3
Dental Prosthetist and Oral Health Therapist			1							1
Dental Therapist	13	181	14	161	74	42	134	253	5	877
Dental Therapist and Dentist							1			1
Dental Therapist and Oral Health Therapist								6		6
Dentist	319	5,512	113	3,636	1,239	266	4,206	1,874	562	17,727
Dentist and Oral Health Therapist		3		1			2			6
Oral Health Therapist	33	512	17	424	215	21	452	190	10	1,874
Total	428	7,100	166	4,797	1,959	399	5,536	2,738	607	23,730

Registration type and divisions

Table 3.1 Dental practitioners - registration type and division by state or territory

Registration Types	Division	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	No PPP	Total
General	Dental Hygienist	41	385	9	151	291	21	234	253	15	1,400
	Dental Hygienist and Dental Prosthetist		2		1						3
	Dental Hygienist and Dental Prosthetist and Dental Therapist		1					1			2
	Dental Hygienist and Dental Therapist	7	61	4	128	61	3	120	55	1	440
	Dental Hygienist and Dental Therapist and Dentist				1						1
	Dental Hygienist and Dental Therapist and Oral Health Therapist		7		6	5		8	1		27
	Dental Hygienist and Dentist		2		1			2			5
	Dental Hygienist and Oral Health Therapist		15	1	4	1		1	5		27
	Dental Prosthetist	13	388	7	274	68	46	351	86	1	1,234
	Dental Prosthetist and Dental Therapist							1			1
	Dental Prosthetist and Dentist							3			3
	Dental Prosthetist and Oral Health Therapist			1							1
	Dental Therapist	13	168	14	158	73	42	122	247	2	839
	Dental Therapist and Dentist							1			1
	Dental Therapist and Oral Health Therapist								6		6
	Dentist	272	4,879	107	3,223	1,055	235	3,667	1,632	370	15,440
	Dentist and Oral Health Therapist		3		1			2			6
	Oral Health Therapist	33	508	17	420	212	20	448	190	8	1,856
	Sub Total - General		379	6,419	160	4,368	1,766	367	4,961	2,475	397

Continued on next page.

Registration Types	Division	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	No PPP	Total
General and Non-practising	Dental Hygienist and Dentist				1						1
	Dental Hygienist and Oral Health Therapist										
Sub Total - General and Non-practising					1						1
General and Specialist	Dentist	41	501	4	334	147	30	437	186	40	1,720
Specialist	Dentist	1	9		6	4		11	8	9	48
Limited	Dental Hygienist		1								1
	Dentist		14		23	7		6	11		61
	Oral Health Therapist							1			1
Sub Total - Limited			15		23	7		7	11		63
Non-practising	Dental Hygienist	1	12		4	5		6	11	11	50
	Dental Hygienist and Dental Therapist		4		3			4	2		13
	Dental Prosthetist	1	14		1			10	2	2	30
	Dental Therapist		13		3	1		12	6	3	38
	Dentist	5	109	2	50	26	1	85	37	143	458
	Oral Health Therapist		4		4	3	1	3		2	17
Sub Total - Non-practising		7	156	2	65	35	2	120	58	161	606
Total		428	7,100	166	4,797	1,959	399	5,536	2,738	607	23,730

Dental specialities

Table 4.1 Dental practitioners - dental speciality by state or territory

Speciality	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	No PPP	Total
Dento-maxillofacial radiology		1		8			1	3		13
Endodontics	6	50		34	17	4	46	16	5	178
Forensic odontology	2	5	1	2	2	2	4	5		23
Oral and maxillofacial surgery	4	61	1	47	16	5	58	23	8	223
Oral medicine		9		7			12	8	2	38
Oral pathology		8		5	3	1	2	3	1	23
Oral surgery		36		6			7	2	1	52
Orthodontics	14	184	2	125	56	13	148	64	18	624
Paediatric dentistry	2	44		26	13	1	43	18	3	150
Periodontics	9	64	1	43	16	4	63	34	4	238
Prosthodontics	5	69		42	25		55	19	7	222
Public health dentistry (Community dentistry)		3		1	1		8	1		14
Special needs dentistry		3		4	2		8	1	1	19
Surgery				1						1
Total	42	537	5	351	151	30	455	197	50	1,818

Endorsements

Table 5.1 Dental practitioners - endorsement by state or territory

Endorsement	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	No PPP	Total
Area of Practice - Conscious sedation	4	53	2	19	2	2	7	12	1	102

Age group

Table 6.1 Dental practitioners - by age group

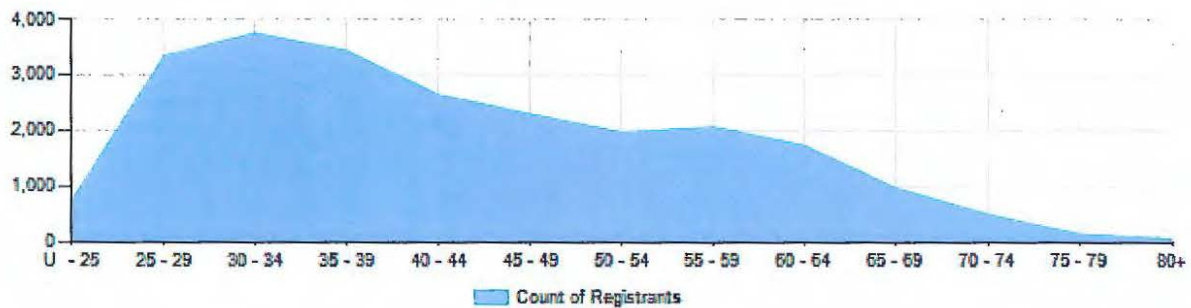


Table 6.2 Dental practitioners - registration type by age group

Age group	General	General and Non-practising	General and Specialist	Specialist	Limited			Non-practising	Total
					Postgraduate training or supervised practice	Public interest	Teaching or research		
U - 25	753								753
25 - 29	3,306		10	1	6			33	3,356
30 - 34	3,537	1	117	5	10		1	89	3,760
35 - 39	3,093		262	12	3		6	67	3,443
40 - 44	2,320		263	14	2		10	46	2,655
45 - 49	2,029		206	5	2		7	52	2,301
50 - 54	1,714		192	7			7	53	1,973
55 - 59	1,781		223	1			6	60	2,071
60 - 64	1,465		199				2	74	1,740
65 - 69	775		142	2			1	54	974
70 - 74	383		65					48	496
75 - 79	107		26	1				13	147
80+	29		15					17	61
Total	21,292	1	1,720	48	23		40	606	23,730

Gender

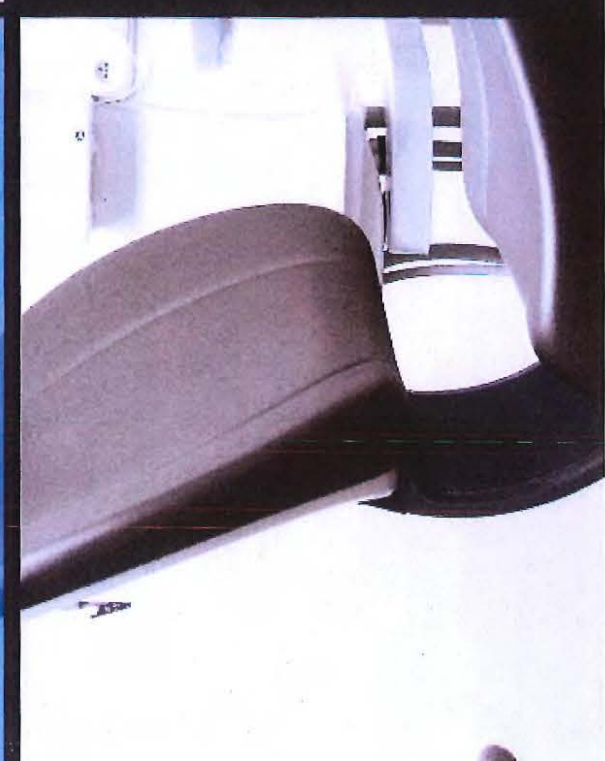
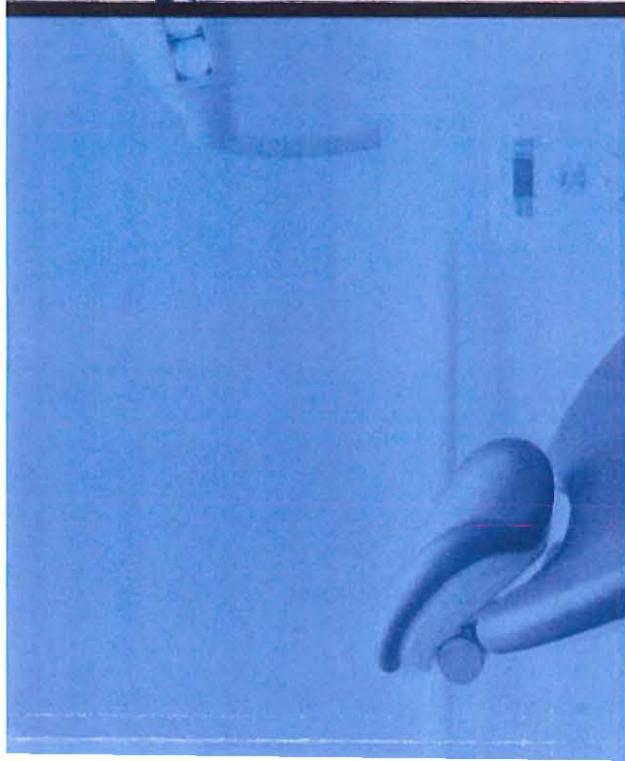
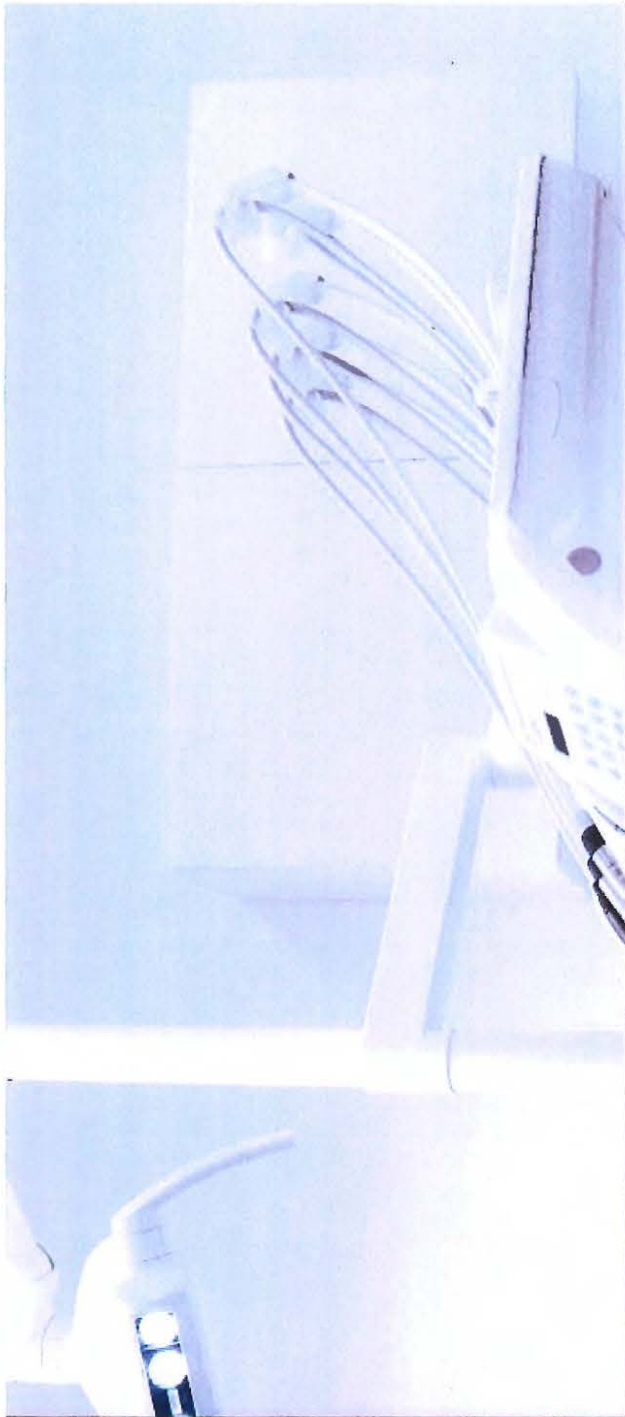
Table 7.1 Dental practitioners - registration type by gender

Gender	Registration types	Registration sub types	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	No PPP	Total
Female	General		250	3,224	88	2,281	1,078	179	2,695	1,493	188	11,476
	General and Non-practising					1						1
	General and Specialist		8	128	1	82	42	8	140	57	10	476
	Specialist		1	5		2	1		7	2		18
	Limited	Postgraduate training or supervised practice		4		2	1		1	4		12
		Teaching or research		3		6	3			2		14
	Limited			7		8	4		1	6		26
	Non-practising			3	77		33	16	1	67	32	78
Total Female			262	3,441	89	2,407	1,141	188	2,910	1,590	276	12,304
Male	General		129	3,195	72	2,087	688	188	2,266	982	209	9,816
	General and Specialist		33	373	3	252	105	22	297	129	30	1,244
	Specialist			4		4	3		4	6	9	30
	Limited	Postgraduate training or supervised practice		2		4	1		3	1		11
		Teaching or research		6		11	2		3	4		26
	Limited			8		15	3		6	5		37
	Non-practising			4	79	2	32	19	1	53	26	83
Total Male			166	3,659	77	2,390	818	211	2,626	1,148	331	11,426
Total			428	7,100	166	4,797	1,959	399	5,536	2,738	607	23,730

Table 7.2 Dental practitioners - percentage by gender

Gender	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	No PPP	Total
Female	61.2%	48.5%	53.6%	50.2%	58.2%	47.1%	52.6%	58.1%	45.5%	51.8%
Male	38.8%	51.5%	46.4%	49.8%	41.8%	52.9%	47.4%	41.9%	54.5%	48.2%

ANNEXURE 3



ADPA Member Survey

Data Summary



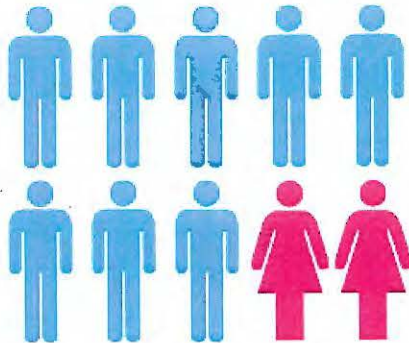
INTRODUCTION

The ADPA Member Survey was launched in March 2018 and closed May 2018.

Out of the registered dental prosthetist population of 1253 (March 2018, DBA) a sample population of 390 was achieved. This represents a statistically significant sample population with a 95% confidence ration and 4.13% error margin in reporting.

This report outlines key findings.

DEMOGRAPHICS



GENDER

Males account for 83.15% of the registered dental prosthetist population compared to females (16.15%)

1965

DATE OF BIRTH

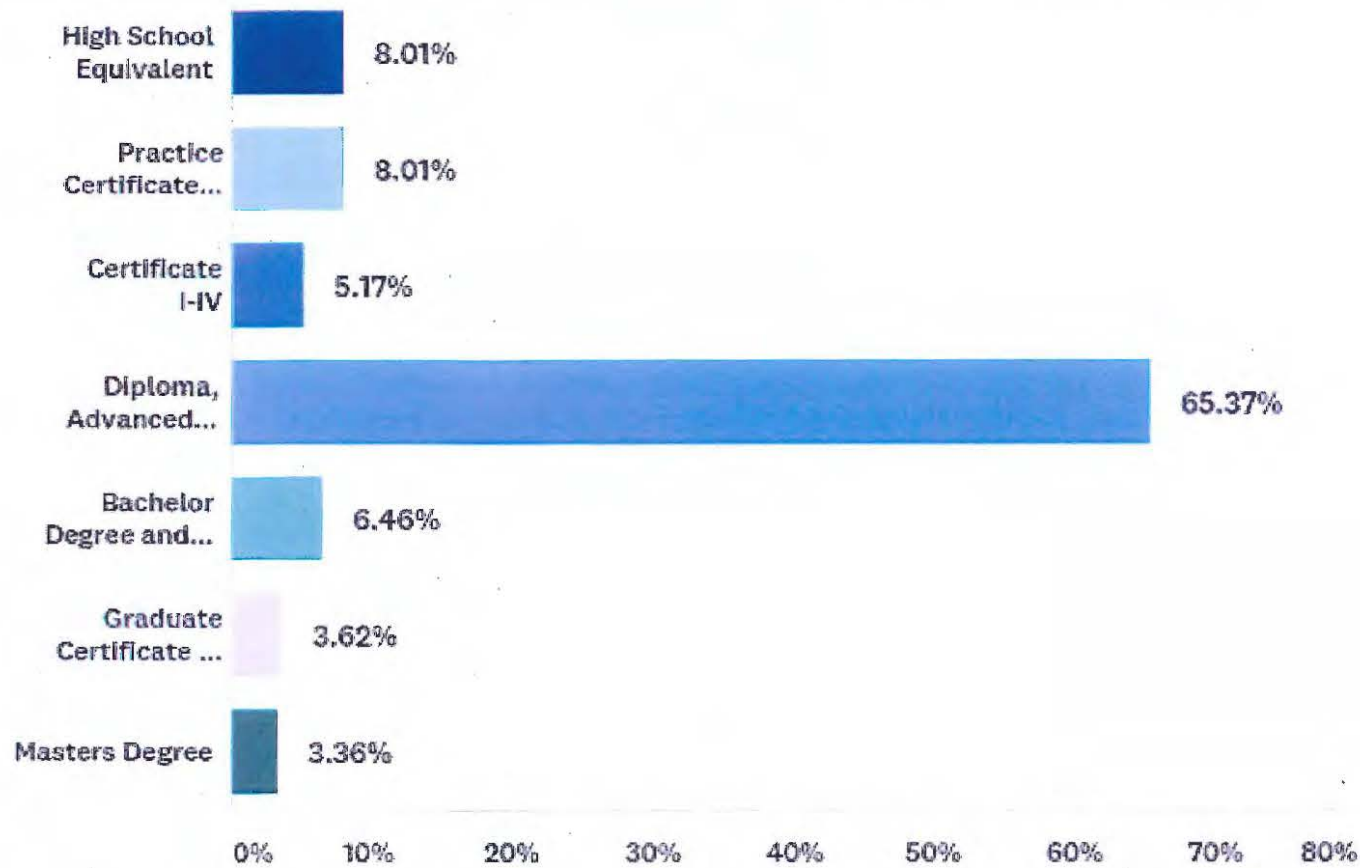
The average date of birth was 1965 with a reported range of 1940 (oldest) to 2000 (youngest).

1999

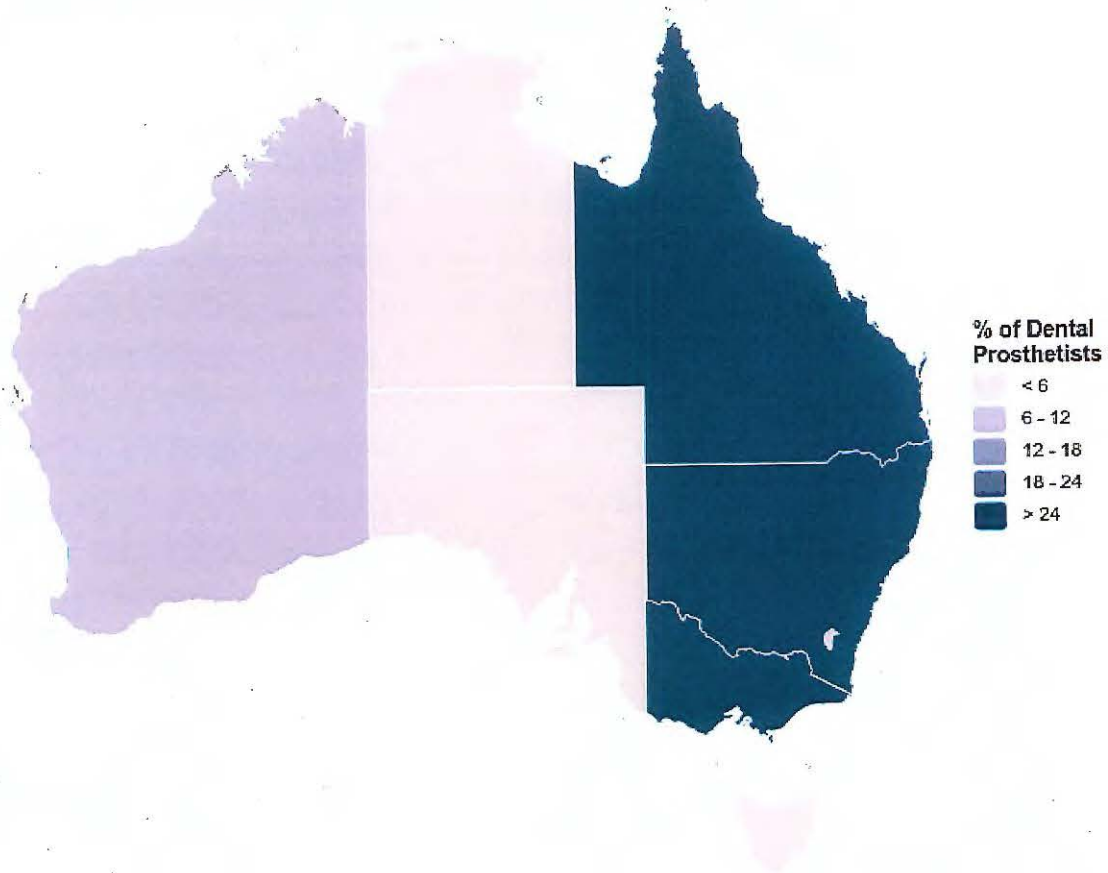
REGISTRATION

The average year of registration as a dental prosthetist was 1999.

HIGHEST LEVEL OF EDUCATION

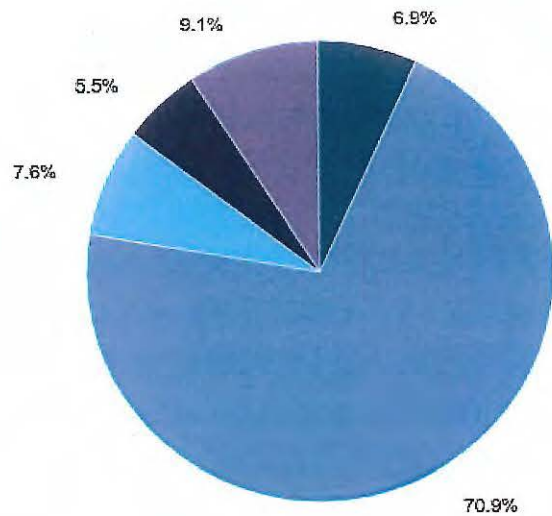


EMPLOYMENT LOCATION



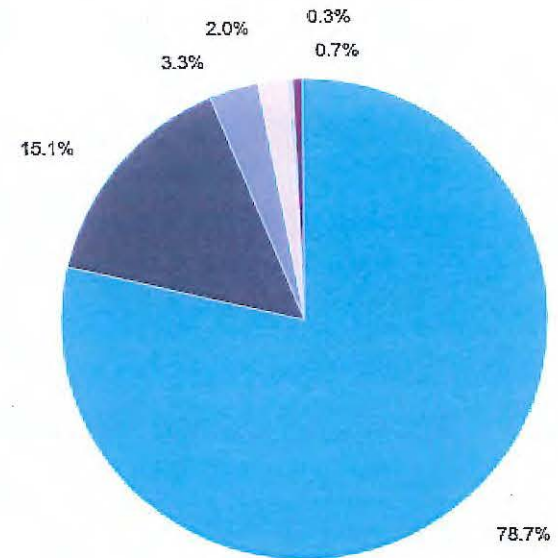
EMPLOYMENT MIX AND PRACTICES

EMPLOYMENT TYPES



- Public Health 6.9%
- Private Practice (Owner) 70.9%
- Private Practice (employee) 7.6%
- Private Practice (sub-contractor) 5.5%
- Mix/Other 9.1%

PRACTICES OWNED



- 1 78.7%
- 2 15.1%
- 3 3.3%
- 4 2.0%
- 5 0.7%
- 6+ 0.3%



HOURS AND WORKFORCE

CLINICAL VS LABORATORY HOURS



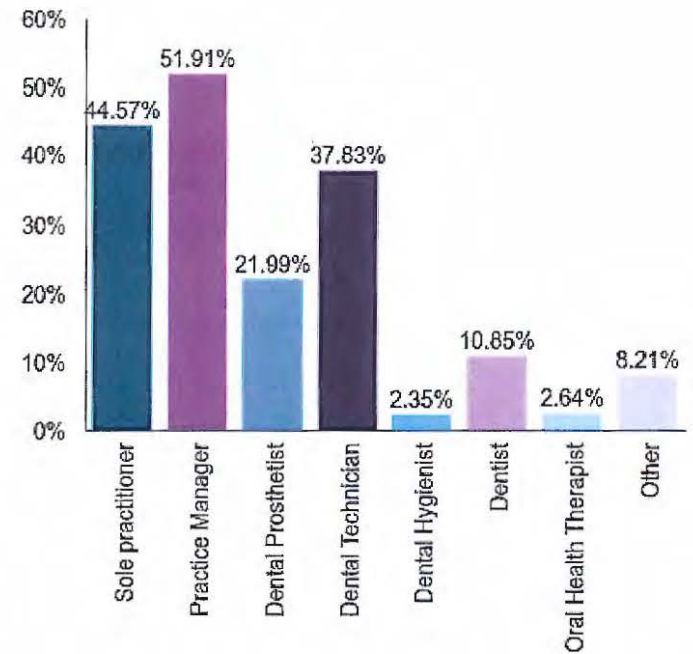
On average a private practitioner will work 30 hours a week in a clinical capacity compared to 26 hours in a laboratory setting.

OUTSOURCED LABORATORY WORK

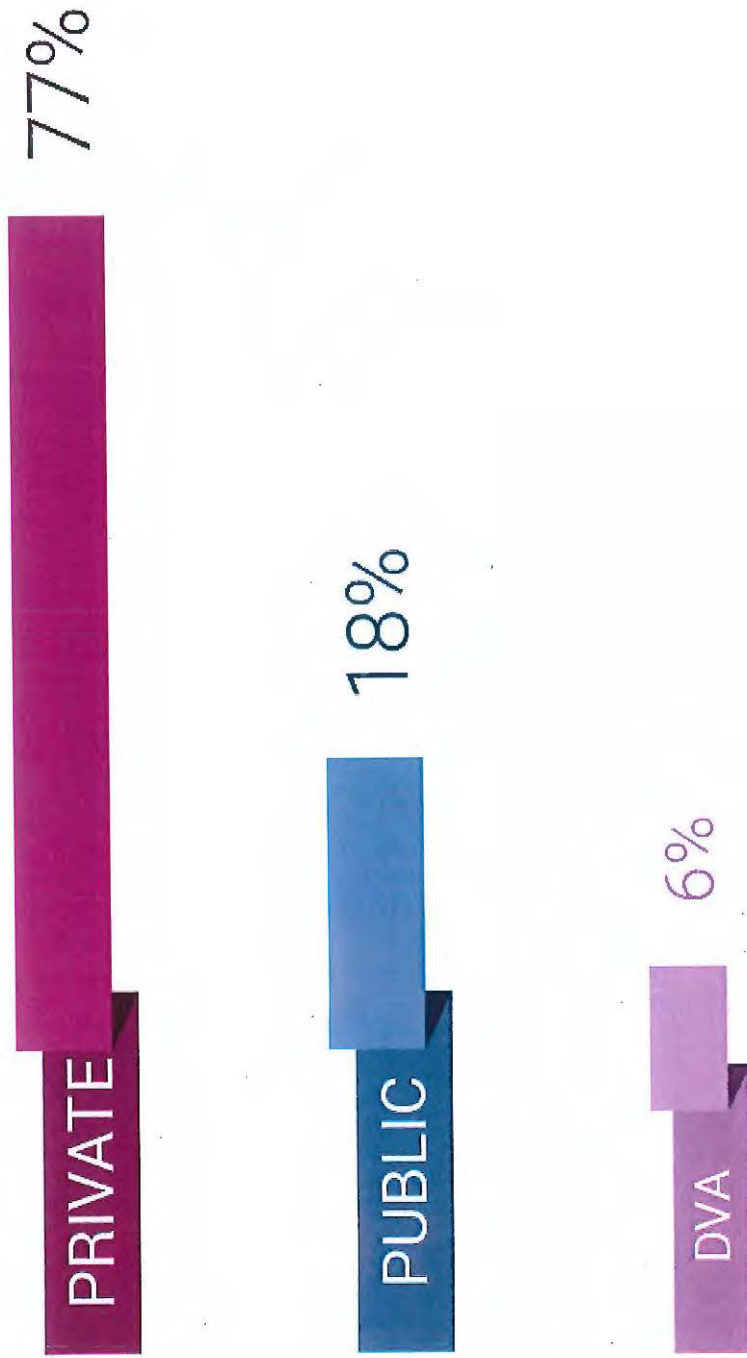


An average of 10% of laboratory work is outsourced. A statistically significant proportion of the industry does not outsource work at all. The highest rate of outsourced laboratory work was 80%.

WORKFORCE



PATIENT BREAKDOWNS



ANNEXURE 4

Dental Prosthetists



Australian Government
Department of Health

2017 Factsheet

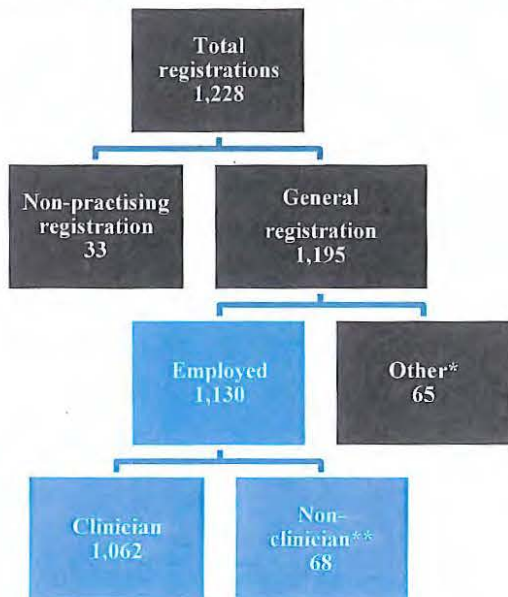
Dental prosthetists are registered healthcare practitioners who provide education, assessment, treatment, management and provision of removable dentures, and flexible, removable mouthguards used for sporting activities. Dental prosthetists collaborate with referring dentists and specialist dentists to ensure proper fitting and maintenance of dental prostheses.

To gain registration as a dental prosthetist, practitioners must complete a minimum three year undergraduate, or one year postgraduate program of study approved by the Dental Board of Australia.

The following analysis is drawn from the number of dental prosthetists with general registration who were employed (1,130 in 2017) unless otherwise stated.

Workforce

Figure 1: Dental prosthetists registrations, 2017



*'Other' includes: working but on long leave, working outside the profession, looking for work, overseas, and retired.

**'Non-clinician' includes roles reported by survey respondents that did not fit predefined survey categories.

The number of registered dental prosthetists increased by 0.4% from 1,223 in 2014 to 1,228 in 2017 (average annual increase of 0.1%).

Table 1: Dental prosthetist, 2014-2017

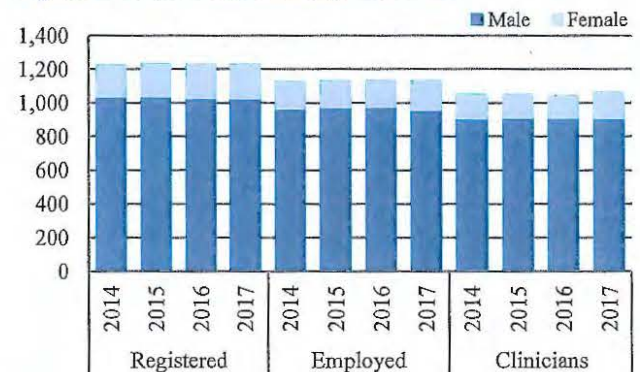
	2014	2015	2016	2017	Avg. annual growth
Registered	1,223	1,230	1,228	1,228	0.1%
Employed	1,124	1,130	1,131	1,130	0.2%
Clinicians	1,047	1,050	1,042	1,062	0.5%

The number of employed dental prosthetists increased by 0.5% from 1,124 to 1,130 over the same period (an average annual decrease of 0.2%).

Demographics

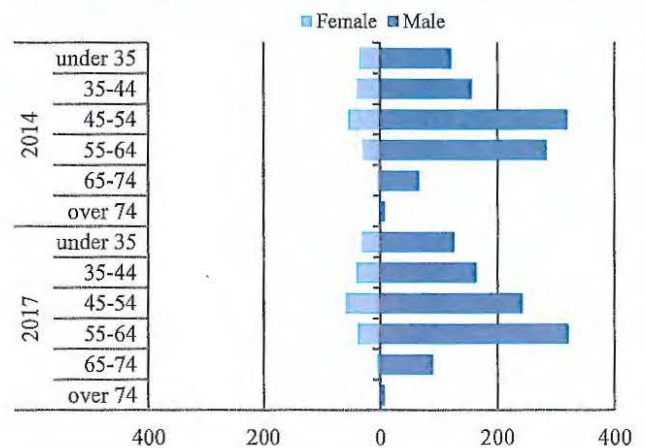
In 2017, 15.2% of dental prosthetists were female, an increase from 14.1% in 2014.

Figure 2: Gender distribution, 2014-2017



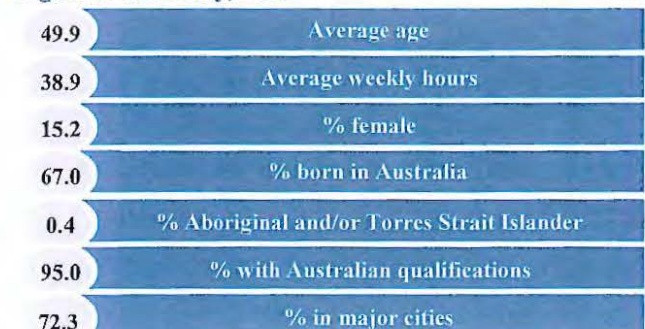
In 2017, the average age of dental prosthetists was 49.9 years, an increase from 49.2 years in 2014. Between 2014 and 2017, the proportion aged over 54 years has increased from 35.1% to 41.4%.

Figure 3: Age and gender distribution, 2014 and 2017



Quick Facts - 2017

Figure 4: Summary, 2017



Hours Worked

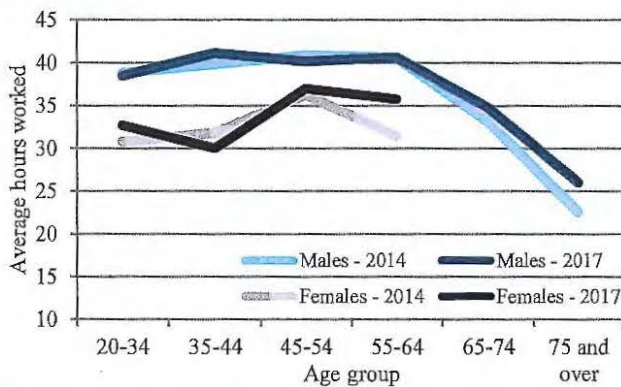
In 2017, dental prosthetists worked an average of 38.9 hours per week in total, with an average of 9.9 hours per week in non-clinical roles.

Table 2: Average hours per week, 2014-2017

Average hours worked	2014	2015	2016	2017
Clinical	29.6	28.6	29.1	29.0
Non-clinical	9.2	10.1	9.8	9.9
Total	38.7	38.7	39.0	38.9

In 2017, male dental prosthetists worked an average of 39.7 hours per week, remaining unchanged from 2014. Female dental prosthetists worked an average of 34.6 hours per week, increasing from 33.1 hours in 2014. Males aged 35-44 years worked the longest hours per week, at 41.2 hours on average.

Figure 5: Average hours per week by gender and age group, 2014 and 2017



Principal Role

In 2017, 94.0% of dental prosthetists worked as clinicians in their principal role, an increase from 93.1% in 2014.

Table 3: Principal role, 2014 and 2017

Principal role	2014		2017	
	Headcount	%	Headcount	%
Clinician	1,047	93.1	1,062	94.0
Non clinician	77	6.9	68	6.0
Total	1,124	100	1,130	100

Second job

In 2017, 13.2% of dental prosthetists reported a second job role in dental prosthetics, an increase from 12.8% in 2014.

Table 4: Second job role, 2014 and 2017

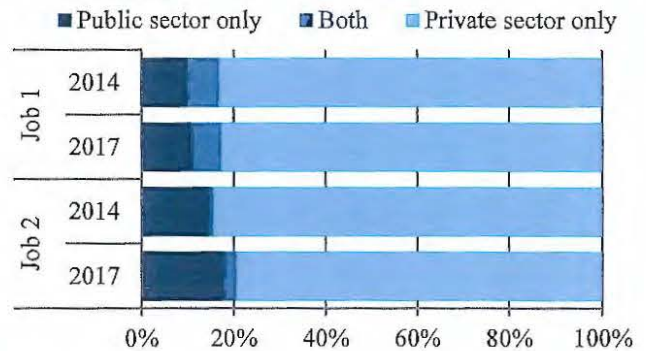
Principal role	2014		2017	
	Headcount	%	Headcount	%
Clinician	88	7.8	98	8.7
Non clinician	56	5.0	51	4.5
Total	144	12.8	149	13.2

Principal work sector

In 2017, 10.8% of dental prosthetists reported that in their principal role, they worked only in the public sector, an increase from 9.9% in 2014.

Of those dental prosthetists reporting a second job role in 2017, 1.7% reported they worked only in the public sector, an increase from 1.3% in 2014.

Figure 6: Sector in which clinical hours were worked, 2014 and 2017



Note: 'Not applicable' responses are excluded from the chart

Principal Work Setting

In 2017, 67.2% of dental prosthetists worked in a Solo private practice setting in their principal role, a decrease from 70.4% in 2014, and 19.1% worked in a Group private practice setting, an increase from 17.3% in 2014.

In 2017, dental prosthetists working in Commercial/ business service reported the highest average weekly hours (44.2) and those in Other community health care service (included in 'Remaining work settings') reported the lowest average weekly hours (18.0).

Table 5: Principal work setting, 2014 and 2017

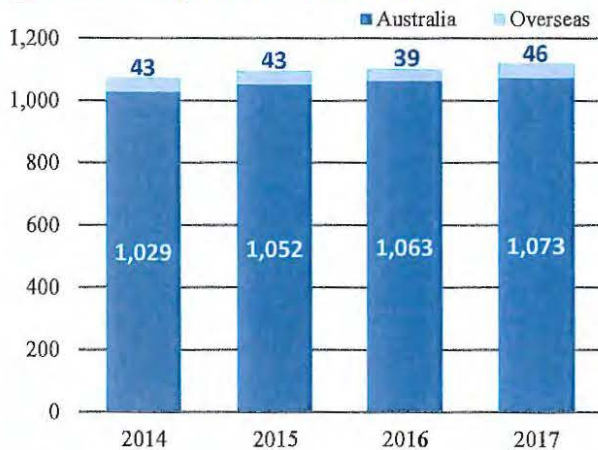
Principal work setting	2014		2017	
	Principal role	Second job	Principal role	Second job
Solo private practice	791	49	759	61
Group private practice	195	32	216	55
Public clinic	29	14	52	15
Hospital	54	NP	52	12
Commercial/ business service	9	NP	11	0
Tertiary education facility	16	10	11	5
Remaining work settings	28	26	29	23
Total	1,124	137	1,130	171

Note: In this instance the principal work setting headcount for the reported second job does not equal the principal role for the reported second job. This occurs when the survey respondent indicates a second job work setting but not a second job principal role.

Initial Qualification

The workforce survey asks dental prosthetists where they obtained their initial qualification. In 2017, 95.0% of dental prosthetists obtained their initial qualification in Australia and 4.1% obtained their initial qualification overseas.

Figure 7: Initial qualification, 2014-2017



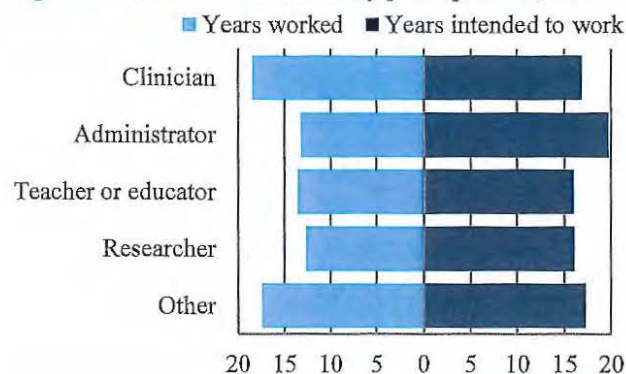
Note: 'Not stated/Unknown' responses are excluded from this chart

Working Intentions

In 2017, dental prosthetists had, on average, worked 18 years in the profession and intended to work for another 17 years. In 2014, dental prosthetists had worked 19 years on average, and had intended to work for another 16 years.

Note: The workforce survey ask how many years have you worked and intend to work as a 'dental practitioner'. Therefore all years reported may not refer to the dental prosthetic division.

Figure 8: Workforce intentions by principal role, 2017



Distribution

State and Territory

In 2017, the jurisdiction with the highest rates of full-time equivalent dental prosthetists per 100,000 population (FTE rate) was TAS. Between 2014 and 2017 the total FTE rate decreased from 4.9 to 4.7 and the ACT had the largest FTE rate decrease (1.0).

In 2017, dental prosthetists in TAS worked the most hours per week on average (42.4 hours) and those in the NT worked the fewest (36.5 hours).

Table 6: Distribution by state/ territory, 2017

State / Territory	Headcount	Total FTE	Avg. total hours	² FTE rate per 100,000 population
NSW	363	371.0	38.8	4.7
VIC	321	316.9	37.5	5.0
QLD	248	257.5	39.5	5.2
SA	60	61.8	39.2	3.6
WA	78	83.4	40.6	3.2
TAS	44	49.1	42.4	9.4
ACT	12	12.9	40.9	3.1
NT	4	3.8	36.5	1.6
Total	1,130	1,156.4	38.9	4.7

Note: 'Not stated/Unknown' are excluded from this table but are included in the total

Remoteness Area

In 2017, 94.1% of dental prosthetists worked in either major cities or inner regional locations, compared with 94.4% in 2014.

Between 2014 and 2017, the largest shift in average hours worked was in outer regional areas, decreasing from 41.0 hours per week in 2014 to 38.8 hours in 2017. However the FTE rate in outer regional areas remained stable due to an increase in the number of dental prosthetists in these areas.

Table 7: Distribution by remoteness area, 2017

Remoteness Area	Headcount	Total FTE	Avg. total hours	² FTE rate per 100,000 population
Major cities	817	818.4	38.1	4.6
Inner regional	246	269.1	41.6	6.1
Outer regional	64	65.3	38.8	3.2
Remote & very remote	3	3.6	46.0	0.7
Total	1,130	1,156.4	38.9	4.7

Note: 'Not stated/Unknown' are excluded from this table but are included in the total

Other Work Location Outside of Major Cities

In 2017, 6.6% of dental prosthetists reported that they had worked in a regional, rural or remote location, in addition to their principal or second job location. Of these respondents, 80.0% had worked in an inner regional or outer regional location, and 2.7% had worked in either remote or very remote locations.

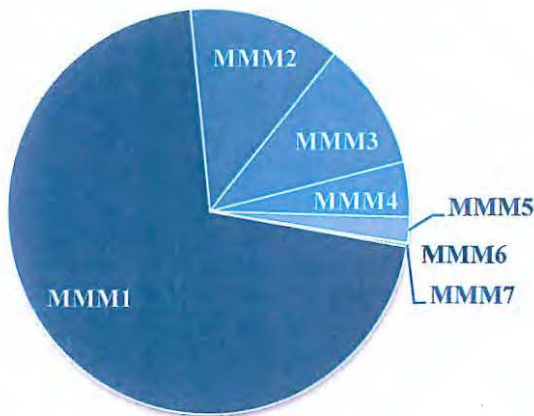
Modified Monash Model

In 2017, the majority (70.8%) of FTE dental prosthetists were located in a major city or a location considered as MMM1 under the Modified Monash Model (MMM) classification system, a decrease from 72.4% in 2014.

(See www.doctorconnect.gov.au for more information on the MMM).

MMM3 locations had the highest FTE rate of dental prosthetists (7.6) followed by MMM2 (6.2). The lowest FTE rate was in MMM6 locations (0.2).

Figure 9: FTE Distribution by MMM, 2017



Tele-Health

The workforce survey asks dental prosthetists to report their hours practiced via tele-health in dental prosthetics in the previous year.

Note: Tele-health is the use of telecommunication techniques for the purpose of providing telemedicine, medical education, and health education over a distance.

A total of 94 dental prosthetists (8.3%) provided a response to the Tele-Health question in 2017. On average, these respondents practiced via Tele-Health for 21.8 hours per week, with the majority (83.0%) of Tele-Health services provided by practitioners based in a major city.

Table 8: Tele-health workforce remoteness location, 2017

Major cities	Inner regional	Outer regional	Remote	Very remote
83.0%	11.7%	5.3%	0.0%	0.0%

Note: The tele-health workforce remoteness location refers to the location of the Practitioner, not the location of the person receiving the service.

References

- 1) National Health Workforce Dataset (NHWDS): Allied Health Practitioners 2014-2017.
- 2) ABS - 3218.0 - Regional Population Growth, Australia, 2016-17, Released 31/08/18.

Notes

- 1) 'NP' denotes figures that are not published (suppressed) for confidentiality reasons
- 2) The 2013-2016 NHWDS have been revised due to an error in recoding the missing values for job role. As such the figures may not match those that were previously published.
- 3) FTE number measures the number of standard-hour workloads worked by employed health practitioners. The FTE number provides a useful measure of supply because it takes into account both the number of practitioners who are working and the hours that they work. FTE number is calculated based on the total hours worked in a 'standard working week'. The standard working week is assumed to be 38 hours, equivalent to 1 FTE for all practitioners with the exception of medical practitioners where it is assumed to be 40 hours.

Commonwealth of Australia 2019

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healthworkforcedata@health.gov.au

ANNEXURE 5

IRC No. 1765 of 2008 – Bishop C – New Award – effective 17 September 2008	(368 IG 409)
IRC No. 174 of 2012 – Staff J – Award Review Variation – effective 19 March 2012	(373 IG 158)
IRC No. 631 of 2015 – Stanton C – Award Review Variation – effective 15 October 2015	(378 IG 440)
Case No. 2017/00195623 – Kite C – New Award – effective 1 July 2017	(382 IG 248)
Case No. 2018/00198658 – Murphy C – New Award – effective 1 July 2018	(384 IG 817)
Case No. 2019/00205776 – Kite CC – New Award – effective 1 July 2019	(IG pending)

HEALTH EMPLOYEES DENTAL PROSTHETISTS AND DENTAL TECHNICIANS (STATE) AWARD 2019

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

AWARD

1. Arrangement

Clause No.	Subject Matter
1.	Arrangement
2.	Definitions
3.	Classifications
4.	Transitional Arrangements
5.	Previous Industry Service
6.	Salaries and Allowances
7.	Conditions of Service
8.	Grading and Classification of Officers
9.	No Extra Claims
10.	Area, Incidence and Duration

2. Definitions

Unless the context otherwise indicates or requires the several expressions hereunder defined shall have their respective meanings assigned to them.

“Employee” means a person or persons employed in any hospital as defined.

“Hospital” means a public hospital as defined under section 15 of the *Health Services Act 1997*.

“Industrial Committee” means the Public Health Employees (State) Industrial Committee.

“Industry Service”, unless the context otherwise indicates or requires means service before and/or after commencement of this award in any hospital and/or laboratory acceptable to the Ministry.

“Ministry” means the Ministry of Health.

“Service”, unless the context otherwise indicates or requires means service or experience as a Dental Technician before and/or after commencement of this Award in any one or more New South Wales public health organisations or any other organisation acceptable to the Ministry.

“Union” means the Health Services Union NSW.

3. Classifications

3.1 Dental Technician

- (a) Trainee Dental Technician means a person appointed as such who is undertaking the Diploma of Dental Technology conducted by NSW TAFE or an equivalent course in Dental Technology.
- (b) Dental Technician Level 1 means a person appointed as such who has successfully completed the Diploma of Dental Technology conducted by NSW TAFE or an equivalent course in Dental Technology.

- (c) Dental Technician Level 2 means a dental technician who fulfils the following criteria:
- (i) having at least 3 years' experience as a registered dental technician; and
 - (ii)
 - (a) successful completion of the first year of the Dental Prosthetics course conducted by NSW TAFE; or
 - (b) having qualifications deemed by the Ministry to be equivalent to the first year of the Dental Prosthetics course; and
 - (iii) demonstrating skills in excess of those required of a Dental Technician Grade 1; and
 - (iv) being proficient in, and spending the major part of their time engaged in, one or more of the following areas of work;
 - orthodontic appliances;
 - cast metal denture techniques;
 - crown and bridge;
 - osseo-integrated implant technology;
 - maxillo facial and complicated prosthetics, including over-dentures, oburators, precision attachments and magnets, occlusal splints, complete and partial dentures requiring complicated (that is crossbite, class II and class III jaw relationship) tooth arrangements in balanced occlusion.
- (d) Dental Technician Level 3 means a dental technician who fulfils the following criteria:
- (i) having at least 6 years' experience as a registered dental technician and maintains relevant registration; and
 - (ii) successfully completed qualifications deemed by the Employer to be equivalent to the Advance Diploma of Dental Prosthetics (these may include qualifications in ceramics, orthodontics, implants, crowns etc). Equivalency is to be assessed based upon the hours of study undertaken and the complexity of the course work; and
 - (iii) show a high level of competency in the exercise of all the skills of the recognised training in accordance with the position requirements.
- (e) Senior Dental Technician Level 4 means a dental technician appointed to such a position and who undertakes the following duties/or role:
- (i) meets all the requirements of a Dental Technician Level 3; and
 - (ii) manages a section/unit, which includes the responsibility of supervising the work and activities of other dental technicians/prosthetists.
- (f) Specialised Dental Technician Level 5 means a dental technician appointed to such a position and who undertakes most of the following duties/ role:
- (i) master or highly skilled technician with technical skills and proficiency above that which would be expected of a fully proficient level 3;
 - (ii) specialist in an area of their profession and relied on for advice in this field;

- (iii) undertakes complex independent scientific, technical or specialist work and analysis;
- (iv) contributes to the development of standards relating to the sector, program or profession;
- (v) develops technical or professional standards for the organisation;
- (vi) provides professional leadership, education and development of staff in area of professional expertise;
- (vii) routinely advises senior levels of the organisation on technical issues and solutions within a functional area; and
- (viii) manages complex and significant state-wide, in-house services provided by dental technicians. (Such services provided on a Local Health District(s)-wide basis would be managed by a technician at level 4.)

3.2 Dental Prosthetist

- (a) Dental Prosthetist Level 1 means a dental prosthetist who fulfils the following criteria:
 - (i) having at least 6 years' experience as a registered dental technician;
 - (ii) having successfully completed all qualifications of the Diploma of Dental Technology and the Advanced Diploma of Dental Prosthetics;
 - (iii) possesses and maintains relevant registration; and
 - (iv) shows a high level of competency in the exercise of all the skills of the recognised training in accordance with the position requirements.
- (b) Senior Dental Prosthetist Level 2 means a dental prosthetist appointed to such a position who has developed specialised skills through additional study or the development of specialised skills/techniques and who undertakes the following duties:
 - (i) meets all the requirements of a Dental Prosthetist Level 1; and
 - (ii) has a specialised area of practice such as dealing with special needs patients or trauma patients with complex prosthetics requirements; and
 - (iii) may manage a section/unit, which includes the responsibility of supervising the work and activities of other dental technicians/prosthetists.
- (c) Specialised Dental Prosthetist Level 3 - means a prosthetist appointed to such a position and who undertakes most of the following duties/ role:
 - (i) master or highly skilled prosthetist with technical skills and proficiency above that which would be expected of a fully proficient level 2 ;
 - (ii) specialist in an area of their profession and relied on for advice in this field;
 - (iii) undertakes complex independent scientific, technical or specialist work and analysis;
 - (iv) contributes to the development of standards relating to the sector, program or profession;
 - (v) develops technical or professional standards for the organisation;
 - (vi) provides professional leadership, education and development of staff in area of professional expertise;

- (vii) routinely advises senior levels of the organisation on technical issues and solutions within a functional area; and
- (viii) manages complex and significant state-wide, in-house services provided by dental prosthetists (such services provided on an Area-wide basis would be managed by a prosthetist at level 2.)

4. Transition Arrangements

- (a) Existing dental technicians will have their current duties and qualifications assessed against the classification descriptors provided in clause 3, in order to appropriately transfer employees into the dental prosthetist classification structure. There will be no reduction to employees' rates of pay arising from this transition and existing incremental dates will be maintained.
- (b) Dental technicians who obtained prosthetist qualifications under the previous award provisions will have their qualifications recognised and, if appropriate, their current grade as a dental technician maintained. However employees who have not yet commenced nor completed the prosthetist qualification will no longer have this qualification recognised for progression to level 2 or beyond in the technicians stream of the classification structure. Employees who have partially completed this qualification can only rely upon the qualification to progress as a prosthetist, not as a technician.
- (c) Progression to level 3 in the technicians' structure, and to level 1 in the prosthetist structure, will require completion of relevant qualifications, the exercise of the relevant skills and the possession of any relevant license or registration.
- (d) The parties will work together to identify suitable qualifications for progression in the dental technician classification structure.
- (e) The award classification of Deputy Chief Dental Technician has been deleted but this classification and salary will be maintained for the current occupant.

5. Previous Industry Service

Previous industry service shall be taken into account in determining the commencing salary of an employee to be paid in accordance with rates set in the Health Professional and Medical Salaries (State) Award.

6. Salaries and Allowances

Full time Dental Prosthetist and Dental Technician employees shall be paid the salaries and allowances as set out in the *Health Professional and Medical Salaries (State) Award 2018*, as varied or replaced from time to time.

7. Conditions of Service

The *Public Hospitals (Professional and Associated Staff) Conditions of Employment (State) Award 2018*, as varied or replaced from time to time, shall apply to all persons covered by this award.

In addition, the *Health Industry Status of Employment (State) Award 2018*, as varied or replaced from time to time, shall also apply to all relevant employees.

8. Grading and Classification of Officers

Nothing in Clause 3 - Classifications, or Clause 5 - Previous Industry Service, shall affect the right of the Union to apply to the Industrial Commission of New South Wales for the settlement of any dispute arising from the grading of an employee under this award.

9. No Extra Claims

Other than as provided for in the *Industrial Relations Act 1996* and the *Industrial Relations (Public Sector Conditions of Employment) Regulation 2014*, there shall be no further claims/demands or proceedings instituted

before the Industrial Relations Commission of New South Wales for extra or reduced wages, salaries, rates of pay, allowances or conditions of employment with respect to the employees covered by the Award that take effect prior to 30 June 2020 by a party to this Award.

10. Area, Incidence and Duration

- (i) This Award takes effect from 1 July 2019 and shall remain in force for a period of one year.
- (ii) This Award rescinds and replaces the *Health Employees Dental Prosthetists and Dental Technicians (State) Award 2018* as published and all variations thereof.
- (ii) This Award shall apply to persons employed in classifications contained herein employed in the New South Wales Health Service under s115(1) of the *Health Services Act 1997*, or their successors, assignees or transmittes.

ANNEXURE 6

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TASMANIAN INDUSTRIAL COMMISSION

Industrial Relations Act 1984

s23 application for award or variation of award

Tasmanian Trades and Labor Council

(T12940 of 2007)

Private Sector Awards

Public Sector Awards

FULL BENCH:

PRESIDENT P L LEARY

DEPUTY PRESIDENT P C SHELLEY

COMMISSIONER T J ABEY

Wage Rates – State Wage Case 2007 – application amended - application to vary private and public sector awards – award wage rates to be increased by \$22.70 per week - wage related allowances to be increased by 3.8% – meal allowance increased to \$14.10 - State Minimum Wage rate determined at \$527.10 - s.35(1)(b) – operative date ffpp 1 August 2007

DENTISTS AWARD

ORDER -

**No. 2 of 2007
(Consolidated)**

AMEND THE **DENTISTS AWARD** BY DELETING ALL CLAUSES CONTAINED THEREIN AND INSERTING IN LIEU THEREOF THE FOLLOWING; AND THE AWARD IS CONSOLIDATED:

P023

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1. TITLE

This award shall be known as the "Dentists Award".

2. SCOPE

This award is established in respect of:

- (a) Dentists;
- (b) Dental Mechanics;

registered under Part III of the *Dentists Act 1919*.

3. ARRANGEMENT

<u>SUBJECT MATTER</u>	<u>CLAUSE NO.</u>
Title	1
Scope	2
Arrangement	3
Date of Operation	4
Supersession and Savings	5
Parties and Persons Bound	6
Definitions	7
Wage Rates	8
Annual Leave	9
Bereavement Leave	10
Casual Employees	11
Consultative Procedures	12
Enterprise Flexibility	13
General Conditions	14
Holidays with Pay	15
Hours of Work	16
Occupational Superannuation	17
Overtime	18
Parental Leave	19
Part-time Employees	20
Payment of Wages	21
Personal Leave	23
Saturday Work	22
Sunday and Holiday Work	24
Terms of Employment	25

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4. DATE OF OPERATION

This award shall come into operation from the first full pay period to commence on or after 1 August 2007.

5. SUPERSESION AND SAVINGS

This award incorporates and supersedes the Dentists Award No. 2 of 2006 (Consolidated) and No. 1 of 2007.

PROVIDED that no right, obligation or liability incurred or accrued under any of the abovementioned provisions shall be affected by the replacement or supersession.

6. PARTIES AND PERSONS BOUND

Unless otherwise specified, this award shall have application to and be binding upon:

- (a) all employers (whether members of a Registered Organisation or not) who are engaged in the industry specified in Clause 2 - Scope;
- (b) all employees (whether members of a Registered Organisation or not) for whom classifications appear in this award and who are engaged in the industry specified in Clause 2 - Scope;
- (c) the following organisation of employees in respect of whom award interest has been determined:

the Health Services Union of Australia, Tasmania No. 1 Branch and the officers of that organisation and their members employed in the industry specified in Clause 2 - Scope;
- (d) the following organisation of employers in respect of whom award interest has been determined:

the Tasmanian Chamber of Commerce and Industry Limited.

7. DEFINITIONS

'Adult' means an employee of 20 years of age or over.

'Apprentice' means any person who is being trained as a Dental Technician or a Registered Dental Mechanic by a qualified Journeyman or Dentist under articles of apprenticeship.

'Association' means The Dental Assistants' Association of Australia (Tasmanian Branch).

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'Casual employee' means any person who is employed on a casual basis and except as to probationary employees mentioned in subclause (a), Clause 25 - Terms of Employment hereof, includes any person who is employed for a period not exceeding five days at any one time.

'Dental Mechanic' means any person registered under Section 48 of the *Dentists Act 1919* who makes any article to be fitted to the human mouth.

'Dental Technician' means any person other than a Registered Dental Mechanic who makes any article to be fitted to the human mouth and who has served an apprenticeship under the provisions of The Dental Assistants' Association of Australia (Tasmanian Branch).

'Experience' means experience in a dental surgery whether in the employ of one employer or of several. For the purposes of this subclause an employee who is dismissed or leaves his or her employment shall be entitled to a reference stating the period of his or her experience.

'Part-time employee' is one who regularly works for less than 38 hours per week.

'Show day' means not more than one local show day observed on an employee's ordinary working day, other than a Saturday or a Sunday, in the city, town or district in which the employee is employed; or such other day which, in the absence of such a local show day, is agreed on by the employee and the employer, therefore making a total of 11 paid public holidays per year.

8. WAGE RATES

1. WAGES

DIVISION A - REGISTERED DENTAL MECHANICS AND DENTAL TECHNICIANS

- (a) The minimum weekly wage rate to be paid by employers to adult employees per week of 38 hours shall be as follows:

	Base Rate Relativity %	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
Registered Dental Mechanic				
1st year of experience	118.14	492.90	201.70	694.60
2nd year of experience	119.70	499.40	201.70	701.10
3rd year of experience	121.26	505.90	201.70	707.60
4th year of experience	122.82	512.40	201.70	714.10
5th year of experience & thereafter	124.37	518.90	199.70	718.60

Dental Technician

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1st year of experience	104.98	438.00	203.70	641.70
2nd year of experience	106.54	444.50	203.70	648.20
3rd year of experience	108.10	451.00	203.70	654.70
4th year of experience	109.66	457.50	203.70	661.20
5th year of experience & thereafter	111.21	464.00	201.70	665.70

(b) Apprentices

The minimum weekly wage rate to be paid to an apprentice shall be the undermentioned percentages of the weekly wage rate of a Dental Technician, 1st year of experience:

	%
First year	45
Second year	55
Third year	65
Fourth year	85

Adjustments are to be made to the nearest 10 cents.

PROVIDED that an apprentice Dental Technician who attains the relevant qualification in accordance with the relevant policies, procedures and provisions of the *Vocational Education and Training Act 1994* will then be paid the weekly wage rate of a Dental Technician.

(c) Extra Rates

A Dental Mechanic who is responsible for the supervision of three or more employees shall be paid \$13.50 per week in addition to his/her weekly wage.

DIVISION B - DENTAL MECHANIC'S ASSISTANTS AND ATTENDANTS

(a) The minimum weekly wage rate to be paid by employers to adult Dental Mechanic's Assistants and Attendants (i.e. employees over 20 years of age) shall be the undermentioned rates per week:

	Base Rate Relativity %	Base Rate \$	Safety Net Adjustment \$	Weekly Wage Rate \$
1st year of adult experience	79.45	331.50	201.70	533.20
2nd year of adult experience	81.01	338.00	201.70	539.70
3rd year of adult experience	82.57	344.50	201.70	546.20
4th year of adult experience	84.13	351.00	201.70	552.70
5th year of adult experience	85.69	357.50	201.70	559.20

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(b) Juniors

The minimum weekly wage rate to be paid to junior assistants shall be as follows:

	Percentage of appropriate Adult Wage prescribed in Division B
	%
Under 17 years of age	50
17 to 18 years of age	62.5
18 to 19 years of age	75
19 to 20 years of age	87.5

DIVISION C - DENTAL ASSISTANTS

(a) The minimum weekly wage rate to be paid by employers to adult Dental Assistants (i.e. employees over 20 years of age) shall be the undermentioned rates per week:

	Base Rate Relativity	Base Rate	Safety Net Adjustment	Weekly Wage Rate
	%	\$	\$	\$
1st year of adult experience	83.62	348.90	201.70	550.60
2nd year of adult experience	85.18	355.40	201.70	557.10
3rd year of adult experience	86.74	361.90	201.70	563.60
4th year of adult experience	88.30	368.40	201.70	570.10
5th year of adult experience	89.86	374.90	201.70	576.60

PROVIDED that employees who prior to 20 November 1991 were classified as Dental Assistants in Clause 8 - Wage Rates, Division C - Dental Assistants, paragraph (a) 4th and 5th years adult experience shall receive an actual wage increase of \$12.50 and \$12.40 respectively.

(b) Juniors

The minimum weekly wage rate to be paid to junior Dental Assistants shall be the undermentioned percentages of the 1st year adult experience contained in paragraph (a) of this division.

	Percentage of appropriate Adult Wage prescribed in Division C
	%
Under 17 years of age	50
17 to 18 years of age	62.5
18 to 19 years of age	75
19 to 20 years of age	87.5

PROVIDED that at 20 years of age an employee shall be classified under paragraph (a) of this division.

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(c) Certificate Allowance

In addition to the wage rates contained in paragraphs (a) and (c) of this division an employee who holds a certificate of proficiency accredited by the Dental Assistants' Education Council of Australia shall be paid a certificate allowance of \$23.10 per week.

2. MINIMUM WAGE

(a) Minimum Wage

No employee shall be paid less than the minimum wage.

(b) Amount of Adult Minimum Wage

(i) The minimum wage for full-time adult employees not covered by Clause 4 - Supported Wage System is \$527.10 per week.

(ii) Adults employed under a supported wage system clause shall continue to be entitled to receive the wage rate determined under that clause. Provided that such employees shall not be paid less than the amount determined by applying the percentage in the supported wage system clause applicable to the employee concerned to the amount of the minimum wage specified in subclause (b)(i).

(iii) Adults employed as part-time or casual employees shall continue to be entitled to receive the wage rate determined under the casual and part-time clauses of the award. Provided that such employees shall not be paid less than pro rata the minimum wage specified in subclause (b)(i) according to the number of hours worked.

(c) How the Minimum Wage Applies to Juniors

(i) The wage rates provided for juniors by this award continue to apply unless the amount determined under subclause (c)(ii) is greater.

(ii) The minimum wage for an employee to whom a junior rate of pay applies is determined by applying the percentage in the junior wage rates clause applicable to the employee concerned to the relevant amount in subclause (b)(i).

(d) Application of Minimum Wage to Certain Employees

Due to existing applicable award wage rates being greater than the relevant proportionate minimum wage, this clause will not apply to employees falling within the scope of the National Training Wage (Tasmanian Private Sector) Award and Trainees undertaking an apprenticeship.

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(e) Application of Minimum Wage to Award Rates Calculation

The minimum wage:

- (i) applies to all work in ordinary hours;
- (ii) applies to the calculation of overtime and all other penalty rates, superannuation, payments during personal leave, long service leave and annual leave, and for all other purposes of this award; and
- (iii) is inclusive of the arbitrated safety net adjustment provided by the July 2007 State Wage Case Decision (T12940 of 2007) and all previous safety net and state wage case adjustments.

3. TOOL ALLOWANCE

All employees engaged in classifications that are proclaimed as trades under the *Vocational Education and Training Act 1994* shall either be supplied with all tools by the employer or be paid a tool allowance of not less than 8.50 per week.

PROVIDED that such allowance shall not be subject to adjustment when computing payments for shift penalty rates, for weekend or holiday work, for overtime or for any other purpose.

4. SUPPORTED WAGE SYSTEM

(a) Eligibility Criteria

Subject to this subclause an employer may engage employees at a supported wage rate (as set out in paragraph (c) of this subclause) who meet the impairment criteria for receipt of a Disability Support Pension and who, because of their disability, are unable to perform the range of duties to the competence level normally required for the class of work for which they are engaged.

PROVIDED that this subclause does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers' compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their current employment.

PROVIDED FURTHER that this subclause does not apply to employers in respect of their facility, programme, undertaking, service or the like which receives funding under the *Disability Services Act 1986* and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a disability support pension, except with respect to an organisation which has received recognition under Section 10 or under Section 12A of the above Act, or if a part only has received recognition, that part.

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(b) For the purposes of this subclause:

'Accredited Assessor' means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual's productive capacity within the Supported Wage System.

'Assessment instrument' means the form provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.

'Disability Support Pension' means the pension available under the Commonwealth pension scheme to provide income security for persons with a disability as provided under the *Social Security Act 1991*, as amended from time to time, or any successor to that scheme.

'Supported Wage System' means the Commonwealth Government System to promote employment for people who cannot work at full award wages because of a disability.

(c) Supported Wage Rates

Employees to whom this subclause applies shall be paid the applicable percentage of the minimum rate of pay prescribed by this award for the class of work which the person is performing according to the following schedule:

Assessed Capacity (paragraph (d))	% of Prescribed Award Rate
10%	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

PROVIDED that the minimum amount payable shall be not less than \$61 per week.

(d) Assessment of Capacity

For the purpose of establishing the percentage of the award rate to be paid to a supported wage employee under this award, the productive capacity of the employee will be assessed in accordance with the Supported Wage System and documented in an assessment instrument by either:

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- (i) the employer and a union party to the award, in consultation with the employee or, if desired by any of these;
- (ii) the employer and an accredited Assessor from a panel agreed by the parties to the award and the employee.

(e) Lodgment of Assessment Instrument

- (i) All assessment instruments under the conditions of this subclause, including the appropriate percentage of the award wage to be paid to the employee, shall be lodged by the employer with the Registrar of the Tasmanian Industrial Commission.
- (ii) All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where a union which is party to the award, is not a party to the assessment, it shall be referred by the Registrar of the Tasmanian Industrial Commission to the union by certified mail and shall take effect unless an objection is notified to the Registrar of the Tasmanian Industrial Commission within 10 working days.

(f) Review of Assessment

The assessment of the applicable percentage shall be subject to annual review or earlier on the basis of a reasonable request for such a review. The process of review shall be in accordance with the procedures for assessing capacity under the Supported Wage System.

(g) Other Terms and Conditions of Employment

Where an assessment has been made, the applicable percentage shall apply to the wage rate only. Employees covered by the supported wage provisions of this subclause shall be entitled to the same terms and conditions of employment as all other workers covered by this award who are paid on a pro rata basis.

(h) Workplace Adjustment

An employer wishing to employ a person under the provisions of this subclause shall take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other workers in the area.

(i) Trial Period

- (i) In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this subclause for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.

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- (ii) During that trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined in accordance with paragraphs (d) and (e).
- (iii) The minimum amount payable to the employee during the trial period shall be no less than \$61 per week or such greater amount as is agreed from time to time between the parties.
- (iv) Work trials should include induction or training as appropriate to the job being trialed.
- (v) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under paragraph (c) hereof.

9. ANNUAL LEAVE

(a) Period of Leave

A period of 28 consecutive days' leave shall be allowed annually to an employee after 12 months' continuous service (less the period of annual leave).

(b) Annual Leave Exclusive of Public Holidays

If any of the holidays prescribed by Clause 15 - Holidays with Pay fall within an employee's period of annual leave, and is observed on a day which in the case of that employee would have been an ordinary working day there shall be added to that leave one day for each such holiday so occurring.

(c) Payment in Lieu Prohibited

Except as provided in subclause (g) hereof, payment shall not be made or accepted in lieu of annual leave.

(d) Time of Taking Leave

Annual leave shall be given at a time fixed by the employer within a period not exceeding six months from the date when the right to annual leave accrued and after not less than two weeks' notice to the employee.

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(e) Payment for Period of Leave

All employees, before going on annual leave, shall be paid the amount of wages they would have received in respect of the ordinary time they would have worked had they not been on leave during the relevant period. In addition thereto, all employees, other than casual employees, shall receive a loading of 17.5 percent on the payment made for annual leave. Such loading shall not apply to proportionate leave on termination of service.

(f) Leave Allowed Before Due Date

An employer may allow annual leave to an employee before the right thereto has accrued due, but where it is taken in such a case a further period of annual leave shall not commence to accrue until after expiration of the 12 months in respect of which annual leave has been taken before it accrued.

Where leave has been granted to an employee pursuant to this subclause before the right thereto has accrued due and the employee subsequently leaves or is discharged from the service of the employer before completing the 12 months' continuous service in respect of which the leave was granted, the employer may, for each completed month of the qualifying period of 12 months not served by the employee, deduct from whatever remuneration is payable upon the termination of the employment one-twelfth of the amount of wage paid on account of the annual leave which amount shall not include any sums paid for any of the holidays prescribed by Clause 15 - Holidays with Pay hereof.

(g) Proportionate Leave on Termination of Service

If after one completed month of service in any qualifying 12-monthly period an employee lawfully leaves his/her employment, or his/her employment is terminated by the employer through no fault of the employee the employee shall be paid at his/her ordinary rate of wage as follows:

13 $\frac{1}{3}$ hours for each completed month of continuous service. The service being in respect of leave which has not been granted.

(h) Single Day Annual Leave

Notwithstanding provisions elsewhere in the award, the employer and the majority of employees at an enterprise may agree to establish a system of single day annual leave absences, provided that:

- (i) An employee may elect, with the consent of the employer, to take annual leave in single day periods or part of a single day not exceeding a total of five days in any calendar year at a time or times agreed between them.
- (ii) Access to annual leave, as prescribed in paragraph (i) above, shall be exclusive of any shutdown period provided for elsewhere under this award.

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- (iii) An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.
- (iv) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiations referred to in paragraph (i) of this subclause.
- (v) Once a decision has been taken to introduce an enterprise system of single day annual leave, in accordance with this subclause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.
- (vi) An employer shall record these short term annual leave arrangements in the time and wages book.

10. BEREAVEMENT LEAVE

An employee shall on the death of a member of the employee's immediate family, or a member of the employee's household be entitled upon application being made to, and approved by the employer, to leave up to and including the day of the funeral of such relative and such leave will be without deduction of pay not exceeding the number of ordinary hours worked by the employee in three ordinary days.

Proof of such death, in the form of a death notice or other written evidence, shall be furnished by the employee to the satisfaction of the employer.

PROVIDED that no such payment shall be made in respect of an employee's rostered days off.

PROVIDED FURTHER that this clause shall have no operation while the period of entitlement to leave under it coincides with any other period of entitlement to leave.

The term '**immediate family**' includes:

- (a) spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse, in relation to a person, means a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; and
- (b) child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child), parent (including foster parent, step parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse of the employee
- (c) Unpaid Bereavement Leave

An employee may take unpaid bereavement leave by agreement with the employer.

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(d) Casual Employees

- (i) Subject to the evidentiary requirements in subclause (a), casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of an immediate family or household member.
- (ii) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
- (iii) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

11. CASUAL EMPLOYEES

- (a) The minimum rates of wages which shall be paid to casual employees shall be calculated on a daily or hourly basis according to the rates prescribed in Clause 8 - Wage Rates, subclause 1 - Wages, with the addition of 20 per cent.
- (b) A casual employee shall be paid as for a minimum of four hours' work.

12. CONSULTATIVE PROCEDURES

- (a) The parties to this award are committed to co-operating positively to increase the efficiency, productivity and competitiveness of the industries and establishments covered by Clause 2 - Scope and to enhance the career opportunities and job security of employees in these industries and establishments.
- (b) At each enterprise or establishment, the employer, the employees and the relevant union or unions, may establish a consultative mechanism and procedures appropriate to the size, structure and needs of that enterprise or establishment. Measures raised by the employer, employees or union of unions for consideration consistent with the objectives of subclause (a) herein shall be processed through that consultative mechanism and procedures.

13. ENTERPRISE FLEXIBILITY

- (a) Notwithstanding anything contained in this award, but subject to the provisions of this clause, an agreement may be entered into between an employer and all or some of the employees engaged by that employer.

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- (b) An agreement shall be subject to the following requirements:
 - (i) The majority of employees affected by the change must genuinely agree to the change.
 - (ii) The agreement taken as a whole shall not confer a lesser benefit to any employee than is available under the award.
 - (iii) The relevant union or unions shall be advised by the employer of the intention to commence discussions with employees on an agreement under this clause.
 - (iv) The relevant union or unions must be a party to the agreement.
 - (v) The relevant union or unions shall not unreasonably oppose any agreement.
- (c) Any enterprise agreement shall be signed by the parties, being the employer and the union or unions, and contains the following:
 - (i) The term of the agreement.
 - (ii) The parties covered by the agreement.
 - (iii) The classes of employees covered by the agreement.
 - (iv) The means by which a party may retire from the agreement.
 - (v) The means by which the agreement may be varied.
 - (vi) Where appropriate, the means by which any dispute arising in respect to the agreement may be resolved.
- (d) Any agreement which seeks to vary a provision of this award shall be referred to the Tasmanian Industrial Commission.

14. GENERAL CONDITIONS

- (a) Clean towels shall be provided daily and the employer shall furnish and supply all destructible tools used by the employees.
PROVIDED that by mutual consent the employee shall provide his/her own tools in which case the employer shall pay the employee a tool allowance to be agreed upon or the employer shall replace the tools used by an employee.
- (b) Suitable accommodation or lockers for employees' clothing and personal effects shall be provided by the employer.
- (c) An employer shall provide appropriate protective appliances where the work is of a dusty or hazardous nature.

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- (d) Sufficient and serviceable uniforms shall be provided free of cost to all employees required to wear uniforms, or if employees provide their own uniforms they shall be paid an allowance of \$4.00 per week. Uniforms shall be laundered as and when necessary at the expense of the employer, or if employees launder their own uniforms they shall be paid an allowance of \$3.00 per week paid to the employee.
- (e) The employer shall make provision for adequate light for employees to perform their work.
- (f) An employee who, at the date of this award, is in receipt of a higher rate of pay or of better conditions than those respectively provided herein shall not have his/her rate of pay reduced or the conditions of employment altered to his/her prejudice merely as a consequence of this award.
- (g) Any dispute arising from the provisions of this clause shall be referred to the Tasmanian Industrial Commission for determination.

15. HOLIDAYS WITH PAY

- (a) All employees (other than casuals) shall be allowed the following days as paid holidays:

New Year's Day, Australia Day, Hobart Regatta Day (south of Oatlands), Labour Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Show Day, Recreation Day (where Hobart Regatta Day is not observed), Christmas Day and Boxing Day.
- (b) Payment for the holidays mentioned in subclause (a) which are taken and not worked, shall be at the normal rate of pay which would have applied to the employee concerned, when, if it were not for such holiday, he/she had been at work.
- (c) Payment to an employee for work performed on holidays mentioned in subclause (a) shall be at the rates prescribed elsewhere in this award.
- (d) By agreement between an employer and employee an alternative day may be substituted for a prescribed holiday.

16. HOURS OF WORK

- (a) The ordinary hours of work shall be an average of 38 hours per week to be worked on one of the following bases:
 - (i) 38 hours within a work cycle not exceeding seven consecutive days; or
 - (ii) 76 hours within a work cycle not exceeding 14 consecutive days; or

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- (iii) 114 hours within a work cycle not exceeding 21 consecutive days; or
- (iv) 152 hours within a work cycle not exceeding 28 consecutive days.
- (b) The ordinary hours of work prescribed herein may be worked Monday to Friday between the hours of 7.30am and 9.00pm and Saturday between the hours of 8.30am to 12 noon.
- (c) Ordinary working hours may be extended beyond eight hours but not so as to exceed 10 hours on any day, Monday to Friday.
- (d) In any arrangement of ordinary hours where the ordinary working hours are to exceed eight on any day, the arrangement of hours shall be subject to agreement between an employer and the majority of employees affected.
- (e) For all work performed as part of ordinary hours between 6.30pm and 9.00pm Monday to Friday, payment shall be made at the rate of time and one quarter.
- (f) Make Up Time

Notwithstanding provisions elsewhere in the award, the employer and the majority of employees at an enterprise may agree to establish a system of make up time provided that:

- (i) An employee may elect, with the consent of the employer, to work 'make up time' under which the employee takes time off during ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the award.
- (ii) An employee on shift work may elect, with the consent of their employer, to work 'make up time' under which the employee takes time off during ordinary hours and works those hours at a later time, at the shift work rate which would have been applicable to the hours taken off.
- (iii) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiations referred to in paragraph (i) of this subclause.
- (iv) Once a decision has been taken to introduce an enterprise system of make up time, in accordance with this subclause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.
- (v) An employer shall record make up time arrangements in the time and wages book at each time this provision is used.

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(g) Rostered Days Off

Notwithstanding provisions elsewhere in the award, the employer and the majority of employees at an enterprise may agree to establish a system of Rostered Days Off (RDOs) to provide that:

- (i) An employee may elect, with the consent of the employer, to take a RDO at any time.
- (ii) An employee may elect, with the consent of the employer, to take RDOs in part day amounts.
- (iii) An employee may elect, with the consent of the employer, to accrue some or all RDOs for the purpose of creating a bank to be drawn upon by the employee at times mutually agreed by the employer, or subject to the reasonable notice by the employee to the employer.
- (iv) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiations referred to in paragraph (i) of this subclause.
- (v) Once a decision has been taken to introduce an enterprise system of RDO flexibility, in accordance with this subclause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.
- (vi) An employer shall record RDO arrangements in the time and wages book at each time this provision is used.

17. OCCUPATIONAL SUPERANNUATION

(a) Contributions

- (i) The employer shall make an occupational superannuation contribution equivalent to three per cent of ordinary time earnings into the funds known as TASPLAN or HESTA or any other approved fund where an exemption has been granted under subclause (c) of this clause in respect of all eligible employees as from 1 June 1990 provided that in the case of all eligible casual and part-time employees contributions shall only be made where the employee works at least 38 hours during a fund billing statement month.

Contributions to the fund shall be made by the employer on at least a calendar monthly basis unless there are circumstances for which the employer cannot be held responsible.

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- (ii) Notwithstanding anything elsewhere contained in this clause an employee who is able to demonstrate to the employer their bona fide membership of the religious fellowship known as Exclusive Brethren shall have the contributions defined in subclause (a)(i) of this clause paid into the fund known as CIS Superannuation Deed BR1188 being a scheme approved by the Insurance and Superannuation Commission.

(b) Definitions

'Approved fund' shall mean a superannuation fund or scheme approved in accordance with the Commonwealth Operational Standards for Occupational Superannuation Funds.

'Eligible employee' means an employee for whom a classification appears in this award whether employed on a full-time, part-time or casual basis and who has had at least three months continuous service with the employer, but excludes the spouse of the employer and children of the employer. Where an eligible employee has completed at least three months continuous service with the employer then the superannuation contributions shall be made from the date the employee commenced employment.

'HESTA' means the Health Employees Superannuation Trust Australia established by Trust Deed on 30 July 1987.

'Ordinary time earnings' shall include an employee's classification rate, overaward payments, shift loading, casual loading and any permanent all purpose work related allowance but shall exclude overtime payments, annual leave loading, annual or long service leave payments on termination and allowances paid as a reimbursement of expenses.

'TASPLAN' shall be an approved fund established by Trust Deed made on 24 March 1987.

(c) Exemptions

The Tasmanian Industrial Commission may grant an exemption to an employer from making contributions into TASPLAN or HESTA in the following circumstances:

- (i) where the fund subject to the exemption application is an approved fund which was established prior to 1 December 1989 and occupational superannuation contributions equivalent to three per cent of ordinary time earnings were being paid on behalf of employees in the establishment covered by this award prior to 1 December 1989 and have continued to be paid since that date; or
- (ii) where an employer can demonstrate a special and compelling circumstance to justify the use of an approved fund other than TASPLAN or HESTA.

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(d) Procedure for Seeking Exemption

- (i) Employers seeking exemption in accordance with this provision shall make application through the appropriate registered organisation to the Tasmanian Industrial Commission by no later than 1 June 1990 for hearing and determination.

Such application shall contain the following information:

- (1) Name of Fund into which the funds are to be paid.
 - (2) Evidence of the funds compliance with Commonwealth Operational Standards.
 - (3) Summary of Structure and Benefits.
 - (4) Level of Administration Charge.
 - (5) Any other relevant information.
- (ii) Any application shall in the first instance be considered by the union(s) party to the award which in each case have constitutional coverage for the class of employee affected. Where the union(s) agree with the application, the exemption will be granted.
- (iii) Where agreement is not reached, the matter shall be heard and determined by the Tasmanian Industrial Commission.
- (iv) An employer who commences a new business after 1 June 1990 may make application for exemption in accordance with subclause (c) of this clause. Such application shall be made within one month of the commencement of operation of the new business. However, this provision shall not apply to a business which has been transmitted or was a subsidiary of a business subject to this award as at 1 June 1990.
- (v) For the purposes of this clause, the following companies are exempt from contributing to either TASPLAN or HESTA for those employees for whom contributions (equivalent to the amount nominated in subclause (a)) have been made into the funds set out below on or prior to 1 December 1989.

In the case of those employees, contributions shall continue to be made in accordance with subclause (a) into the approved funds set out below:

Hanid Pty. Ltd.

Mercantile Mutual Life Master Fund

W.T. Edmondson Pty. Ltd.

AMP Superleader Plan

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R.L. West Pty. Ltd.

Legal & General Superannuation Fund

18. OVERTIME

- (a) All time of duty before the usual time of commencing work or after the usual time of ceasing work or outside the ordinary hours shall be paid for at the rate of time and a half for the first two hours and double time thereafter.
- (b) Where an employee is called upon to work more than three hours after the usual finishing time \$5.70 for a meal shall be paid in addition to the overtime rates.
- (c) An employee who is recalled to work overtime (that is, outside the hours the employee usually works) after a period of one hour from the time fixed for ceasing work, whether or not he/she has been notified before ceasing work, shall receive a minimum payment as for two hours worked.
- (d) In computing overtime, each day's work shall stand alone.
- (e) Time Off In Lieu of Payment

Notwithstanding provisions elsewhere in this award the employer and the majority of employees at an enterprise may agree to establish a system of time off in lieu of overtime provided that:

- (i) An employee may elect, with the consent of the employer, to take time off in lieu of payment for overtime at a time or times agreed with the employer.
- (ii) Overtime taken as time off shall be taken at the penalty equivalent.
- (iii) An employer shall, if requested by an employee, provide payment at the rate provided for the payment of overtime as prescribed in this clause for any overtime worked under this subclause where such time has not been taken within four weeks of accrual.
- (iv) An employee or the employees may choose to request a union party to this award, to represent their interests in negotiations referred to in paragraph (i) of this subclause.
- (v) Once a decision has been taken to introduce an enterprise system of time off in lieu in accordance with this subclause, its terms must be set out in the time and wages records kept pursuant to Regulation 25 of the Industrial Relations Regulations 1993.
- (vi) An employer shall record time off in lieu arrangements in the time and wages book at each time this provision is used.

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19. PARENTAL LEAVE

Subject to the terms of this clause employees are entitled to maternity, paternity and adoption leave and to work part-time in connection with the birth or adoption of a child.

(a) Definitions

For the purposes of this clause:

- (i) **'Child'** means a child of the employee under the age of one year except for adoption of a child where 'child' means a person under the age of five years who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the parent of the employee or a child who has previously lived continuously with the employee for a period of six months or more.
- (ii) **'Continuous service'** means service under an unbroken contract of employment and includes:
 - (1) any period of leave taken in accordance with this clause;
 - (2) any period of part-time employment worked in accordance with this clause; or
 - (3) any period of leave or absence authorised by the employer or by the award.
- (iii) **'Employee'** includes a part-time employee but does not include an employee engaged upon casual work, unless that work has been under a continuous contract of employment of at least 12 months.
- (iv) **'Female employee'** means an employed female who is pregnant or is caring for a child she has borne or a child who has been placed with her for adoption purposes.
- (v) **'Male employee'** means an employed male who is caring for a child borne of his spouse or a child placed with the employee for adoption purposes.
- (vi) **'Primary care-giver'** means a person who assumes the principal role of providing care and attention to a child.
- (vii) **'Spouse'** includes a de facto or a former spouse.

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(b) Entitlement

- (i) After twelve months continuous service, parents are entitled to a combined total of 52 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of their child. For mothers, maternity leave provisions apply and for male employees, paternity leave provisions apply. Adoption leave provisions apply in the case of adoption.
- (ii) Subject to subclause (c) (vi), parental leave is to be available to only one parent at a time, in a single unbroken period, except that both parents may simultaneously take:
 - (1) for maternity and paternity leave, an unbroken period of up to one week at the time of the birth of the child;
 - (2) for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.
- (iii) Unless otherwise agreed between the employee and the employer, parental leave shall be granted and taken in accordance with the notice given by the employee as specified below.

(c) Maternity Leave

- (i) An employee must provide notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:
 - (1) of the expected date of confinement (included in a certificate from a registered medical practitioner stating that the employee is pregnant) – at least 10 weeks;
 - (2) of the date on which the employee proposes to commence maternity leave and the period of leave to be taken – at least 4 weeks.
- (ii) Where the employee gives notice under (d) (i) the employee must also provide a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse, and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.
- (iii) An employee will not be in breach of this clause if failure to give the stipulated notice is occasioned by confinement occurring earlier than the presumed date or other compelling circumstances.
- (iv) An employee may commence maternity leave at any time within six weeks immediately prior to the expected date of birth.

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- (v) Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.
- (vi) Special Maternity Leave
 - (1) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child, then the employee may take unpaid special maternity leave of such periods as a registered medical practitioner certifies as necessary.
 - (2) Where an employee is suffering from an illness not related to the direct consequences of the confinement, an employee may take any paid personal leave to which she is entitled in lieu of, or in addition to, special maternity leave.
 - (3) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take any paid personal leave to which she is then entitled and such further unpaid special maternity leave as a registered medical, practitioner certifies as necessary before her return to work. The aggregate of paid personal leave, special maternity leave and parental leave, including paternity leave taken by her spouse, may not exceed 52 weeks.
- (vii) Transfer to a safe job
 - (1) Where an employee is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee will, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.
 - (2) If the transfer to a safe job is not practicable, the employee may elect, or the employer may require the employee to commence parental leave for such period as is certified necessary by a registered medical practitioner.
- (d) Paternity Leave
 - (i) A male employee will provide to the employer at least 10 weeks prior to each proposed period of paternity leave:
 - (1) that a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place, and

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- (2) written notification of the proposed dates on which the period of paternity leave will start and finish and
 - (3) a statutory declaration stating:
 - (A) that period of paternity leave will be taken to become the primary care-giver of a child;
 - (B) particulars of any period of maternity leave sought or taken by the mother, and
 - (C) that for the period of paternity leave, the employee will not engage in any conduct inconsistent with their contract of employment.
 - (4) The employee will not be in breach of this subclause if the failure to give the required period of notice is because of the birth occurring earlier than expected, the death of the mother of the child, or other compelling circumstances.
- (e) Adoption leave
- (i) The employee will notify the employer at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice, where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.
 - (ii) Before commencing adoption leave, an employee will provide the employer with a statutory declaration stating:
 - (1) the employee is seeking adoption leave to become the primary care-giver of the child;
 - (2) particulars of any period of adoption leave sought or taken by any other person in respect of that child, and
 - (3) that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.
 - (iii) An employer may require an employee to provide confirmation from the appropriate government authority of the placement.
 - (iv) Where the placement of a child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from receipt of notification for the employee's return to work.

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- (v) An employee will not be in breach of this subclause as a consequence of failure to give the stipulated periods of notice if such failure results from a requirement of an adoption agency to accept earlier or later placement of a child, the death of an adoptive parent or other compelling circumstances.
- (vi) An employee seeking to adopt a child is entitled to unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure. The employee and the employer should agree on the length of the unpaid leave. Where agreement cannot be reached, the employee is entitled to take up to two days unpaid leave. Where paid leave is available to the employee, the employer may require the employee to take such leave instead.

(f) Parental Leave and Other Entitlements

An employee may in lieu of or in conjunction with parental leave, access any annual leave or long service leave entitlements which they have accrued subject to the total amount of leave not exceeding 52 weeks.

(g) Part time work

(i) Entitlement

With the agreement of the employer:

- (1) An employee may work part-time in one or more periods at any time from the date of birth of the child until its second birthday or, in relation to adoption, from the date of placement of the child until the second anniversary of the placement.
- (2) A female employee may work part-time in one or more periods while she is pregnant where part-time employment is, because of the pregnancy, necessary or desirable.

(ii) Effect of Part-time Employment on Continuous Service

Commencement on part-time work under this clause, and return from part-time work to full-time work under this clause, shall not break the continuity of service or employment.

(iii) Pro Rata Entitlements

Subject to the provisions of this subclause and the matters agreed to in accordance with this subclause, part-time employment shall be in accordance with the provisions of this award which shall apply pro rata.

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(iv) Transitional Arrangements - Annual Leave

- (1) An employee working part-time under this subclause shall be entitled to any leave accrued in respect of a period of full-time employment, as if the employee was still working full-time, in the position held prior to taking leave.
- (2) (A) A full-time employee shall be entitled to annual leave accrued in respect of a period of part-time employment under this subclause, as if the employee was working part-time in the position held, immediately before resuming full-time work.

(B) Provided that, by agreement between the employer and the employee, the period over which the leave is taken may be shortened to the extent necessary for the employee to receive pay at the employee's current full-time rate.

(v) Transitional Arrangements - Personal Leave

An employee working part-time under this subclause shall have personal leave entitlements which have accrued under this award (including any entitlements accrued in respect of previous full-time employment) converted into hours. When this entitlement is used, whether as a part-time employee or as a full-time employee, it shall be debited for the ordinary hours that the employee would have worked during the period of absence.

(vi) Part-time Work Agreement

- (1) Before commencing a period of part-time employment under this subclause the employee and the employer shall agree:
 - (A) that the employee may work part-time;
 - (B) upon the hours to be worked by the employee, the days upon which they will be worked and commencing times for the work;
 - (C) upon the classification applying to the work to be performed; and
 - (D) upon the period of part-time employment.
- (2) The terms of this agreement may be varied by consent.
- (3) The terms of this agreement or any variation to it shall be reduced to writing and retained by the employer. A copy of the agreement and any variation to it shall be provided to the employee by the employer.
- (4) The terms of this agreement shall apply to the part-time employment.

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(vii) Termination of Employment

- (1) The employment of a part-time employee under this clause, may be terminated in accordance with the provisions of this award but may not be terminated by the employer because the employee has exercised or proposes to exercise any rights arising under this clause or has enjoyed or proposes to enjoy any benefits arising under this clause.
- (2) Any termination entitlements payable to an employee whose employment is terminated while working part-time under this clause, or while working full-time after transferring from part-time work under this clause, shall be calculated by reference to the full-time rate of pay at the time of termination and by regarding all service as a full-time employee as qualifying for a termination entitlement based on the period of full-time employment and all service as a part-time employee on a pro rata basis.

(viii) Extension of Hours of Work

An employer may request, but not require, an employee working part-time under this clause to work outside or in excess of the employee's ordinary hours of duty provided for in accordance with paragraph (vi).

(ix) Nature of Part-time Work

The work to be performed part-time need not be the work performed by the employee in his or her former position but shall be work otherwise performed under this award.

(x) Inconsistent Award Provisions

An employee may work part-time under this clause notwithstanding any other provisions of this award which limits or restricts the circumstances in which part-time employment may be worked or the terms upon which it may be worked including provisions:

- (1) limiting the number of employees who may work part-time;
- (2) establishing quotas as to the ratio of part-time to full-time employees;
- (3) prescribing a minimum or maximum number of hours a part-time employee may work; or
- (4) requiring consultation with, consent of or monitoring by a union;

and such provisions do not apply to part-time work under this clause.

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(h) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on parental leave or working part time in accordance with this clause.
- (ii) A replacement employee may be employed part-time. The provisions of this subclause in relation to annual leave and personal leave apply to the part-time employment of replacement employees.
- (iii) Before an employer engages a replacement employee under this paragraph, the employer shall inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced. Specifically, the employer must advise that the period of engagement is subject to variation or change in the event that the employee on leave exercises the right to vary the period of leave.
- (iv) Unbroken service as a replacement employee shall be treated as continuous service.
- (v) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

(i) Return to Former Position after a Period of Parental Leave or Part Time Work

Unless other wise agreed between employee and employer, and consistent with the provisions of this clause

- (i) An employee will give at least four weeks' notice prior of their intention to return to work after a period of parental leave or part time work in accordance with this clause.
- (ii) An employee will be entitled to the position which they held immediately before proceeding on parental leave or part time work. In the case of an employee transferred to a safe job pursuant to subclause (c) (vii) of this clause, the employee will be entitled to return to the position they held immediately before such transfer.
- (iii) During the period of parental leave an employee shall be entitled to return to work at any time, as agreed between the employer and the employee, provided that the employer may require notice of not more than four weeks.
- (iv) An employee shall be entitled to extend the period of parental leave on one occasion, provided that the employer may require notice of not more than four weeks.

By mutual agreement between the employee and the employer, the period of leave may be further extended.

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(j) Redundancy

- (i) If a position held by an employee prior to taking parental leave is likely to be made redundant before the employee returns to work, the employer must advise the employee of the impending redundancy, provide an opportunity for consultation and shall not disadvantage the employee by virtue of the taking of parental leave.
- (ii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee will be entitled to a position as nearly comparable in status and pay to that of their former position.

(k) Right To Request Variation To Parental Leave Provision

- (i) An employee entitled to parental leave pursuant to the provisions of this clause may request the employer to allow the employee:
 - (1) to extend the period of simultaneous unpaid parental leave up to a maximum of eight weeks;
 - (2) to extend the period of unpaid parental leave by a further continuous period of leave not exceeding 12 months;
 - (3) to return from a period of parental leave on a part-time basis until the child reaches school age,to assist the employee in reconciling work and parental responsibilities.
- (ii) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

(l) Communication During Parental Leave

- (i) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:
 - (1) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and
 - (2) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.

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- (ii) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.
- (iii) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with (l)(i)(1).

20. PART-TIME EMPLOYEES

All part-time employees shall be entitled to the same wages, allowances and conditions provided for full-time employees under this award but at the appropriate proportional rate of pay.

The hourly rate for part-time employees shall be calculated by dividing the appropriate weekly rate by 38.

A part-time employee shall be paid a minimum of four hours for work performed on any given day.

21. PAYMENT OF WAGES

Wages shall be paid during working hours and not later than Thursday in each week.

PROVIDED that by mutual consent wages may be paid fortnightly.

22. PERSONAL LEAVE

The provisions of this clause apply to full-time and regular part-time employees (on a pro rata basis) but do not apply to casual employees. The entitlements of casual employees are set out in subclause (j).

(a) Definitions

The term 'immediate family' includes:

- (i) spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse means a person of the opposite sex to the employee who lives with the employee as his or her husband or wife on a bona fide domestic basis; and

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- (ii) child or an adult child (including an adopted child, a step child or an ex-nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.

(b) Amount of Paid Personal Leave

- (i) Paid personal leave is available to an employee, when they are absent:
 - (1) due to personal illness or injury; or
 - (2) for the purposes of caring for an immediate family or household member who is sick and requires the employee's care and support or who requires care due to an unexpected emergency.
- (ii) He/she shall not be entitled to such leave of absence for any period in respect of which he/she is entitled to workers' compensation.
- (iii) The employee shall not be entitled in any year to personal leave in excess of 76 hours of ordinary working time. Provided that during the first three months of employment, personal leave shall accrue on the basis of 6.33 hours for each completed calendar month of service with the employer.

(c) Personal Leave for Personal Injury or Sickness

An employee is entitled to use the full amount of their personal leave entitlement including accrued leave for the purposes of personal illness or injury, subject to the conditions set out in this clause.

(d) Personal Leave to Care for an Immediate Family or Household Member

- (i) An employee is entitled to use up to 10 days personal leave, including accrued leave, each year to care for members of their immediate family or household who are sick and require care and support or who require care due to an unexpected emergency, subject to the conditions set out in this clause.

Leave may be taken for part of a single day.

- (ii) By agreement between an employer and an individual employee, the employee may access an additional amount of their accrued personal leave for the purposes set out in paragraph (d)(i), beyond the limit set out in paragraph (d)(i). In such circumstances, the employer and the employee shall agree upon the additional amount that may be accessed.

(e) Employee Must Give Notice

The employee shall as soon as possible and where practicable within one hour of the commencement of the employees' normal working day, inform the employer of his/her inability to attend for work, and as far as practicable, state the nature of the illness or injury and the estimated duration of the absence.

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(f) Evidence Supporting Claim

- (i) He/she shall prove to the satisfaction of the employer (or in the event of a dispute, the Tasmanian Industrial Commission), that he/she was unable on account of such illness or injury to attend for work on the day or days for which the personal leave is claimed.
- (ii) When taking leave to care for members of their immediate family or household who require care due to an unexpected emergency, the employee must, if required by the employer, establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

(g) Personal leave shall accumulate from year to year so that any balance of the period specified in paragraph (a)(iv) of this clause which has in any year not been allowed to an employee by an employer as paid personal leave shall be credited to the employee and, subject to the conditions hereinbefore prescribed shall be allowed by that employer in a subsequent year without diminution of the personal leave prescribed in respect of that year.

(h) An employer shall not be required to make any payment in respect of accumulated personal leave credits to an employee who is discharged or leaves his/her employment, or for any time an employee is absent from work without producing satisfactory evidence of personal illness.

(i) Unpaid Personal Leave

Where an employee has exhausted all paid personal leave entitlements, they are entitled to take unpaid personal leave to care for members of their immediate family or household who are sick and require care and support or who require care due to an unexpected emergency. The employer and the employee shall agree on the period. In the absence of agreement, the employee is entitled to take up to two days (up to a maximum of 16 hours) per occasion, provided the requirements of subclauses (e) and (f) are met.

(j) Casual Employees – Caring Responsibilities

Subject to the evidentiary and notice requirements in subclauses (e) and (f) casual employees are entitled to not be available to attend work, or to leave work if they need to care for members of their immediate family or household who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.

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The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.

An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

23. SATURDAY WORK

For all work during ordinary hours on Saturday, payment shall be made at the rate of time and one-quarter.

24. SUNDAY AND HOLIDAY WORK

An employee required to work on any of the holidays mentioned in Clause 15 - Holidays with Pay hereof shall be paid at the rate of double time and one half.

An employee required to work on a Sunday shall be paid at the rate of double time.

25. TERMS OF EMPLOYMENT

- (a) All employees except casual employees shall be engaged by the week, provided that the first week of employment with any employer may be regarded as a probationary period and shall be paid for at the weekly rate computed on a daily basis. After having served one probationary period an employee shall not be required to serve another probationary period with the same employer.
- (b) Excepting as to casual employees and employees serving one probationary period mentioned in subclause (a) hereof, employment shall be terminated by one week's notice in writing on either side or by payment or forfeiture of one week's wages as the case may be.

PROVIDED that this shall not affect the right of an employer to dismiss an employee without notice for neglect of duty or misconduct in which case wages shall be paid up to the time of dismissal only.

- (c) In the case of casual employees employment shall be terminated by one hour's notice in writing on either side or by the payment or forfeiture of one hour's wages as the case may be.

PROVIDED that this shall not affect the right of the employer to dismiss an employee without notice for neglect of duty or misconduct in which case wages shall be paid up to the time of dismissal only.

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- (d) An employer may direct an employee to carry out such duties as one within the limits of an employee's skill, competence and training consistent with the classification structure of the award.

This provision should not deny such employee any award entitlement which might be applicable for performing work at a higher classification; nor should the provision enable the employer to pay an employee at a rate lower than the substantive classification for performing work of a lower classification.

P C Shelley
DEPUTY PRESIDENT

24 July 2007

ANNEXURE 7

From:
Sent:
To:
Subject:

From: Rachel Liebhauer <rachell@hsu.net.au>
Sent: Monday, 12 August 2019 11:32 AM
To: David Wilkinson <DWilkinson@myadvantage.com.au>
Subject: RE: HPSS Award Review Matter AM2016 / 31 - Urgent Clarification of the HSU position

Hi David,

Thank you for your call on Friday.

Our view is that the HPSS Award covers all health professionals, and this includes dentists and dental prosthetists.

I understand your view is these occupations are not covered by the award. However, from our perspective it is not clear from the wording of the award that the award intends to exclude senior specialists such as dentists, and I am not aware of any decisions excluding dentists from coverage.

In the case of dental specialists who are doctors, our view is that they would likely be covered by the *Medical Practitioners Award*. This is in accordance with clause 4.8 of the HPSS Award (clause 3.7, Exposure Draft), which states: *'Where an employer is covered by more than one award, an employee of that employer is covered by the award classification which is most appropriate to the work performed by the employee and to the environment in which the employee normally performs the work'*.

I refer to our submissions of 12 February 2018 (noting that clause references are in relation to the exposure draft).

53. *The HPSS award is an industry and occupational award (ED 3.1). Subject to exemptions elsewhere in clause 3, the award is expressed to cover both employers in the "health industry" and their employees in the classifications in Schedule A, and employers engaging a "health professional employee" in the classifications in Schedule A. Health professionals employed outside the "health industry" are intended to be covered by the award.*
54. *Schedule A contains the classifications in the Award. The second part contains the "Health Professional Employee" classifications. The term "Health Professional", which appears at each level of the classifications is not defined in the Dictionary and does not appear elsewhere.*
55. *In Schedule A, "Health professional employees - definitions", there's a preamble which says: "A list of common health professionals which are covered by the definitions is contained in Schedule C, list of common health professionals."*
56. *The use of the term "common" in respect of the list, signifies that it is not an exhaustive list. Those roles may be contrasted with health professional roles which are relatively scarce, or have only recently been developed. Award coverage is not limited by reference to the list, it is defined by*

reference to the classifications schedule. Although the HSU contends the award was always intended to be so read, this should be made clear in order to prevent any further doubt or confusion. This is consistent with the need for modern awards to be easy to understand, per s 134(1)(g).

I hope that clarifies our position. Please feel free to contact me if you have any more questions.

Kind regards,
Rachel

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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.

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From: David Wilkinson <DWilkinson@myadvantage.com.au>
Sent: Friday, 9 August 2019 7:33 PM
To: Rachel Liebhaber <rachell@hsu.net.au>
Subject: HPSS Award Review Matter AM2016 / 31 - Urgent Clarification of the HSU position

Hi Rachel,

It was good to have some telephone discussions with you this afternoon. As I pointed out in our discussions we had noted that the HSU in their submissions is seeking to potentially cover Dentists and Dental Specialists (who are doctors), Dental Prosthodontist and Medical Officers in private practice under the *Health Professionals and Support Services Award 2010 (HPSS Award)* in circumstances where it is entirely clear that the HPSS Award did not extend to those senior specialists.

We seek urgent clarification from the HSU as to its intention in this regard.

Therefore, considering this could we have a response to this email by close of business this coming Monday 12 August 2019.

Thanking you in advance for your prompt attention on this important issue.

Regards,

David Wilkinson
ADA Award Review Officer
Ph. 0439 191 764

