

**SUBMISSION TO
FAIR WORK COMMISSION**

Matter No:

AM2016/31

4 YEARLY REVIEW OF MODERN AWARDS

***HEALTH PROFESSIONALS AND SUPPORT SERVICES AWARD
(MA000027)***

DECEMBER 2018

**SUBMISSION IN RESPONSE TO FWCFB DECISION
[2018] FWCFB 7350**

**SUBMISSION BY
PRIVATE HOSPITAL INDUSTRY EMPLOYER ASSOCIATIONS**

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

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[1] This submission is being lodged on behalf of the Private Hospital Industry Employers' Associations (PHIEA) which includes: Australian Private Hospitals Association (APHA), the Private Hospitals Association of Queensland (PHAQ), APHA – South Australia, APHA – Tasmania; APHA – Victoria, APHA – Western Australia, Private Hospitals Association of New South Wales, Catholic Health Australia and Day Hospitals Australia. These organisations collectively represent approximately 95% of licensed private hospital beds in Australia and in addition, represent approximately 90% of all Free Standing Day Hospitals.

[2] This submission is being lodged in response to paragraph [159] of the decision handed down on 3 December 2018 - [2018] FWCFB 7350 – in which the Full Bench stated:

[159] *“In relation to PHIEA’s proposal to differentiate between permanent and casual employees performing shift work we would consider any wording provided by the PHIEA following this decision.*

PHIEA appreciates the opportunity afforded by the Full Bench to make further submissions in relation to shift penalty payments and proposes:

18.4 (b) A casual employee who works shift work as defined in clause 18.4, will be paid 140% of the minimum hourly rate applicable to their classification and pay point but will not be paid the casual loading of 25%

Also in paragraph [159], the Full bench noted:

[159] *PHIEA submit that shift penalties would not be applicable to work performed on weekends and public holidays where other payments apply. We agree with these submissions and will change the HPSS Award accordingly.*

It does not appear that this change has been made as per the December 3 decision and PHIEA therefore proposes:

18.4 (c) The shift penalties prescribed in this clause will not apply to shiftwork performed by any employee on Saturday, Sunday or Public Holidays where the extra payments prescribed in clause 18.1 – weekend penalties or clause 23 – public holidays apply.

A draft determination follows as attachment 1

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FAIR WORK COMMISSION

DRAFT DETERMINATION

Fair Work Act 2009

s.156 – 4 Yearly Review of Modern Awards

Health Professionals and Support Services Award 2010

(AM2016/31) MA000027

Health and Welfare Services

[MEMBERS]

[Location, Date]

Further to the Full Bench decision issued on 3 December 2018 the above award is varied by:

Deleting Exposure Draft Clause 18.4 (Clause 29 – current Award) and replace with the following clause.

18.4 – Shiftwork

- 18.4 (a) Where the ordinary rostered hours of work of a shiftworker finish between 6.00 pm and 8.00 am or commence between 6.00 pm and 6.00 am, the employee will be paid 115% of the minimum hourly rate of pay applicable to their classification and pay point.
- 18.4 (b) A casual employee who works shift work as defined in clause 18.4, will be paid 140% of the minimum hourly rate applicable to their classification and pay point but will not be paid the casual loading of 25%
- 18.4 (c) The shift penalties prescribed in this clause will not apply to shiftwork performed by any employee on Saturday, Sunday or Public Holidays where the extra payment prescribed in clause 18.1 – weekend penalties and clause 23 – public holidays apply.