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10 January 2018

Ms Liz Main
People and Culture Manager
Clinpath Laboratories
19 Fullarton Road
Kent Town SA 5067

Dear Ms Main

As previously advised, we have a number of concerns with the proposed Clinpath Laboratories Enterprise Agreement 2017, which we outline below.

Notice of employee representational rights

The Notice of Employee Representational Rights (NERR) was not correctly completed. The notice Clinpath provided states:

Clinpath Laboratories Pty. Ltd. gives notice that it is bargaining in relation to an enterprise agreement (Clinpath Laboratories Enterprise Agreement 2017) which is proposed to cover employees that are currently covered by the Clinpath Laboratories Enterprise Agreement 2015 and the Clinpath Laboratories Nursing Employees Enterprise Agreement 2013.

However, this is different to the coverage of the proposed Enterprise Agreement that Clinpath indicates in its Form F17. In paragraph 2.2 of the Form F17, Clinpath states that:

The groups covered were the groups covered by the previous Clinpath Laboratories Enterprise Agreement and warehouse staff previously covered by the HPSS Award.

The groups not covered were nurses, who are covered by the Nurses Award and senior management.

We believe that the NERR is deficient, as warehouse staff are to be covered by the proposed agreement, but were not identified in the notice, and were not provided with the notice. Additionally, the proposed agreement does not cover those employees covered by the Clinpath Laboratories Nursing Employees Enterprise Agreement 2013, as indicated in the notice.

We draw your attention to *AMOU v Harbour City Ferries Pty Ltd* (2015) 250 IR 1, [29], in which the Full Bench held that:

The terms of the prescribed form necessitate the provision of information so that an employee is able to assess whether he or she is an employee who would be covered by the proposed agreement. The employee reading the notice must be able to understand who it is "who would be covered" by the proposed agreement. That is the purpose of the words in the first paragraph of the prescribed form "... which is proposed to cover employees that [proposed coverage]".

We believe that these defects are likely to render the notice of employee representational rights invalid. If no valid notice of employee representational rights was given to employees, the Agreement does not satisfy s 188 of the *Fair Work Act* and cannot be approved.

Ballot Process

We understand that employees were sent their ballot papers by mail on the 11 December 2017, but did not receive access to the proposed agreement until 14 December 2017. We believe this is in breach of s 180(1) of the *Fair Work Act 2009*, which provides:

Before an employer requests under subsection 181(1) that employees approve a proposed enterprise agreement by voting for the agreement, the employer must comply with the requirements set out in this section.

We believe that the voting process began when employees are provided with ballot papers. (See, for example, *Australian Char Pty Ltd* [2011] FWA 1627). This means the process began on 11 December 2017, and not 21 December 2017, as indicated in the Form F17. As employees were not provided with copies of the agreement until 14 December 2017, after the voting process had begun, we believe that the pre-approval requirements in s 180 of the *Fair Work Act* were not met, and the vote is therefore invalid.

We also note that the information provided to employees was deficient and confusing. The letter sent on 11 December did not state when the ballot was to open, only that it closed at 4pm on the 28th December 2017. This, coupled with the timing of the ballot over the Christmas period and the ballot return box not always accessible caused major confusion and frustration by employees wanting to cast a ballot.

Misleading information provided to employees

The HSU SA/NT maintains that Clinpath misled employees in its communication on 1 December 2017, as indicated in our letter dated 13 December 2017, to which Clinpath responded on 13 December 2017. Further, the letter Clinpath provided to employees dated 11 December 2017 contained contradictory information about what was and was not changing in the proposed agreement.

For example, Clinpath stated in their agreement summary titled '*Changes to the agreement are,*' that the '*increment increases occur at 1950 hours for all staff*', but also said in the '*Many clauses remain unchanged in the agreement*' summary that there will be '*no change to increment increases*'. The increment increases were a major point of difference in negotiations and a point the parties did not reach an in principle agreement on.

Given our concerns outlined above, we do not support the approval of the proposed enterprise agreement.

Yours sincerely



Jorge Navas
STATE SECRETARY, HSU SA/NT