HEALTH PROFESSIONALS AND SUPPORT SERVICES AWARD 2010

Summary of outstanding issues as of 21 June 2016

In the <u>Further Report to the Full Bench on 26 April 2016</u> parties were asked to respond to the package of proposals put by <u>HSU on 25 April 2016</u>. The below table provides a summary of the provisions which are subject to HSU's alternative proposal package and the parties overall response to the package. For details on specific clauses, please see red text in the Summary of outstanding issues below.

		HSU alternative proposal package
subs ref.	CLAUSE (exposure draft)	Summary of issue
12A	6.1	HSU provided alternative proposal as a package of measures on <u>25 April 2016</u> .
17	8	
19	9	The following parties provided conditional support for the package:
23	18.1	• PHIEA – <u>28/04/16</u>
23A	18.3	 Supports HSU proposal with amendments outlined in its submission
27A	18.4 (referred in HSU sub as 18.3)	 ACE - 4/05/16 Subject to clarification of some clauses in line with PHIEA proposal, ACE supports HSU alternative proposal. CAA - 5/05/16 Sets out a number of amendments. If amendments accepted will not press its claims in relation to items: 12A, 17, 18, 19, 23, 26,
30B	19	27, 27A, 42
43	Sch I	 The following parties opposed the package as a whole (with some providing specific comments on provisions as per summary below): ABI & NSWBC - 4/05/16 AFEI - 3/05/16 AiG - 4/05/16 MIERG - 19/05/16 - continues to push its claims in this submission
		Following submission made without support/opposition to the package as a whole: • Australian Dental Association Inc – 4/05/16

			Summary of outstanding issues	
Summary of subs ref.	Party	CLAUSE (exposure draft)	Summary of issue	Status/outcome
5A	MIERG		, , ,	Proposal for medical imagining appendix – substantive issue referred to Full Bench – Report to
	HSU		Opposes all of MIERG submissions to reinstate award. Should be matters for bargaining.	Full Bench – 5 January 201
	ABI		Opposes variations sought by MIERG (except span of hours issue) industry specific provisions have not been justified.	the Full Bench (27
	AiG		Concerned MIERG variations may introduce additional costs and significant inflexibilities for employers in health industry	November) at [1]
38	APESMA		· · · · · · · · · · · · · · · · · · ·	Items 37B, 38, 38A, 20A – Proposed provisions for translators and interpreter
	ABI		Opposes APESMA's submission, as opposes employees working in industries or businesses unrelated to health industry being covered by award.	- substantive referred to Full Bench - <u>Report to Full</u> Bench - 5 January 2016
	BusSA		Opposes APESMA's submission. Submits HPSS is industry specific award, to cover translators would create confusion.	
	AiG		Opposes APESMA's submission and all related translator and interpreter variations to the award (e.g. changes to classifications 1, 5 and 7)	
8	FWO	3.1(b), 11 and Sched A		Substantive referred to Full Bench - Report to Full
	PHIEA	& B	Parties are asked to clarify whether the list of common health professionals is an exhaustive list or indicative list of examples.	Bench – 5 January 2016
	HSU	_	e i	Parties disagree on whether the list of
	1130		List indicative only, not exhaustive.	Whether the list of

	•		Summary of outstanding issues	
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			Group indicative list of common health professional titles by practice areas. If Commission is of view that list is not indicative HSU submits matter should be argued further.	professions is exhaustive or merely indicative (see Report to the Full Bench
			Proposed variation to reflect HSU submission list is indicative: Schedule A A.2 "An indicative list of common health professionals which are covered by the definitions is contained in Schedule B— Indicative List of Common Health Professionals" Schedule B "Schedule B— Indicative List of Common Health Professionals"	(27 November) at [2])
	PHIEA		Disagree with HSU. Contrary to PHIEA initial view, following discussion with other employer parties, now of view list should be <u>exhaustive</u> and not indicative. Agrees with BusSA and ABI.	
	PHIEA		Opposes HSU position (Sub 16/07/15) & AWU. Concerned positions which lack qualifications may be added to list of professionals.	
	ACE		Not in position to provide clarification of list. Only limited number of classifications relevant to aged care industry.	
	BusSA		Supports view list is exhaustive. A view that list is indicative only would be confusing for end users and make it ambiguous.	
	АВІ		List operates in same manner as clauses found in other awards. Inclusion serves as example of what may be included in particular classification or particular industry award. List indicative, meaning not an exhaustive or an all-inclusive list, but is useful and makes award easier to understand and apply. Clause should remain as it is presently.	
	AIG		to understand and apply. Clause should remain as it is presently. Relies on decision [2009] AIRCFB 948 as support for view list is an exhaustive list of occupations covered by the Award. If the list of common health professionals contained in Schedule B was not exhaustive, then the effect of the AIRC's decision to remove dental hygienists from the list would arguably be superfluous.	
	AiG		Both clause A.2 and Schedule B do not include expansive terms such as 'including' or 'for example'. Both clause.2 and Schedule B use limiting language.	
	AWU		Contends list is not exhaustive list, but an indicative list.	

	I		Summary of outstanding issues	
Summary of subs ref.	Party	CLAUSE (exposure draft)	Summary of issue	Status/outcome
	DHAA		Opposes HSU's variation (sub 16/07/15). Supports AiG (sub 4/03/15). List is exhaustive not indicative. Submits Decision [2009] AIRCFB 948, removal of dental hygienists demonstrates the list is exhaustive not indicative.	
	ADA		Opposes AWU & HSU submissions. Submits dentists in private practice have always been award-free in Australia	
	ABI		Indicative list. HSU draft determination unnecessary. Rejects AiG interpretation of clause/sched B. List does not determine award coverage, coverage determined by cl.4.	
			Any changes to cl. should not result in change in coverage, or be used to circumvent the process of making application to Commission to alter coverage in award either to expand or reduce it.	
12A	HSU	6.1(b)	Add underline section to clause: "At the time of engagement an employer will inform each employee whether they are employed on a full-time, part-time or casual basis, and whether they are employed as a day worker or a shiftworker'. (HSU advise that this is not a separate issue to the substantive variation sought in relation to span of hours – see Report to the Full Bench (27 November) at [3])	Items 12A and 17 – Span of hours – substantive issue likely to be referred to Full Bench – further conference to be held – Report to Full Bench – 5 January 2016
	PHIEA		Opposes HSU 16/07/15 variation. It is the shift that attracts the penalty not the person.	
	ACE		Opposes HSU variation.	-
	ADA		Opposes HSU variation, too inflexible not suitable for modern private dental practice.	
	AiG		Opposes HSU variation	
	HSU		HSU package of proposals <u>25/04/16</u> – no variation to ED except to correct numbering subclauses in cl 6.3.	Report to Full Bench 26 April 2016 – parties to
	PHIA		Supports variation in so far as the clause should be renumbered – current (c), (d), and (e) should be (a), (b), and (c) – $\frac{28}{04}$	comment on HSU proposa by 3 May 2016
	AFEI		Opposes HSU variation as package, no comment on this particular clause – 3/05/2016	
	ADA		Supportive of HSU proposal in so far as the clause should be renumbered – current (c), (d), and (e) should be (a), (b), and (c) – $\frac{4}{05}$.	
	AiG		Opposes HSU variation as package, no comment on this particular clause – 4/05/2016.	
15A	MIERG	New clause	Probationary employment of not more than 3 months, the initial probationary period may be	Issue removed in
			extended for a period not exceeding 6 months. Employee of probationary employment may be	accordance with Report to

			Summary of outstanding issues	
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			terminated upon one week's notice or forfeiture of one week's salary where notice is not given.	Full Bench – 5 Jan 2016
	ABI		Opposed new probationary term	
	BusSA		Opposes, as unnecessary given FW Act unfair dismissal application require minimum 6 month employment.	
16	HSU	8	Ordinary hours of work – overtime Vary current ordinary hours of work to clarify that time worked in excess of 10 ordinary hours for all employees in any one day will be paid at the overtime provisions of award.	HSU component appears resolved by amendment to clause 19. See HSU Furthe
	MIERG	8.1	Ordinary hours – Private Medical Imaging: proposed new clause: Ordinary hours of work will not	Submission – Report to Fu Bench, 4 December 2015.
	MIERG		exceed 152 hours per four week period. Consultation to occur on method of implementing ordinary hours, however final choice rests with employer.	Issue removed in accordance with Report to Full Bench – 5 Jan 2016
17	HSU	8.2	Span of hours Considering application for a simplified variation of span of hours for private practice. Likely to look like the following: (a) - Monday to Friday, 7am to 7pm; and (b) - Saturday, 8am to 2pm	Items 12A and 17 – Span of hours – substantive issue likely to be referred to Full Bench – further conferenc to be held – Report to Full
	HSU		Reiterates position for single span of hours. Opposes applications made by employer parties. Note that several additional applications relate either directly or indirectly to proposed variation, including: definition of day worker and shiftworker, rostering provisions and shift work. HSU intends to pursue these claims.	Bench – 5 January 2016

Summary of outstanding issues					
Summary of subs ref.	Party	CLAUSE (exposure draft)	Summary of issue	Status/outcome	
	HSU	8.2	Proposes a single span of hours for day workers. Opposes introduction of new specialised spans of hours. Proposed variation: "8.1 Span of hours – day worker (a) Ordinary hours of work for a day workers are worked between 6:00am and 6:00pm, Monday to Friday" • Delete definition in Sched I "private medical, dental and pathology" (as not needed if no provision for different rates in clause 8.2) • Remove distinction in 8.2(c) 'private medical imaging practices'		
	AWU		Seeks single simple span of hours' provision.		
	ADA		Disagrees with AWU. Submits 8.1 (a)&(b), and 8.2(b) should be preserved.		
	PHIEA		Opposes HSU proposal to single span of hours. Concern would increase overtime payment in place of applicable shift or weekend penalties. Should be considered substantial matter with shift/casual issues.		
	ACE		Opposes HSU proposal.		
	ADA		Opposes HSU. Submits communities require medical, dental and pathology to be available in evenings and on weekends. Agree with CAA sub 15/07/15 at [1.1], and APA sub 15/07/158 at [2], proposes ordinary hours of a day worker should be extended to align with public expectations of service availability from health professional without additional cost to the community.		
	CAA		Does not oppose the rationalisation of span of hours provisions. Disagrees with HSU's proposal. Submits what HSU defines as "normal working hours" do not align with industry practice, chiropractors and other allied health services are expected to work outside traditional business hours (on week nights and weekends).		
	ABI		Opposes HSU and AWU submission for single span of hours.		
	BusSA		Opposes HSU submission. Health is not Mon-Fri industry. Span of hours issue linked to issues of definition for day worker, shiftworker and associated penalties. Matters should be heard together by		

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			full bench.	
	AiG		Opposes HSU variation and related variations to definition of day worker and shiftworker.	
	AFEI		Concern span of hours, shiftworker and penalty rate issues may have 'far reaching and perhaps unintended consequences' should be referred to FB.	
	HSU	8.1-8.2	HSU alternative proposal <u>25/04/16</u> – see page 3. Removes general ordinary hours provision and provisions based on sectors of the industry. Provides definition of span of hours for day worker, shiftworker, full-time employee.	
	AFEI		Opposed to HSU alternative proposal regarding span of hours – 3/5/2016.	
	ADA		Supportive of HSU proposal in so far as span of hours should be amended to 7:30am-7:30pm, Monday to Friday and not 6:00am-6:00pm $-\frac{4}{05}/2016$.	
	ABI		Opposes HSU alternative proposal. Operational needs of business require different span of hours for various sectors. Proposal would also remove ability to roster day worker employees to work ordinary hours Sat and Sun $-4/05/2016$.	
	CAA		Opposes HSU proposal, provides amendment to allow span of hours to be varied by two hours either end by agreement between an employer, the employee or employees concerned; provision to allow work on weekends and public holidays; redefine definition of shift worker; and insert 'ordianry hours' in to maximum shift work in HSU proposed clause $8.1(d) - \frac{5}{05}/2016$.	
	PHIEA	8.2	Span of hours - 24/7 business- award does not clearly identify what an employee employed in a 24/7 business such as a hospital, who is both a day worker and a shift worker, is to be paid on afternoon or night shifts or on weekends. PHIEA proposes to vary span or hours clause with associated amendments to 26.1 and 29.	
	AFEI	8.2	Span of hours - weekend work Award prevents a host of other health professionals such as chiropractors, acupuncturists and naturopaths from having ordinary hours on a weekend. AFEI in discussions with members and associations to ascertain whether a variation to this clause will be jointly pursued	

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	CAA	8.2(a)	Span of hours - chiropractic practices	
			Seek to vary span of hours for chiropractic practices. Current span not reflective of industry practice which involves work outside traditional business hours. Seeks to include provision to enable span of hours to be altered by up to two hours at either end of the spread, by agreement between the employer and employee.	
	HSU		HSU opposes. Ability to alter span of hours by up to 2 hours issue for bargaining.	
	Tristar Medical Group	8.2(b) new subclause	Span of hours – private medical, dental, and pathology Propose new subclause "(b)" "24.2(b) Seven day practice Where the work location of a practice services patients on a seven day a week basis, the ordinary hours of work for an employee at that location will be between 7:00 am and 9:00pm Monday to Sunday. Work performed on a Saturday will be paid at the rate of time and a quarter of the employee's ordinary rate of pay instead of the loading prescribed in clause 26 – Saturday and Sunday work. Work performed on a Sunday will be paid at the rate of time and a half of the employee's ordinary rate of pay instead of the loading prescribed in clause 26." (Note clause 26 = ED cl.8.1 Weekend penalties – day worker)	
	ADA		Supports Tristar's variation and wording to include new subclause (b).	
	Pathology Australia		Submits ED does not contain clause 24.2, which outlines ordinary hours for pathology practices. Seeks to amend draft clause covering sub group 2B, to have ordinary hours until 9pm Monday – Sunday.	
	AIG	8.2(c)	Private medical imaging practices – five and a half day practices Propose alternative wording: "Where a private medical imaging practice services patients on a five and a half day a week basis"	
	AFEI		AIG variation is unnecessary and may alter existing meaning of clause. Existing provision should be retained.	
	MIERG		MIERG proposes further addition: work on Saturday will be paid at time and half and working outside	
	MIERG		span of hours will attract penalty rates. Insert "where a <u>location of a practice</u> services patients on a five and half day basis"	

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	MIERG	8.2(c) new clause	Span of hours - private medical imaging practices – six day practices Propose to add clause for 6 day practice, that states where a location of practice services patients on			
	MIERG		six day week basis – ordinary hours 7:00am – 9:00pm Mon to Sat			
	AIG	8.2(d)	Span of hours - private medical imaging practices – seven day practices Propose alternative wording: "Where a private medical imaging practice services patients on a seven day a week basis"			
	AiG		Opposes HSU variation as would increase rate of pay on Saturday.			
	APA	8.2(e)	Span of hours - Physiotherapy practices Amend clause to allow greater flexibility in ordinary span of hours for physiotherapy practices on weekdays and Saturdays. Proposed variation to ordinary hours of work to: 7:00am - 8:00pm Monday - Friday; 7:00am - 2:00pm Saturday.			
	K'da Nadala	0.2(1)	Submits change needed to reflect current operation of physiotherapy practices.			
	Kids Matters Occupational Therapy Pty Ltd	8.2(c)	Expand clause for 5 and half day practices to include Occupational Therapy. Saturdays high demand for OT, operate like physiotherapy and it is inequitable physiotherapist can operate ordinary hours and OT cannot. Compromises ability to provide administration services on Saturdays.			
	PHIEA	8.2(f) – new subclause	Span of hours - Private Hospitals operating 24 hours a day, seven days a week – Propose adding clause 8.2(f), ordinary hours to be between 6:00am – 6:00pm Monday to Sunday.			
	HSU		Does not oppose PHIEA subclause, provided its application is limited to shiftwork in private hospitals. Opposes application of rates of pay for shift work.			
	APC	8.2 – new subclause	Span of hours - Podiatry practices Insert new sub-clause to allow greater flexibility in ordinary span of hours for practices on weekdays and Saturdays.			
18	ACE	8.3	Rostering Proposed variation to remove ambiguity or uncertainty, ensure no adverse effects to aged care industry including in respect of flexibility, rostering arrangements, labour costs and government funding.	Item 18 – rostering flexibility – likely to be referred to Full Bench – further conference to be		

			Summary of outstanding issues	
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	ACE	8.3	Rostering – flexibility proposal Add to 8.3(b) 'unless the employee otherwise agrees' seven days' notice will be given to change of roster. ACE believes change is necessary for matters other than 'illness' or 'emergency' that may require change of roster at short notice.	held – Report to Full Bench – 5 January 2016 See also [2014] FWCFB 129 re notice of rostering
	PHIEA BusSA HSU		Supports ACE proposed variation Supports ACE proposed variation Opposes ACE (15/07/15). Award contains several flexibilities enabling variations of work.	changes Substantive – see <u>Report to</u>
	ABI		Supports ACE (15/07/15) variation.	the Full Bench (27 November) at [5]
19	AIG	9.1	Propose to add at 9.1(a) after 60 minutes: "Provided that an employee who works not more than six hours may elect to forgo the meal break, with the consent of the employer". Submits current clause is unduly inflexible, other awards have greater flexibility (list provided at para [36]), and would benefit employees who want to leave early rather than take unpaid break.	Item 19 – meal breaks – substantive likely to be referred to Full Bench – further conference to be held – Report to Full Bench – 5 January 2016
	PHIEA ABI BusSA		Current clause does not contemplate what happens if employee is rostered to work 6 hours and break falls (due to operational reasons) at end of 6 hours. Supports in principle AiG proposed variation to meal breaks. Supports AiG Supports AiG	
	HSU		Opposes AiG variation without proposed provisions put by ANMF in Nurses Award (AM2014/207 – ANMF sub 15/07/15). Note ANMF proposal: Break to be taken 4 th & 6 th hour unless agreed by majority of employees, where employee required to work during meal break or "remain available" (ANMF seek definition to equal remain at workplace) the employee will be paid overtime.	
	HSU	9.1	Seeks to vary clause 9.1(a) by including words "the meal break will, wherever reasonably practicable, be taken between the fourth and sixth hours of commencing work"	Report to Full Bench 26 April 2016 – parties to
	AIG ABI CAA		Does not oppose HSU proposal – <u>4/05/2016</u> . Supports HSU proposal – <u>4/05/2016</u> . Agrees to HSU proposal – 5/05/16	comment on HSU proposal by 3 May 2016

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	MIERG	9.1	Meal breaks – private medical imagining practices Proposed new clause for PMIP: Not less than 30 min and not more than 1 hour meal break within 5			
	MIERG		hours of commencement. Provision can be varied by agreement between employer and individual employee. If urgent work required – unpaid meal break may be deferred and must be taken as soon as practicable.			
	ADA		Supports MIERG unpaid breaks provision, propose include 'private medical, dental and pathology' as these practices require flexibility of staff and the timing of breaks in order to meet emergencies.			
	MIERG	9.2	Paid tea breaks – private medical imaging practices. Proposed new clause: Up to 2 paid tea breaks up			
<u> </u>	MIERG		to 10min duration for full-time employees. Time taking subject to 'workload of the practice'.			
20	AIG	Proposed new clause	· · · · · · · · · · · · · · · · · · ·	Item 20 – annualised salaries – substantive likely to be referred to Full Bench – Report to Full Bench – 5		
	PHIEA		Proposed clause be inserted as new clause 16. To apply to classifications: • Support services employee – level 8; • Support services employee – level 9; • Health Professional employees – any level. Subclauses to be titles as following (see draft clause [58]): 16.1	January 2016		
1	CAA		Seeking annualised salary provision.			
	CAA		Generally supports AiG's submission. Believes should be applied to all classification levels within award. Similar provisions in other modern awards are not limited to classification levels. CAA sees no			

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			reason why administrators in allied health industry should differentiated from administrators in private sector.	
	ABI		Supports AiG application	
	BusSA		Supports proposal of AiG and CAA.	
	AWU		Opposes AiG annualised salary clause. AWU submits the AiG is seeking this 'significant variation without any probative evidence'.	
	HSU		Opposes submissions AiG & CAA. Would require significant quantum to not disadvantage employees, should remain matter for bargaining and limited to specific workplaces and classifications.	
	AiG		Supportive in principle of CAA claim	
20A	APESMA	11.2	 Health Professional Employee – Level 1 (a) Insert "and NAATI accredited Paraprofessional Translator and NAATI accredited Paraprofessional Interpreter" after "UG 2 qualification" (b) Insert "and NAATI accredited Professional Interpreter and NAATI accredited Professional Translator " after "three year degree entry"; 	Items 37B, 38, 38A, 20A – Proposed provisions for translators and interpreters – Substantive referred to Full Bench – Report to Full Bench – 5 January 2016
20B	MIERG	12	Payment of wages – seeks condition for Private Medical Imaging Practices, which allows payment to occur not more than 3 working days from end of pay period, and by cash, cheque, electronic transfer or other arrangement by agreement with the employee. Payment for full time workers may be weekly, fortnightly, four weekly or monthly. For part-time or casual employees will be weekly or fortnightly.	Items 5A, 20B, 30A, 44 – Proposal for medical imagining appendix – substantive issue referred to Full Bench – Report to Full Bench – 5 January 2016
23	HSU	18.1	HSU submits error in drafting of HPSS Award 2010. Plain reading suggests penalty rates apply only to day workers not to shift workers; this is inconsistent with predecessor award and logically inconsistent.	Items 23, 26, 27, 27A, 42 – casual loadings and weekend penalties and
	PHIEA		Agrees with HSU, clause is logically inconsistent. Disagrees should be dealt with in Full Bench hearing of technical issues. Believes definitions of day/shift workers, span of hours, shift and weekend penalties are linked and cannot be considered in isolation.	definition of shift work – likely to be referred to Full Bench – further conference to be held – <u>Report to Full</u>

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	AWU		Notes in current form, weekend penalties apply to day workers for ordinary hour worked between midnight Friday and midnight Sunday, do not apply to shiftworkers. Propose to delete 'a shift worker' from clause 18.1 and insert 'an employee'.	Bench – 5 January 2016 Substantive - see [19] – [24
	ADA		Opposes AWU's proposed variation to delete 'day worker' and replace with 'an employee': Does not agree with HSU's contention error in original drafting in 2010 on weekend penalties, notes ADA which has not had 'shiftworkers' in their awards. Agree with PHIEA the issues are unclear and should be referred to Full Bench.	of <u>Report to Full Bench - 30</u> October 2015
	HSU	18.1	HSU package of proposals <u>25/04/16</u> – revises clause 18.1 to remove day worker, see page 5.	Report to Full Bench 26
	PHIEA		Supports HSU variation but similar amendments should be made to clause 18.3(b), shift penalties for casual employees –28/04/2016.	
	AFEI		Opposes HSU variation as package, including introduction of shift and weekend penalties $-\frac{3}{05}/2016$	
	ADA		Supports HSU proposal in so far as clause (b) should be amended to delete words 'Saturday or Sunday and replace with 'weekends' $-\frac{4/05/2016}{2016}$.	
	ABI		Opposes HSU variation, as adds new entitlement for employees $-\frac{4/05/2016}{2016}$.	
	CAA		Supports HSU variation to delete "day worker" and replace with "full or part time employee" subject to clarification shiftworker does not apply when weekend or public holidays penalty applies, HSU proposed clause $18.3 - \frac{5}{05} / 2016$.	
	MIERG	18.1	Add 'unless otherwise stated' at beginning of clause	
	MIERG			Report to Full Bench 26 April 2016 – parties to comment on HSU proposal
	PHIEA		Agree with MIERG - Add 'unless otherwise stated' at beginning of clause	
23A	HSU	18.3	HSU alternative proposal variation to delete clause 18.3 – Weekend work in private medical imaging seven day practice – $\frac{25}{04}$	
	MIERG		Request retention of current medical imaging specific provisions and reinstatement of the remainder relevant MIERG provisions – $\frac{19/05/16}{}$	by 3 May 2016
	ABI		Notes the deletion of 18.3 and opposes the limitation on ability for day workers to be rostered on Saturday and Sunday for 7 day medical imaging practices $-\frac{4/05/16}{2}$	

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25A	PHIEA	18.3 proposed new clause	 Propose to add 'weekend work in private hospitals operating 24/7' – as new clause 18.3 (vary other clauses accordingly) (a) For all ordinary hours worked between midnight Friday and midnight Sunday be paid 150% of their minimum hourly rate. (b) Casual workers who work on Saturday or Sunday will be paid 175% of their minimum hourly rated for all time worked but will not be paid the casual loading of 25%. (c) The shift penalties prescribed in clause 18.5(ii) will not apply to shiftwork performed by an employee on a Saturday, Sunday or public holiday where the extra payment prescribed in clause 18.3(a) weekend work in private hospitals and clause 18.4 – Public holidays, applies. 	
26	FWO	18.4	Shift work penalties, weekend penalties Unclear whether casuals are entitled to weekend penalties and if they are, what they should be paid. Unclear whether additional 15% is paid only for hours within span of hours or if loading is paid for every hour worked in the shift.	Items 23, 26, 27, 27A, 42 – casual loadings and weekend penalties and definition of shift work – likely to be referred to Full
	PHIEA		Parties asked to confirm whether this rate is in addition to casual loading and/or weekend penalties Shift work penalty does not apply when employee works weekends, consistent with pre-reform awards and Nurses Award.	Bench – further conference to be held – <u>Report to Full</u> <u>Bench – 5 January 2016</u>
	CAA		Believes shiftwork penalties are not in addition to casual loading, shiftwork penalties are not applicable to casuals.	Substantive - see [19] – [24 of Report to Full Bench - 30 October 2015
	ACE		Not clear casuals have any entitlement under this clause. Casual employees have no ordinary hours of work in respect of day work and shiftwork therefore cannot be said to be a "shiftworker" under award. Notwithstanding, propose new additional clauses be adopted (see submission).	OCTOBEL 2012
	BusSA		Submits penalties are not cumulative.	
	ABI		Nothing in clause leads to conclusion that should be treated as loaded rate. Submit casual loading in award is not 'all purpose' and therefore should not be treated as compounding when determining rate of pay for weekends, public holidays or shiftwork. Drafting in ED is problematic in that it would lead to significant increase in calculation of casual wages.	

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	PHIEA		 Discussion occurring between parties as to amended wording. Agrees with ACE clause wording not clear. Agrees with ABI, not all purpose allowance Agree with ABI - highest applicable rate applies and penalty should not be applied to penalty unless expressly provided. 	
	AIG		 Suggest new sub-clause 18.3 (with current 18.3 renumbered) based on wording in clause 19.1(c) of ED: "18.3 Weekend penalties not cumulative "The weekend penalties will be in substitution for and not cumulative upon the shift loadings prescribed in clause 18.5." In relation to calculation of shift penalties and the casual loading, AIG considers there is no basis in text of Award for shift loading to be calculated on casually loaded rate. would support PHIEA's suggested variation in adopting the clause used in clause 6.4(d) of Nurses Award - ED. 	
	HSU		Any allowance or loading would not be cumulative but paid in addition to any other allowance or loading.	
	ABI		Submits no ambiguity, shift workers do not receive weekend penalties. To do so would be substantive change, with significant impact on employers.	
27	FWO	18.4	Unclear whether additional 15% is paid only for hours within span of hours or if loading is paid for	Items 23, 26, 27, 27A, 42 – casual loadings and weekend penalties and definition of shift work –
	BusSA	18.4	Unclear whether hours worked should be treated as ordinary hours for a day worker or shift hours.	likely to be referred to Full Bench – further conference
	CAA	18.4	Unclear in some circumstances whether and when a shiftwork penalty is payable. Submits definition of shiftworker should be amended to provide clarity. There is ambiguity in relation to interaction between shiftwork loadings and weekend penalties	to be held – Report to Full Bench – 5 January 2016 Substantive - see [19] – [24] of Report to Full Bench - 30

	1		Summary of outstanding issues	
Summary of subs ref.	Party	CLAUSE (exposure draft)	Summary of issue	Status/outcome
	PHIEA		Agrees with CAA that there is ambiguity regarding interaction between shift work loadings and weekend penalties. As award currently reads a shiftworker is not entitled to weekend penalties. PHIEA considers this an anomaly to be rectified as part of review.	October 2015
	ABI	18.4	In response to issue raised by Ombudsman, ABI do not consider clause ambiguous. Shiftworker defined in clause 18.4 as employee that performs a rostered shift that finishes between 6pm and 8am or commences between 6pm and 6am. Span of hours prescribed in clause 23 of current award does not and cannot apply to shiftwork nor does clause 18.4 prescribe a span of hours, it is a categorisation of shiftwork only. If a span of hours applied to a shiftworker then their shift would not be a shift for shiftwork purposes but overtime. On this basis submit clause 18.4 should remain as it is presently.	
	ABI		Submits no lack clarity. Cl.18.4 defines shift work by reference to parameters of the shift, if shift falls within parameters then shift loading is payable.	
	ABI	18.4	Appears to be difficulty in understanding whether shiftwork and penalties should apply at same time. Applying both penalties represents a "double dip". In line with long established principle that highest applicable rate applies to work of the day, a penalty should never be applied to a penalty unless instrument expressly provides otherwise.	
	CAA		CAA provides variation to 18.4 and to vary definition of shiftwork, see also Sched I: 18.4 Shiftwork Penalties (a) This clause will only apply to persons specifically employed as shiftworkers under this award. (b) This clause does not apply to an employee who is employed as a day worker and who does additional hours or overtime. (c) For the purposes of this clause, shiftwork means a rostered shift finishing between 6.00pm and 8.00am or commencing between 6.00pm and 6.00am. (d) Any rostered shiftwork performed by a shiftworker will be paid at the rate of 115% of their minimum hourly rate of pay for that entire shift."	
27A	HSU	18.4	Shift work – afternoon and night shift Vary clause to ensure shift allowances are payable to employees when they work afternoon or night	Items 23, 26, 27, 27A, 42 – casual loadings and weekend penalties and

			Summary of outstanding issues	
Summary of subs ref.	Party	CLAUSE (exposure draft)	Summary of issue	Status/outcome
			• after '15% of their minimum hourly rate' ADD "for each hour worked" Add new subclause (b):	definition of shift work – likely to be referred to Full Bench – further conference to be held – <u>Report to Full</u> <u>Bench – 5 January 2016</u>
	AWU		Seek to ensure shift allowances are payable to employees when they work an afternoon or night shift.	
	AiG		Unsure of AWU's position on afternoon or night shift – reserves position.	
	PHIEA		Opposes HSU proposed variations	
	ACE		Opposes HSU variation in respect to payment of shiftwork penalty rates to 'any penalty, allowance, overtime, weekend or casual rates of pay'	
	CAA		Opposes HSU variation. CAA considers it significant departure from HPSS award and inconsistent with usual position that penalty rates are not cumulative. CAA seeks clarity on when overtime and other penalty rates are payable. Submits HSU proposal does not make clear when shiftwork penalties are payable.	
	AiG		Opposes HSU variation	
	ABI		Opposes HSU claim for shift loading and weekend penalty to be paid.	
	HSU	18.4	HSU package of proposals includes provision it has number clause 18.3 titled shift work and 18.3(b) shift penalties $\frac{25}{04}$ – see page 5-6	Report to Full Bench 26 April 2016 – parties to comment on HSU proposal by 3 May 2016
	AFEI		Oppose HSU variation – 3/05/2016.	
	ABI&NSWBC		Opposes HSU variation, introduction of shift penalties requires evidentiary case— 4/05/2016.	.,
	PHIEA	7	Supports HSU variation with amendment to include provisions for casual employees – $\frac{28/04/16}{1}$	
	ADA		Supports HSU variation with amendment to hours "6:00pm" replaced with "7:30pm" and "Saturday and Sunday" replaced with "Weekend penalties" $-\frac{4/05/2016}{2016}$.	
	ACE		Supports variation sought by HSU, subject to acceptance of calcification shiftwork penalties effect on	

			Summary of outstanding issues	
Summary of subs ref.	Party	CLAUSE (exposure draft)	Summary of issue	Status/outcome
			casual loading, supports proposal by PHIEA – <u>4/05/2016</u> .	
	CAA	1	Supports HSU variation with amendments outlined in page 3-4 – 5/05/2016.	
	PHIEA	18.4 – new subclause (ii) proposed	Add 'unless otherwise stated' to 18.4 Additional subclause (ii) 'Shiftwork in Private Hospitals operating 24/7 – Monday to Friday – 'where ordinary rostering hours of work finish between 6:00pm and 8:00am or commence between 6:00pm and 6:00am, the employee will be paid 114% of their minimum hourly rate of pay'.	
	HSU	19	Removal of substitution arrangements for shift allowances and payment of overtime for time worked beyond rostered hours	This item resolved. See HSU HSU Further Submission – Report to Full Bench, 4 December 2015. ED has been revised, republished 4 December 2015.
30A	MIERG	Proposed new clause	Overtime for job share proposed new clause: A job share employee will not receive overtime payments for any time worked within the rostered ordinary hours for the shared job.	Items 5A, 20B, 30A, 44 – Proposal for medical
	MIERG			imagining appendix – substantive issue referred
	BusSA		Opposes MIERG job share provision, as would be burdensome for business.	to Full Bench – <u>Report to</u> <u>Full Bench – 5 January 2016</u>
30B	HSU	19	HSU alternative proposal package, insertion of "ordinary" before "hours" $19.1(a)(ii)$, $19.1(b)(ii)$ (iii), $19.1(c)(i)$ and $19.1(c)(ii)$; expands $19.1(b)(iii)$ to reflect ordinary hours provided in its $8.1(c)$; and, insertion new 19.3 "Each day or shift (as relevant) stands alone." $-\frac{25/04/16}{1}$	Report to Full Bench 26 April 2016 – parties to comment on HSU proposal
	PHIEA		Supports HSU proposal, subject to amendment of clause 19.2(d) to include a clause reference to clause 23—Public holidays – $\frac{28}{04}$.	by 3 May 2016
	ACE		Supports HSU proposal and amendment provided by PHIEA at clause $19.2(d) - \frac{04/05/2016}{2016}$.	
	ABI &NSWBC	_	Supports HSU variation to this clause – <u>4/05/16</u>	
	CAA		Agrees to proposal – <u>5/05/16</u>	
33	HSU	20	Annual leave	Referred to Annual leave
			Propose to express safety net entitlement to an additional week of annual leave for shift workers in	Full Bench, see Report to
			similar way to that expressed in Exemplar Award	Full Bench - 5 January 2016

			Summary of outstanding issues	
Summary of subs ref.	Party	CLAUSE (exposure draft)	Summary of issue	Status/outcome
	ABI		Opposes HSU proposal. Clause sufficiently clear.	
	HSU	20.2	Certain shiftworkers – vary definition – Annual Leave provision for shift workers Seeks to vary clause to allow employee who is not shift worker, but works more than four ordinary hours on 10 or more weekends is entitled to the additional weeks annual leave; and provisions for employees who are engaged for part of the year as shift worker to receive additional week leave pro rata.	
			 Proposed drafting: Variation to 20.2(b): "For the purposes of the NES a shiftworker is an employee who works for more than four ordinary hours on 10 or more weekends and/or public holidays" Additional subclause (c): "An employee who is engaged for part of the yearly period as a shiftworker, is entitled to have the period of four weeks' annual leave increased by half a day for each month the employee is engaged on shiftwork, up to a maximum of 5 days additional leave." 	
	PHIEA		Opposes HSU Sub 16/07/16 variation to 20.2. Will refer to [2013] FWCFB 5551 - HSU (C2013/4216).	
	ACE		Opposes HSU variation 20.2 in respect to definition of 'shiftworker' for NES purposes, and pro-rata additional leave for employees who work only part of the year as shiftworker.	
	ADA		Strongly disagrees with HSU submission on annual leave for shiftworkers. Submits that HSU had unsuccessfully argued same principle, in slightly different guise in 2 Year Award Review. Decision [2013] FWCFB 5551 at [86-100]	
	AWU		Seeks to vary provision to ensure the additional annual leave is provided for shiftworkers.	
	ADA		Opposes AWU's submission for additional annual leave for shiftworkers. Issue dealt with tin HPSS 2 Year Award Review Decisions [2013] FWCFB 5551. Submits definition of shiftworker properly defined in cl. 20.2(a) &(b).	
	MIERG		Define shift workers as employee who is regularly rostered to work on a "24/7 shift system", delete "Sunday and public holidays"	
	MIERG		Further to submission on 11/05/15, add the underlined "continuous 24/7 shift work system"	

			Summary of outstanding issues	
Summary of subs ref.	Party	CLAUSE (exposure draft)	Summary of issue	Status/outcome
	AiG		Opposes HSU and AWU's claims	
	CAA		Opposes MIERG definition of shiftworker as unworkable; Opposes HSU submissions, as basically identical to submission made in 2012 Review that was rejected by FB.	
36A	MIERG	29	Dispute Resolution – proposed process for private medical imaging practices. Specific wording proposed. Aim of clause is to resolve dispute by direct negotiation and consultation.	Items 5A, 20B, 30A, 44 – Proposal for medical imagining appendix – substantive issue referred to Full Bench – Report to Full Bench – 5 January 202
37	HSU	Sched A	 Classification Definitions Vary "Support Services employees" that describe the job outcome and reflects the language used in the AQS Framework. Vary "Health Professional Stream" to clarify pay point at which health professionals undertaking an intern position commence. 	Item 37, 38 Interns – to be referred to Full Bench – Report to Full Bench – 5 January 2016 First point: withdrawn HSU Sub – 16/07/15 – para 65 Substantive – see Report to the Full Bench (27) November 2015) at [10]
37B	APESMA	Sched A 1.5(b)	Support Services employee – Level 5 Delete "Interpreter (unqualified)"	Items 37B, 38, 38A, 20A – Proposed provisions for
	BusSA		Opposes removal, as would make employees currently covered by award system award-free.	translators and interprete – Substantive referred to
38	APESMA	Sched A	Classification Definitions - Support Services employee - level 7: Seek to extend coverage of award to Translators and Interpreters who are not covered by any modern award (and to provide classification descriptors).	Full Bench – <u>Report to Full</u> <u>Bench – 5 January 2016</u>
	APESMA	Sched A 1.7	Delete "Interpreter (qualified)"	

			Summary of outstanding issues	
Summary of subs ref.	Party	CLAUSE (exposure draft)	Summary of issue	Status/outcome
	HSU	Sched A 2.1	Classification Definition – Health Professional – Level 1: Add classification for interns	Item 37, 38 Interns – to be referred to Full Bench – Report to Full Bench – 5
	ABI		Submits HSU's addition of intern level is not necessary.	
	AiG		Submits HSU's addition is not necessary and could lead to unintended consequences.	January 2016
38A	APESMA	Sched B	List of common health professionals Insert, in correct alphabetical order: "interpreter" and "translator".	Items 37B, 38, 38A, 20A – Proposed provisions for translators and interpreters – Substantive referred to Full Bench – 5 January 2016
	HSU		Add some titles not currently included which are commonly used.	Item 38A – additional job
	AiG		Opposes HSU additions to list, submits attempt to broaden coverage of award.	titles – to be referred to Full Bench – Report to Full Bench – 5 January 2016
42	CAA	Sched I	Definition of shiftworker- definition creates uncertainty as to who is a shiftworker. Can a shiftworker be both a day worker and a shiftworker? e.g. Chiropractic businesses where businesses operate outside regular hours. Quantum of annual leave unclear.	Items 23, 26, 27, 27A, 42 – casual loadings and weekend penalties and
	PHIEA		Agrees with CAA.	definition of shift work –
	AWU		Lack of clarity surrounding definitions of shiftworkers and day workers. Proposes 'in accordance with a roster' be deleted from definition of shiftworker.	likely to be referred to Full Bench – further conference to be held – <u>Report to Full</u> <u>Bench – 5 January 2016</u>
	ADA		Disagrees with AWU's view 'day worker' and 'shiftworker' definitions lack clarity. Cannot find what 'in accordance with a roster' refers to.	
	MIERG		Define shiftworker as, 'an employee who is regularly rostered to work their ordinary hours in a 24/7 shift system'	
	MIERG		Further to their submission 11/05/15 adds – "continuous" 24/7 shift "work"	
	HSU		Lack clarity "shiftworker" and "day worker", proposes updated definition (draft determination at appendix C): • "Day worker means an employee who is engaged as such and whose ordinary hours are	

			Summary of outstanding issues	
Summary of subs ref.	Party	CLAUSE (exposure draft)	Summary of issue	Status/outcome
			 worked between the span of hours as defined in clause 8.1." "Shift worker means an employee who is engaged as such and who is required to work shifts which may include ordinary hours outside the span of hours of a day worker as defined in clause 8.1." 	
	PHIEA		PHIEA agrees with HSU clause lack clarity. Disagrees with proposed amendment.	
	ACE		Opposes HSU proposed shiftworker definition.	
	ADA		Disagrees with HSU proposed definitions, as not in keeping with HPSS award decision 2010 nor amendments made in 2 Year Award Review process.	
	CAA		 Notes earlier submissions, shift worker traditionally work continuous 24/7 roster, position reflected in FW Act s.87. CAA submits current definition inappropriate. Issue arises as HPSS Award covers both private practices and hospitals. Workers who work past 6pm in private practice are 'inappropriately' being captured by the shiftwork provisions, rather than evening penalties or similar. CAA submits this is drafting oversight/error – propose variation for 18.4 (see above) & sched I:	
	HSU		Opposes CAA definition of shiftworker, submits the proposal changes intention of award is not technical issue, should be addressed as substantive issue as part consideration of cl.8 particularly span of hours.	
	HSU	Sch I	HSU alternative package of proposals – delete definition of "private medical, dental and pathology practice" and "shiftworker" – 25/04/16	Report to Full Bench 26 April 2016 – parties to
	AFEI		Does not oppose expansion of definition of 'private medical, dental and pathology practice' as	comment on HSU proposal by 3 May 2016

			Summary of outstanding issues	
Summary of subs ref.	Party	CLAUSE (exposure draft)	Summary of issue	Status/outcome
			outlined in previous negotiations and did not appear to have any dissent. Definition of 'Private clinics' provided – see page $2 - \frac{3/05/16}{2}$	
44	MIERG	Sched I	Definitions Agree there are definitional issues in award. Generally believes issues arise out of drafting error in first instance and not specifically as a consequence of the ED. Does not believe there should be a decision as a consequence of the ED that deals with these issues. Submission provides definition of the following words, to be included in list of definitions: Casual, Commission, CPD, full-time, imaging assistant, job share, part-time, Private Medical Imaging practice (pMIp), Union	Items 5A, 20B, 30A, 44 – Proposal for medical imagining appendix – substantive issue referred to Full Bench – Report to Full Bench – 5 January 2010
	APESMA		Insert in correct alphabetical order: "NAATI means National Accreditation Authority For Translators and Interpreters Ltd"	Issue may be dealt with on basis of written submissions – <u>Report to</u> Full Bench – 5 January 2010
	ABI		Does not oppose APESMA's submission to add definition of NAATI provided limited to awards current coverage of translators and interpreters at lvl 5 & 7 of the Award.	

List of abbreviations (in alphabetical order)

ABI Australian Business Industrial and the NSW Business Chamber Ltd

ACE Aged Care Employers, also known as Leading Age Services Australia NSW-ACT

ACTU Australian Council of Trade Unions

ADA Australian Dental Association

AFEI Australian Federation of Employers and Industries

APA Australian Physiotherapy Association

AIG Ai Group, Australian Industry Group

APESMA Association of Professional Engineers, Scientists and Managers Australia

BusSA Business SA

CAA Chiropractors' Association of Australia (National) Ltd

DHAA Dental Hygienists Association of Australia Ltd

ED Exposure Draft

FWO Fair Work Ombudsman

HSU Health Services Union

LASA Leading Age Services Australia NSW-ACT

MIERG Medical Imaging Employment Relations Group

NAATI National Accreditation Authority For Translators and Interpreters Ltd

PHIEA Private Hospital Industry Employer Associations