

REVISED SUMMARY OF SUBMISSIONS

Revised as at 30 September 2015 to incorporate submissions received since 17 March 2015

Status:	A = Agreed (changes will be made to Exposure draft)	C = referred to Common issue Full Bench	O = Outstanding technical/drafting issue
	R = Resolved by previous Full Bench decision	S = Substantive issue	W = Withdrawn/Not pressed

Conference convened by Commissioner Bissett 3 February 2015 - refer to [Transcript](#), 2 December 2014 at PN340 - 348

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	Reference	NOTES	STATUS	
General issues									
1	PHIEA	Sub - 27/01/15	Various		Inclusion of term ‘ordinary hourly rates’ for awards with all-purpose allowance Requires further consideration, adoption of general definition of all-purposes may give rise to unintended consequences.	Para 7	See Full Bench decision [2014] FWCFB 9412 , paras [63], opportunity to make further submissions on this issue.		
	HSU	Sub - 28/01/15			Terms minimum hourly rate and ordinary hourly rate have been mixed together in some awards. Language should be consistent throughout award.	Para 12			To be filed by 6 March 2015.
	PHIEA	Reply-sub-17/02/15			Agrees with HSU.	p.3			
	CAA	Sub – 15/07/15			CAA seeks inclusion of definition of ‘ordinary hours’ and consistent use of term	Paras 3.3-3.4			
	HSU	Reply Sub – 28/08/15			HSU disagrees with CAA submission ‘ordinary hours’ needs to be defined, notes no wording has been provided.	Para 5			

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2	PHIEA	Sub - 27/01/15	Various, 20.1, 21, 22, 23.1, 24, 25 & 26.1		Inclusion of NES summaries - strongly propose such references be removed from ED.	Para 29	Full Bench in decision [2014] FWCFB 9412 determined that NES summaries will be removed from 'legal instrument', see para [36]	
	BusSA	Sub - 28/01/15			Removal of items related to Full Bench decision, including NES summaries.	Item 1,p.6		
	HSU	Sub - 28/01/15			Welcomes inclusion of summaries although not clear how copies of award will be made available to employees or how employees can request a copy.	Para 7		
3	PHIEA	Sub - 27/01/15	1.2		Supersession clause - agree with view that when varying modern awards there is no requirement for supersession clause. Suggest review case number be included to clearly identify variations resulting from the Review.	Para 4	Determined in Full Bench decision [2014] FWCFB 9412 at paras [9]-[10]	
	HSU	Sub - 28/01/15			Proposed wording sits comfortably with HSU. While they do not oppose PHIEA submission, they do not think it necessary.	Para 6		
	BusSA	Sub - 28/01/15			Supports removal of items related to Full Bench decision.	Item 1 p.6		
4	HSU	Sub - 28/01/15	Various		Inclusion of examples Welcomes inclusion in annotated version. Willing to work with parties to come up with appropriate examples.	Paras 10-11	See Full Bench decision [2014] FWCFB 9412 , paras [63] regarding use of examples.	
	PHIEA	Reply-sub-			Also willing to work with parties to develop	p.3		

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		17/02/15			appropriate examples.			
5	HSU	Sub - 28/01/15	Schedule B		Summary wage tables Adopts ACTU group 1 submission supporting inclusion of wages table. Notes award rates are minimum wage rates only, employees may be entitled to higher rates of pay as part of their contract of employment.	Paras 13-14	ACTU sub-15/10/14 , paras 29-35. Determined by Full Bench in decision [2014] FWCFB 9412 , para [58]	
	PHIEA	Reply-sub-17/02/15			Agrees with HSU.	p.3		
5A	MIERG	Sub – 11/5/15			Reinstate Medical Imaging Employment Relations Group and HSU consent award “Health Services Union of Australia (NSW/ACT Private Medical Imaging) Award 2004”. Propose to adjust clauses throughout and insert award in new appendix J and revise cl.3 accordingly.		Clauses proposed by MIERG commented on by other parties have been included in this summary. Otherwise refer to submission of MIERG directly.	
		Sub – 15/07/15						
		Reply sub – 21/08/15						
		Reply sub - 28/08/15						
	HSU	Reply Sub – 28/08/15			Opposes all of MIERG submissions to reinstate award. Should be matters for bargaining.	Para 27-29		
	ABI	Reply sub - 21/08/15			Opposes variations sought by MIERG (except span of hours issue) industry specific provisions have not been justified.	Para 3.56-3.59		
	AiG	Reply sub – 28/08/15			Concerned MIERG variations may introduce additional costs and significant inflexibilities for employers in health industry	Para 253-254		

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5B	APESMA	Sub – 15/07/15			Award for Translators and Interpreters Variation to make HPSS award occupational award for all translators and interpreters not covered by any other award.	Para 3		
	ABI	Reply sub - 21/08/15			Opposes APESMA’s submission, as opposes employees working in industries or businesses unrelated to health industry being covered by award.	Para 3.19-3.23		
	BusSA	Reply sub – 28/08/15			Opposes APESMA’s submission. Submits HPSS is industry specific award, to cover translators would create confusion.	Para 45-46		
	AiG	Reply sub – 28/08/15			Opposes APESMA’s submission and all related translator and interpreter variations to the award (e.g. changes to classifications 1, 5 and 7)	Para 100-110		
Award specific issues								
6	ACE	Reply-sub-04/03/15	NA		ACE confirms they rely on submission filed on 28 January 2015 and join issue with the matters on contest between parties.	Page 2.		
7	HSU	Reply-sub-04/03/15	Various		Loadings, penalties and others Variety of matters raised re ED wording that more correctly go to interpretation of clauses, proposed changes and/or variations: <ul style="list-style-type: none">• Span of hours• Casual loading• Shift penalties• Weekend rates• Definitions; and• Overtime	Paras 10-13		

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					Drafting more starkly identify ambiguity and inconsistency between some provisions. Submit no variations to wording should result from ED until further discussions between parties occur. Need to be considered more formally by Commission			
8	FWO	Corr-24/11/14	3.1(b), 11 and Sched A & B	4.1(b), 15 and Sched B & C	Coverage - list of common health professionals Unclear how list is to be applied.	Issue 9		
	PHIEA	Sub - 27/01/15			<i>Parties are asked to clarify whether the list of common health professionals is an exhaustive list or indicative list of examples.</i> Should be regarded as indicative only and not an exhaustive list.	Para 8		
	HSU	Sub - 28/01/15			List indicative only, not exhaustive.	Para 25		
		Sub - 25/11/14			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.	Para 18		
		Reply-sub-04/03/15				Paras 4-9		
		Sub – 16/07/15			Proposed variation to reflect HSU submission list is indicative: <i>Schedule A</i> <ul style="list-style-type: none"> 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” 	Para 10-24; Appendix B		

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					<i>Schedule B</i> <ul style="list-style-type: none"> “Schedule B – Indicative List of Common Health Professionals” 			
	PHIEA	Reply-sub-17/02/15			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.	pp.3-4, 8-10		
	PHIEA	Sub in reply – 19/08/15			Opposes HSU position (Sub 16/07/15) & AWU. Concerned positions which lack qualifications may be added to list of professionals.	p.4		
	ACE	Sub - 28/01/15			Not in position to provide clarification of list. Only limited number of classifications relevant to aged care industry.	Para 3		
	BusSA	Sub - 28/01/15			Supports view list is exhaustive. A view that list is indicative only would be confusing for end users and make it ambiguous.	Item 2, p.6		
	ABI	Sub - 02/02/15			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.	Para 49		

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	AIG	Reply-sub-04/03/15			<p>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.</p> <p>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.</p> <p>Contends list is not exhaustive list, but an indicative list.</p> <p>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.</p> <p>Opposes AWU & HSU submissions. Submits dentists in private practice have always been award-free in Australia</p> <p>Indicative list. HSU draft determination unnecessary. Rejects AiG interpretation of clause/sched B. List does not determine award coverage, coverage determined by cl.4.</p>	Paras 74-75		
	AiG	Reply Sub – 28/08/15				Paras 81-83		
	AWU	Sub – 15/07/15				Para 4		
	DHAA	Sub – 21/08/15				Full submission	Intends to call 2 witnesses	
	ADA	Reply Sub – 21/08/15				Para 2.1.1, 2.1.2, 2.2.2		
	ABI	Reply Sub – 21/08/15				Para 2.1-2.9		

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					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.			
9	AIG	Sub - 28/01/15	3.1(a) and (b)	4.1	Coverage - clause reference - words in clause 3.1 slightly differ from words in corresponding clause 4.1 of existing award. 3.1(a) refers readers to classifications listed in Schedule A whereas clause 3.1(b) refers readers to classifications listed in clause 11. Propose reference should be to Schedule A.	Paras 115-116		
	PHIEA	Reply-sub-17/02/15			Agrees with AIG.	p.11		
	AFEI	Sub - 28/01/15			Reference to classification structure in schedule is a clearer reference that to clause 11.	Para 48		
	PHIEA	Reply-sub-17/02/15			Agrees with AFEI.	p.5		
	BusSA	Reply-sub-04/03/15			Support AFEI and AIG submissions.	p.10		
	PHIEA	Sub – 15/07/15			Agree position with HSU, refers to classifications in ‘Schedule A’, does not support HSU proposal that it be included in schedule 3.2.	Table p.8		
	Parties				Agreed position – delete “clause 11” and replace “Schedule A”		AGREED	
10	PHIEA	Sub - 27/01/15	3.2 & Sched I	3	Definition of health industry - unnecessary for definition to be included twice, more appropriate to remain in schedule I–Definitions	Para 9		

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	HSU	Sub – 16/07/15			Definition be kept in 3.2 and removed from Sched I, consistent with proposal for Nurses Award. Draft determination contained in submission at Appendix B.	Para 25-27; Appendix B			
11	ADA	Sub - 28/01/15	5.2		Facilitative provisions - list missing facilitative provisions found in clause 6.2(c)–Part-time employment.	Para 2.2	AGREED		
	PHIEA	Reply-sub-17/02/15			Agrees with ADA.	p.7			
	Parties				Agreed position – add: <table><tr><td>Clause</td><td>Provision</td><td>Agreement between an employer and:</td></tr><tr><td>6.3(c)</td><td>Part-time employment</td><td>An individual</td></tr></table>				Clause
Clause	Provision	Agreement between an employer and:							
6.3(c)	Part-time employment	An individual							
12	HSU	Sub - 28/01/15			Facilitative provisions - adopts ACTU group 1 submission, support inclusion of clause with amendment to first sentence to provide clarity regarding individual versus majority agreement facilitative provisions.	Para 8	See ACTU sub-15/10/14 , paras 46-53 and Full Bench decision [2014] FWCFB 9412 , para [43]		
12A	MIERG	Sub – 15/07/15	6.1		Employment categories – proposed addition ‘job share’ – add job share to (a)(ii) and (b)				
	HSU	Sub – 16/07/15	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, <u>and whether they are employed as a day worker or a</u>	Para 91-92			

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					shiftworker’.			
	PHIEA	Reply Sub - 19/08/15			Opposes HSU 16/07/15 variation. It is the shift that attracts the penalty not the person.	p.7		
	ACE	Reply Sub – 21/08/15			Opposes HSU variation.	p.2		
	ADA	Reply Sub – 21/08/15			Opposes HSU variation, too inflexible not suitable for modern private dental practice.	Para 2.2.2		
	AiG	Reply sub – 28/08/15			Opposes HSU variation	Para 111-112		
	MIERG	Sub – 15/07/15	6.2		Full-time employment – Private medical imaging practice – proposed additional definition of PMIP, hours of work to be rostered and ordinary hours will not exceed an average of 152 hours per four week period.	p.4		
	MIERG	Sub – 15/07/15	6.3		<p>Part-time employment Private medical imaging practice - Part-time: defined as employee working less than 152 hours per four week, minimum start of 2 hours per rostered day, entitlements on pro rata basis. Employer and employee will agree in writing a pattern of work which may be varied by agreement at any time.</p> <p>Job share Definition for job share employees, provides that in first instance it will be job share employees responsibility to share the job roster themselves.</p> <p>Terms of agreement – add can be varied at any time.</p>	p.4		

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13	PHIEA	Sub - 27/01/15	6.4(c) and (d)		Minimum engagement <i>Parties are to clarify whether minimum engagements are daily minimums which can be worked consecutively, unless otherwise stipulated</i> Minimum hours should be consecutive, in line with provisions contained in applicable industry pre-reform awards.	Para 14		
	ACE	Sub - 28/01/15			No “split” or “broken shifts” contained in award; however, ACE submit that in relation to casual employees, ED should not contain minimum engagements but minimum shift payments. Clause 6.4(c) should be amended.	Para 4		
	HSU	Sub - 28/01/15			Must be worked consecutively. In taking this position, they considered lack of a split clause, operation of ordinary hours and rostering system. Also looked at arrangements in industry prior to making of modern award.	Para 27		
		Sub – 16/07/15			HSU further submits variation to split shifts are unnecessary and would be significant change to current HPSS Award	Para 31-40		
	BusSA	Sub - 28/01/15			Recommend minimum engagement is a daily minimum which can be worked on two or more occasions.	Item 3, p.6		
	PHIEA	Reply-sub-17/02/15			Agree with HSU.	p.4		

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	AIG	Reply-sub-04/03/15			Supports ACE proposed variation, accommodate circumstances where an employer may not have sufficient work for minimum engagement period. Consistent with minimum engagement periods for casual employees in many other awards AIG note casual minimum engagement periods will be separately dealt with by Casual and Part-time Employment Full Bench.	Paras 76-77		
	AWU	Sub – 15/07/15			Submits to allow ‘split shifts’ for minimum engagement would be a significant departure from current award. Would have consequences for other provisions.	Para 5-7		
	CAA	Reply sub – 25/08/15			Opposes HSU and AWU submissions on minimum engagement. Says award is not clear, as it says HSU acknowledges in its submissions. Split shifts are common in chiropractic industry, practices operate a morning and an afternoon shift, CAA submits HPSS award enables this.	Para 8-11		
	ABI	Reply sub - 21/08/15			Disagrees with HSU and AWU. Plain reading of clause allows split shift. Submits awards which do not allow split shifts specifically provide for this.	Para 2.10-2.14		
	MIERG	Sub – 15/07/15			Proposes new clause: casual employees in private medical imaging practices may be engaged by agreement on two or more starts per day.	p.5		

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14	PHIEA	Sub - 27/01/15	6.4(e)(i)	10.4	<p>Casual employment - Use of term ‘minimum hourly rate’ could be interpreted as lowest pay point for employee’s classification. May result in detrimental changes for some casual employees.</p> <p>Need to clarify that casual employee will be paid minimum hourly rate applicable to <u>their</u> classification AND pay point.</p>	Para 11	This clause may be subject to proceedings AM2014/197–casual employment common issue	
	AIG	Reply-sub-04/03/15			Notes PHEIA’s concerns regarding use of “minimum hourly rates” throughout ED and their suggested variation to ensure employee’s relevant pay point and classification are captured. AIG does not consider variation necessary. Consistent with approach in other EDs.	Paras 86-87		
15	PHIEA	Sub - 27/01/15 Reply-sub-17/02/15	6.4(e)(iii)		<p>Casual employees <i>Parties are asked to provide a list of provisions that do not apply to casuals</i> PHIEA notes Full Bench decision and therefore not responded.</p>	Para 13 p.3	Full Bench decided to remove this sub-clause and the note from EDs in decision [2014] FWCFB 9412 , see para [69].	
	BusSA	Sub - 28/01/15			Supports removal of items related to Full Bench decision. (including 6.4(e)(ii) & (iii))	Item 1, p.6		
	CAA	Sub - 28/01/15			List provided, however, CAA notes Full Bench intends to remove subclause.	p.10		
	ACE	Sub - 28/01/15			Notes Full Bench decision and therefore not responded.	Para 5		
	HSU	Sub - 28/01/15			Not convinced necessary to insert standardised	Para 23		

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					clause purporting to identify entitlements covered, or not, by the casual leave loading. Support submissions of AMWU and ACTU.			
	ADA	Sub - 28/01/15	6.4(e) New subclause		Propose to insert following at 6.4(e)(iii) ‘casual loading is not paid on overtime hours worked by a casual’. Propose 6.4(e)(iii) renumber as 6.4(e)(iv).	Para 2.3		
15A	MIERG	Sub – 15/07/15	New clause		Probationary employment of not more than 3 months, the initial probationary period may be extended for a period not exceeding 6 months. Employee of probationary employment may be terminated upon one week’s notice or forfeiture of one week’s salary where notice is not given.	p.5		
	ABI	Reply sub - 21/08/15			Opposed new probationary term	Para 3.55		
	BusSA	Reply sub – 28/08/15			Opposes, as unnecessary given FW Act unfair dismissal application require minimum 6 month employment.	Para 54		
16	HSU	Sub - 25/11/14	8	23	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.	Para 7		
	MIERG	Sub – 11/5/15	8.1		Ordinary hours – Private Medical Imaging: proposed new clause: Ordinary hours of work will not exceed 152 hours per four week period. Consultation to occur on method of implementing ordinary hours, however final	p. 2		
	MIERG	Sub – 15/7/15				p.6		

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					choice rests with employer.			
17	HSU	Sub - 25/11/14	8.2	24	Span or 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	Paras 8-9	Unclear if this submission is replaced by submission dated 16/07/15.	
	HSU	Reply Sub – 28/08/15			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.	Para [12-16]	Calls for matter to be dealt with by Full Bench, submits none of proposals ‘technical and drafting or substantive’ should be dealt with in isolation.	
	HSU	Sub – 16/07/15	8.2	24.1	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)	Para 79-90		

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					<ul style="list-style-type: none"> Remove distinction in 8.2(c) 'private medical imaging practices' 			
	AWU	Sub – 15/07/15			Seeks single simple span of hours' provision.	Para 18		
	ADA	Reply Sub – 21/08/15			Disagrees with AWU. Submits 8.1 (a)&(b), and 8.2(b) should be preserved.	Para 2.2.1		
	PHIEA	Reply Sub - 19/08/15			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.	p.6		
	ACE	Reply Sub – 21/08/15			Opposes HSU proposal.	p.2		
	ADA	Reply Sub – 21/08/15			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.	Para 2.2.2		
	CAA	Reply sub – 25/08/15			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).	Para		

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	ABI	Reply sub - 21/08/15			Opposes HSU and AWU submission for single span of hours.	Para 3.33-3.35		
	BusSA	Reply sub – 28/08/15			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 full bench.	Para 38-42		
	AiG	Reply sub – 28/08/15			Opposes HSU variation and related variations to definition of day worker and shiftworker.	Para 84-91; 115-117		
	AFEI	Sub – 01/09/15			Concern span of hours, shiftworker and penalty rate issues may have ‘far reaching and perhaps unintended consequences’ should be referred to FB.	Para 16-17		
	PHIEA	Sub - 27/01/15	8.2	24	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.	Para 31		
	AFEI	Sub - 25/11/14	8.2	24	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	Paras 7-13		

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					be jointly pursued			
	CAA	Sub - 25/11/14 Sub - 28/01/15 Sub – 15/07/15	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.	Issue 1 p.9 Issue 1		
	HSU	Reply Sub – 28/08/15			HSU opposes. Ability to alter span of hours by up to 2 hours issue for bargaining.	Para 24-25		
	Tristar Medical Group	Sub – 21/07/15	8.2(b) new subclause	24.2	Span of hours – private medical, dental, and pathology Propose new subclause “(b)” <i>“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.”</i> (Note clause 26 = ED cl.8.1 Weekend penalties – day worker)	p.2		

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	ADA	Reply Sub – 21/08/15			Supports Tristar’s variation and wording to include new subclause (b).	2.2.3		
	Pathology Australia	Sub – 30/06/15			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.	Para 4-9	Note: pathology practices included in clause 8.2(b) same provision as 24.2.	
	AIG	Sub - 28/01/15	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 ...”	Para 117		
	AFEI	Sub - 28/01/15			AIG variation is unnecessary and may alter existing meaning of clause. Existing provision should be retained.	Para 50		
	MIERG	Sub – 11/5/15			MIERG proposes further addition: work on Saturday will be paid at time and half and working outside span of hours will attract penalty rates. Insert “where a <u>location of a</u> practice services patients on a five and half day basis”	p.1-3		
	MIERG	Sub – 15/07/15				p.6		
	MIERG	Sub – 11/5/15	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 six day week basis – ordinary hours 7:00am – 9:00pm Mon to Sat	p.3		
	MIERG	Sub – 15/07/15				p.7		
	AIG	Sub - 28/01/15	8.2(d)		Span of hours - private medical imaging	Para 118		

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	Reference	NOTES	STATUS
					practices – seven day practices Propose alternative wording: “Where a private medical imaging practice services patients on a seven day a week basis...”			
	AiG	Reply sub – 28/08/15			Opposes HSU variation as would increase rate of pay on Saturday.	Para 118-142		
	APA	Sub - 25/11/14	8.2(e)	24.4	Span of hours - Physiotherapy practices Amend clause to allow greater flexibility in ordinary span of hours for physiotherapy practices on weekdays and Saturdays.	p.1	(see their draft determination on p.2)	
		Sub – 16/07/15			Proposed variation to ordinary hours of work to: 7:00am – 8:00pm Monday – Friday; 7:00am – 2:00pm Saturday. Submits change needed to reflect current operation of physiotherapy practices.	p.2-6		
	Kids Matters Occupational Therapy Pty Ltd	Sub – 10/6/15	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.	p.1		
	PHIEA	Sub – 15/07/15	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.	p.6		

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	HSU	Reply sub - 28/08/15			Does not oppose PHIEA subclause, provided its application is limited to shiftwork in private hospitals. Opposes application of rates of pay for shift work.	Para 30-31		
	APC	Sub - 25/11/14	8.2 – new subclause	Proposed 24.5	Span of hours - Podiatry practices Insert new sub-clause to allow greater flexibility in ordinary span of hours for practices on weekdays and Saturdays.	p.1	(see their draft determination on p.2)	
18	ACE	Sub-25/11/14	8.3	25	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.	pp.3-4	See also [2014] FWCFB 129 re notice of rostering changes	
	HSU	Sub - 25/11/14	8.3	25	Rostering – span of hours proposal Vary rostering clause to include reference back to ordinary hours of work clause. Will seek to add clarity by ensuring current award is referenced directly to ordinary hours of work.	Paras12-13		
		Sub – 16/07/15			Proposes additional subclause: <ul style="list-style-type: none"> “(d) Rosters will be developed in accordance with the provisions in clause 6 Types of employment, clause 8.1 Ordinary hours of work and clause 8.2 Span of hours.” 	Para 73-78; Appendix C (draft determination)		

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	AWU	Sub – 15/07/15			Submits rostering provisions are currently insufficient and should reference both the span of hour and ordinary hours of work provisions. This will ensure rostered hours are consistent with these provisions.	Para 16-17		
	AiG	Reply sub – 28/08/15			Does not support HSU proposal. Does not support AWU's intention to include span of hours in rostering provision.	Para 145-160		
	ADA	Reply Sub – 21/08/15			Disagrees with AWU's submission rostering provision insufficient.	Para 2.2.1	(see also 8.1 & 8.2)	
	ACE	Sub – 15/07/15	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.	Paras 2-3		
	PHIEA	Reply Sub – 19/08/15			Supports ACE proposed variation	p.10		
	BusSA	Reply sub – 28/08/15			Supports ACE proposed variation	Para 51		
	HSU	Reply Sub – 28/08/15			Opposes ACE (15/07/15). Award contains several flexibilities enabling variations of work.	Para 17		
	ABI	Reply sub - 21/08/15			Supports ACE (15/07/15) variation.	Para 3.16-3.18		

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	MIERG	Sub – 11/5/15	8.3		Rostering – Private medical imaging Proposed new provision, hours will be rostered to establish nominal starting and finish times for employees. Hours will not exceed an average of 152 hours per four week period.	p.4		
	MIERG	Sub – 15/07/15				p.7		
19	AIG	Sub - 28/11/14	9.1	27.1	Meal breaks Propose inclusion of facilitative provision to enable 5 hour maximum period before an unpaid meal break is taken to be extended to 6 hours by agreement.	p.2		
		Sub – 15/07/15			Propose to add at 9.1(a) after 60 minutes: <i>“Provided that an employee who works not more than six hours may elect to forgo the meal break, with the consent of the employer”.</i>	Paras – 19-55		
					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.			
					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.			
	PHIEA	Reply sub – 19/08/15			Supports in principle AiG proposed variation to meal breaks.	p.14		
	ABI	Reply sub - 21/08/15			Supports AiG	Para 3.49-3.50		

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	BusSA	Reply sub – 28/08/15			Supports AiG	Para 49		
	HSU	Reply Sub – 28/08/15			Opposes AiG variation without proposed provisions put by ANMF in Nurses Award (AM2014/207 – ANMF sub 15/07/15).	Para 18-19	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.	
	MIERG	Sub – 11/5/15	9.1		Meal breaks – private medical imaging practices	p.4		
	MIERG	Sub – 15/07/15			Proposed new clause for PMIP: Not less than 30 min and not more than 1 hour meal break within 5 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.	p.8		
	ADA	Reply Sub – 21/08/15			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.	Para 2.2.4		

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	MIERG	Sub – 11/5/15	9.2		Paid tea breaks – private medical imaging practices. Proposed new clause: Up to 2 paid tea breaks up to 10min duration for <u>full-time employees</u> . Time taking subject to ‘workload of the practice’.	p.4		
	MIERG	Sub – 15/07/15				p.8		
20	AIG	Sub - 28/11/14	Proposed new clause		Annualised salary - Inclusion of annualised salary clause for employees in health professionals stream and employees at higher classification levels in support services stream.	p.3	Substantive	
		Sub – 15/07/15			Proposed clause be inserted as new clause 16. To apply to classifications: <ul style="list-style-type: none"> • 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]): <p>16.1 <u>Annual salary instead of award provisions</u> – clause provides salary is in satisfaction of clauses 14 & 15 (minimum weekly wages); 18 (allowances); 26, 28.1, & 29 (overtime, penalty rates, shift loading); 31.2 (annual leave loading).</p> <p>16.2 <u>Annual salary not to disadvantage employees</u> – subclause provides annual salary must be no less than amount</p>	Paras 56-149		

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					salary provided in award. 16.3 <u>Base rate of pay for employees on annual salary arrangement</u> – provides details of how base rate would be calculated for purposes of NES.			
	PHIEA	Reply sub – 19/08/15			Supports in principle AiG proposal for annualised salary clause.	p.14		
	CAA	Sub - 25/11/14			Seeking annualised salary provision.	Issue 6		
		Sub - 28/01/15				p.9		
		Sub - 15/07/15				Issue 2		
	CAA	Reply sub – 25/08/15			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 reason why administrators in allied health industry should differentiated from administrators in private sector.	Para 7		
	ABI	Reply sub - 21/08/15			Supports AiG application			
	BusSA	Reply sub – 28/08/15			Supports proposal of AiG and CAA.			
	AWU	Reply sub – 21/08/15			Opposes AiG annualised salary clause. AWU submits the AiG is seeking this ‘significant variation without any probative evidence’.	Para 2-3		
	HSU	Reply sub – 28/08/15			Opposes submissions AiG & CAA. Would require significant quantum to not disadvantage employees, should remain matter for bargaining and limited to specific workplaces and	Para 20-23; 26		

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					classifications.			
	AiG	Reply sub – 28/08/15			Supportive in principle of CAA claim	Para 113-14		
20A	APESMA	Sub – 15/07/15	11.2		Health Professional Employee – Level 1 Insert “and NAATI accredited Paraprofessional Translator and NAATI accredited Paraprofessional Interpreter” after “UG 2 qualification”	Para 4		
20B	MIERG	Sub – 15/07/15	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.	p.8-9		
21	PHIEA	Sub - 27/01/15	15.2(a)(iii)		Heat allowance <i>Parties are asked to consider whether provision is obsolete</i> Considers clause obsolete and should be deleted.	Para 15		
	ADA	Sub - 28/01/15			Clause obsolete and irrelevant.	Para 2.4		
	ACE	Sub - 28/01/15			Obsolete in that they are not aware of any instance where its provisions have actually applied.	Para 6		
	AFEI	Sub - 28/01/15			Cannot say clause is obsolete, however, unaware of its ongoing relevance. Support removal of clauses that have no relevance.	Para 49		

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	HSU	Sub - 28/01/15			Oppose removal of provision.	Para 28		
	BusSA	Sub - 28/01/15			Recommend removal; unless a party is able identify current usage.	Item 4, p.6		
	PHIEA	Reply-sub-17/02/15			Unless any party can demonstrate that someone is receiving allowance, it should be considered obsolete and be deleted. Agrees with ACE, AFEI, ADA and BusSA, disagrees with HSU.	pp. 4, 5 6 and 7.		
	AIG	Reply-sub-04/03/15			Agrees with the PHEIA, Business SA, and AFEI that the provision should be removed.	Para 78		
	Parties				Parties agree to keep provision 15.2(a)(iii) Heat Allowance.		AGREED	
22	BusSA	Sub - 28/01/15	15.2(b) [sic]		Wage related allowances ED has changed percentage to dollar amount. Business SA argues for inclusion of both percentage and dollar amount for sake of transparency and consistency.	Item 7, p.6.	It would appear that clause reference should be 15.2 rather than 15.2(b).	
23	PHIEA	Sub - 27/01/15	18.1		Weekend penalties—day worker - concern that in converting time and a half to 150% of minimum hourly rate and double time to 200% of minimum hourly rate without confirmation that it is the <u>employee's</u> minimum hourly rate that is being referred to could be interpreted to mean minimum hourly rate applicable to the position classification that the employee holds.	Para 16	Substantive	

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	AIG	Reply-sub-04/03/15			Notes PHEIA's concerns regarding use of "minimum hourly rates" throughout ED and their suggested variation to ensure employee's relevant pay point and classification are captured. AIG does not consider variation necessary.	Paras 86-87		
	HSU	Sub – 16/07/15			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.	Para 45-58; Appendix B (draft determination)		
	PHIEA	Sub in reply – 19/08/15			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.	Para 7	Substantive issue	
	AWU	Sub – 15/07/15			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'.	Para 11	[Note: 'a shiftworker' not mentioned in clause, party may mean 'day worker']	

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	ADA	Reply Sub – 21/08/15			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.	Para 2.1.1		
	MIERG	Sub – 11/5/15	18.1		Add 'unless otherwise stated' at beginning of clause	p.4		
	MIERG	Sub – 15/07/15				p.9		
	PHIEA	Sub – 15/07/15			Agree with MIERG - Add 'unless otherwise stated' at beginning of clause	p.6		
24	BusSA	Sub- 25/11/14	18.1(b)	26.2 -	Saturday and Sunday work (casuals) Intention of clause not clearly reflected in current wording. Seeking variation to remove ambiguity.	p. 5		
25	PHIEA	Sub - 27/01/15	18.2	24.3	Weekend work in private medical imaging seven day practice - concern about use of 'minimum hourly rate of pay' could potentially be interpreted as referring to pay point one only.	Para 17		
	AIG	Reply-sub- 04/03/15			Notes PHEIA's concerns regarding use of "minimum hourly rates" throughout ED and their suggested variation to ensure employee's relevant pay point and classification are captured. AIG does not consider variation necessary.	Paras 86-87		
	MIERG	Sub – 11/5/15	18.2		Add to title underlined 'private medical imaging	p.5		
	MIERG	Sub – 15/07/15				p.9		

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					<u>six and seven day practice locations'</u>			
25A	PHIEA	Sub – 15/07/15	18.3 proposed new clause		<p>Propose to add 'weekend work in private hospitals operating 24/7' – as new clause 18.3 (vary other clauses accordingly)</p> <p>(a) <i>For all ordinary hours worked between midnight Friday and midnight Sunday be paid 150% of their minimum hourly rate.</i></p> <p>(b) <i>Casual workers who work on Saturday or Sunday will be paid 175% of their minimum hourly rate for all time worked but will not be paid the casual loading of 25%.</i></p> <p>(c) <i>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.</i></p>	p.6		
26	FWO	Cor - 24/11/14	18.4	26	<p>Shift work penalties, weekend penalties Unclear whether casuals are entitled to weekend penalties and if they are, what they should be paid.</p> <p>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.</p>	Issue 11	Substantive issue	

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	PHIEA	Sub - 27/01/15			<p><i>Parties asked to confirm whether this rate is in addition to casual loading and/or weekend penalties</i></p> <p>Shift work penalty does not apply when employee works weekends, consistent with pre-reform awards and Nurses Award.</p>	Paras 18-19		
	CAA	Sub - 28/01/15			Believes shiftwork penalties are not in addition to casual loading, shiftwork penalties are not applicable to casuals.	p.10		
	ACE	Sub - 28/01/15			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).	Para 7		
	BusSA	Sub - 28/01/15			Submits penalties are not cumulative.	Item 5, p.6		
	ABI	Sub - 02/02/15			<p>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.</p> <p>Drafting in ED is problematic in that it would</p>	Para 50		

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					lead to significant increase in calculation of casual wages.			
	PHIEA	Reply-sub-17/02/15			<ul style="list-style-type: none"> 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. 	p.6, p.10		
	AIG	Reply-sub-04/03/15			<ul style="list-style-type: none"> Suggest new sub-clause 18.3 (with current 18.3 renumbered) based on wording in clause 19.1(c) of ED: <i>“18.3 Weekend penalties not cumulative</i> <i>“The weekend penalties will be in substitution for and not cumulative upon the shift loadings prescribed in clause 18.5.”</i> 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. 	Paras 79-82		
	HSU	Reply-sub-04/03/15			Any allowance or loading would not be cumulative but paid in addition to any other allowance or loading.	Para 14		
	ABI	Reply sub -			Submits no ambiguity, shift workers do not	Para 2.18-		

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		21/08/15			receive weekend penalties. To do so would be substantive change, with significant impact on employers.	2.23		
27	FWO	Cor - 24/11/14	18.4	29	Shift work penalties and weekend penalties 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.	Issue 12		
	BusSA	Sub- 25/11/14	18.4	29	Unclear whether hours worked should be treated as ordinary hours for a day worker or shift hours. Seeking variation to clause.	p.6		
	CAA	Sub - 25/11/14	18.4	26 & 29	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 (clause 18.1 - 18.4).	Issue 4		
		Sub - 28/01/15				pp. 6-8		
		Sub – 15/07/15				para 3.12-3.21		
	PHIEA	Reply-sub-17/02/15			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.	pp.7-8.		

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	ABI	Sub - 02/02/15	18.4	29	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.	Para 52		
	ABI	Reply sub - 21/08/15			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.	Para 2.15-17		
	ABI	Sub - 02/02/15	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.	Para 52		
	CAA	Reply sub – 25/08/15			CAA provides variation to 18.4 and to vary definition of shiftwork, see also Sched I: <i>18.4 Shiftwork Penalties</i> <i>(a) This clause will only apply to persons</i>		(see also variation & discussion at Sched I):	

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					<p><i>specifically employed as shiftworkers under this award.</i></p> <p><i>(b) This clause does not apply to an employee who is employed as a day worker and who does additional hours or overtime.</i></p> <p><i>(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.</i></p> <p><i>(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.”</i></p>			
27A	HSU	Sub – 16/07/15	18.4		<p>Shift work – afternoon and night shift</p> <p>Vary clause to ensure shift allowances are payable to employees when they work afternoon or night shift. Proposed drafting:</p> <ul style="list-style-type: none"> • after ‘commences between 6:00pm and 6:00am’ ADD “on any day of the week” • after ‘15% of their minimum hourly rate’ ADD “for each hour worked” <p>Add new subclause (b):</p> <p><i>“The shiftwork rate is payable in addition to any penalty, allowance, overtime, weekend or casual rates of pay”</i></p>	Para 93-99		
	AWU	Sub – 15/07/15			Seek to ensure shift allowances are payable to employees when they work an afternoon or night	Para 19		

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					shift.			
	AiG	Reply sub – 28/08/15			Unsure of AWU’s position on afternoon or night shift – reserves position.	Para 219-220		
	PHIEA	Reply Sub - 19/08/15			Opposes HSU proposed variations	p.7		
	ACE	Reply Sub – 21/08/15			Opposes HSU variation in respect to payment of shiftwork penalty rates to ‘any penalty, allowance, overtime, weekend or casual rates of pay’	Para 5(b)(iv)		
	CAA	Reply sub – 25/08/15			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.	Para 17-20		
	AiG	Reply sub – 28/08/15			Opposes HSU variation	Para 194-		
	ABI	Reply sub - 21/08/15			Opposes HSU claim for shift loading and weekend penalty to be paid.	Para 3.36-3.42		

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	PHIEA	Sub – 15/07/15	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	Sub - 25/11/14	19	28	Removal of substitution arrangements for shift allowances and payment of overtime for time worked beyond rostered hours	Para 15		
28	PHIEA	Sub - 27/01/15	19.1		Overtime rates - concern about minimum hourly rate could be interpreted to mean pay point one.	Para 20		
	AIG	Reply-sub-04/03/15			Notes PHEIA’s concerns regarding use of “minimum hourly rates” throughout ED and their suggested variation to ensure employee’s relevant pay point and classification are captured. AIG does not consider variation necessary. Consistent with approach in other EDs.	Paras 86-87		
	AWU	Sub – 15/07/15			Submits amendments are needed to current provisions to ensure no uncertainty with regard to payment of overtime for employees performing work outside of ordinary hours.	Para 20		
	HSU	Sub – 16/07/15			Seeks to vary clause to make clear overtime is payable to all employees: provides draft provisions for part-time, casual employees, day	Para 110-115	Substantive issue: proposed draft at para 114	

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					workers.		See also “Overtime – casual workers” below	
	ABI	Reply sub - 21/08/15			Opposes HSU variation, submits provision is sufficiently clear.	Para 3.43		
	AiG	Reply sub – 28/08/15			Opposes HSU variation	Para 161-192		
	MIERG	Sub – 11/05/15	Overtime – proposed provision for Private medical imaging practices		P5			
	MIERG	Sub – 15/07/15	Proposal to provide time off in lieu for full-time employees who work outside ordinary rostered hours. For work less than 30 minutes only time off in lieu. For work in excess of 30 min employee entitled to receive overtime payment, or elect to take time off in lieu at hourly rate for overtime calculated by dividing the weekly rate by 38. Same clause proposed for part-time employees		p.10			
29	PHIEA	Sub - 27/01/15	19.1		Overtime rates - each day stands alone? <i>Parties asked whether provisions for overtime should clarify if each day stands alone</i> Does not stand alone. Overtime can be continuous in some circumstances and should be calculated accordingly.	Para 22		
	CAA	Sub - 28/01/15			Should be clarified to avoid uncertainty. Wording of clause suggests likely intent was that each day stands alone.	p.12		
	ACE	Sub - 28/01/15			No clarification required. Each day stands alone	Para 8		

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					for overtime purposes using natural, plain and ordinary meaning of words ‘ordinary hours on any day’.			
	HSU	Sub - 28/01/15			No clarification required. Not possible to be paid overtime for hours worked beyond 10 hour roster as well as hours worked beyond average of 38 hours a week within pay cycle.	Para 29		
		Reply-sub-04/03/15			Note error in 28 January HSU submission. Believes overtime provisions stand alone on a daily, weekly or fortnightly basis, equally applies to all employee. Where HSU refers to ‘day stands alone’, believe ‘day’ constitutes the ‘shift’. May require definition.	Para 15		
	BusSA	Sub - 28/01/15			Supports inclusion of words ‘each day stands alone’.	Item 6,p.6		
	PHIEA	Reply-sub-17/02/15			For a 24/7 business this needs to be each shift which stands alone – not each day.	pp.4, 6, 8, 9		
	AIG	Reply-sub-04/03/15			Agrees with other parties that “each day stands alone” Purpose of the “each day stands alone” overtime rule is to calculate overtime on relevant penalty based on each day or shift worked, rather than accruing overtime worked on a weekly or pay cycle basis as one period for purpose of calculating penalties. However, AIG considers it not necessary to change award to reflect this given current	Paras 83-85		

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	Reference	NOTES	STATUS
					wording of “on any day” used in clause 19.1(a) of the ED			
30	FWO	Cor - 24/11/14	19.1	28.1	Overtime penalty rates - casual employees? Unclear as to whether casuals are entitled to overtime and if they are, what they should be paid.	Issue 11	Substantive	
	CAA	Sub - 28/01/15			<i>Parties are asked to clarify if casual employees are entitled to overtime and if so, what they should be paid.</i> Casuals are not entitled to overtime. Employed by the hour therefore do not have ordinary hours.	pp.12-13		
	ACE	Sub - 28/01/15			Casual employees’ ordinary hours should be same as that of full time employees, therefore, casual employees are entitled to overtime where ordinary hours of work per day exceed 10, or where their hours per week exceed 38. Rates should be in substitution and not be cumulative with casual loading.	Para 9		
	HSU	Sub - 28/01/15			Casual employees are entitled to overtime. Intention of award clear.	Para 30		
	PHIEA	Reply-sub-17/02/15			Agrees with HSU and ACE. Provided clause specifies an average of 38 hours per week. Defers comment on specific amendments as discussion is continuing between parties.	pp. 4, 6-7		
	ABI	Reply-sub-05/03/15			In response to submissions of PHIEA and ACE, already clear from current wording of Award ('ordinary hours on any day') that overtime could	Para 57		

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	Reference	NOTES	STATUS
					only be calculated as each day standing alone. However, support employer parties' suggestion that wording 'each day stands alone' could be added to the ED.			
	AWU	Sub – 15/07/15			Straightforward interpretation of clause provides casual workers are entitled to overtime; clause 19.1 refers to ‘an employee’, a casual worker is an employee and is entitled to overtime.	Para 8-10		
	ADA	Reply Sub – 21/08/15			Disagrees with AWU submission that casuals are entitled to overtime, as cl. 8.1 and 8.2 respectively refer to ‘ordinary hours of full-time employees’ and ‘ordinary hours of a day worker’.	Para 2.1.1		
	HSU	Sub – 16/07/15			<p>Intention clear ‘an employee’ includes casual and part-time. If submissions between parties are greatly at odds, HSU submits matter should be referred to casual and part-time Full Bench.</p> <p>HSU further submits employee who works in excess of their rostered times, should be entitled to overtime. Any definition of overtime should define when overtime is paid for ongoing, part-time, casual employees and day workers. HSU proposes wording to this effect at 114.</p> <p>Proposes overtime be payable for:</p> <ul style="list-style-type: none">• Part-time employees, ‘where agreement has been reached in accordance with clauses 6.3(b) or (c), a part-time employee who is required by the employer to work in excess of those agreed hours’;• Casual employee who works beyond their	Para 41-44; 110-115		

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					<p>rostered or agreed hours, the maximum daily hours or a 38-hour week;</p> <ul style="list-style-type: none"> Day worker who works outside of the Span of Hours in cl.8.2 			
	PHIEA	Sub in reply – 19/08/15			Considers current clause unclear and should be referred to Full Bench. Opposes HSU's proposed variation.	Para 6; p.8		
	ACE	Reply Sub – 21/08/15			Opposes HSU's variation.	Para 5 (b)(v)		
	CAA	Reply sub – 25/08/15			Rejects AWU & HSU submissions. CAA submits HPSS award provides 'an employee who workers outside <u>their</u> ordinary hours on <u>any day</u> ...' (emphasis CAA): casuals do not have ordinary hours, therefore are not entitled to overtime. Opposes HSU variation as will increase operating costs.	Para 12-16		
	MIERG	Sub – 11/05/15	Proposed new clause		Proposed new overtime for casual employees clause: For work done by casual employee in excess of 38 hours in week, the rate of pay time and a half for first 2 hours and double time thereafter. Calculated on pay period basis.	p.6		
	MIERG	Sub – 15/07/15				p.10		
30A	MIERG	Sub – 11/05/15	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. Opposes MIERG job share provision, as would be burdensome for business.	p.6		
	MIERG	Sub – 15/07/15				p.10-11		
	BusSA	Reply sub – 28/08/15						
31	PHIEA	Sub - 27/01/15	19.2		Rest period after overtime - submits 200% of minimum hourly rate should be changed to 200% of the employee's minimum hourly rate to	Para 23		

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	Reference	NOTES	STATUS
					eliminate unintended consequences due to pay point issue.			
	AIG	Reply-sub-04/03/15			Notes PHEIA's concerns regarding use of "minimum hourly rates" throughout ED and their suggested variation to ensure employee's relevant pay point and classification are captured. AIG does not consider variation necessary. Consistent with approach in other EDs.	Paras 86-87		
	ABI	Reply-sub-05/03/15			Disagree with PHIEA. Terminology appropriately being adopted across all modern awards which do not contain all purpose allowances. Employees are classified on commencement and pay points determined by employee's length of service. Clear when interpreting clauses, employee's classification (including paypoint) is correct reference to use and there is no ambiguity in the ED which requires correction.	Para 56		
	MIERG	Sub – 11/05/15	19.4 proposed new clause		Recall to work overtime – proposed subclause for private medical imaging practice Employee recalled to work will be paid time and half for first 2 hours and double time thereafter for time to perform work and time taken to travel subject to maximum of 15 minutes travel each way. To be paid for minimum 2 hours including travel time.	p.7		
	MIERG	Sub – 15/07/15				p.11		

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	Reference	NOTES	STATUS
	MIERG	Sub – 11/5/15	19.5 proposed new clause		Paid rest break during overtime – private medical imagining practice Where work is required urgently the unpaid (sic?) meal break may be deferred, and must be taken as soon as practicable.	p.7		
32	ADA	Sub - 28/01/15	Part 6		Part 6- Leave, Public Holidays and Other NES entitlements Propose to rename part heading to include termination to enable easy reference to terms relating to termination and redundancy.	Para 2.5		
	ABI	Reply-sub-05/03/15			Support ADA proposal. Will make award more user-friendly.	Para 58		
33	HSU	Sub - 25/11/14	20	31	Annual leave Propose to express safety net entitlement to an additional week of annual leave for shift workers in similar way to that expressed in Exemplar Award	Paras 10-11		
	ABI	Reply-sub-05/03/15			Opposes HSU proposal. Clause sufficiently clear.	Para 59		
	HSU	Sub – 16/07/15	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	Para 100-109	Substantive claim	

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	Reference	NOTES	STATUS
					<p>provisions for employees who are engaged for part of the year as shift worker to receive additional week leave pro rata.</p> <p>Proposed drafting:</p> <ul style="list-style-type: none"> • Variation to 20.2(b): <i>“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”</i> • Additional subclause (c): <i>“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.”</i> 			
	PHIEA	Reply Sub - 19/08/15			Opposes HSU Sub 16/07/16 variation to 20.2. Will refer to [2013] FWCFB 5551 - HSU (C2013/4216).	p.7		
	ACE	Reply Sub – 21/08/15			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.	Para 5(b)(vi)		
	ADA	Reply Sub – 21/08/15			Strongly disagrees with HSU submission on annual leave for shiftworkers. Submits that HSU had unsuccessfully argued same principle, in	Para 2.2.2		

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					slightly different guise in 2 Year Award Review. Decision [2013] FWCFB 5551 at [86-100]			
	AWU	Sub – 15/07/15			Seeks to vary provision to ensure the additional annual leave is provided for shiftworkers.	Para 20		
	ADA	Reply Sub – 21/08/15			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).	Para 2.2.1		
	MIERG	Sub – 11/5/15			Define shift workers as employee who is regularly rostered to work on a “24/7 shift system”, delete “Sunday and public holidays”	p.7		
	MIERG	Sub – 15/07/15			Further to submission on 11/05/15, add the underlined “ <u>continuous</u> 24/7 shift <u>work</u> system”	p.12		
	AiG	Reply sub – 28/08/15			Opposes HSU and AWU’s claims	Para 221		
	CAA	Reply Sub – 25/08/15			Opposes MIERG definition of shiftworker as unworkable; Opposes HSU submissions, as basically identical to submission made in 2012 Review that was rejected by FB.	Para 29-32		

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34	PHIEA	Sub - 27/01/15	20.3		Annual leave loading - 'ordinary rate of pay' should be changed to 'minimum rate of pay'.	Para 24		
35	PHIEA	Sub - 27/01/15	23.1		Public holidays Sentence 'The NES provides a paid day off on each public holiday, except where reasonably requested to work' should be removed. There may be other reasons why an employee would not be provided with paid day off.	Para 25		
			23.2		Proposes clause should be deleted to avoid any potential misinterpretation.	Para 26		
			23.3		Proposes changing " the " minimum hourly rate should be changes to " their "	Para 27		
	AIG	Reply-sub-04/03/15			Notes PHEIA's concerns regarding use of "minimum hourly rates" throughout ED and their suggested variation to ensure employee's relevant pay point and classification are captured. AIG does not consider variation necessary. Consistent with approach in other EDs.	Paras 86-87		
	AIG	Sub - 28/01/15	23.1 and 23.2		Consistent with Commission's decision, the following provisions should be removed: <ul style="list-style-type: none"> Second and third sentences in clause 23.1; and clause 23.2. 	Para 119	Full Bench in decision [2014] FWCFB 9412 determined that NES summaries will be removed from the 'legal instrument', see para [36]	

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	PHIEA	Reply-sub-17/02/15			Agrees with AIG submission re clause 23.1 and 23.2.	p.11		
36	HSU	Sub - 25/11/14	25		Ceremonial leave Vary clause to include a reference to Torres Strait Islander tradition	Para 6		
	Parties		25		Agreed position of parties – Add ‘or Torres Strait Islander’ after Aboriginal; remove ‘aboriginal’ before ‘ceremonial purposes’		AGREED	
36A	MIERG	Sub – 15/07/15	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.	p.14		
37	HSU	Sub - 25/11/14	Sched A	Sched B	Classification Definitions <ul style="list-style-type: none"> • 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. 	Paras 16-17	First point: withdrawn HSU Sub – 16/07/15 – para 65	
37B	APESMA	Sub – 15/07/15	Sched A 1.5(b)		Support Services employee – Level 5 Delete “Interpreter (unqualified)”	Para 4		
	BusSA	Reply sub – 28/08/15			Opposes removal, as would make employees currently covered by award system award-free.	Para 48		

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38	APESMA	Sub - 26/11/14	Sched A	Sched B B1.5 & 1.7	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).	Paras 3-4		
	APESMA	Sub – 15/07/15	Sched A 1.7		Delete “Interpreter (qualified)”	Para 4		
	HSU	Sub – 16/07/15	Sched A 2.1		Classification Definition – Health Professional – Level 1: Add classification for interns	Para 116-119		
	ABI	Reply sub - 21/08/15			Submits HSU’s addition of intern level is not necessary.	Para 3.47-3.48		
	AiG	Reply sub – 28/08/15			Submits HSU’s addition is not necessary and could lead to unintended consequences.	Para 242-243		
38A	APESMA	Sub – 15/07/15	Sched B		List of common health professionals Insert, in correct alphabetical order: “interpreter” and “translator”.			
	HSU	Sub -16/07/15			Add some titles not currently included which are commonly used.	Para 120-123	See draft determination Appendix C	
	AiG	Reply sub – 28/08/15			Opposes HSU additions to list, submits attempt to broaden coverage of award.	Para 244-252		
39	HSU	Sub – 25/11/14			Training plan Propose inclusion of provision for an employee to request a training plan so skills are maintained.	Para 19	Withdrawn: HSU Sub – 16/07/15 – para 65	

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40	PHIEA	Sub - 27/01/15	Sched C	New	Summary of hourly rates - word 'ordinary' should be replaced with 'minimum' wherever it appears in schedule for consistency of terminology.	Para 28		
	HSU	Sub - 28/01/15			Conflict arises when reader takes meaning of 'ordinary', as it relates to ordinary hourly rates, and applies it to ordinary and penalty rates as words appear in Schedule. Term ordinary is not defined. HSU notes award rates are minimum wage rates only and that employees may be entitled to higher rates of pay as part of their contract of employment.	Para 31-32		
	ABI	Reply-sub-05/03/15			Disagree with HSU regarding meaning of 'ordinary' as it relates to ordinary hours of work. Modern awards deal with 'minimum' rates of pay and penalties. Award cannot and nor should it be read or amended so that it might operate beyond the scope and deal with matters contained in common law contracts. In practice, employees may receive above award rates of pay, but whether these are the rates on which penalties and overtime are calculated is a matter for the common law contract. The Award provides a minimum rate.	Para 60		

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41	CAA	Sub - 25/11/14	Sched I	3.1	Definition of ordinary hours - absence of definition of ordinary hours and interchangeable use of term throughout (particularly clauses 18 and 19) has led to uncertainty. Seeks definition for ordinary hours as well as consequential amendments to other provisions so that term is consistently used.	Issue 2		
		Sub - 28/01/15				pp. 2-4		
		Sub – 15/07/15				Issue 2		
	PHIEA	Reply-sub-17/02/15			Agrees with CAA	p.7		
42	CAA	Sub - 25/11/14	Sched I	3.1	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.	Issue 3		
		Sub - 28/01/15				pp.4-6		
		Sub – 15/07/15				Para 3.5		
	PHIEA	Reply-sub-17/02/15			Agrees with CAA.	p.7		
	HSU	Sub 25/11/14			Seek to vary definition of shiftworker by replacing term “day worker” with term “employee” so that single term is used throughout award.	Para 14	(Withdrawn – HSU Sub – 16/07/15 – para 65)	
	AWU	Sub – 15/07/15			Lack of clarity surrounding definitions of shiftworkers and day workers. Proposes ‘in accordance with a roster’ be deleted from definition of shiftworker.	Paras 14-15	Note: words do not appear to be in ED or HPSS award.	
	ADA	Reply Sub – 21/08/15			Disagrees with AWU’s view ‘day worker’ and ‘shiftworker’ definitions lack clarity. Cannot find what ‘in accordance with a roster’ refers to.	Para 2.2.1		
	MIERG	Sub – 11/5/15			Define shiftworker as, ‘an employee who is	p.8		

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					regularly rostered to work their ordinary hours in a 24/7 shift system'			
	MIERG	Sub – 15/07/15			Further to their submission 11/05/15 adds – “continuous” 24/7 shift “work”	p.15		
	HSU	Sub – 16/07/15			Lack clarity “shiftworker” and “day worker”, proposes updated definition (draft determination at appendix C): <ul style="list-style-type: none"> • “Day worker means an employee who is engaged as such and whose ordinary hours are 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.” 	Para 67-72; Appendix C	Substantive	
	PHIEA	Sub in reply – 19/08/15			PHIEA agrees with HSU clause lack clarity. Disagrees with proposed amendment.	p.5		
	ACE	Reply sub – 21/08/15			Opposes HSU proposed shiftworker definition.			
	ADA	Reply sub – 21/08/15			Disagrees with HSU proposed definitions, as not in keeping with HPSS award decision 2010 nor amendments made in 2 Year Award Review process.	Para 2.2.2		
	CAA	Reply sub – 25/08/15			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		Proposed definition to sit with variation sought by CAA in cl.18.4.	

ITEM	PARTY	DOCUMENT	CLAUSE (exposure draft)	CLAUSE (current award)	SUMMARY OF ISSUE	Reference	NOTES	STATUS
					<p>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:</p> <p><i>“Shiftworker means an employee who is engaged as such and who may be required to work shiftwork in accordance with a roster”</i></p> <p>Provides following responses to submissions.</p> <ul style="list-style-type: none"> • AWU submission to delete ‘in accordance with a roster’ is confused, as words not contained in award. • HSU 16/07/15 – is inappropriate as uses ‘ordinary hours’ which CAA submit is confusing due to various meanings within the award. • MIERG submissions – could lead to confusion over who is a day worker and who is a shiftworker, seemingly every employee in a 24/7 shift work system would be shiftworker under this definition. 			
	HSU	Reply Sub – 28/08/15			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.	Para 4-8		

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43	ADA	Sub - 28/01/15	Sched I	3.1	Definition of trainee - while there is a definition for apprentices in schedule there is no definition for trainees. ADA believes definition necessary to provide clarification of distinction between a trainee and an apprentice. Proposed definition is provided in submission.	Para 2.1		
44	HSU	Reply-sub-04/03/15	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.	Para 16		
	MIERG	Sub – 15/07/15			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	p.14-15		
	APESMA	Sub – 15/07/15			Insert in correct alphabetical order: “NAATI means National Accreditation Authority For Translators and Interpreters Ltd”			
	ABI	Reply sub - 21/08/15			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.	Para 3.24		

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