

## NURSES AWARD 2010

Summary of outstanding issues as of 7 December 2015

Issues for further discussions				
Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Status/Outcome
63	PHIEA, Ai Group	17.5	<b>Minimum/ordinary</b> – Given change in terminology, ‘ordinary’ should be replaced with ‘minimum’.	The exposure draft will be updated to reflect the approach taken by the Full Bench in respect to the use of the term ‘ordinary pay’. The parties can then clarify if there are any remaining substantive issues. See [8] <a href="#">Report to FB</a> , 27 Nov 15

Issues to refer to Full Bench				
Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Status/Outcome
21	ANMF	8.1	<b>Ordinary hours of work</b> – Clause 10.4(c) provides minimum two hour payment for casuals. Proposes introduction of a clause providing for a minimum shift length for all employees. Submit that proposal for a minimum shift length regarding full-time employees should be dealt with after the part-time and casual employee claims have been dealt with by the Full Bench in the Casual and Part-Time common issues matter (AM2014/196 & AM2014/197) because the fulltime proposal will cover similar issues, and may rely on the same or similar evidence as will be filed in that matter.	Discussion on whether should be dealt with by Casual/Part-time full bench at [PN691]-[PN696] of <a href="#">Full Bench hearing 7 October 2015</a>  Parties noted the aspects of this issue deal with full time employment.

Issues to refer to Full Bench				
Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Status/Outcome
	HSU		Has had additional discussions with ANMF and supports their claim and the proposition that these matters be referred to a separately constituted Full Bench for determination.	
	PHIEA		PHIEA will be opposing this proposal, however as it is a Common Issue, PHIEA will participate in the Part-Time and Casual Common Issue proceedings in accordance with published timeframes.	
	Bus SA		This issue will be dealt with by the Full Bench in accordance with AM2014/196 and AM2014/197	
	Ai Group		Strongly opposes variation, should the Commission decide to deal with the variation sought after the casual employment and part-time employment common issues cases are heard and determined as proposed by the union, Ai Group will seek an opportunity to respond to the claim then.	
26	ACE	8.2	<b>Rostering</b> – Proposed variation to remove ambiguity or uncertainty, ensure there are no adverse effects to aged care industry in respect of flexibility, rostering arrangements, labour costs and government funding. Submit that without the variation proposed, that is amending clause 8.2(e) to include ‘ <u>unless the employee otherwise agrees</u> ’, an employer cannot alter an employee’s roster absent seven days’ notice to the employee, making the provision impractical and unnecessary.	To be referred to FB, see [43] <a href="#">Report to FB</a> , 9 October 2015
	PHIEA		Does not object to ACE proposal	
	BusSA		ACE proposal will provide flexibility in workplace and maintain requirement that agreement is reached between the employer and employee.	
	ABI & NSWBC		Support ACE variation, promotes flexible work practices.	

Issues to refer to Full Bench				
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	ANMF		Opposes ACE variation for reasons including: <ul style="list-style-type: none"> <li>• Unnecessary to achieve MA objective.</li> <li>• Proposal may undermine the goal of reasonable predictability in hours of work for employees.</li> <li>• Previous FWC decisions on changes to the hours of part-time employees are also relevant to this proposal.</li> </ul>	
	HSU		Opposes ACE proposal, contends variation may disadvantage employees and is not required to meet modern award objectives.	
	Ai Group		Supports ACE proposed variation.	
27	Ai Group	9.1	<b>Breaks</b> – 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.	To be referred to FB, see [45] <a href="#">Report to FB</a> , 9 October 2015
	BusSA		Supports this proposal as there are clear benefits to both employers and employees.	
	PHIEA		This is similar to part of the proposal put forward by the ANMF on same issue which is agreed as being a substantive matter. Should be referred to a separate Full Bench.	
	ANMF		Does not support proposal in isolation from the other aspects of ANMF's proposal at item 29 below.	
	HSU		Does not support the AiG proposal in isolation from the additional aspects of the ANMF proposal.	
	ABI & NSWBC		Support variation, of view that the variation would meet the modern awards objective.	
29	ANMF	9.1(a)	<b>Breaks</b> – Clause does not specify when during the shift the meal break must be taken.	
			Proposes to clearly specify that meal breaks will be taken between the fourth and the sixth hour after beginning work, unless otherwise agreed by the majority of employees affected. By agreement of individual	

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			<p>employees, employees who work shifts of six hours or less may forfeit the meal break.</p> <p>Seeks to clarify and improve upon the existing subclause (b) by splitting it into two subclauses.</p> <p>Proposes to insert new paragraph 27.1(c) to provide for compensation while being effectively 'on call' during a meal break.</p>	
	HSU		Supports ANMF claim and proposition that it be referred to separate Full Bench.	
	PHIEA		Not opposed to the general aims of this proposal. Some modification to the proposed wording would be required.	
	ACE		Opposes claim. Substantive claim and ought be referred to a separate Full Bench.	
	BusSA		Opposes claim, supports meal break clause proposed by AiG, refer to item 27.	
	ABI & NSWBC		<p>Oppose variation. Substantive claim and will require merit based argument in support of variation, and evidence to show that claim achieves the modern awards objective.</p> <p>Not opposed to the variation allowing employees who work shifts of six hours or less to forfeit their meal break by agreement.</p>	
	Ai Group		Some consensus between AiG and ANMF proposals. Opposes requirement that unpaid meal break must be taken between the fourth and sixth hour. Claim opposed to extent that it introduces additional costs for employers, re: providing compensation while on call.	

Issues to refer to Full Bench				
Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Status/Outcome
31	ANMF	9.3	<b>Breaks</b> – Increase rest break between ordinary shifts from existing eight hours and outline consequences of breach of entitlement. Increase minimum rest break between ordinary shifts from 8 hours to 10 hours except where individual employee agrees to 8 hour break. Introduce a penalty for breach to provide a disincentive similar to that in clause 28.3 relating to insufficient break after overtime.	
	HSU		HSU supports ANMF	
	PHIEA, ACE, Bus SA, ABI & NSWBC, AFEI, AiGroup		Parties oppose the variation	
40	ACE	11	<b>Allowances</b> - insert new telephone allowance. Proposal to insert a 'Remote Communication Allowance' at 11.3(b). Variation intends to provide for payment of on call and remote communication allowances to employees who provide advice or assistance remotely, e.g. via telephone, text, web chat or email. ACE to amend application to limit proposal to aged care employees, see [PN749] <a href="#">Transcript</a> , 7 October 2015.	
	PHIEA, ANMF, HSU		Parties oppose ACE proposal.	
	ABI & NSWBC, Ai Group		Parties reserve their position	
42	ANMF, HSU	11	<b>Allowances</b> – Proposed introduction of clause providing for an 'in-charge' allowance. Proposed 'in charge allowance' for registered nurses and 'leading hand allowance' for enrolled nurses and nursing assistants	

Issues to refer to Full Bench				
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			performing supervisory functions. These nurses are not adequately compensated under the award for work performed. HSU supports ANMF's proposal.	
	PHIEA, ACE, BusSA, ABI & NSWBC, AFEI, AiGroup		Parties oppose the proposal.	
47	HSU	14.2	Seeks to vary clause 14.2 to ensure that shift allowances are payable to employees when they work an afternoon or night shift.	
	AFEI, PHIEA		Opposes HSU's proposal	
49	HSU, ANMF	15.1	<b>Overtime</b> – Proposed variation to definition of overtime to clarify that overtime applies to all employees working in excess of their hours as rostered. Seeks to clarify that each period of overtime stands alone in its own right, whether that employee works beyond the hours for that single day or shift, their hours of engagement or the normal hours for a full-time employee in a week. Proposes to insert additional subclauses into clause 15.1. ANMF supports proposal	
	Ai Group		Clarifying that each period of overtime stands alone is unnecessary. Opposes insertion of 15.1(e). Proposal does not achieve outcomes sought by HSU. Given that clause is ambiguous in meaning and effect, it should not be adopted. Proposed clause 15.1(f) is unnecessary, Award is sufficiently clear already.	
	PHIEA, ACE, Bus SA, ABI & NSWBC, AFEI		Parties oppose HSU proposal	
56	ANMF, HSU	15.5, 15.6	<b>Overtime</b> – ANMF Proposes to vary these clauses to confirm that they apply to situations where nurses are recalled to perform work remotely.	

Issues to refer to Full Bench				
Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Status/Outcome
			<p>Amend clauses to remove doubt they apply where employee required to perform work without needing to return to usual workplace.</p> <p>Proposing additional amendments to ensure suitable award conditions for nurses and midwives placed on call. These include:</p> <ul style="list-style-type: none"> <li>Improving compensation for 'serious intrusion of work/life balance' and excessive on call duties</li> <li>Accrual of additional annual leave when a particular amount of on-call duty is performed.</li> </ul> <p>Make clear that the existing clause 21.4, which requires an employee to be free from duty for specified periods, includes periods when an employee is on call.</p> <p>HSU supports ANMF's variation.</p>	
	PHIEA, ACE, Bus SA, ABI & NSWBC, AFEI, AiGroup		Parties oppose variation	
72	ANMF	Sch. A	<p><b>Classifications</b> – Proposes to vary several classification definitions in Schedule A to ensure definitions and terminology reflect current nomenclature regarding regulation of the nursing profession.</p> <p>Proposes to vary definition of 'Nursing assistant' by removing 'or Enrolled' to reflect the current state of the law, which does not allowed enrolled nurses to supervise nursing assistants.</p>	Matter not resolved, now substantive matter, see [9] <a href="#">Report to FB</a> 27 Nov 15
	HSU	Supports ANMF claim and proposes these matters be referred to a separately constituted Full Bench for determination.		
	PHIEA	Agrees with proposal.		
	ACE	Opposes claim. Considered a substantive claim and ought to be referred to a separately constituted Full Bench.		

Issues to refer to Casual / Part-time Full Bench				
Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Status/Outcome
19	ACE, AiGroup	6.4(d)	<b>Casual employees</b> – Clause should be varied to specifically reference Saturday and Sunday as method of calculating casual employee’s entitlement for working ordinary hours. Suggested wording provided by ACE.	<a href="#">PN672 – Transcript</a> Relates to Summary of sub reference 52, 59, 77
	ANMF		Agrees to ACE proposal, subject to term ‘shift allowances’ being used and overtime rates being added.	
52	ACE	15.1(c)	<b>Overtime</b> – Clause 15.1(c) does not mention payment of overtime for casual employees	
	ANMF		Casuals entitled to receive the casual loading in addition to the overtime penalty.	
77	ANMF	Sch. B	<b>Summary of hourly rates</b> – Schedule does not contain tables dealing with some situations where more than one loading potentially applies, for example, where casuals perform overtime.	

Issues to refer to Public holiday full bench				
Summary of subs. Ref	Party	Clause (Exposure draft)	Summary of issue	Status/Outcome
67	ANMF	18.4	<b>Public holidays</b> – Seeks to extend clause to at least some part-time employees.	



**List of abbreviations (in order alphabetical order)**

ABI & NSWBC	Australian Business Industrial and the New South Wales Business Chamber Ltd
ACE	Aged Care Employers
AFEI	Australian Federation of Employers and Industries
Ai Group	Australian Industry Group
ANMF	Australian Nursing and Midwifery Federation
HSU	Health Services Union
PHIEA	Private Hospital Industry Employers' Associations
ED	Exposure draft
Current award	<i>Nurses Award 2010</i>