



IN THE FAIR WORK COMMISSION

Matter No: AM2014/207

Title: Modern Award Review 2014
Nurses Award 2010

SUBMISSIONS ON THE EXPOSURE DRAFT TECHNICAL AND DRAFTING MATTERS AND OUTLINE OF SUBMISSIONS ON SUBSTANTIVE CLAIMS

16 July 2015

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Contents

Contents.....	2
Introduction.....	3
Technical and drafting issues relating to the exposure draft.....	3
Agreed matters.....	4
Withdrawn matters.....	4
Outstanding matters.....	4
Minimum hourly rate.....	4
Outline of submissions in relation to HSU substantive claims.....	5
Agreed.....	5
Ceremonial leave.....	5
Withdrawn.....	6
Outline submissions in support of substantive claims.....	6
Overtime.....	6
Shift Allowances.....	7
Referral.....	9
Appendix A.....	10
Agreed Matters.....	10
Appendix B.....	19

Introduction

1. The Health Services Union (HSU) makes these submissions on the technical and drafting issues related to the Exposure Draft the Nurses Award 2014 released by the Fair Work Commission (the Commission) on 8 December 2014, and outlines its submissions in relation to its substantive claims being pursued, in accordance with the Statement issued by Justice Ross on 30 March 2015¹ and amended directions issued on 6 May 2015².
2. The HSU relies upon its submissions concerning the Exposure Draft, which were filed on 28 January 2015. Those submissions did not address the 23 December 2014 Full Bench decision³.
3. The HSU also notes the Full Bench Decision of 13 July 2015⁴, and more specifically the sections that relate to general drafting and technical issues common to multiple exposure drafts. Whilst there have been no changes made to this Exposure Draft at this stage the HSU expect that the Nurses Award Exposure Draft will be varied to reflect these Decisions and as such makes no submissions concerning the matters addressed by the decisions. If the Commission requires submissions on these matters the HSU is happy to provide them.
4. The HSU further notes and relies upon the comments included at the commencement of the Exposure Draft, which state *'This exposure draft does not seek to amend any entitlements under the Nurses Award but has been prepared to address some of the structural issues identified in modern awards.'*
5. The HSU has read and supports the submissions made by the Australian Nursing and Midwifery Federation (ANMF) in relation to the Nurses Award.

Technical and drafting issues relating to the exposure draft

6. These submissions with technical and drafting issues in three parts,
 - a. Firstly they outline the issues which have been agreed by the parties;
 - b. Secondly they outline the issues that have been withdrawn by the HSU; and
 - c. Finally, they identify the issues in relation to which the parties have not reached agreement, outline the HSU's position, and articulate the arguments it contends support the adoption of the HSU's position.

¹ [\[2015\] FWC 2194](#)

² [\[2015\] FWC 3148](#)

³ [\[2014\] FWCFB 9412](#)

⁴ [\[2015\] FWCFB 4658](#)

Agreed matters

7. Following initial submissions and submissions in reply concerning the exposure draft, a conference held before Commissioner Bissett on 2 February 2015, and further discussions by teleconference, the parties have been able to reach agreement on several technical and drafting issues.
8. These agreed matters have been outlined in Appendix A of this submission.
9. Given the parties' agreement, the HSU does not intend to make any further submissions in relation to these matters, which relate primarily to the Exposure Draft, except if such submissions are sought by the Commission, whether at the final hearing of this matter or otherwise.
10. There are additional submissions concerning the only substantive claim included in the table later in these submissions.

Withdrawn matters

11. Following conferences and discussions HSU withdraws the submissions in relation to minimum weekly rates, identified in the HSU submissions⁵ of 28 January 2015 at paragraph 37 and the revised summary of claims at Item 36⁶.

Outstanding matters

Minimum hourly rate

12. The term 'minimum hourly rate' has been used throughout the Exposure Draft to describe the applicable pay rate or how a penalty or loading should be calculated.
 - a. Clause 15 Overtime, at 15.1(i), 15.1(ii) and 15.1(iii); and
 - b. Clause 18 Public holidays, at 18.2(a), 18.2(b)(i), 18.2(b)(ii), and 18.6.
13. In each of these circumstances the HSU submits the term 'minimum hourly rate' could be interpreted as describe above for the 'minimum rate of pay', resulting in underpayment to an employee.
14. At clause 15.3(c)(i) the term 'minimum hourly rate' is clarified by the addition of the words 'for their classification'
 - (i) *to be paid at a rate of 200% of the minimum hourly rate for their classification until being released from duty; and [emphasis added]*

⁵ [HSU Submissions](#)

⁶ [Revised Summary](#)

15. And at clause 16 Saturday and Sunday work 'the minimum hourly rate' is varied to 'their minimum hourly rate'
 - 16.1 *Where an employee is rostered to work ordinary hours between midnight Friday and midnight Saturday, the employee will be paid 150% of their minimum hourly rate for the hours worked during this period.*
 - 16.2 *Where an employee is rostered to work ordinary hours between midnight Saturday and midnight Sunday, the employee will be paid 175% of their minimum hourly rate for the hours worked during this period. [Emphasis added]*
16. Similarly clause 14 Shiftwork uses the terminology of 'their minimum hourly rate' and prevents potential confusion.
17. The HSU submits that all references to 'minimum hourly rate' should be clarified by the addition of the words 'for their classification' or varied to read 'their minimum hourly rate'.

Outline of submissions in relation to HSU substantive claims

18. The HSU provides an outline of submissions in relation to its substantive claims in three parts:
 - a. Firstly an outline of the matters which have been agreed by the parties;
 - b. Secondly an outline of the matters now withdrawn; and
 - c. Finally submissions in relation to issues on which the parties have not reached agreement and which the HSU intend to pursue

Agreed

Ceremonial leave

19. HSU has proposed a variation to the current Ceremonial leave clause to include reference to Torres Strait Islander tradition.
20. During the consultation processes HSU provided the following proposed wording to other parties and the variation was agreed. Variations are marked up.

19 Ceremonial Leave

An employee who is legitimately required by Aboriginal or Torres Strait Islander tradition to be absent from work for ~~Aboriginal~~ ceremonial purposes will be entitled to up to 10 working days unpaid leave in any one year, with the approval of the employer.

21. The HSU submits the agreed variation meets the modern award objectives, and particularly the objective at s.134(1)(c) of the Act of promoting social inclusion through increased workforce participation. Recognition of ceremonial obligations, and an entitlement to leave in that event, will assist to facilitate and promote the participation of Aboriginal and Torres Strait Islander peoples in the workforce, and the application should be granted by the Commission.

22. Clauses in the same or very similar words are a common feature of modern awards. The HSU believes failure to include reference to Torres Strait Islander custom at the time of making the HPSS Award was an oversight and as such is an anomaly. The HSU does not intend to lead further evidence in respect of this claim unless requested by the Commission.
23. A draft determination, reflecting the agreed proposal has been provided at Appendix B.

Withdrawn

24. HSU has foreshadowed variations to remove the provisions that preclude shift allowances being paid when a shiftworker undertakes overtime.
25. The HSU does not intend to pursue these variations at this time. Without any admission as to the merits of those variations and without prejudice to its capacity to re-agitate those claims at an appropriate point in the future, it withdraws those claims.

Outline submissions in support of substantive claims

Overtime

26. The HSU seeks to vary clause 15 Overtime rates to ensure that there is no ambiguity as to the payment of overtime for all employees, including casual employees, performing work outside or in excess of the times, rosters and patterns considered 'ordinary' under the Nurses Award.
27. In addition the HSU 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.
28. The current clause reads:

Overtime penalty rates

- (a) *Hours worked in excess of the ordinary hours on any day or shift prescribed in clause 8 are to be paid as follows:*
 - (i) *Monday to Saturday (inclusive)—150% of the minimum hourly rate for the first two hours and double time thereafter;*
 - (ii) *Sunday—200% of the minimum hourly rate; and*
 - (iii) *Public holidays—250% of the minimum hourly rate.*
- (b) *Overtime penalties as prescribed in clause 15.1(a) do not apply to Registered nurse levels 4 and 5.*

(c) *Overtime rates under this clause will be in substitution for and not cumulative upon the shift and weekend premiums prescribed in clause 14—Shiftwork and clause 16—Saturday and Sunday work.*

29. The HSU submits that an employee who works in excess of their rostered times, again whether this occurs because the employee starts early or finishes late, should be entitled to payment at overtime rates. Any definition of overtime provided in the Nurses Award should define when overtime is paid for both ongoing **and** casual employees as overtime provisions apply to all employees
30. HSU proposes the following words to clarify overtime entitlements.

15.1 Overtime penalty rates

- (a) Hours worked in excess of the ordinary hours on any day or shift prescribed in clause 8 are to be paid as follows:
- (i) Monday to Saturday (inclusive)—150% of the minimum hourly rate for the first two hours and double time thereafter;
 - (ii) Sunday—200% of the minimum hourly rate; and
 - (iii) Public holidays—250% of the minimum hourly rate.
- (b) Overtime penalties as prescribed in clause 15.1(a) do not apply to Registered nurse levels 4 and 5.
- (c) Overtime rates under this clause will be in substitution for and not cumulative upon the shift and weekend premiums prescribed in clause 14—Shiftwork and clause 16—Saturday and Sunday work.
- (d) For the purposes of overtime each shift, day, week or averaged roster period stands alone. All work beyond these hours will be overtime and paid as prescribed in clause 15.1(a).
- (e) All work beyond 10 hours in a day, whether in a single shift or not, will be overtime and paid as prescribed in clause 15.1(a).
- (f) Overtime is payable to all employees, other than those specifically excluded by clause 15.1(b).

Shift Allowances

31. HSU seeks to vary clause 14.2 to ensure that shift allowances are payable to employees when they work an afternoon or night shift. The provision of such additional remuneration is consistent with s134(a)(da)(iv) of the Act.

32. The HSU believes that medical evidence, both international and Australian, incontrovertibly shows that working shiftwork has a detrimental health impact on employees. That detriment or disadvantage is suffered regardless of the day the shifts are worked; that is, the detriment is not suffered only on weekdays.
33. Weekend and public holiday rates of pay are intended to compensate an employee for the loss of social and family time. Shift work allowances are intended to provide some compensation to an employee for working hours late in the evening or overnight. In the HSU's submission these are not interchangeable. Both should be paid where both detriments and disadvantages are suffered.
34. The payment of shift allowances in addition to weekend and/or public holiday rates was a feature of many awards prior to the award modernisation process. The practice continues in some modern awards, (see for example Clause 20.6 of the *Ambulance and Patient Transport Award 2010*, Clause 25.2 of the *Medical Practitioners Award 2010*, clause 26 of the *Nurses and Midwives (Victoria) State Reference Public Sector Award 2015*, clause 23 of the *Nurses (ANMF – Victorian Local Government) Award 2015*, clause 20.5 & 20.6 of the *Mining Industry Award 2010*) and in many agreements. Nothing in the modern awards objective requires that only one form of penalty or loading may accrue in respect of the same shift. Section 134(1)(da) of the Act recognises that additional remuneration is required for both working on weekends and working shifts. Nothing in that section warrants the view that an employee might only be entitled to one form of penalty or loading in respect of a particular shift.
35. The HSU intends to provide research evidence, current and pre-existing award material and submissions in support of the claim. At this stage it does not intend to lead witness evidence, other than the possible exception of an expert in support of the research.
36. The HSU proposes the following variations:
37. HSU proposes the following variations:

14.2 Shift work

- (a) Where an employee works a rostered afternoon shift on any day the employee will be paid an additional 12.5% of their minimum hourly rate for each hour they work.
- (b) Where an employee works a rostered night shift on any day the employee will be paid an additional 15% of their minimum hourly rate for each hour they work.

- (c) The provisions of this clause do not apply where an employee commences their ordinary hours of work after 12.00 noon and completes those hours at or before 6.00 pm on that day.
- (d) The provisions of this clause will not apply to Registered nurse levels 4 and 5.
- (d) Shift allowances for a casual employee will be added to the casual loading in accordance with clause 6.4(d).

Referral

- 38. The HSU recognise that the claims around overtime and shiftwork entitlements are or may be viewed by other parties as substantive claims and therefore are likely to be subject to separate directions.
- 39. The HSU is also conscious that there have been several matters foreshadowed by other parties, both formally in previous submissions and informally during consultation processes, that are substantive claims and which include matters that overlap with the claims made by the HSU.
- 40. The HSU considers that these matters are interrelated and as such submits that if matters are to be referred to a separately constituted Full Bench such a bench would be an 'Award Review Bench' constituted to hear all outstanding matters on the Nurses Award.
- 41. Where the HSU indicates that in its opinion the matter is substantive and likely to be subject to separate directions it is an indication that the HSU believes the matter should probably be referred to a separately constituted Full Bench.



Leigh Svendsen
Senior National Industrial Officer

Appendix A

Agreed Matters

Item No	Exposure Draft Nurses Award	Agreed Wording or Outcome																		
12, 13	<p>5.2 Facilitative provisions in this award are contained in the following clauses:</p> <table border="1" data-bbox="280 611 1155 932"> <thead> <tr> <th data-bbox="280 611 421 683">Clause</th> <th data-bbox="421 611 757 683">Provision</th> <th data-bbox="757 611 1155 683">Agreement between an employer and:</th> </tr> </thead> <tbody> <tr> <td data-bbox="280 683 421 719">9.2(b)</td> <td data-bbox="421 683 757 719">Paid tea breaks</td> <td data-bbox="757 683 1155 719">An individual</td> </tr> <tr> <td data-bbox="280 719 421 756">10.7(a)</td> <td data-bbox="421 719 757 756">Payment of wages</td> <td data-bbox="757 719 1155 756"></td> </tr> <tr> <td data-bbox="280 756 421 831">15.2</td> <td data-bbox="421 756 757 831">Time off instead of payment for overtime</td> <td data-bbox="757 756 1155 831">An individual</td> </tr> <tr> <td data-bbox="280 831 421 868">18.3</td> <td data-bbox="421 831 757 868">Public holiday substitution</td> <td data-bbox="757 831 1155 868">The majority of employees</td> </tr> <tr> <td data-bbox="280 868 421 932">18.6</td> <td data-bbox="421 868 757 932">Additional leave days by mutual agreement</td> <td data-bbox="757 868 1155 932">An individual</td> </tr> </tbody> </table>	Clause	Provision	Agreement between an employer and:	9.2(b)	Paid tea breaks	An individual	10.7(a)	Payment of wages		15.2	Time off instead of payment for overtime	An individual	18.3	Public holiday substitution	The majority of employees	18.6	Additional leave days by mutual agreement	An individual	Parties recommend that last column re payment of wages remain blank or a dash be inserted.
Clause	Provision	Agreement between an employer and:																		
9.2(b)	Paid tea breaks	An individual																		
10.7(a)	Payment of wages																			
15.2	Time off instead of payment for overtime	An individual																		
18.3	Public holiday substitution	The majority of employees																		
18.6	Additional leave days by mutual agreement	An individual																		
14	6.1(b) At the time of engagement an employer will inform each employee of the terms of their engagement and in particular whether they are to be employed on a full-time, part-time or casual basis. An employer may direct an employee to carry out such duties that are within the limits of the employee’s skill, competence and training, consistent with the respective classification	6.1(b) At the time of engagement an employer will inform each employee of the terms of their engagement and in particular whether they are to be employed on a full-time, part-time or casual basis. An employer may direct an employee to carry out such duties that are within the limits of the employee’s skill, competence and training, consistent with the respective classification																		

Item No	Exposure Draft Nurses Award	Agreed Wording or Outcome
15	<p>6.3(a) A part-time employee:</p> <ul style="list-style-type: none"> (i) is engaged to work less than an average of 38 ordinary hours per week; (ii) has reasonably predictable hours of work; and (iii) receives, on a pro rata basis, pay and conditions equivalent to those of full-time employees who do the same kind of work. <p>(b) Before commencing part-time employment, the employer and employee will agree in writing to the guaranteed minimum number of hours to be worked and the rostering arrangements which will apply to those hours.</p> <p>(c) The terms of the agreement in clause 6.3(b) may be varied by agreement and recorded in writing.</p>	<p>6.3(a) A part-time employee <u>is engaged to work less than an average of 38 ordinary hours per week and has reasonably predictable hours of work.:</u></p> <p>(i) has reasonably predictable hours of work; and</p> <p>(ii) receives, on a pro rata basis, pay and conditions equivalent to those of full-time employees who do the same kind of work.</p> <p>(b) Before commencing part-time employment, the employer and employee will agree in writing to the guaranteed minimum number of hours to be worked and the rostering arrangements which will apply to those hours.</p> <p>(c) The terms of the agreement in clause 6.3(b) may be varied by agreement and recorded in writing.</p> <p><u>(d) The terms of this award will apply on a pro rata basis to part-time employees on the basis that the ordinary weekly hours for full-time employees are 38.</u></p>

Item No	Exposure Draft Nurses Award	Agreed Wording or Outcome
17 18	<p>6.4 Casual employment</p> <p>(a) A casual employee is an employee engaged on an hourly basis.</p> <p>(b) Casual loading</p> <p>(i) For each ordinary hour worked, a casual employee must be paid:</p> <ul style="list-style-type: none"> • The minimum hourly rate; and • A loading of 25% of the minimum hourly rate, for the classification in which they are employed. <p>(ii) The casual loading is paid instead of annual leave, paid person/carer’s leave, notice of termination, redundancy benefits and other entitlements of full time or part time employment.</p> <p>(iii) The following provisions of this award do not apply to casual employees:</p> <p>(c) A casual employee will be paid a minimum of two hours pay for each engagement.</p> <p>(d) A casual employee will be paid shift allowances calculated on the minimum rate of pay excluding the casual loading with the casual loading component then added to the penalty rate of pay.</p>	<p>6.4 Casual employment</p> <p>(a) A casual employee is an employee engaged on an hourly basis.</p> <p>(b) Casual loading</p> <p>(i) For each ordinary hour worked, a casual employee must be paid:</p> <ul style="list-style-type: none"> • The minimum hourly rate; and • A loading of 25% of the minimum hourly rate, for the classification in which they are employed. <p>(ii) The casual loading is paid instead of annual leave, paid person/carer’s leave, notice of termination, redundancy benefits and other entitlements of full time or part time employment.</p> <p>(iii) The following provisions of this award do not apply to casual employees.</p> <p>(e)(c) A casual employee will be paid a minimum of two hours pay for each engagement.</p> <p>(f)(d) A casual employee will be paid shift allowances calculated on the minimum rate of pay excluding the casual loading with the casual loading component then added to the penalty rate of pay.</p>
24	<p>8.1(e) An accrued day off (ADO) system of work may be implemented where an employee works no more than 19 days in a four week period of 152 hours.</p> <p>8.3(a) Where an employee is entitled to an ADO, in accordance with the arrangement of ordinary hours of work as set out in clause 8, the ADO will be taken within 12 months of the date on which the first full ADO accrued.</p>	<p>8.1(e) An accrued day off (ADO) system of work may be implemented where an <u>a full-time</u> employee works no more than 19 days in a four week period of 152 hours.</p> <p>8.3(a) Where an <u>a full-time</u> employee is entitled to an ADO, in accordance with the arrangement of ordinary hours of work as set out in clause 8, the ADO will be taken within 12 months of the date on which the first full ADO accrued.</p>

Item No	Exposure Draft Nurses Award	Agreed Wording or Outcome
25	<p>8.1(c) The ordinary hours of work for a full-time employee will be:</p> <ul style="list-style-type: none"> (i) 38 hours per week; (ii) 76 hours per fortnight; or (iii) 152 hours over 28 days. <p>(f) Each employee must be free from duty for not less than:</p> <ul style="list-style-type: none"> (i) two full days in each week; (ii) four full days in each fortnight; or (iii) eight full days in each 28-day cycle. 	<p>8.1(c) The ordinary hours of work for a full-time employee will be:</p> <ul style="list-style-type: none"> (i) 38 hours per week; <u>or</u> (ii) 76 hours per fortnight; or (iii) 152 hours over 28 days. <p>(f) Each employee must be free from duty for not less than:</p> <ul style="list-style-type: none"> (i) two full days in each week; <u>or</u> (ii) four full days in each fortnight; or (iii) eight full days in each 28-day cycle.
30	<p>9.3 Rest breaks between rostered work</p> <p>An employee will be allowed a rest break of eight hours between the completion of one ordinary work period or shift and the commencement of another ordinary work period or shift.</p>	<p>9.3 Rest breaks between rostered work</p> <p>An employee will be allowed a rest break of eight hours between the completion of one ordinary work period or shift and the commencement of another ordinary work period or shift.</p> <p>8.34 Accumulation and taking of accrued days off (ADOs)</p>
32, 33, 34	<p>10. Minimum weekly wages</p> <p>An employer must pay adult employees the following minimum wages for ordinary hours worked by the employee:</p> <p>Columns in clauses 10.1, 10.2, 10.3, 10.4, 10.5, B.1.3, B.2.3, B.3.3, B.4.3, and B.5.3 are headed "Casual hourly rate"</p>	<p>10. Minimum wages <u>wage rates</u></p> <p>An employer must pay adult employees the following minimum wages for ordinary hours worked by the employee:</p> <p>Change headings of columns in clauses 10.1, 10.2, 10.3, 10.4, 10.5, B.1.3, B.2.3, B.3.3, B.4.3, and B.5.3 to "<u>Minimum</u> casual hourly rate"</p>

Item No	Exposure Draft Nurses Award	Agreed Wording or Outcome
37	<p>10.6 Progression through pay points</p> <p>(a) Progression to the next pay point for all classifications for which there is more than one pay point will have regard to</p> <p>(i) the acquisition and use of skills described in the definitions contained in Schedule A – Classification Definitions; and</p> <p>(ii) knowledge gained through experience in the practice settings over such a period.</p> <p>(b) Progression will be:</p> <p>(i) for full time employees – by annual movement; or</p> <p>(ii) for part-time or casual employees – 1786 hours of experience.</p>	<p>10.6 Progression through pay points</p> <p><u>(a) Progression will be:</u></p> <p><u>(i) for full time employees – by annual movement; or</u></p> <p><u>(iii) for part time or casual employees – 1786 hours of experience.</u></p> <p>(a) Progression to the next pay point for all classifications for which there is more than one pay point will have regard to</p> <p>(i) the acquisition and use of skills described in the definitions contained in Schedule A – Classification Definitions; and</p> <p>(ii) knowledge gained through experience in the practice settings over such a period.</p> <p>(b) Progression will be:</p> <p>(i) for full time employees – by annual movement; or</p> <p>(iii) for part time or casual employees – 1786 hours of experience.</p>
39	<p>11.2 The following allowances do not apply to employees classified at Registered nurse levels 4 or 5.</p>	<p>Parties agree RN 4 & 5 are not entitled to any of the allowances in clause 11.</p>
43	<p>11.4 (a) Clothing and equipment</p> <p>(i) Employees required to wear uniforms will be supplied with an adequate number of uniforms appropriate to the occupation free of cost. Uniforms are to remain the property of the employer and be laundered and maintained by the employer free of cost to the employee.</p>	<p>11.4 (a) Clothing and equipment</p> <p>(i) Employees required <u>by the employer</u> to wear uniforms will be supplied with an adequate number of uniforms appropriate to the occupation free of cost. Uniforms are to remain the property of the employer and be laundered and maintained by the employer free of cost to the employee.</p>

Item No	Exposure Draft Nurses Award	Agreed Wording or Outcome
50	<p>15. Overtime</p> <p>15.1 Overtime penalty rates</p> <p>(a) Hours worked in excess of the ordinary hours on any day or shift prescribed in clause 8 are to be paid as follows:</p> <p>(i) Monday to Saturday (inclusive) – 150% of the minimum hourly rate for the first two hours and double time thereafter.</p> <p>(ii) Sunday – 200% of minimum hourly rate; and</p> <p>(iii) Public holidays – 250% of the minimum hourly rate.</p>	<p>15. Overtime</p> <p>15.1 Overtime penalty rates</p> <p>(a) Hours worked in excess of the ordinary hours on any day or shift prescribed in clause 8 are to be paid as follows:</p> <p>(i) Monday to Saturday (inclusive) – 150% of the minimum hourly rate for the first two hours and double time <u>200%</u> thereafter.</p> <p>(ii) Sunday – 200% of minimum hourly rate; and</p> <p>(iii) Public holidays – 250% of the minimum hourly rate.</p>

Item No	Exposure Draft Nurses Award	Agreed Wording or Outcome
54	<p>15.3 Rest period after overtime</p> <p>(a) When overtime work is necessary, it will, wherever reasonably practicable, be so arranged that employees have at least 10 consecutive hours off duty between the work of successive days or shifts, including overtime.</p> <p>(b) An employee working overtime, other than a casual employee, is entitled to 10 consecutive hours off duty between the termination of work on one day and the commencement of work on the next day, without loss of pay for ordinary hours.</p> <p>(c) If on the instructions of the employer, an employee referred to in clause 15.3(b) does not receive 10 consecutive hours off duty, the employee is entitled:</p> <p>(i) to be paid at a rate of 200% of the minimum hourly rate for their classification until being released from duty; and</p> <p>(ii) upon being released from duty, to be absent until they have had at least 10 consecutive hours off duty, without loss of pay for rostered ordinary hours during their absence.</p>	<p>15.3 Rest period after overtime</p> <p>(a) When overtime work is necessary, it will, wherever reasonably practicable, be so arranged that employees have at least 10 consecutive hours off duty between the work of successive days or shifts, including overtime.</p> <p>(b) An employee working overtime, other than a casual employee, is entitled to 10 consecutive hours off duty between the termination of work on one day and the commencement of work on the next day, without loss of pay for ordinary hours.</p> <p>(c) If on the instructions of the employer, an employee referred to in clause 15.3(b) does not receive 10 consecutive hours off duty, the employee is entitled:</p> <p>(i) to be paid at a rate of 200% of the minimum hourly rate for their classification until being released from duty; and</p> <p>(ii) upon being released from duty, to be absent until they have had at least 10 consecutive hours off duty, without loss of pay for rostered ordinary hours during their absence.</p> <p><u>(b) An employee, other than a casual employee, who works so much overtime between the termination of their ordinary work on one day and the commencement of their ordinary work on the next day, that they have not had at least 10 consecutive hours off duty between those times, will be released after completion of such overtime, until they have had 10 consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.</u></p> <p><u>(c) If, on the instruction of the employer, an employee resumes or continues to work without having had 10 consecutive hours off duty, they will be paid at the rate of double time until released from duty for such period. The employee will then be entitled to be absent until they have had 10 consecutive hours off duty without loss of pay for rostered ordinary hours occurring during the absence.</u></p>

Item No	Exposure Draft Nurses Award	Agreed Wording or Outcome
61	17.2(b) A shiftworker, for the purposes of the additional week’s annual leave provided by the NES and referred to in clause 17.1, is an employee who:...	17.2(b) A shiftworker, for the purposes of the additional week’s annual leave provided by the NES and referred to in clause 17.1 , is an employee who:...
66	<p>18.2 Payment for work done on public holidays</p> <p>(a) All work done by an employee during their ordinary shifts on a public holiday, including a substituted day, will be paid at 200% of the minimum hourly rate.</p> <p>(b) Where 25 December falls on a weekend and, because of substitution, is not a public holiday within the meaning of the NES, an employer conducting a business that operates seven days a week will pay to an employee the following rates for each hour worked:</p> <p>(i) Where the employee works on 25 December and that day is:</p> <ul style="list-style-type: none"> • A Saturday – 200% of the employee’s minimum hourly rate; or • A Sunday – 225% of the employee’s minimum hourly rate. <p>(ii) Where the employee works on the substitute day – 150% of the employee’s minimum hourly rate.</p>	<p>18.2 Payment for work done on public holidays</p> <p>(a) All work done by an employee during their ordinary shifts on a public holiday, including a substituted day, will be paid at 200% of the minimum hourly rate.</p> <p><u>(b) Businesses that operate seven days a week shall recognise work performed on 25 December which falls on a Saturday or Sunday and, where because of substitution, is not a public holiday within the meaning of the NES with the Saturday or Sunday payment (as appropriate) plus an additional loading of 50% of the employee’s ordinary time rate for the hours worked on that day. All work performed on the substitute day by an employee will receive an additional loading of 50% of the ordinary time rate for the hours worked on that day instead of the rate referred to in clause 18.2(a).</u></p> <p>(b) Where 25 December falls on a weekend and, because of substitution, is not a public holiday within the meaning of the NES, an employer conducting a business that operates seven days a week will pay to an employee the following rates for each hour worked:</p> <p>(i) — Where the employee works on 25 December and that day is:</p> <p>0. — A Saturday — 200% of the employee’s minimum hourly rate; or</p> <p>0. — A Sunday — 225% of the employee’s minimum hourly rate.</p> <p>(ii) — Where the employee works on the substitute day — 150% f the employee’s minimum hourly rate.</p>

Item No	Exposure Draft Nurses Award	Agreed Wording or Outcome																														
70	<p>19. Ceremonial leave</p> <p>An employee who is legitimately required by Aboriginal tradition to be absent from work for Aboriginal ceremonial purposes will be entitled to up to ten working days' unpaid leave in any one year, with the approval of the employer.</p>	<p>19. Ceremonial leave</p> <p>An employee who is legitimately required by Aboriginal or Torres Strait Islander tradition to be absent from work for Aboriginal ceremonial purposes will be entitled to up to ten working days' unpaid leave in any one year, with the approval of the employer.</p>																														
75	Schedule B – Summary of Hourly Rates of Pay	Columns in all tables should be in the same order																														
78	<p>C.1 Wage related allowances ...</p> <table border="1" data-bbox="322 679 1137 995"> <tr> <td data-bbox="322 679 938 732">On-call allowance</td> <td data-bbox="938 679 1061 732">11.3(a)</td> <td data-bbox="1061 679 1137 732"></td> </tr> <tr> <td data-bbox="322 732 938 799">Between rostered shifts or ordinary hours on:</td> <td data-bbox="938 732 1061 799"></td> <td data-bbox="1061 732 1137 799"></td> </tr> <tr> <td data-bbox="322 799 938 852">Monday to Friday inclusive</td> <td data-bbox="938 799 1061 852"></td> <td data-bbox="1061 799 1137 852">2.35</td> </tr> <tr> <td data-bbox="322 852 938 904">Saturday</td> <td data-bbox="938 852 1061 904"></td> <td data-bbox="1061 852 1137 904">3.45</td> </tr> <tr> <td data-bbox="322 904 938 995">Sunday, public holiday or non-rostered day</td> <td data-bbox="938 904 1061 995"></td> <td data-bbox="1061 904 1137 995">4.13</td> </tr> </table>	On-call allowance	11.3(a)		Between rostered shifts or ordinary hours on:			Monday to Friday inclusive		2.35	Saturday		3.45	Sunday, public holiday or non-rostered day		4.13	<p>C.1 Wage related allowances ...</p> <table border="1" data-bbox="1247 679 2063 995"> <tr> <td data-bbox="1247 679 1863 732">On-call allowance</td> <td data-bbox="1863 679 1986 732">11.3(a)</td> <td data-bbox="1986 679 2063 732"></td> </tr> <tr> <td data-bbox="1247 732 1863 799">Between rostered shifts or ordinary hours on:</td> <td data-bbox="1863 732 1986 799"></td> <td data-bbox="1986 732 2063 799"></td> </tr> <tr> <td data-bbox="1247 799 1863 852">Monday to Friday inclusive</td> <td data-bbox="1863 799 1986 852"></td> <td data-bbox="1986 799 2063 852">2.35</td> </tr> <tr> <td data-bbox="1247 852 1863 904">Saturday</td> <td data-bbox="1863 852 1986 904"></td> <td data-bbox="1986 852 2063 904">3.4554</td> </tr> <tr> <td data-bbox="1247 904 1863 995">Sunday, public holiday or non-rostered day</td> <td data-bbox="1863 904 1986 995"></td> <td data-bbox="1986 904 2063 995">4.13</td> </tr> </table>	On-call allowance	11.3(a)		Between rostered shifts or ordinary hours on:			Monday to Friday inclusive		2.35	Saturday		3.4554	Sunday, public holiday or non-rostered day		4.13
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Note: this table includes only those items agreed between the parties that require *changes* to the Nurses Award exposure draft wording. It does *not*, however, include any changes that result from FWC decisions that have been made or may be made regarding Group 1 exposure drafts.

Appendix B

SCHEDULE X

<<FileNo>> <<PrintNo>>

FAIR WORK COMMISSION

DRAFT DETERMINATION

Fair Work Act 2009

Part 2-3, Div 4 – 4 Yearly reviews of modern awards

Nurses Award 2010

(ODN AM2014/207) [MA000034]

Health and Welfare

<<FWC MEMBER>>

<<PLACE, MONTH, YEAR>>

Review of modern awards to be conducted.

- [1] Further to the Decision and Reasons for the Decision << Decision No>> in <<File No>>, it is determined pursuant to section 156(2)(b)(i) of the *Fair Work Act 2009*, that the Nurses Award 2010 be varied as follows.
- [2] By deleting clause 19 Ceremonial leave and replacing it with the following:
- 19. Ceremonial leave**
An employee who is legitimately required by Aboriginal or Torres Strait Islander tradition to be absent from work for ceremonial purposes will be entitled to up to 10 working days unpaid leave in any one year, with the approval of the employer.
- [3] The determination shall operate on and from <<date>>