

HEALTH PROFESSIONALS AND SUPPORT SERVICES AWARD 2010

Summary of outstanding issues as of 7 December 2015

Issues to refer to Full Bench				
Summary of subs ref.	Party	CLAUSE (exposure draft)	Summary of issue	Status/outcome
5A	MIERG		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.
	HSU		Opposes all of MIERG submissions to reinstate award. Should be matters for bargaining.	
	ABI		Opposes variations sought by MIERG (except span of hours issue) industry specific provisions have not been justified.	Substantive – see Report to the Full Bench (27 November) at [1]
	AiG		Concerned MIERG variations may introduce additional costs and significant inflexibilities for employers in health industry	
38	APESMA		Award for Translators and Interpreters Variation to make HPSS award occupational award for all translators and interpreters not covered by any other award.	Substantive issue, parties believe unlikely to be resolved. Request FB. (7/10/15)
	ABI		Opposes APESMA's submission, as opposes employees working in industries or businesses unrelated to health industry being covered by award.	
	BusSA		Opposes APESMA's submission. Submits HPSS is industry specific award, to cover translators would create confusion.	
	AiG		Opposes APESMA's submission and all related translator and interpreter variations to the award (e.g. changes to classifications 1, 5 and 7)	
8	FWO	3.1(b), 11 and Sched A & B	Coverage – list of common health professionals Unclear how list is to be applied.	Parties disagree on whether the list of professions is exhaustive or merely indicative (see Report to the Full Bench
	PHIEA		<i>Parties are asked to clarify whether the list of common health professionals is an exhaustive list or indicative list of examples.</i>	

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			Should be regarded as indicative only and not an exhaustive list.	(27 November) at [2])
	HSU		List indicative only, not exhaustive.	
			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.	
			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" <i>Schedule B</i> <ul style="list-style-type: none"> "Schedule B – Indicative List of Common Health Professionals" 	
	PHIEA		Disagree with HSU. Contrary to PHIEA initial view, following discussion with other employer parties, now of view list should be <u>exhaustive</u> and not indicative. Agrees with BusSA and ABI.	
	PHIEA		Opposes HSU position (Sub 16/07/15) & AWU. Concerned positions which lack qualifications may be added to list of professionals.	
	ACE		Not in position to provide clarification of list. Only limited number of classifications relevant to aged care industry.	
	BusSA		Supports view list is exhaustive. A view that list is indicative only would be confusing for end users and make it ambiguous.	
	ABI		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.	

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	AiG		Relies on decision [2009] AIRCFB 948 as support for view list is an exhaustive list of occupations covered by the Award. If the list of common health professionals contained in Schedule B was not exhaustive, then the effect of the AIRC's decision to remove dental hygienists from the list would arguably be superfluous.	
	AiG		Both clause A.2 and Schedule B do not include expansive terms such as 'including' or 'for example'. Both clause.2 and Schedule B use limiting language.	
	AWU		Contends list is not exhaustive list, but an indicative list.	
	DHAA		Opposes HSU's variation (sub 16/07/15). Supports AiG (sub 4/03/15). List is exhaustive not indicative. Submits Decision [2009] AIRCFB 948 , removal of dental hygienists demonstrates the list is exhaustive not indicative.	
	ADA		Opposes AWU & HSU submissions. Submits dentists in private practice have always been award-free in Australia	
	ABI		Indicative list. HSU draft determination unnecessary. Rejects AiG interpretation of clause/sched B. List does not determine award coverage, coverage determined by cl.4. Any changes to cl. should not result in change in coverage, or be used to circumvent the process of making application to Commission to alter coverage in award either to expand or reduce it.	
12A	HSU	6.1(b)	Add underline section to clause: "At the time of engagement an employer will inform each employee whether they are employed on a full-time, part-time or casual basis, <u>and whether they are employed as a day worker or a shiftworker</u> ".	HSU advise that this is not a separate issue to the substantive variation sought in relation to span of hours – see Report to the Full Bench (27 November) at [3]
	PHIEA		Opposes HSU 16/07/15 variation. It is the shift that attracts the penalty not the person.	
	ACE		Opposes HSU variation.	
	ADA		Opposes HSU variation, too inflexible not suitable for modern private dental practice.	
	AiG		Opposes HSU variation	

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15A	MIERG	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.	Also See item 3 (5A on previous summary of submissions document)
	ABI		Opposed new probationary term	
	BusSA		Opposes, as unnecessary given FW Act unfair dismissal application require minimum 6 month employment.	
16	HSU	8	Ordinary hours of work – overtime Vary current ordinary hours of work to clarify that time worked in excess of 10 ordinary hours for all employees in any one day will be paid at the overtime provisions of award.	HSU component appears resolved by amendment to clause 19. See HSU Further Submission – Report to Full Bench , 4 December 2015.
	MIERG	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 choice rests with employer.	
	MIERG			
17	HSU	8.2	Span of hours Considering application for a simplified variation of span of hours for private practice. Likely to look like the following: (a) - Monday to Friday, 7am to 7pm; and (b) - Saturday, 8am to 2pm	
	HSU		Reiterates position for single span of hours. Opposes applications made by employer parties. Note that several additional applications relate either directly or indirectly to proposed variation, including: definition of day worker and shiftworker, rostering provisions and shift work. HSU intends to pursue these claims.	

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	HSU	8.2	Proposes a single span of hours for day workers. Opposes introduction of new specialised spans of hours. Proposed variation: "8.1 Span of hours – day worker (a) Ordinary hours of work for a day workers are worked between 6:00am and 6:00pm, Monday to Friday" <ul style="list-style-type: none"> Delete definition in Sched I "private medical, dental and pathology" (as not needed if no provision for different rates in clause 8.2) Remove distinction in 8.2(c) 'private medical imaging practices' 	
	AWU		Seeks single simple span of hours' provision.	
	ADA		Disagrees with AWU. Submits 8.1 (a)&(b), and 8.2(b) should be preserved.	
	PHIEA		Opposes HSU proposal to single span of hours. Concern would increase overtime payment in place of applicable shift or weekend penalties. Should be considered substantial matter with shift/casual issues.	
	ACE		Opposes HSU proposal.	
	ADA		Opposes HSU. Submits communities require medical, dental and pathology to be available in evenings and on weekends. Agree with CAA sub 15/07/15 at [1.1], and APA sub 15/07/158 at [2], proposes ordinary hours of a day worker should be extended to align with public expectations of service availability from health professional without additional cost to the community.	
	CAA		Does not oppose the rationalisation of span of hours provisions. Disagrees with HSU's proposal. Submits what HSU defines as "normal working hours" do not align with industry practice, chiropractors and other allied health services are expected to work outside traditional business hours (on week nights and weekends).	
	ABI		Opposes HSU and AWU submission for single span of hours.	
	BusSA		Opposes HSU submission. Health is not Mon-Fri industry. Span of hours issue linked to issues of definition for day worker, shiftworker and associated penalties. Matters should be heard together by	

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			full bench.	
	AiG		Opposes HSU variation and related variations to definition of day worker and shiftworker.	
	AFEI		Concern span of hours, shiftworker and penalty rate issues may have 'far reaching and perhaps unintended consequences' should be referred to FB.	
	PHIEA	8.2	Span of hours - 24/7 business- award does not clearly identify what an employee employed in a 24/7 business such as a hospital, who is both a day worker and a shift worker, is to be paid on afternoon or night shifts or on weekends. PHIEA proposes to vary span or hours clause with associated amendments to 26.1 and 29.	
	AFEI	8.2	Span of hours - weekend work Award prevents a host of other health professionals such as chiropractors, acupuncturists and naturopaths from having ordinary hours on a weekend. AFEI in discussions with members and associations to ascertain whether a variation to this clause will be jointly pursued	
	CAA	8.2(a)	Span of hours - chiropractic practices Seek to vary span of hours for chiropractic practices. Current span not reflective of industry practice which involves work outside traditional business hours. Seeks to include provision to enable span of hours to be altered by up to two hours at either end of the spread, by agreement between the employer and employee.	
	HSU		HSU opposes. Ability to alter span of hours by up to 2 hours issue for bargaining.	

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Summary of subs ref.	Party	CLAUSE (exposure draft)	Summary of issue	Status/outcome
	Tristar Medical Group	8.2(b) new subclause	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)	
	ADA		Supports Tristar’s variation and wording to include new subclause (b).	
	Pathology Australia		Submits ED does not contain clause 24.2, which outlines ordinary hours for pathology practices. Seeks to amend draft clause covering sub group 2B, to have ordinary hours until 9pm Monday – Sunday.	
	AIG	8.2(c)	Private medical imaging practices – five and a half day practices Propose alternative wording: <i>“Where a private medical imaging practice services patients on a five and a half day a week basis ...”</i>	
	AFEI		AIG variation is unnecessary and may alter existing meaning of clause. Existing provision should be retained.	
	MIERG		MIERG proposes further addition: work on Saturday will be paid at time and half and working outside 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”	
	MIERG			
	MIERG	8.2(c) new clause	Span of hours - private medical imaging practices – six day practices Propose to add clause for 6 day practice, that states where a location of practice services patients on six day week basis – ordinary hours 7:00am – 9:00pm Mon to Sat	
	MIERG			
	AIG	8.2(d)	Span of hours - private medical imaging practices – seven day practices Propose alternative wording:	

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			<i>"Where a private medical imaging practice services patients on a seven day a week basis..."</i>	
	AiG		Opposes HSU variation as would increase rate of pay on Saturday.	
	APA	8.2(e)	<p>Span of hours - Physiotherapy practices Amend clause to allow greater flexibility in ordinary span of hours for physiotherapy practices on weekdays and Saturdays.</p> <p>Proposed variation to ordinary hours of work to: 7:00am – 8:00pm Monday – Friday; 7:00am – 2:00pm Saturday.</p> <p>Submits change needed to reflect current operation of physiotherapy practices.</p>	
	Kids Matters Occupational Therapy Pty Ltd	8.2(c)	Expand clause for 5 and half day practices to include Occupational Therapy. Saturdays high demand for OT, operate like physiotherapy and it is inequitable physiotherapist can operate ordinary hours and OT cannot. Compromises ability to provide administration services on Saturdays.	
	PHIEA	8.2(f) – new subclause	Span of hours - Private Hospitals operating 24 hours a day, seven days a week – Propose adding clause 8.2(f), ordinary hours to be between 6:00am – 6:00pm Monday to Sunday.	
	HSU		Does not oppose PHIEA subclause, provided its application is limited to shiftwork in private hospitals. Opposes application of rates of pay for shift work.	
	APC	8.2 – new subclause	<p>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>	

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18	ACE	8.3	Rostering Proposed variation to remove ambiguity or uncertainty, ensure no adverse effects to aged care industry including in respect of flexibility, rostering arrangements, labour costs and government funding.	See also [2014] FWCFB 129 re notice of rostering changes Substantive – see Report to the Full Bench (27 November) at [5]
	ACE	8.3	Rostering – flexibility proposal Add to 8.3(b) ‘unless the employee otherwise agrees’ seven days’ notice will be given to change of roster. ACE believes change is necessary for matters other than ‘illness’ or ‘emergency’ that may require change of roster at short notice.	Substantive – see Report to the Full Bench (27 November) at [5]
	PHIEA		Supports ACE proposed variation	
	BusSA		Supports ACE proposed variation	
	HSU		Opposes ACE (15/07/15). Award contains several flexibilities enabling variations of work.	
ABI		Supports ACE (15/07/15) variation.		
19	AIG	9.1	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> 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.	Substantive - see Report to the Full Bench (27 November) at [6] 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)
	PHIEA		Supports in principle AiG proposed variation to meal breaks.	
	ABI		Supports AiG	
	BusSA		Supports AiG	

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	HSU		Opposes AiG variation without proposed provisions put by ANMF in Nurses Award (AM2014/207 – ANMF sub 15/07/15).	the employee will be paid overtime.
	MIERG	9.1	Meal breaks – private medical imaging practices 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.	
	MIERG			
	ADA		Supports MIERG unpaid breaks provision, propose include ‘private medical, dental and pathology’ as these practices require flexibility of staff and the timing of breaks in order to meet emergencies.	
	MIERG	9.2	Paid tea breaks – private medical imaging practices. Proposed new clause: Up to 2 paid tea breaks up to 10min duration for <u>full-time employees</u> . Time taking subject to ‘workload of the practice’.	
	MIERG			
20	AIG	Proposed new clause	<p>Annualised salary - Inclusion of annualised salary clause for employees in health professionals stream and employees at higher classification levels in support services stream.</p> <p>Proposed clause be inserted as new clause 16. To apply to classifications:</p> <ul style="list-style-type: none"> • Support services employee – level 8; • Support services employee – level 9; • Health Professional employees – any level. <p>Subclauses to be titles as following (see draft clause [58]):</p> <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 salary provided in award.</p> <p>16.3 <u>Base rate of pay for employees on annual salary arrangement</u> – provides details of how base</p>	

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			rate would be calculated for purposes of NES.	
	PHIEA		Supports in principle AiG proposal for annualised salary clause.	
	CAA		Seeking annualised salary provision.	
	CAA		Generally supports AiG's submission. Believes should be applied to all classification levels within award. Similar provisions in other modern awards are not limited to classification levels. CAA sees no reason why administrators in allied health industry should differentiated from administrators in private sector.	
	ABI		Supports AiG application	
	BusSA		Supports proposal of AiG and CAA.	
	AWU		Opposes AiG annualised salary clause. AWU submits the AiG is seeking this 'significant variation without any probative evidence'.	
	HSU		Opposes submissions AiG & CAA. Would require significant quantum to not disadvantage employees, should remain matter for bargaining and limited to specific workplaces and classifications.	
	AiG		Supportive in principle of CAA claim	
20A	APESMA	11.2	Health Professional Employee – Level 1 (a) Insert "and NAATI accredited Paraprofessional Translator and NAATI accredited Paraprofessional Interpreter" after "UG 2 qualification" (b) Insert "and NAATI accredited Professional Interpreter and NAATI accredited Professional Translator " after "three year degree entry" ;	See items 4, 25, 26, 28 (items 5B, 38, 38A, 44 in previous summary of submissions document)
20B	MIERG	12	Payment of wages – seeks condition for Private Medical Imaging Practices, which allows payment to occur not more than 3 working days from end of pay period, and by cash, cheque, electronic transfer or other arrangement by agreement with the employee. Payment for full time workers may be weekly, fortnightly, four weekly or monthly. For part-time or casual employees will be weekly or fortnightly.	Also see item 3 (5A on previous summary of submissions document)
23	HSU	18.1	HSU submits error in drafting of HPSS Award 2010. Plain reading suggests penalty rates apply only to day workers not to shift workers; this is inconsistent with predecessor award and logically inconsistent.	Substantive - see [19] – [24] of Report to Full Bench - 30 October 2015
	PHIEA		Agrees with HSU, clause is logically inconsistent. Disagrees should be dealt with in Full Bench hearing	

Issues to refer to Full Bench				
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			of technical issues. Believes definitions of day/shift workers, span of hours, shift and weekend penalties are linked and cannot be considered in isolation.	
	AWU		Notes in current form, weekend penalties apply to day workers for ordinary hour worked between midnight Friday and midnight Sunday, do not apply to shiftworkers. Propose to delete 'a shift worker' from clause 18.1 and insert 'an employee'.	
	ADA		Opposes AWU's proposed variation to delete 'day worker' and replace with 'an employee': Does not agree with HSU's contention error in original drafting in 2010 on weekend penalties, notes ADA which has not had 'shiftworkers' in their awards. Agree with PHIEA the issues are unclear and should be referred to Full Bench.	
	MIERG	18.1	Add 'unless otherwise stated' at beginning of clause	
	MIERG			
	PHIEA		Agree with MIERG - Add 'unless otherwise stated' at beginning of clause	
25A	PHIEA	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>	
26	FWO	18.4	<p>Shift work penalties, weekend penalties</p> <p>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>	Substantive - see [19] – [24] of Report to Full Bench - 30 October 2015
	PHIEA		<i>Parties asked to confirm whether this rate is in addition to casual loading and/or weekend penalties</i>	

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			Shift work penalty does not apply when employee works weekends, consistent with pre-reform awards and Nurses Award.	
	CAA		Believes shiftwork penalties are not in addition to casual loading, shiftwork penalties are not applicable to casuals.	
	ACE		Not clear casuals have any entitlement under this clause. Casual employees have no ordinary hours of work in respect of day work and shiftwork therefore cannot be said to be a "shiftworker" under award. Notwithstanding, propose new additional clauses be adopted (see submission).	
	BusSA		Submits penalties are not cumulative.	
	ABI		Nothing in clause leads to conclusion that should be treated as loaded rate. Submit casual loading in award is not 'all purpose' and therefore should not be treated as compounding when determining rate of pay for weekends, public holidays or shiftwork.	
	PHIEA		Drafting in ED is problematic in that it would lead to significant increase in calculation of casual wages. <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. 	
	AIG		<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 	

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			Award - ED.	
	HSU		Any allowance or loading would not be cumulative but paid in addition to any other allowance or loading.	
	ABI		Submits no ambiguity, shift workers do not receive weekend penalties. To do so would be substantive change, with significant impact on employers.	
27	FWO	18.4	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.	Substantive - see [19] – [24] of Report to Full Bench - 30 October 2015
	BusSA	18.4	Unclear whether hours worked should be treated as ordinary hours for a day worker or shift hours. Seeking variation to clause.	
	CAA	18.4	Unclear in some circumstances whether and when a shiftwork penalty is payable. Submits definition of shiftworker should be amended to provide clarity. There is ambiguity in relation to interaction between shiftwork loadings and weekend penalties (clause 18.1 - 18.4).	
	PHIEA		Agrees with CAA that there is ambiguity regarding interaction between shift work loadings and weekend penalties. As award currently reads a shiftworker is not entitled to weekend penalties. PHIEA considers this an anomaly to be rectified as part of review.	
	ABI	18.4	In response to issue raised by Ombudsman, ABI do not consider clause ambiguous. Shiftworker defined in clause 18.4 as employee that performs a rostered shift that finishes between 6pm and 8am or commences between 6pm and 6am. Span of hours prescribed in clause 23 of current award does not and cannot apply to shiftwork nor does clause 18.4 prescribe a span of hours, it is a categorisation of shiftwork only. If a span of hours applied to a shiftworker then their shift would not be a shift for shiftwork purposes but overtime. On this basis submit clause 18.4 should remain as it is presently.	
	ABI		Submits no lack clarity. Cl.18.4 defines shift work by reference to parameters of the shift, if shift falls	

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			within parameters then shift loading is payable.	
	ABI	18.4	Appears to be difficulty in understanding whether shiftwork and penalties should apply at same time. Applying both penalties represents a “double dip”. In line with long established principle that highest applicable rate applies to work of the day, a penalty should never be applied to a penalty unless instrument expressly provides otherwise.	
	CAA		CAA provides variation to 18.4 and to vary definition of shiftwork, see also Sched I: <i>18.4 Shiftwork Penalties</i> <i>(a) This clause will only apply to persons specifically employed as shiftworkers under this award.</i> <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> <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> <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>	
27A	HSU	18.4	Shift work – afternoon and night shift Vary clause to ensure shift allowances are payable to employees when they work afternoon or night shift. Proposed drafting: <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” Add new subclause (b): <i>“The shiftwork rate is payable in addition to any penalty, allowance, overtime, weekend or casual rates of pay”</i>	
	AWU		Seek to ensure shift allowances are payable to employees when they work an afternoon or night shift.	
	AiG		Unsure of AWU’s position on afternoon or night shift – reserves position.	
	PHIEA		Opposes HSU proposed variations	
	ACE		Opposes HSU variation in respect to payment of shiftwork penalty rates to ‘any penalty, allowance, overtime, weekend or casual rates of pay’	

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	CAA		Opposes HSU variation. CAA considers it significant departure from HPSS award and inconsistent with usual position that penalty rates are not cumulative. CAA seeks clarity on when overtime and other penalty rates are payable. Submits HSU proposal does not make clear when shiftwork penalties are payable.	
	AiG		Opposes HSU variation	
	ABI		Opposes HSU claim for shift loading and weekend penalty to be paid.	
	PHIEA	18.4 – new subclause (ii) proposed	Add ‘unless otherwise stated’ to 18.4 Additional subclause (ii) ‘Shiftwork in Private Hospitals operating 24/7 – Monday to Friday – ‘where ordinary rostering hours of work finish between 6:00pm and 8:00am or commence between 6:00pm and 6:00am, the employee will be paid 114% of their minimum hourly rate of pay’.	
	HSU	19	Removal of substitution arrangements for shift allowances and payment of overtime for time worked beyond rostered hours	This item resolved. See HSU Further Submission – Report to Full Bench , 4 December 2015. ED has been revised and republished 4 December 2015.
30A	MIERG	Proposed new clause	Overtime for job share proposed new clause: A job share employee will not receive overtime payments for any time worked within the rostered ordinary hours for the shared job.	Also see item 3 (5A on previous summary of submissions document)
	MIERG			
	BusSA		Opposes MIERG job share provision, as would be burdensome for business.	
33	HSU	20	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	
	ABI		Opposes HSU proposal. Clause sufficiently clear.	
	HSU	20.2	Certain shiftworkers – vary definition – Annual Leave provision for shift workers	

Issues to refer to Full Bench				
Summary of subs ref.	Party	CLAUSE (exposure draft)	Summary of issue	Status/outcome
			Seeks to vary clause to allow employee who is not shift worker, but works more than four ordinary hours on 10 or more weekends is entitled to the additional weeks annual leave; and provisions for employees who are engaged for part of the year as shift worker to receive additional week leave pro rata. Proposed drafting: <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		Opposes HSU Sub 16/07/16 variation to 20.2. Will refer to [2013] FWCFB 5551 - HSU (C2013/4216).	
	ACE		Opposes HSU variation 20.2 in respect to definition of 'shiftworker' for NES purposes, and pro-rata additional leave for employees who work only part of the year as shiftworker.	
	ADA		Strongly disagrees with HSU submission on annual leave for shiftworkers. Submits that HSU had unsuccessfully argued same principle, in slightly different guise in 2 Year Award Review. Decision [2013] FWCFB 5551 at [86-100]	
	AWU		Seeks to vary provision to ensure the additional annual leave is provided for shiftworkers.	
	ADA		Opposes AWU's submission for additional annual leave for shiftworkers. Issue dealt with tin HPSS 2 Year Award Review Decisions [2013] FWCFB 5551 . Submits definition of shiftworker properly defined in cl. 20.2(a) &(b).	
	MIERG		Define shift workers as employee who is regularly rostered to work on a "24/7 shift system", delete "Sunday and public holidays"	
	MIERG		Further to submission on 11/05/15, add the underlined " <u>continuous 24/7 shift work system</u> "	
	AiG		Opposes HSU and AWU's claims	

Issues to refer to Full Bench				
Summary of subs ref.	Party	CLAUSE (exposure draft)	Summary of issue	Status/outcome
	CAA		Opposes MIERG definition of shiftworker as unworkable; Opposes HSU submissions, as basically identical to submission made in 2012 Review that was rejected by FB.	
36A	MIERG	29	Dispute Resolution – proposed process for private medical imaging practices. Specific wording proposed. Aim of clause is to resolve dispute by direct negotiation and consultation.	Also see item 3 (5A on previous summary of submissions document)
37	HSU	Sched A	<p>Classification Definitions</p> <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. 	<p>First point: withdrawn HSU Sub – 16/07/15 – para 65</p> <p>Substantive – see Report to the Full Bench (27 November 2015) at [10]</p>
37B	APESMA	Sched A 1.5(b)	Support Services employee – Level 5 Delete “Interpreter (unqualified)”	See item 13 (20A of previous summary of submissions document)
	BusSA		Opposes removal, as would make employees currently covered by award system award-free.	
38	APESMA	Sched A	Classification Definitions - Support Services employee - level 7: Seek to extend coverage of award to Translators and Interpreters who are not covered by any modern award (and to provide classification descriptors).	See item 13 (20A of previous summary of submissions document)
	APESMA	Sched A 1.7	Delete “Interpreter (qualified)”	
	HSU	Sched A 2.1	Classification Definition – Health Professional – Level 1: Add classification for interns	
	ABI		Submits HSU’s addition of intern level is not necessary.	
	AiG		Submits HSU’s addition is not necessary and could lead to unintended consequences.	
38A	APESMA	Sched B	List of common health professionals Insert, in correct alphabetical order: “interpreter” and “translator”.	See item 13 (20A of previous summary of submissions document)
	HSU		Add some titles not currently included which are commonly used.	
	AiG		Opposes HSU additions to list, submits attempt to broaden coverage of award.	

Issues to refer to Full Bench				
Summary of subs ref.	Party	CLAUSE (exposure draft)	Summary of issue	Status/outcome
42	CAA	Sched I	Definition of shiftworker - definition creates uncertainty as to who is a shiftworker. Can a shiftworker be both a day worker and a shiftworker? e.g. Chiropractic businesses where businesses operate outside regular hours. Quantum of annual leave unclear.	
	PHIEA		Agrees with CAA.	
	AWU		Lack of clarity surrounding definitions of shiftworkers and day workers. Proposes 'in accordance with a roster' be deleted from definition of shiftworker.	
	ADA		Disagrees with AWU's view 'day worker' and 'shiftworker' definitions lack clarity. Cannot find what 'in accordance with a roster' refers to.	
	MIERG		Define shiftworker as, 'an employee who is regularly rostered to work their ordinary hours in a 24/7 shift system'	
	MIERG		Further to their submission 11/05/15 adds – "continuous" 24/7 shift "work"	
	HSU		Lack clarity "shiftworker" and "day worker", proposes updated definition (draft determination at appendix C): <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." 	
	PHIEA		PHIEA agrees with HSU clause lack clarity. Disagrees with proposed amendment.	
	ACE		Opposes HSU proposed shiftworker definition.	
	ADA		Disagrees with HSU proposed definitions, as not in keeping with HPSS award decision 2010 nor amendments made in 2 Year Award Review process.	
CAA	Notes earlier submissions, shift worker traditionally work continuous 24/7 roster, position reflected in FW Act s.87. CAA submits current definition inappropriate. Issue arises as HPSS Award covers both private practices and hospitals. Workers who work past 6pm in private practice are 'inappropriately' being captured by the shiftwork provisions, rather than evening penalties or similar. CAA submits this is drafting oversight/error – propose variation for 18.4 (see above) & sched I: <i>"Shiftworker means an employee who is engaged as such and who may be required to work shiftwork in accordance with a roster"</i>			

Issues to refer to Full Bench				
Summary of subs ref.	Party	CLAUSE (exposure draft)	Summary of issue	Status/outcome
			<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		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.	
44	HSU	Sched I	<p>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.</p>	See item 13 (20A of previous summary of submissions document)
	MIERG		<p>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>	
	APESMA		Insert in correct alphabetical order: "NAATI means National Accreditation Authority For Translators and Interpreters Ltd"	
	ABI		Does not oppose APESMA's submission to add definition of NAATI provided limited to awards current coverage of translators and interpreters at lvl 5 & 7 of the Award.	

List of abbreviations (in alphabetical order)

ABI	Australian Business Industrial and the NSW Business Chamber Ltd
ACE	Aged Care Employers, also known as Leading Age Services Australia NSW-ACT
ACTU	Australian Council of Trade Unions
ADA	Australian Dental Association
AFEI	Australian Federation of Employers and Industries
APA	Australian Physiotherapy Association
AIG	Ai Group, Australian Industry Group
APESMA	Association of Professional Engineers, Scientists and Managers Australia
BusSA	Business SA
CAA	Chiropractors' Association of Australia (National) Ltd
DHAA	Dental Hygienists Association of Australia Ltd
ED	Exposure Draft
FWO	Fair Work Ombudsman
HSU	Health Services Union
LASA	Leading Age Services Australia NSW-ACT
MIERG	Medical Imaging Employment Relations Group
NAATI	National Accreditation Authority For Translators and Interpreters Ltd
PHIEA	Private Hospital Industry Employer Associations