



# FURTHER REPORT TO THE FULL BENCH

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

## **4 Yearly Review of Modern Awards**

### **Health Professionals and Support Services Award 2010**

(AM2014/204)

COMMISSIONER ROE

MELBOURNE, 26 APRIL 2016

*Four yearly Review of Modern Awards: Health Professionals and Support Services Award 2010 - Report to the Full Bench.*

Further to the report of 5 January 2016 I can report that an extensive process has occurred to explore options for resolution of the large number of outstanding items which relate to hours of work issues. Despite the best efforts of the parties consensus has not been reached.

However, the HSU has now proposed the attached package as a resolution to this group of issues and this proposal or some elements of it have attracted support from a number of other parties. The HSU proposal replaces its claims in relation to items 12A, 17, 18, 19, 23, 26, 27, 27A and 42 of the Summary of Outstanding Issues dated 7 December 2015.

**To assist the Full Bench in progressing these matters parties are requested to advise by no later than 3 May 2016 their response to the HSU proposal and to advise what matters, if any, in this group of issues they continue to press as a result. The responses will be posted on the website.**

The Summary of Outstanding Issues will then be updated to reflect the HSU proposal and these responses and my earlier report of 5 January 2016 as follows:

1. Matters resolved:
  - a. Deleting Items 15A and 16.
2. The following item should be referred to the annual leave full bench:
  - a. Item 33.
3. There are a number of outstanding items which should be referred to a Full Bench and which are likely to require the hearing of evidence. These items are:
  - a. Items 5A, 20B, 30A, 36A and 44 – Proposal for medical imaging appendix (note some of these items may be resolved by the HSU proposal. **MIERG to update the status of these items in their response to the HSU proposals.**)
  - b. Item 8 – Whether the list of common health professionals is exhaustive or indicative.

- c. Items 38, 20A, 37B and 38A – Proposed provisions for translators and interpreters.
  - d. Item 20 – Annualised salaries.
  - e. Items 37 and 38 – Interns.
  - f. Item 38A – Addition of job titles in indicative list.
4. There is one item which could be dealt with by the current full bench on the basis of written submissions:
- a. Item 44 – Addition of definition of NAATI.
5. The hours of work issues which will be updated to reflect the HSU proposal and parties responses:
- a. Items 12A and 17 – Span of hours.
  - b. Item 18 – Roster flexibility.
  - c. Item 19 – Meal breaks.
  - d. Items 23, 26, 27, 27A and 42 – Casual loadings and weekend penalties and definition of shift work.



COMMISSIONER

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Monday, 25 April 2016

**Commissioner Roe  
Fair Work Commission**

[chambers.roe.c@fwc.gov.au](mailto:chambers.roe.c@fwc.gov.au)

Dear Commissioner,

**RE: AM2014/204 Health Professionals and Support Services Award - without prejudice**

The Health Services Union proposes the attached package of measures in a final attempt to reach some level of agreement concerning the various span of hours claims by all parties.

This is an alternate proposal, as opposed to an attempt to find a middle ground between various previous proposals.

The proposal uses the Nurses Award provisions for Span of Hour and shift penalties. This mean there is a single span of hours provision, and a change from one to two shift penalties – afternoon at 12.5% and night at 15%.

The attached includes any changes, where they exist, against the current HPSS clauses in the most recent Exposure Draft and which relates to the package outlined as a possible way forward at the conference between the parties on 4 February 2016. And excludes changes which would not be required it the proposal was accepted.

The meal break proposal is included – without change from previous iterations.

The Span of Hour matters are answered as follows; if the attached is acceptable then

- A. 6.1. Employee to be advised on engagement – variation not required
- B. 8.2. Overtime for day workers outside the span – variation not required as not applicable
- C. 18.1 Deletion of the day worker in the heading – applicable
- D. 18.4. Clarification that the shift penalties are paid in addition to weekend, public holiday or overtime rates
- E. deleted
- F. deleted
- G. deleted

The attached proposal is intended as an alternate package.

Leigh Svendsen  
Senior National Industrial Officer



## Part 2—Types of Employment and Classifications

### 6. Types of employment

#### 6.1 Employment categories

- (a) Employees under this award will be employed in one of the following categories:
  - (i) full-time;
  - (ii) part-time; or
  - (iii) casual.
- (b) At the time of engagement an employer will inform each employee whether they are employed on a full-time, part-time or casual basis.
- (c) 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.

#### 6.2 Full-time employment

A full-time employee is engaged to work:

- (a) 38 ordinary hours per week; or
- (b) an average of 38 ordinary hours per week in a fortnight or four week period.

#### 6.3 Part-time employment

- (c) A part-time employee:
  - (i) is engaged to work less than an average of 38 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.
- (d) Before commencing employment, the employer and employee will agree in writing on a regular pattern of work including the:
  - (i) number of hours to be worked each week;
  - (ii) days of the week the employee will work; and
  - (iii) starting and finishing times each day.
- (e) The terms of the agreement in clause 6.3(b) may be varied by agreement and recorded in writing.

## 6.4 Casual employment

- (a) A casual employee is an employee engaged on an hourly basis, other than as a part-time, full-time or fixed-term employee.
- (b) A casual employee can be engaged to work up to and including 38 ordinary hours per week.

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## Part 3—Hours of Work

### 8. Ordinary hours of work and rostering

#### 8.1 Ordinary hours and roster cycles

##### (a) Span of hours—day worker

Ordinary hours of work for a **day worker** are worked between 6.00 am and 6.00 pm, Monday to Friday.

(b) A **shiftworker** is an employee who is regularly rostered to work their ordinary hours of work outside the span of hours of a day worker as defined in clause 8.1(a).

(c) The ordinary hours of work for a full-time employee will be:

(i) 38 hours per week; or

(ii) 76 hours per fortnight; or

(iii) 152 hours over 28 days.

(d) The shift length or ordinary hours of work per day will be a maximum of 10 hours exclusive of meal breaks.

(e) The hours of work will be continuous, except for meal breaks. Except for the regular changeover of shifts, an employee will not be required to work more than one shift in each 24 hours.

#### ~~— Ordinary hours~~

~~— The ordinary hours of work for a full-time employee are an average of 38 hours per week in a fortnight or four week period.~~

~~— Not more than 10 ordinary hours of work (exclusive of meal breaks) are to be worked in any one day.~~

#### ~~— Span of hours—day workers~~

~~— The ordinary hours of work for a day worker are worked between 6.00 am and 6.00 pm, Monday to Friday, unless otherwise stated.~~

~~Private medical, dental and pathology practices~~

~~The ordinary hours of work for a day worker in private medical, dental and pathology practices are worked between:~~

~~7.30 am and 9.00 pm, Monday to Friday; and~~

~~8.00 am and 4.30 pm on Saturday.~~

~~Private medical imaging practices—five and a half day practices~~

~~Where a practice services patients on a five and a half day a week basis, the ordinary hours of work for an employee are worked between:~~

~~7.00 am and 9.00 pm, Monday to Friday; and~~

~~8.00 am and 1.00 pm on Saturday.~~

~~Private medical imaging practices—seven day practices~~

~~Where a practice services patients on a seven day a week basis, the ordinary hours of work for an employee at that location are worked between 7.00 am and 9.00 pm, Monday to Sunday.~~

~~Payment for weekend work under clause 8.2(d)(i) is paid in accordance with clause 18.2.~~

~~Physiotherapy practices~~

~~In physiotherapy practices, the ordinary hours of work for a day worker will be worked between:~~

~~6.00 am and 6.00 pm, Monday to Friday; and~~

~~6.00 am to 12.00 noon on Saturday.~~

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## 9. Breaks

### 9.1 Unpaid meal breaks

(a) An employee who works in excess of five hours will be entitled to an unpaid meal break of between 30 minutes and 60 minutes. The meal break will, wherever reasonably practicable, be taken between the fourth and sixth hours of commencing work.

(b) The time of taking the meal break may be varied by agreement between the employer and employee.

(b)(c) An employee who works not more that six hours may elect to forgo the meal break, with the consent of the employer.

## 9.2 Paid tea breaks

- (a) Every employee will be entitled to a paid 10 minute tea break in each four hours worked at a time to be agreed between the employer and employee.
- (b) Subject to agreement between the employer and employee, such breaks may be taken as one 20 minute tea break.
- (c) Tea breaks will be counted as time worked.

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## Part 5—Penalties and Overtime

### 18. Penalty rates and shiftwork

#### 18.1 Weekend penalties—~~day worker~~

- (a) For all ordinary hours worked between midnight Friday and midnight Sunday, a ~~day worker~~ full time or part time employee [LS1] will be paid **150%** of the minimum hourly rate applicable to their classification and pay point.
- (b) A casual employee who works on a Saturday or Sunday will be paid **175%** of the minimum hourly rate applicable to their classification and pay point for all time worked, but will not be paid the casual loading of **25%**.

#### ~~18.3~~—~~Weekend work in private medical imaging seven day practice~~

- ~~(i) Work performed on a Saturday in accordance with clause 8.2(d)(i) will be paid at the rate of **125%** of the minimum hourly rate applicable to their classification and pay point instead of the loading prescribed in clause 18.1.~~
- ~~(ii) Work performed on a Sunday in accordance with clause 8.2(d)(i) will be paid at the rate of **150%** of the minimum hourly rate applicable to their classification and pay point instead of the loading prescribed in clause 18.1.~~

#### ~~18.6~~ **18.2 Public holidays**

Payment for public holidays is in accordance with clause 23.1.

#### **18.3 Shift Work**

**(a) For the purposes of this clause:**

**(i) Afternoon shift means any shift commencing not earlier than 12.00 noon and finishing after 6.00 pm on the same day; and**

**(ii) Night shift means any shift commencing on or after 6.00 pm and finishing before 7.30 am on the following day.**

**(b) Shift penalties**

- (i) Where an employee works a rostered afternoon shift between Monday and Friday, the employee will be paid a loading of 12.5% of their minimum hourly rate.
- (ii) Where an employee works a rostered night shift between Monday and Friday, the employee will be paid a loading of 15% of their minimum hourly rate.
- (iii) 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.
- (iv) The shift penalties prescribed in this clause will not apply to shiftwork performed by an employee on Saturday, Sunday or public holiday where the extra payment prescribed by clause 16—Saturday and Sunday work and clause 18—Public holidays applies.
- (e) The provisions of this clause will not apply to Registered nurse levels 4 and 5.

#### ~~Shiftwork penalties~~

~~Where the ordinary rostered hours of work of a shiftworker finish between 6.00 pm and 8.00 am or commence between 6.00 pm and 6.00 am, the employee will be paid 115% of their minimum hourly rate of pay applicable to their classification and pay point.~~

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## 19. Overtime rates

### 19.1 Overtime is paid in the following circumstances:

- (a) Where a full time employee:
  - (i) works in excess of their ordinary hours;
  - (ii) works in excess of 10 ordinary hours per shift;
- (b) Where a part time employee:
  - (i) works in excess of their ordinary hours, except where agreement has been reached in accordance with clauses 6.3(c); and/or
  - (ii) works in excess of 10 ordinary hours per shift; ~~and/or~~
  - (iii) works in excess of an average of 38 hours per week, or 76 ordinary hours in a fortnight or 152 ordinary hours in a four week period.
- (c) Where a casual employee:



- (i) works in excess of 10 ordinary hours per shift; and/or
- (ii) works in excess of 38 ordinary hours per week.

**19.2** An employee who works overtime shall be paid the following rates based on the minimum hourly rate for their employment classification:

- (a) Monday to Saturday - 150% for the first two hours and 200% thereafter;
- (b) Sunday - 200%;
- (c) Public Holidays - 250%;
- (d) Overtime rates under this clause will be in substitution for and not cumulative upon the penalties and loadings prescribed in clause 18 – Penalty rates and shiftwork and the casual loading in clause 6.4(e).

**19.3** Each day or shift (as relevant) stands alone

**19.3****19.4** Rest period after overtime

- (a) An employee working overtime 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.
- (b) If, on the instructions of the employer, an employee referred to in clause 19.3(a) does not receive 10 consecutive hours off duty, the employee is entitled:
  - (i) to be paid at a rate of **200%** of the minimum hourly rate applicable to their classification and pay point until being released from duty; and
  - (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 ordinary working time occurring during their absence.

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## Schedule I—Definitions

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~~private medical, dental and pathology practice means the practice of any medical practitioner, such as medical centre, general practice, specialist practice, family practice, medical clinic, dental practice, pathology practice and women's health centre, but does not include medical imaging practices, hospitals or hospices~~

~~shiftworker is an employee who is regularly rostered to work their ordinary~~

~~hours outside the span of ordinary hours of work of a day worker as defined in clause 8.2~~

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