



IN THE FAIR WORK COMMISSION

Matter No: AM2014/204 - Health Professionals and Support Services Award

AM2104/206 - Medical Practitioners Award

AM2014/207 - Nurses Award

AM2014/209 - Pharmacy Industry Award

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Title: Sub Group 2 B Awards

OUTLINE OF SUBMISSIONS

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Contents

Contents	2
Introduction	4
General Response to the Exposure Drafts	4
Supersession	4
Inclusion of NES Summaries	4
Inclusion of index of facilitative provisions	5
Inclusion of payslip provisions	5
Inclusion of examples to clarify the operation of provisions	5
Inclusion of ordinary hourly rates	5
Inclusion of summary wage tables	5
List of provisions that do not apply to casual employees	5
Health Professionals and Support Services (HPSS) Award	6
Coverage	6
Casual employment	7
Wage related allowances – heat allowance	7
Overtime	7
Inclusion of summary wage tables	7
Medical Practitioners Award	7
Ordinary hours and roster cycles - Sessions	7
Nurses Award	8
Facilitative provisions	8
Types of employment	8
Minimum weekly rates	8
Pharmacy Industry Award	8
Annualised Salaries	8



Meal Allowance.....8

Overtime8

Introduction

1. These submissions by HSU National [HSU] concerns the exposure drafts for the Sub-Group 2B modern awards, and in particular the:
 - Health Professional and Support Services (HPSS) Award
 - Medical Practitioners Award
 - Nurses Award
 - Pharmacy Industry Award
2. These submissions are pursuant to the Fair Work Commission's [Statement](#)¹ of 8 December 2014 and Full Bench [Decision](#)² of 23 December 2014.
3. HSU notes that the Exposure Draft is not intended to change the existing terms and conditions contained in modern awards³ but to correct some identified structural issues.
4. We also note that various Full Benches are considering matters that may impact on the provisions for part time and casual employees⁴, annual leave provisions⁵ and part day public holidays⁶.

General Response to the Exposure Drafts

5. These submissions relate to technical and drafting issues raised by the release of Exposure Drafts. HSU does so in the absence of detail claims by parties to change the award and the impact on drafting these changes may have.

Supersession

6. The proposed wording in clause 1.2 sits comfortably with the HSU. In their submissions on the HPSS and Nurses Exposure Drafts, the Private Hospital Industry Employers' Associations (PHIEA) has submitted that the clause should reference the Award Review process, specifically the award review matter number. While we do not think it is necessary we do not oppose this suggestion.

Inclusion of NES Summaries

7. HSU welcomes the inclusion of the NES summaries although it is not clear how copies of the Award will be made available to employees or how an employee can ask for a copy of the Award and NES.

¹ [2014] FWC 8837

² [2014] FWC FB 9412

³ [2014] FWC FB 9412

⁴ [2014] 196 & AM2014/197

⁵ AM2014/196 & AM2014/197

⁶ AM2014/301

⁶ [AM2014/301](#), [MA000018](#), [MA000027](#) and [MA000100](#)

Inclusion of index of facilitative provisions

8. HSU adopts the ACTU submissions in relation to the general issues concerning the new facilitative provisions.

Inclusion of payslip provisions

9. HSU welcomes the additional provision requiring employers to provide payslip. The reference to the Act and the Regulations is particularly welcome.

Inclusion of examples to clarify the operation of provisions

10. HSU welcomes the inclusion of examples in an annotated version of Awards.
11. HSU is willing to work with parties to come up with appropriate examples.

Inclusion of ordinary hourly rates

12. HSU notes the Commission's preference for using the term minimum hourly rate instead of ordinary hourly rate where the award does not provide for allowances and loadings to be paid for all purposes. When awards do not include allowances or loadings that are paid for all purposes the Exposure Draft should use the same language through out. Some Exposure Drafts mix the terms.

Inclusion of summary wage tables

13. HSU adopts the submissions made by the ACTU in their submissions about the Group 1 Exposure Drafts.
14. HSU notes the award rates are minimum wage rates only and that employees may be entitled to higher rates of pay as part of their contract of employment.

List of provisions that do not apply to casual employees

15. Most of the current health related modern awards contain minimal, if any information about what the casual loading purportedly covers. The most common definition⁷ is: *'...a loading of 25% of that rate will be paid instead of the paid leave entitlements accrued by full-time employees'* and several awards contain no information about what the casual loading purports cover.
16. The provisions existing in predecessor Victorian public and private health sector awards varied markedly, despite the fact that the casual loading is itself identical, the sector the same and that each awards contains very similar entitlements generally.
17. Both the public and private sectors the Health and Allied Services Awards⁸ provide casual employees with long service leave entitlements, but not overtime, or personal and bereavement leave, except in so far as it expressly applies to a casual employee.

⁷ [MA000115](#), [MA000018](#), [MA000027](#) and [MA000100](#)

⁸ [Health and Allied Services - Public Sector - Victoria Consolidated Award 1998](#) and [HASA Private Sector](#)

18. The Nurses Award⁹ excludes casual employees from the provisions of Annual Leave, Long Service Leave and Termination of Employment, which only applies to notice provision. And then provides for modified entitlements such as penalty rates and personal leave.
19. Health Professional¹⁰ casuals are only excluded from annual leave, personal leave [except as otherwise provided] termination of employment and long service leave. Again some penalties are modified for casual employees.
20. And the Medical Scientists¹¹ [public and private] only have provisions for locum employees, although the awards exclude them from some entitlements where the employees are paid the applicable loading in the public sector; and in the private sector to personal and bereavement leave, overtime and notice of termination within the clauses.
21. All of these health awards provide 'eligible casual' employees with unpaid parental leave in the same form and spelt out in the parental leave clause itself.
22. While this is a sample of the awards only from the Victorian health industry, and it does not pretend to be an examination of the history of the entitlements, it seeks to emphasis the variations evident in what entitlements are covered by the casual loading. Further it seeks to reinforce and support the warnings made by the AMWU that industry and award specific considerations were relevant to the establishment of casual loadings.
23. HSU is not convinced that it is necessary to insert a standardised clause purporting to identify the entitlements covered, or not, by the casual leave loading into the modern awards in order to achieve the modern award objectives. HSU supports the position of the ACTU and AMWU that any consideration by the Commission to include a standard clause in relation to casual loading should not be considered without a rigorous examination of casual entitlements and if it is to be considered during the review process, should be dealt with as part of the casual/part time employment common issue proceedings.

Health Professionals and Support Services (HPSS) Award

Coverage

24. The Exposure Draft asked parties for their view on whether the list of common health professionals included in the Award is an exhaustive list or an indicative list.
25. The list of common health professionals in Schedule B is an indicative list of the types of health professionals that are covered by this award. It is not an exhaustive list. There are other classes of health professionals who meet the Classification Definitions in Schedule A.2 (for health professionals) than those classes listed in Schedule B.

⁹ [Nurses \(Victorian Health Services\) Award 2000](#)

¹⁰ [Health Professional Services - Public Sector - Victoria Award 2003](#)

¹¹ [Medical Scientists, Pharmacists and Psychologists \(Public Sector - Victoria\) Award 2003](#) and [Health Services Union of Australia \(Victoria - Private Sector – Medical Scientists, Psychologists and Pharmacists\) Award 2004](#)

Casual employment

26. The Exposure Draft asked parties for their view on whether the minimum engagements are daily minimums, which can be split, or if these hours must be worked consecutively?
27. The HSU's position is that the minimum engagement for casuals must be worked consecutively. In taking this position we look to the lack of a split shift clause, the operation of the ordinary hours of work and rostering provisions. We also look to the arrangements across the industry prior to the making of the modern award.

Wage related allowances – heat allowance

28. The Exposure Draft asked parties for their view as to whether the provision for payment of a heat allowance was obsolete. While we are unaware of anyone receiving payment of the allowance it is possible that there is someone who still meets the requirements of the provision and receives the payment. We do not think the provision should be removed at this point.

Overtime

29. Parties are asked, should the provisions for overtime clarify if each day stands alone? We say no. It is possible to be paid overtime for hours worked beyond a ten hour roster as well as for hours worked beyond a average of 38 hours a week within the pay cycle.
30. Casual employees are entitled to overtime. The intention of the award is clear. At the least, casuals are entitled to overtime for hours worked beyond a ten hour day. They will also be entitled to overtime if the number of hours worked in the pay period was in excess of the average of 38 hours per week. Casual employees would be paid overtime rates on their minimum hourly rate.

Inclusion of summary wage tables

31. A conflict arises when a reader of the Exposure Draft takes the meaning of ordinary, as it relates to ordinary hourly rates, and applies it to ordinary and penalty rates as the words appear in Schedule C. The term ordinary is not defined.
32. HSU notes the award rates are minimum wage rates only and that employees may be entitled to higher rates of pay as part of their contract of employment.

Medical Practitioners Award Award

Ordinary hours and roster cycles - Sessions

33. HSU does not believe the term session needs to be defined. The length of a session can vary depending on the arrangement of hours.

Nurses Award

Facilitative provisions

34. HSU does not object to the proposed list included in the facilitative provisions. In our submission the reference to Payment of Wages at 10.7(a) is for an individual agreement between an employee and their employer, and that any agreement in a broader context would be subject to an enterprise agreement.

Types of employment

35. The definition of casual loading is opposed by HSU.
36. The casual loading does not make provision for, or exclude an employee from notice of termination and or redundancy benefits

Minimum weekly rates

37. At cl. 10.3(b) the minimum entry rates have been expressed as rate of pay as opposed to a grade and pay point.

Pharmacy Industry Award

38. HSU supports the submission made by APESMA and the SDA.

Annualised Salaries

39. HSU supports the retention of the annualised salary provisions contained within the Award and not those contained within the Exposure Draft. The Award provisions make it clear that an employee's annualised salary agreement must provide compensation for all the provisions they agree to annualise and not just one of the terms.

Meal Allowance

40. HSU adopts the submissions of the SDA and APESMA relating to meal allowance.

Overtime

41. HSU supports the Award making it clear that casuals are entitled to overtime.

