

In the Fair Work Commission

Matter No AM2014/204

Health Professionals and Support Services Award MA000027

4 yearly award review

Sub-group 2B

Requests by Medical Imaging Employment Relations Group (MIERG)
for Award provisions changes

19 May 2016

1. This Further request by MIERG is in relation to the Fair Work Commission’s proceedings concerning the 4 yearly award review of the Health Professionals and Support Services Award (HPSS) matter no. AM2014/204 in sub-group B of Group 2 revives and revises MIERG’s request for retention of current Medical Imaging specific HPSS provisions and reinstatement of the remainder of the relevant Medical Imaging Employment Relations Group and Health Services Union of Australia Consent Award provisions in HPSS to apply to private Medical Imaging practices as a result of MIERG’s experience to date with this award review process.

2. MIERG respectfully requests the Fair Work Commission in this award review to make the changes to the HPSS award sought in Requests made by MIERG in Submissions on 11 May, 15 June and 21 and 28 August 2015 by the amendments, by attaching a new **Schedule J—Medical Imaging**, to HPSS as set out in the Draft Determination Attached for the Reasons in those earlier Submissions to the Commission by MIERG.

3. MIERG is unable to agree to HSU’s package proposal dated 25 April 2016 contained in Commissioner Roe’s Further Report to the Full Bench of 26 April 2016.

Filed on behalf of	Medical Imaging Employment Relations Group
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Fair Work Commission

Draft Determination

Fair Work Act 2009

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

Health Professionals and Support Services Award 2015 [Exposure Draft]

(ODN AM2014/204) MA000027

Health and Welfare

A. The above award is varied

[1] Insert

In clause **1. Title and commencement**

1.6 Schedule J—Medical Imaging sets out medical imaging provisions

[2] Insert

In clause **3. Coverage**

3.1(c) employees in medical imaging with specific provisions in Schedule J—Medical Imaging.

Where there is conflict between a provision in the award and Schedule J the provision in Schedule J applies.

[3] Amend

Schedule B—List of Common Health Professionals Retain and include (abbreviations)

Medical Imaging Technologist (MIT) (including: Medical Radiographer (MR); Ultrasonographer (U); Magnetic Imaging (MI); Nuclear Medicine (NM); and Radiation (R))

Delete from List

~~Nuclear Medicine Technologist (NMT)~~

~~Radiation Therapy Technologist (RTT)~~

~~Sonographer~~

Change

Schedule B to synchronise with Schedule J—Medical Imaging as necessary.

[4] Insert

In **Schedule I—Definitions**

medical imaging means a private medical imaging practice where a medical Specialist supervises Medical Imaging Technologist (MIT) staff operating sophisticated medical imaging technology to

visualise internal body structures for diagnosis by medical Specialist Radiologist or Nuclear Medicine Physician assisted by Medical Imaging Support staff.

private medical imaging practice means the business entity and not the work locations.

[5] Insert

New Schedule

Schedule J—Medical Imaging

Schedule J—Medical Imaging provides medical imaging specific terms of employees covered by the award.

[*Note* A Schedule J clause or sub-clause replaces the award clause or sub-clause with the same clause number and Title or Schedule letter and clause number in whole or in part as indicated in Schedule J]

Schedule J covers:

(a) **medical imaging** (as defined in the award in Schedule I—Definitions) employers throughout Australia and their employees in the classifications of Medical Imaging Technologist (MIT) and Medical Imaging Support (MIS) listed in Schedule A—Classification Definitions of the award to the exclusion of any other modern award.

(b) Neither the making or the operation of Schedule J is intended to result in a reduction in the take-home pay of employees who work a five and a half day week at the date of operation of this Schedule.

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Part 1—Application and Operation

1. Title and Commencement

This Schedule is Schedule J—Medical Imaging which covers private medical imaging (as defined in the award Schedule I—Definitions) practice employers throughout Australia and their employees in the classifications listed in Schedule A—Classification Definitions and Schedule I—Definitions to the exclusion of any other modern award.

[Note Clause 1.5 applies under Schedule J.]

1.5 Neither the making or the operation of Schedule J nor the operation of any transitional arrangements is intended to result in a reduction in the take-home pay of employees who work a five and a half day week at the date of operation of this Schedule.

3. Coverage

[Note The award applies to medical imaging except for provisions in Schedule J—Medical Imaging.]

Where there is conflict between a provision in the award and Schedule J— the provision in Schedule J applies.

Part 2—Types of Employment and Classifications

6. Types of employment

[Note This clause applies to medical imaging and replaces clause 6. Types of employment in the award]

6.1 Employment categories

(a) Employees under this award covered by this Schedule will be employed in one of the following categories:

(i) full-time;

(ii) part-time; job share; 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; job share; 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) The ordinary working hours, exclusive of meal times, will not exceed an average of 152 hours per four week period.

(b) Hours of work will be rostered to establish nominal starting and finishing times for employees.

6.3.1 Part-time employment

(a) A part-time employee is engaged as such to work less than an average of 152 ordinary hours per four-week period with a minimum start of two hours per rostered day.

(b) A part-time employee has full-time employee entitlements on a pro rata basis

(c) The employer and employee will agree in writing on the pattern of work which may be varied by agreement at any time.

6.3.2 Job share

(a) Job share employees ordinary hours of work are the ordinary hours in clause 6.2 in this Schedule for the full-time position shared and in accordance with clause 8 in this Schedule.

(b)(i) The responsibility for organising the job share employee's ordinary hours and rostering to ensure coverage of the work of the position shared is, in the first instance, the primary responsibility of the employees' sharing the job to roster themselves so that they adequately cover the entire spread of hours of the full-time position they share.

(ii) Where this is not possible because of ill health or other unexpected emergency, the employer must be notified as soon as possible of the inability of the job share employees to cover the entire spread of hours.

(c) Job share employees have full-time employee entitlements on a pro rata basis.

(d) The job share employees will agree in writing on the pattern of their work which may be varied by agreement at any time.

6.4 Casual employment

(a) A casual employee is an employee engaged on an hourly basis, other than as a part-time, job share, full-time or fixed-term employee.

(b) A casual employee can be engaged to work up to and including 38 ordinary hours per week.

(c) Subject to clause 6.4(d) the minimum period of engagement of a casual employee is three consecutive hours.

(d) Casual employees may be engaged by agreement on two or more starts per day. The minimum period of engagement of cleaners employed in private medical practices is two consecutive hours.

FWC Request *Parties are asked to clarify whether the minimum engagements are daily minimums which can be worked in two or more occasions (i.e. in split shifts) or if these hours must be worked consecutively.*

(e) Casual loading

(i) For each hour worked, a casual employee must be paid: the minimum hourly rate; and a loading of 25% of the minimum hourly rate for the classification in which they are employed.

(ii) The casual loading is paid instead of the paid leave entitlements of full-time employees.

FWC Request *Parties are asked to provide a list of provisions that do not apply to casual employees.*

6.5 Probationary employment

(a) Notwithstanding anything elsewhere contained in this award, an employer may employ an employee on a probationary basis.

(b) The period of probation will be for an initial period of not more than three months. However, where considered by the employer to be justified before the completion of the initial period, the probationary period may be extended by a further probationary period of not more than three

months. An employee may not be employed on a probationary basis for a period exceeding six months.

(c) Notwithstanding any provision contained elsewhere in this award, the employment of a probationary employee may be terminated by the employer or the employee upon the giving of one week's notice or the payment or forfeiture of one week's salary where such notice is not given.

Part 3—Hours of Work

8. Ordinary hours of work and rostering

[Note This clause applies to medical imaging and replaces clause 8. in the award,]

8.1 Ordinary hours

(a) The ordinary working hours, exclusive of meal times, for employees other than casuals, will not exceed an average of 152 hours per four week period.

(b) The ordinary working hours, exclusive of meal times, for casuals, will not exceed an average of 38 hours per week.

(c) Working hours will be rostered in 8.3 to establish nominal starting and finishing times for employees.

(d) Consultation is to occur on the method of implementation of the ordinary working hours.

However, the final choice as to the method of implementation rests with the employer.

Circumstances may arise where different methods of implementation of the ordinary working hours may apply to individual employees or various groups or sections of employees in the practice location.

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

8.2 Span of hours - day workers

(a) The ordinary hours of work of a day worker will be between 7.00 a.m. and 9.00 p.m. Monday to Sunday inclusive.

(b) Hours worked by a full-time, part-time or job share day worker outside these times will be paid at overtime rates in clause 19.

8.3 Rostering

Hours of work for a fortnight will be rostered to establish nominal starting and finishing times for employees and posted at least two weeks before the roster commences. Seven days notice will be given of a change to the roster. However, by agreement or owing to another employee's absence because of illness or injury or in an emergency the roster may be changed at any time.

9. Breaks

[Note This clause applies to medical imaging and replaces clause 9. in the award.]

9.1 An unpaid break of not less than 30 minutes and not more than one hour will be allowed for a meal within five hours of commencement. This provision may be varied by agreement between the employer and an individual employee.

9.2 Where work is required urgently the unpaid meal break may be deferred, and must be taken as soon as practicable.

9.3 Up to two paid tea breaks of up to 10 minutes duration may be allowed each day for full-time employees. The time of taking such break(s) is subject to the workload of the practice.

Part 4—Wages and Allowances

12. Payment of wages

[Note This clause applies to medical imaging and replaces clause 12. Payment of wages in the award]

12.1 Wages and other payments earned during the pay period will be paid not more than three working days from the end of the pay period. An employer may pay in cash or cheque or electronic transfer or other arrangement by agreement with the employee.

12.2 Depending on the employer's pay period, full-time employee will be paid weekly, fortnightly, four weekly, or monthly. Part-time, job-share or casual employees will be paid weekly or fortnightly.

[Note Fair Work Act 2009 s536 and Fair Work Regulations 2009 specify the employer's responsibilities in relation to pay slips.]

15. Allowances

[Note This clause applies to medical imaging and replaces clause 15. Allowances in the award.]

15.1 Meal allowance

An employee who is required to work more than three hours after his or her rostered time finishes will be supplied with a meal or paid a meal allowance of \$. A further meal will be supplied or allowance of \$ paid on the completion of each additional four hours' overtime worked. [The meal allowance is adjusted in line with ABS CPI index for take away and fast foods sub-group.]

15.2 Motor vehicle allowance

Where an employee, by arrangement with the employer, provides his or her own vehicle for use in connection with the work the employee will be paid an allowance in line with ATO requirements for kilometre travelled in connection with work of \$ per kilometre. [The motor vehicle allowance is adjusted in line with ATO changes.]

15.3 On call allowance

An employee on call for emergency recall under 19.5 will be paid an on call allowance of \$___ per 24 hour period when on call up to a maximum amount of \$___per week. The on call allowance is adjusted in accordance with National Wage Case adjustments.]

15.4 Travel expenses

All reasonably incurred fares, meals and accommodation expenses as agreed prior to travel will be paid on receipted account(s) or other evidence acceptable to the employer.

16. Higher duties

[Note Sub-clause 16.4 applies to medical imaging in addition to sub-clauses 16.1, 16.2 and 16.3 in the award.]

16.4 Higher duties payment does not apply where an employee works in a higher paid classification position for the purpose of learning to work competently in the higher paid position as preparation to qualify to apply for the position if it becomes vacant.

Part 5—Penalties and Overtime

18. Penalty rates

[Note This clause applies to medical imaging and replaces clause 18. in the award]

18.1 Weekend work

(a) 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.

(b) 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.

(c) A casual employee who works on a Saturday or Sunday will be paid 125% of the minimum hourly rate for all time worked.

18.2 Public holidays

[Note Payment for public holidays is in accordance with clause 23.3 of the award.]

19. Overtime rates

[Note This clause applies to medical imaging and replaces clause 19. in the award.]

19.1 Full-time

19.1.1 A full-time employee who on any given day works outside the ordinary rostered hours of his or her employment for a period of less than 30 minutes, will be entitled to an equivalent amount of time off work, at a time mutually convenient to the employee and the employer.

19.1.2 A full-time employee who on any given day works outside the ordinary rostered hours of his or her employment for period in excess of 30 minutes, will be entitled to receive overtime payment at the rate of time and a half for the first two hours and double time thereafter. In lieu of overtime payment an employee may elect to take time off work at a time mutually convenient to the employee and the employer. The single hourly rate for overtime will be calculated by dividing the weekly rate by 38.

19.2 Part-time

19.2.1 A part-time employee who on any given day works outside the ordinary rostered hours of full-time employees employed in a similar position for a period of less than 30 minutes, will be entitled to elect to take either an equivalent amount of time off work at a time mutually convenient to the employee and the employer or payment in accordance with 19.2.3.

19.2.2 A part-time employee who on any given day works outside the ordinary rostered hours of full-time employees employed in a similar position for a period in excess of 30 minutes, will be entitled to receive overtime payment at the rate of time and a half for the first two hours and

double time thereafter. In lieu of overtime payment an employee may elect to take time off work at a time mutually convenient to the employee and the employer. The single hourly rate for overtime will be calculated by dividing the weekly rate by 38.

19.2.3 A part-time employee who by agreement with the employer works beyond his or her ordinary rostered hours, or on days on when he or she does not usually work will be paid at ordinary rates of pay subject to 8.

19.3 Job share

A job share employee will not receive overtime payments for any time worked within the rostered ordinary hours for the shared job.

19.4 Casual

For work done by a casual employee in excess of an average of 38 hours in a week the rate of pay will be time and a half for the first two hours and double time thereafter. Overtime for such employee will be calculated on a pay period basis.

19.5 Recall

19.5.1 An employee who is recalled to work overtime after leaving the employer's premises will be paid at the rate of time and a half for the first two hours and double time thereafter for the time taken to perform the work required and for the time taken in travelling to and from the employer's premises subject to a maximum of 15 minutes travel each way.

19.5.2 An employee who is recalled to work overtime after leaving the employer's premises will be paid for a minimum of two hours' work including travelling time.

19.5.3 An employee who is recalled to work overtime after leaving the employer's premises will also be entitled to payment of reasonable travelling expenses incurred.

19.6 Reasonable hours

19.6.1 Subject to **19.6.2** an employer may require an employee to work reasonable overtime at overtime rates unless or as otherwise provided for under the award.

19.6.2 An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable.

19.6.3 For the purposes of **19.6.2** what is unreasonable or otherwise will be determined having regard to:

- (a)** Any risk to employee health and safety.
- (b)** The employee's personal circumstances including any family and carer responsibilities.
- (c)** The needs of the workplace or enterprise.
- (d)** The notice (if any) given by the employer of the overtime and by the employee of their intention to refuse it; and
- (e)** Any other relevant matter.

Part 6—Leave, Public Holidays and Other NES Entitlements

[Note This sub-clause applies to medical imaging and replaces sub-clause 20.2 in the award.]

20.2 Additional leave for certain workers

The entitlement to five weeks annual leave for the purpose of the NES is if all three of the following apply to the employee:

- 1) they are employed in an enterprise where shifts are continuously rostered 24 hours a day for seven days a week
- 2) they are regularly rostered to work those shifts
- 3) they regularly work on Sundays and public holidays.

Part 7—Consultation and Dispute Resolution

28. Consultation

The employees and the employer will confer with a view to resolving all industrial disputes by direct negotiation and consultation.

29. Dispute Resolution

All disputes will be dealt with in the following manner so as to ensure the orderly settlement of the matters in question:

29.1 Any industrial dispute which arises will, where possible, be settled by discussion on the job between the employees and the employees' immediate supervisor.

29.2 If the matter is not resolved, the matter will be further discussed between the affected employees, the employees' nominated representative (who may be a Union representative) and the supervisor or manager of the relevant section or department, and the assistance of the employer's industrial relations representative will be sought.

29.3 If no agreement is reached, the employee's nominated representative will discuss the matter with the employer's industrial relations representative.

29.4 In the interest of patient care work will continue normally. No party will be prejudiced as to the final settlement by the continuance of work in accordance with the procedures.

29.5 Should the matter still not be resolved it may be referred by the parties to the Fair Work Commissions for conciliation.

Schedule A—Classification Definitions

[*Note* The following definitions apply to medical imaging and replace Schedule A—Classification Definitions in the award on the same subject.]

Medical Imaging Support (MIS) means a person appointed as such where the principal function of the employment, as determined by the employer is of a reception, medical typing, clerical, courier, administrative, accounting or book-keeping nature and who maintains their own CPD.

Medical Imaging Technologist (MIT) means a person appointed as such who meets the standards required by their recognised professional body's quality and accreditation program for the medical imaging modality for which they are employed and who maintains their own CPD. The principal function of their employment is as determined by the employer.

Schedule I—Definitions

[*Note* The following definitions apply to medical imaging and replace Schedule I—Definitions in the award on the same subject.]

Medical Imaging specific definitions

CPD means Continuing Professional Development, which is the responsibility of the employee and includes maintaining their own CPD and on-going career learning in consultation with their employer.

casual means an employee who is engaged on an hourly basis other than as a permanent part-time employee or full-time employee or job share employee.

Full-time means an employee who is engaged as such and who is rostered to work an average of 152 ordinary hours per four week period.

job share means a part-time employee who shares a full-time position.

part-time means an employee who is engaged as such and who is required to work less than an average of 152 ordinary hours per four-week period with a minimum start of two hours per rostered day.

[*Note* **Schedule I—Definitions** includes **medical imaging** means a **private medical imaging practice** where a medical Specialist supervises Medical Imaging Technologist (MIT) staff operating sophisticated medical imaging technology to visualise internal body structures for diagnosis by a medical Specialist Radiologist or Nuclear Medicine Physician assisted by Medical Imaging Support staff.

medical imaging practice means the business entity and not the work locations.]

E&OE