

**Ministry of Health Workplace Relations Branch
Response to HSU evidence and request from Commissioner
Re: impediments arising from current Awards
General (Across all Award Groups)**

In general terms some of the NSW Health Awards have limitations which may impact on NSW Health's operational ability to provide the right care at the right time in the right place. Some examples of such provisions in the Awards are set out below.

There are a range of enhancements which if implemented have the potential to improve flexibility in service delivery, reduce cost and administrative burden, and avoid disputation. Steps to enhance these arrangements might include Award consolidation, rationalisation of Award classifications and allowances, and change to roster patterns.

It should be noted that such enhancements would come at considerable cost, all of which are unfunded. Enhancements would also have a lead time due to the need for broad consultation processes, the required use of mutual gains bargaining or positional based bargaining processes and the implementation of technology changes, including to payroll and rostering systems. Additionally, there would be further lead time before any benefits could be derived from the enhancements.

HSU Awards

General

There are approximately 36 Awards and a number of Determinations which cover the classifications covered by the Health Services Union. Many of the Awards require consolidation and modernisation.

Aside from language, structure and simplification, key focus areas could include the removal of restrictive work and management practices which inhibit flexibility and efficiency, the encouragement of new forms of work organisation, and designing and refining award provisions to support the development of a multiskilled, adaptable workforce which can meet the needs of a 24/7 health service.

For example, some of the awards contain restrictive rostering practices, and limited on call arrangements which may not reflect the needs of a 24/7 health service and evolving work practices. Further, some of the Awards contain provisions for personal regrades on the basis of higher qualifications without adequate consideration of service requirements.

Incidental allowances are difficult to administer and often apply to tasks that form part of the inherent duties of a position. The Health Employees' Conditions of Employment Award contains a number of incidental allowances, many of which have been in existence for over 40

years. In some instances, this has led to challenges for NSW Health including award interpretation issues, disputes and inconsistency of application across the state. Consistent and fair application of award allowances is important for NSW Health in order to ensure equity and cost management.

Specific Examples

Topic	Award Clause (if applicable)	Description and potential enhancements
Incidental Allowances	<p><i>Health Employees' Conditions of Employment (State) Award – Clauses 11, 12 and 32</i></p> <p><i>Health Employees' (State) Award - Table 2 – Allowances</i></p>	<p>Examples include:</p> <ul style="list-style-type: none"> • Infectious cleaning allowance • Nauseous linen allowance • Cash Handling allowance • Automatic Rotary Press operation • Boiler Attendant • Specific Environment allowances • Animal House • Refuse Disposal/Incinerators or Furnaces Allowance <p>Some allowances are obsolete, referring to duties that are no longer being utilised, for example the Incinerator Allowance, while others have high levels of administrative burden due to the need to input the allowance per instance, or on an hourly or per shift basis with managerial authorisation.</p> <p>Another example is the infectious cleaning clause which was inserted into the Award in arbitrated award proceedings in the early 1980s. It is difficult to interpret and its application has expanded over time. There have been three arbitrated hearings since 2018 and implementation requires an extensive use of resources across the health system.</p> <p>Review and where possible rolling these allowances into the base salaries of eligible employees, would reduce administrative burden, increase flexibility and reduce the risk of disputes due to ambiguity or eligibility.</p>
Reduce Ambiguity	<p><i>Health Employees' (State) Award</i></p>	<p>Ambiguity in the Awards can result in misinterpretations and misapplications of Award Terms, leading to inconsistency and disputes.</p>

	<p><i>Health Employees' Medical Radiation Scientists (State) Award</i></p> <p><i>Health Employees' Pharmacists (State) Award</i></p> <p><i>Public Hospital Medical Physicists (State) Award</i></p> <p><i>Public Hospitals (Professionals and Associated Staff) Conditions of Employment (State) Award</i></p> <p><i>Public Hospital Medical Record Librarians (State) Award</i></p> <p><i>Health Managers (State) Award</i></p> <p><i>Teachers' (NSW Health Early Childhood Service Centres) Salaries and Miscellaneous Conditions Award</i></p>	<p>Examples include:</p> <ul style="list-style-type: none"> ○ The Operation Assistant classification, which is used widely across NSW Health, has no definition in the Health Employees' Award, and has been subject to disputation about roles and responsibilities. ○ The Health Manager classification requires clarification to prevent it being utilised for non-managerial roles.
Classification Structures	<p><i>Health Managers (State) Award</i></p> <p><i>Health Employees' Medical Radiation Scientists (State) Award</i></p> <p><i>NSW Health Service Aboriginal Health Workers' (State) Award</i></p> <p><i>NSW Health Service Allied Health Assistants (State) Award</i></p>	<p>Review and update definitions and classification structures to better suit the needs of the contemporary health workforce.</p> <p>Some examples include:</p> <ul style="list-style-type: none"> ● Overuse of the Health Manager classification has resulted in a potential need to consider transitioning non-managerial HM's to a new classification framework. ● Creating more senior positions in a range of clinical and professional awards to equate to salaries contained in the Health Managers (State) Award. This will ensure professions that are required to work

	<i>Public Health Service Employees' Skilled Trades (State) Award</i>	weekends (such as IT staff, Allied Health, Aboriginal Health Workers) can be rostered on a 24/7 basis.
On call/recall provisions	<i>Health and Community Employees Psychologists (State) Award Public Hospitals (Professional and Associated Staff) Conditions of Employment (State) Award</i>	On call and call back clauses may require broadening to include more classifications, eg psychologists, to reflect the needs of a 24/7 Health Service. Some proposed classifications include: <ul style="list-style-type: none"> • Psychologists; • Psychotherapists; • Speech Pathologists; and • Aboriginal Health Practitioners.

Medical Awards

General

There are four (4) Awards covering the medical workforce. The *Staff Specialist (State) Award* is covered by ASMOF and the *Public Hospital Career Medical Officers (State) Award*, *Public Hospital (Medical Superintendents) State Award* and *Public Hospital Medical Officers (State) Award* have dual coverage from ASMOF and the HSU.

All the Awards require modernisation in terms of the language used to support interpretation and application. The way medical officers work in NSW Health has changed over the past decade and medical awards require updating to reflect the current ways of working.

The *Public Hospital Career Medical Officers (State) Award*, *Public Hospital (Medical Superintendents) State Award* and the *Public Hospital Medical Officers (State) Award* could be consolidated into a single award to reduce confusion and ensure consistency for all staff considered junior medical officers.

The *Staff Specialist (State) Award* has deficiencies in that it does not reflect the way in which staff specialists work, including hours of work and overtime provisions. NSW Health has sought to address these deficiencies through an application to vary the Award lodged by the Health Secretary in June 2023. The Industrial Relations Commission (**IRC**) made a recommendation on 19 April 2024 that the parties engage in mutual gains bargaining prior to timetabling this application in the usual manner. The parties have agreed to do so in principle but are still determining the bargaining framework. ASMOF and the Ministry had an initial meeting about this on 22 July 2024.

There is a general dispute around remuneration for all Medical Awards. ASMOF seeks a minimum 30% wage increase in addition to other significant improvements.

Specific Examples

Topic	Award Clause (if applicable)	Description
Public Hospital Medical Officers (State) Award	<i>Clause 10, Meal Breaks</i>	<p>An example of the complexity of interpretation and application of the <i>Public Hospital Medical Officers (State) Award</i> was highlighted in a recently settled class action that included a dispute regarding the provisions of the Award applying to meal breaks for non-day shifts.</p> <p>The Award stated that meal breaks are to be paid on shifts other than a “day” shift, but the term “day” shift was not defined in the Award. Rather the Award referred to a Circular from 1988 which in turn referred to a Circular from 1982.</p> <p>Neither circular was updated in line with minor variations to the Award nor was the definition included in the Award.</p> <p>This ambiguity has recently been resolved via an Award variation by consent following the settling of the class action and separate Award contravention proceedings brought by ASMOF.</p>
Staff Specialist (State) Award	<i>Normal Duties (clause 4) - overtime, on-call/recall and shift work</i>	<p>The Award does not permit the rostering of staff specialists outside of standard business hours except for Emergency Physicians unless agreement is reached with individual specialists. Clause 4 currently provides that the working hours of staff specialists are to be completed between 7am to 6pm Monday to Friday, or where hours are averaged over a longer period, between Monday to Sunday, if agreement is reached.</p> <p>The Award also lacks clarity on overtime provisions. The Award is a salaried award, inclusive of overtime. There is often dispute where there is direction for specialists to undertake additional work beyond ordinary hours.</p>

		<p>ASMOF argued in a recent dispute (which led to the Award variation filed in June 2023) that clause 4 should be interpreted to mean that staff specialists cannot be required to work outside of the hours 7am-6pm, Monday to Friday, including via overtime. This interpretation is operationally untenable for NSW Health. There is an expectation and need for hospitals to provide a 24/7 service, and therefore there is a need for specialists to work after usual business hours and on weekends.</p> <p>The variation filed by NSW Health in June 2023 seeks to address these deficiencies by expressly allowing NSW Health to roster staff specialists to work outside of the hours of 7am-6pm Monday to Friday where clinical need reasonably requires and provide payment of penalties for these hours worked. The variation also provides further clarity in respect of overtime by explicitly stating that all reasonable additional hours are compensated by way of the Award salary.</p>
Nursing Awards		
General		
<p>There are two (2) Awards covering the Nursing and Midwifery workforce. The <i>Public Health System Nurses' and Midwives' (State) Award</i> which includes classifications covered by the NSW Nurses and Midwives' Association, and the <i>Crown Employees Nurses' (State) Award</i>.</p> <p>Compared to other Health Awards, the <i>Public Health System Nurses' and Midwives' (State) Award</i> is quite 'lean' without as many of the inefficiencies of other Awards. Notwithstanding this, modernisation of Award provisions is required, both in relation to language and to reflect contemporary Nursing practices. In addition, there are some initiatives and enhancements that could provide some financial benefits that would assist in the efficient delivery of nursing and midwifery services.</p>		
Specific Examples		
Topic	Award Clause (if applicable)	Description
In Charge allowance	<i>Clause 12, Special Allowances – Public Health System Nurses' and Midwives' (State) Award</i>	The current clause in the Award provides for payment of an allowance to an RN who is 'in charge' on a shift in the absence of a senior nurse (i.e. NUM).

		There have been several disputes in the IRC of late with regards to the interpretation of this clause. Varying the clause to provide payment of the allowance <u>only</u> in circumstances when an RN is rostered on a designated in charge shift would provide greater efficiency.
Telephone Allowance	<i>Clause 12, Special Allowances – Public Health System Nurses’ and Midwives’ (State) Award</i>	<p>The current clause in the Award provides for payment of an allowance to an employee who makes their services available and participates in an approved roster to provide emergency telephone counselling outside their normal rostered ordinary hours.</p> <p>Due to the low frequency of telephone calls in the counselling context, and the fact that nurses who are on call for telephone counselling are already receiving the on-call allowance, the removal of this additional allowance for remote telephone counselling would be an enhancement to the Award.</p>