

# HEALTH EMPLOYEES' TECHNICAL OFFICER TO HOSPITAL SCIENTIST CONVERSION INTERIM AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Health Services Union NSW.

(Case No. 247724 of 2023)

Commissioner McDonald

11 September 2024

## AWARD

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## Preamble

This award is made by consent as an interim resolution of a dispute under sections 10 and 136(2) *Industrial Relations Act 1996 (IR Act)* about the correct interpretation of the classification of ‘Hospital Scientist’ within the *Hospital Scientists (State) Award 2023 (Hospital Scientists Award)*, and separately as to whether it ought to be varied. This Award is made on the basis that it is not taken to prejudice either party’s position in respect of that dispute, in the event that the underlying issue cannot be resolved through broader award negotiations.

## Definitions

‘**Employer**’ means the Secretary of the Ministry of Health exercising employer functions on behalf of the Government of NSW.

‘**Health Service**’ means a Local Health District constituted within the meaning of s.8 of the *Health Services Act 1997*, a Statutory Health Corporation within the meaning of s.11 of that Act, and an Affiliated Health Organisation within the meaning of s.13 of that Act, as amended or varied from time to time.

‘**Union**’ means the Health Services Union (NSW Branch).

‘**Technical Officer**’ means a person employed in the NSW Health Service under s.115(1) of the *Health Services Act 1997* as Technical Officers or Senior Technical Officers under the *Health Employees’ Technical (State) Award 2023*, as amended or varied from time to time.

‘**Requisite science qualification**’ means:

- (A) the Diploma in Medical Technology of the Australian Institute of Medical Technologists (before 1973); or
- (B) a degree in science at Australian Qualifications Level 7 with subjects or a major predominantly relevant to pathology or, if employed in a non-pathology area, to the position to be employed in; or
- (C) a degree in science at Australian Qualification Level 7 with subjects or a major partially relevant to pathology or, if employed in a non-pathology area, the position employed in, and 2 years’ of experience as a Technical Officer or Hospital Scientist; or
- (D) a degree in Science at Australian Qualifications Level 7 and 3 years’ of experience as a Technical Officer or Hospital Scientist; or
- (E) a qualification which has been assessed by the body appointed by the Commonwealth government to assess qualifications for skilled migration visas as meeting the qualification requirement of Medical Scientist ANZ234611; or
- (F) such qualifications and experience as the employer deems equivalent.

## Application

1. This Award shall apply to Technical Officers, the Employer and the Union.

## Transitional Committee

2. A peak level statewide Transitional Committee consisting of an equal number of Employer and Union representatives is to be established within a month of this Award being made unless otherwise mutually agreed between the parties.
  - a. The Employer and the Union are to have the right to select their representatives however the representatives (other than those exercising an administrative function, who will not hold a

vote) must hold appropriate scientific qualifications and be classified as a Senior Hospital Scientist or Principal Hospital Scientist or equivalent.

- b. Where no Senior or Principal Hospital Scientist is available to sit on the Transitional Committee, a Hospital Scientist- with at least 8 years' experience as a Hospital Scientist- may sit on the Transitional Committee with agreement from the Employer and Union. Agreement will not be unreasonably withheld.
- c. An employee of the Union may attend as an observer if requested by a member of the Transitional Committee. Any such observer is not to participate in or interfere with the conduct of the Transitional Committee.

#### **Conversion request criteria**

3. A Technical Officer who:

- a. holds a requisite science qualification; and
- b. agrees to undertake the duties of a Hospital Scientist as determined by the Employer from time to time; and
- c. has been employed by the Employer as a Technical Officer for at least 6 months,

may make a written request to the Employer to have their classification converted to a Hospital Scientist as contained within the Hospital Scientists Award (**conversion request**).

#### **Request requirements**

4. The Technical Officer will provide a completed conversion request application form, a copy of their degree certificate and academic transcript, evidence of their work experience and their written agreement to perform Hospital Scientist duties.

#### **Entitlement & refusal**

5. A Technical Officer, who makes a valid conversion request under clause 3, is entitled to reclassification as a Hospital Scientist unless:

- a. the Employer establishes it is fair and reasonable in all the circumstances to refuse the conversion request; or
- b. the Technical Officer fails to provide the information required under clause 4.

#### **Conversion date**

6. If the Employer accepts a conversion request, the Technical Officer's classification will be converted to a Hospital Scientist effective the date the conversion request was made.

#### **Notification of refusal**

7. In the event that the Employer refuses the request on the basis set out in clause 5:

- a. the notification must include its reasons for doing so, including the basis upon which it has concluded that it is fair and reasonable to refuse the request; and
- b. the notification, and covering email, must clearly inform the Technical Officer of their right to refer the request to the Transitional Committee and take advice from the Union or such other representative the Technical Officer may choose.

#### **Referral to Transitional Committee**

8. Within 1 calendar month of a refusal on the basis set out in clause 5 being communicated to a Technical Officer in accordance with clause 7, the Technical Officer or Union may refer the request to a Transitional Committee constituted in accordance with clause 2 to determine whether the refusal was fair and reasonable in all the circumstances.

#### **Deemed referral to Transitional Committee**

9. Subject to clause 18, if the Employer does not make a decision in respect of a conversion request and communicate that decision to the Technical Officer who made the request by the date 1 calendar month after the request, the request will be taken as referred to the Transitional Committee on that date.

#### **Transitional Committee convening**

10. Within 1 calendar month of a conversion request being referred to the Transitional Committee under clause 8 or 9, the Transitional Committee will be convened by the Employer to determine whether the refusal was fair and reasonable in all the circumstances.

#### **Decisions of Transitional Committee**

11. A decision of the Transitional Committee under clause 10 is to be by majority.

#### **Notification of dispute to IRC**

12. The Employer, Union or the Technical Officer may notify a dispute to the Industrial Relations Commission for determination as to whether the Employer's refusal of a conversion request was fair and reasonable in all the circumstances if the Employer, Union or the Technical Officer disagrees with the decision of the Transitional Committee.

#### **Time for notification to be made**

13. A notification to the Industrial Relations Commission under clause 12 may be made within 1 calendar month of the decision of the Transitional Committee under clause 10.

#### **Deemed conversion where no decision**

14. Subject to clause 18, in the event that the Transitional Committee does not make a decision within 1 calendar month of the Transitional Committee being required to convene under clause 10, 14 days after that date the Technical Officer will be deemed converted to Hospital Scientist effective the date of the request being made, unless the Employer notifies the matter to the Industrial Relations Commission or the Technical Officer withdraws their conversion request within that 14 day period.

#### **Deemed conversion where no notification to IRC**

15. If:
  - a. the Transitional Committee decides that the Employer's refusal of a conversion request was not fair and reasonable in all the circumstances; and
  - b. no notification to the Industrial Relations Commission is made within the period specified in clause 13;

then the Technical Officer will be deemed converted to a Hospital Scientist effective the date the conversion request was made.

#### **Date of conversion where IRC determines**

16. If a notification is made to the Industrial Relations Commission in accordance with clauses 13 or 14, and the Commission determines that the Employer's refusal of a conversion request was not fair and reasonable in all the circumstances, then the Technical Officer will be converted to a Hospital Scientist effective the date the conversion request was made.

#### **Refused requests and delay of further requests**

17. If the Employer refuses a conversion request and:
  - a. no referral to a Transitional Committee is made in accordance with clause 8; or

- b. the Transitional Committee decides that the Employer's refusal of a conversion request was fair and reasonable in all the circumstances and no notification to the Industrial Relations Commission is made within the period specified in clause 13 ; or
- c. a notification is made to the Industrial Relations Commission in accordance with clauses 12, 13 and 14, and the Commission determines that the Employer's refusal of a conversion request was fair and reasonable in all the circumstances,

then:

- d. the Technical Officer will not be converted to a Hospital Scientist; and
- e. the Technical Officer is prohibited from making a further conversion request unless:
  - i. the nature of their employment, including the duties required of them, materially changes; or
  - ii. 12 months has passed since the date of the decision of the Transitional Committee.

#### **Agreed extensions of time**

- 18. When dealing with a request, the Technical Officer and the Employer may agree to alter any of the timeframes specified in clauses 8, 9, 10, 13 and 14. Such agreement will be in writing.

#### **Matters potentially relevant to refusal**

- 19. Matters which are potentially relevant to whether the Employer's refusal of a conversion request was fair and reasonable in all the circumstances include, but are not limited to:
  - a. the particular nature of the science qualification held by the employee;
  - b. any gender disparity in pay within the laboratory or area worked, if any disparity exists;
  - c. any effect on the Employer's ability to attract and retain skilled staff in the laboratory or area worked, where there are attraction and retention issues;
  - d. the nature of the laboratory or area worked, and the nature and volume of work performed where the employee currently works including duties performed by staff in the laboratory or area worked, technology and equipment used;
  - e. the experience, skills, training and other qualifications of the employee;
  - f. the performance of the employee;
  - g. the employee's work experience and duration of the employment; and/or
  - h. the staffing numbers and skills mix in the laboratory or area where the employee currently works.

#### **Matters not to be relied on for a refusal**

- 20. In justifying any refusal to convert an employee, the Employer cannot rely on an employee:
  - a. having not been offered or having not performed particular duties, or
  - b. not holding a competency because they have not had the opportunity to obtain it,

as a reason for refusing a request to convert to Hospital Scientist.

#### **Amendment of award to give effect to decisions**

- 21. Subject to section 17 and pursuant to section 136(1)(b) of the IR Act, the Schedules to this Award will be varied by the Commission as part of the determination of any disputes determined by the Commission in accordance with this Award.

#### **Withdrawal of requests**

- 22. A Technical Officer may withdraw a conversion request at any time.

### **Implementation process**

23. The Employer will develop processes for implementation of this interim award to:
- a. inform Technical Officers of this Award and the process, procedure and form for making a conversion request;
  - b. identify categories of employees who may require additional support to make a request for reclassification due to career disadvantage that may be associated with possibly race, geography, sexuality, gender, marital status, disability, language barriers, age and responsibilities as a carer;
  - c. offer, and where appropriate, provide additional support to those employees to make a request to be reclassified;
  - d. establish an alternative pathway for applications to be made other than to the employees' direct line manager;
  - e. inform Technical Officers they may withdraw their conversion request at any time;
  - f. provide new employees engaged as a Technical Officer with information about this Award and the process for making a conversion request; and
  - g. consult with the Union regarding the above.

### **Application form to be agreed & content of form**

24. The application form referred to in clause 4 and 23.a. must be agreed between the Union and the Employer. The content of that form is prescribed by Schedule C to this Award.

### **Employees not to be worse off**

25. Employees will not be worse off by reason of this Award, in that:
- a. the conversion of a Technical Officer to a Hospital Scientist by way of this Award will be subject to a transitional arrangement; and
  - b. the transitional arrangement will be as such to ensure there is no detriment to the Technical Officer in them converting to a Hospital Scientist in respect of rate of pay.

### **Dispute resolution**

26. The dispute resolution procedures contained in the *Health Employees Conditions of Employment (State) Award 2023*, as varied or replaced from time to time, shall also apply to relevant employees.

### **Commencement and nominal expiry**

27. This Award commences from 2 months after the day it is made, will nominally expire 12 months after commencement and prevail to the extent of inconsistency with other awards.

### **Award to be reviewed**

28. Prior to the nominal expiry, this Award will be reviewed by the Industrial Relations Commission.

### **Union not to pursue particular disputes**

29. The Union will not commence or continue any dispute pursuant to section 130 of the IR Act regarding the proper interpretation of the "Hospital Scientist" classification within the Hospital Scientists Award during the nominal term of this Award.

### **Employer not to withdraw, alter or withhold duties**

30. The Employer will not withdraw, alter or withhold an employee's duties to avoid reclassification in accordance with this interim Award.

**No prevention of direct hire as Hospital Scientists**

31. Nothing in this interim award prevents an employee being hired directly as a Hospital Scientist in accordance with the Hospital Scientist Award.

**Classification attached to person not position**

32. Where the Technical Officer's classification is converted to a Hospital Scientist, the classification is attached to the employee, not the position.

**Backdating of early applications**

33. Where a request is made pursuant to clause 3 of this Award within 1 month of the Award's commencement, and the employee converts to a Hospital Scientist, the effective date of the conversion will be backdated to 1 month prior to the request being made.

J. McDonald, *Commissioner*

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**Schedule A – Employees determined to be Hospital Scientists**

<b>Name</b>	<b>Date of decision</b>

**Schedule B – Employees determined to be Technical Officers**

<b>Name</b>	<b>Date of decision</b>

### **Schedule C – Allowable content of application form**

- Name:
- Assignment number:
- Date of conversion request:
- Current FTE:
- Cost centre (if known):
- Current classification (including grade and year increment e.g. Technical Officer Grade 2 Year 3):
- Location of work (including laboratory and department):
- Area of work (e.g. microbiology):
- Qualification/s (including name, university and year completed):
- Copy of qualification certificate and transcript attached:
- Where relevant to requisite science qualification, memberships or assessments of professional bodies (certificate or letter attached):
- Experience relevant to classification/relevant science qualification:
  - o Date of commencement with NSW Health as a Technical Officer:
  - o Date and location/area of work as a Technical Officer (or above):
  - o Statement of service, statutory declaration or similar evidence attached for positions outside of NSW Health:
- Agreement to perform the duties of a Hospital Scientist as determined by the Employer and, if available to the employee, the relevant Hospital Scientist position description:
- Other information the employee would like to add in support of their conversion request:
- Additional further information as agreed between the Union and Employer.