

**Fair Work Commission**

**Award Review 2014**

**Pharmacy Industry Award 2010**

**AM2014/209**



**Shop Distributive and Allied Employees' Association**

Submission in reply to submissions made  
regarding the Pharmacy Industry Award  
Exposure Draft

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**21 August 2015**

1. The Shop Distributive and Allied Employees' Association (SDA) makes these submissions in reply regarding the technical and drafting issues related to the exposure draft released by the Fair Work Commission for the Pharmacy Industry Award 2010 (Pharmacy Award), and a brief reply to outline of submissions in relation to substantive claims being pursued, in accordance with the Statement and amended Directions issued by Justice Ross on 6 May 2015.
2. The SDA supports the submissions made by APESMA and HSUA.

### **TECHNICAL AND DRAFTING ISSUES**

3. As provided in our submission made on 15 July 2015 the vast majority of technical and drafting issues regarding the exposure draft identified by the parties were resolved by agreement.
4. The submissions filed by APESMA, the Health Services Union, Business SA and the Pharmacy Guild of Australia support this.

### **The Pharmacy Guild of Australia (The Guild)**

5. The only outstanding issue identified by The Guild is in relation to the Plain English Draft they submitted to the Fair Work Commission on 31 March 2015.
6. The SDA agrees with the submissions of The Guild that it has been agreed by the parties that the "plain English" version they have provided should not be dealt with as part of the technical and drafting issues.
7. The SDA submits that this should be dealt with by a full bench as a substantive claim.
8. The SDA notes that the "Plain English" version of the Award seeks to vary the wording contained in the Award which in many clauses will have the effect of changing the meaning and intention of the clause.
9. The SDA is unsure how this will impact on the agreement reached between the parties regarding the Exposure Draft released by the Fair Work Commission.
10. As outlined in our previous submissions, the SDA does not believe that this review is an appropriate mechanism to deal with the "Plain English" draft.

11. The SDA relies on its submissions in reply filed on 18 February 2015 and correspondence to President Ross on 1 April 2015 regarding the Pharmacy Guild's "Plain English" draft of the Award.

### **SUBMISSIONS IN REPLY TO SUBSTANTIVE CLAIMS**

12. The Pharmacy Guild have sought four substantive changes to the *Pharmacy Industry Award 2010*:

- Direction to take annual leave
- Annualised salary for pharmacy assistants
- Minimum shift for part-time and casual school students to be set at 90 minutes per shift
- Penalty rates

13. The SDA strongly opposes the changes sought and that these matters be referred to the relevant full bench for determination.

14. The following submissions provide a very brief outline in response to the claims sought. The SDA will provide more comprehensive submissions in relation to these claims when directed by the Commission.

### **Direction to take annual leave**

15. The Pharmacy Guild is seeking to insert the model 'close-down' provision pressed by employer groups as part of the annual leave proceedings.

16. The SDA strongly opposes the insertion of a close-down provision in the Pharmacy Award. It is completely unnecessary and does not meet the modern Award objectives for this award.

17. The SDA does not believe that the Guild's claim for a close-down provision, which would allow them to force employees to take annual leave where they may have to close the pharmacy for a day or two, is not consistent with the genuine needs of industries which currently have a close-down provision, such as manufacturing, where close downs are generally for at least a week or longer and are used for maintenance purposes.

18. The Award already provides the necessary provisions to deal with single or 2 – 3 day closures. There would not be examples in Pharmacy where a close down, as described in the Guild’s submission, would be required for a longer period than this.

19. The decision of the full bench also made several comments in relation to the ‘reasonableness’ of the employer group’s claim:

*[371] First, while we accept that a close-down provision may be included in modern awards, it is clear from the terms of s.93(3) that an award provision requiring an employee to take paid annual leave in such circumstances is only permitted “if the requirement is reasonable”. We are not satisfied that the model term proposed is “reasonable” in the sense contemplated by s.93(3).*

*[372] The model term is very broadly expressed and is capable of being applied in a manner not contemplated in the type of annual close-down provisions traditionally provided in awards, in particular:*

- (i) there is no restriction on the number of times a close-down can occur in a 12 month period; and*
- (ii) there is no restriction on the duration of the close-down—it could be for a single day, a week or a number of weeks.*

*[373] Further, given the breadth of the model term we are not persuaded that a four week notice period is reasonable.*

20. The SDA agrees with the comments of the Commission and submits that a clause of this nature would not be reasonable in the Pharmacy Industry Award.

21. The Guild also submits that ‘an annual close down also benefits employers by providing a mechanism through which they may reduce leave liability, which in turn has a positive impact on productivity, employment and the regulatory burden’.

22. The decision of the FWC states that:

*[380] Third, in support of the Employer Group’s claim, Ai Group and ACCI pointed to the desirability of employees taking leave and that the proposed model term would provide a mechanism by which employers can reduce their leave liability. We have*

*addressed these issues in the context of our consideration of the Employer Group's "excessive leave" claim.*

23. The full bench clearly indicates that this issue has been dealt with in their decision to grant the "excessive leave" claim. It is unnecessary for the Award to also contain a close down provision for the purpose of reducing the leave liability for employers.
24. The Pharmacy Guild submits that 'a close down provision would enable an employer to close down on days such as Easter Sunday, Christmas day and Boxing day that are not declared public holidays, and to direct employees to take annual leave'.
25. The provision pressed by employer groups as part of the annual leave proceedings provides that a public holiday that falls within a close down is not counted as a day of annual leave and shall be paid as a public holiday in accordance with the NES.
26. Clause 31.2 of the Award currently provides for the ability for an employer and employee to agree to substitute another day for a public holiday so an employer can already effectively deal with closure on a public holiday or one of the days listed above which is not the declared day by substituting the day.
27. There is no need for a close down provision to deal with public holidays or closures of single days or 2-3 consecutive days.
28. The SDA strongly opposes the insertion of a close-down provision and submits that this claim should be dealt with as a substantive issue and referred to a Full Bench for determination. The SDA will provide further, more comprehensive submissions regarding this claim when directed.

### **Annualised Salary for Pharmacy Assistants**

29. The Guild submits that the annualised salary provision be extended to include Pharmacy Assistants (currently Pharmacists only).

30. The SDA strongly opposes extending this provision to Pharmacy Assistants as this is not an appropriate form of safety net remuneration for employees classified as Pharmacy Assistants.
31. Annualised salaries were reviewed during the Part 10A Award Modernisation Process in 2008 by the AIRC and again during the 2012 Award Review. The decision of the Commission was that it was not appropriate to extend the annualised salary provision to employees other than Pharmacists.
32. The SDA opposes the application by the Guild to extend annualised salaries to employees other than Pharmacists and seeks that this be referred to a Full Bench and be dealt with as a substantive issue. The SDA will provide more comprehensive submissions in reply to this issue when directed.

#### **Minimum 90 minute shift for part-time and casual school students**

33. The Guild is seeking to reduce the minimum shift provision for part-time and casual school students from 3 hours to 90 minutes.
34. The SDA opposes this variation to the Award and notes that this has been referred to the Part-time and Casual Full Bench.
35. The SDA will make further submissions in relation to this issue as per the directions of the Part-time and Casual Full Bench.

#### **Penalty Rates and Public Holidays**

36. The Guild is seeking to change the weekend and public holiday penalty rates.
37. The SDA strongly opposes this application and notes that this is currently before the Penalty Rates Full Bench.
38. The SDA will continue to respond to these claims as per the directions of the Penalty Rates Full Bench and Public Holidays Full Bench.