

s. 156 - Four Yearly Review of Modern Awards

Pharmacy Industry Award 2010

AM2014/209

Joint Submission

Revised Plain Language Draft of 21 April 2016

By



Shop Distributive and Allied Employees' Association (SDA)

Association of Professional Engineers, Scientists and Managers, Australia (APESMA)

Health Services Union (HSU)

Dated: 13 May 2016

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1. The Shop Distributive and Allied Employees' Association (SDA), the Association of Professional Engineers and Scientists Australia (APESMA) and the Health Services Union (HSU) make these submissions on the – Pharmacy Industry Award – Plain Language Draft (21 April 2016) published as an attachment to the Commission's report on the plain language modern awards pilot in accordance with the Directions issued by the President on 27 April 2016¹.
2. These submissions also contain an outline of the substantive claims the union parties are still pursuing. Attached to these submissions are Draft Determinations based on the Pharmacy Industry Award Revised Exposure draft – 9 October 2015².

GENERAL COMMENTS ON PROPOSED PLAIN LANGUAGE CLAUSES

3. The interested union parties are in favour of a Pharmacy Industry award that is easy to understand. We were hoping that the user testing process would test proposed clauses with a broad and representative group of employees and employers. We were also hopeful that the user testing would test people's understanding of how pharmacy specific clauses operated. Unfortunately, the user testing Plain Language Award Pilot conducted by the Wallis group (Wallis Report)³ and the Supplementary Information⁴ on this Report indicate that the proposed clauses were tested on a very small group of people and that they also seem to have been tested for what words are preferred – not people's understanding of the clauses.
4. We see the primary reason for conducting an exercise to create a plain language award as one where the award is rewritten into terms that are easier to understand – not necessarily terms that people prefer. In light of the lack of testing for understanding we are unsure if the proposed clauses will assist users to better understand their rights and obligations. However, we will comment on these proposals as best we can.

¹ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am2014209-dirs-270416.pdf>

² <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/Revised-exposure-draft-pharmacy-09Oct15.pdf>

³ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/AM2014209-report-FWC-210416.pdf>

⁴ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/AM2014209-corr-fwc-070516.pdf>

5. In this submission the union interested parties have provided comment on proposed 'Part A' clauses only because we are aware that the proposed 'Part B' clauses will be the subject of wider discussions amongst a larger group of interested parties. We believe that any comments we make at this stage in relation to these clauses may cause confusion and frustrate the process of reaching resolution on plain language award provisions. Of course, we would seek to be involved in the wider discussions on the proposed 'Part B' clauses when these discussions take place.
6. In these submissions we have predominately compared the proposed 'Part A' clauses contained in the Commission's Report from Plain Language Modern Award Pilot dated April 2016⁵ to the 9 October 2015 Exposure Draft. We have only compared clauses to the existing Pharmacy Industry Award where we believe the proposed clause changes the legal intent. We have not compared the proposed clauses in the Wallis Report⁶. We do however, make some comments regarding the Wallis Report in these submissions.
7. We also note that in the Statement⁷ of Justice Ross issued on 22 September 2015 that:

*[3] The Pilot will involve the Commission engaging the services of a plain language expert to redraft the Pharmacy Award. **The expert will be instructed to redraft clauses without altering their legal effect.** The plain language draft will then be user-tested by individuals covered by the award.*

(Emphasis added)

8. We have identified re-drafted clauses which have changed the legal effect of the current Award. In commenting on the proposed new plain language clauses we also note that there are still outstanding matters with the Exposure Draft of 9 October 2015 that still need to be addressed and resolved. We request that the Commission establish a process for resolving these matters as soon as possible so substantive

⁵ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/AM2014209-report-plainlanguage-FWC-210416.pdf>

⁶ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/AM2014209-report-FWC-210416.pdf>

⁷ [2015] FWC 6555, 22 September 2015

claims can be addressed and the finalisation of the review of this Award achieved. Some matters still outstanding with the Exposure Draft include casual loading, minimum and ordinary hours definitions and overtime.

9. At this stage of the process we are only able to make provisional comments on the proposed Part A plain language clauses because a redrafted version of the Exposure draft containing these plain language provisions has not yet been provided. Consequently, we do not know how the plain language clauses relate to those that are not subject to the plain language review or are contained Part B. We reserve our rights to further comment when a full draft containing all clauses including the proposed plain language clauses is provided.
10. Some of the proposed Part A clauses contain 'Examples' and 'Notes'. We are aware of the Decision of the Full Bench⁸ concerning various matters associated with the drafting of Group 1A and B awards including the use of examples and notes. In this Decision the Full Bench said

[35] At the hearing on 18 November 2014 the Commission foreshadowed an approach whereby it would publish two documents – the legal instrument, being the modern award as reviewed, and an annotated version of each modern award. The legal instrument would not contain summaries of NES entitlements or links to various legislation, such as the proposal in relation to pay slips. The second document will be an annotated version of each award, published by the administrative arm of the Commission and will contain summaries of NES entitlements and links to various legislative provisions. Interested parties will be consulted as to the terms of annotated awards to be published by the Commission.

[36] There was general agreement in relation to the proposal to publish an annotated version of each modern award and all parties sought to be

⁸ [2014] FWCFB 9412

included in the consultation process. We propose to adopt the course foreshadowed at the hearing on 18 November 2014.

11. In the same Decision the Full Bench also said:

[59] The exposure drafts have incorporated the use of a select number of examples to provide additional guidance to employers and employees as to the operation and interpretation of award provisions.

[60] A number of parties opposed to the inclusion of examples in the exposure drafts. Business SA and the AFEI submitted that the use of a select number of examples did not advance the objective of modern awards to be 'simple and easy to understand'²² and that by extending the length of the award with examples, the modern award objective would be undermined. ABI and New South Wales Business Chamber Ltd submitted that a solution to this issue would be to insert a hyperlink to the example as opposed to being in the body of the instrument itself.

[61] Some parties also submitted it was not clear which examples would be included, how many and whether they would be regarded as terms of an award.²³ Business SA asserted the inclusion of examples in a modern award as a legal instrument would have a binding effect and that managing and updating such examples would be an inefficient use of the Commission's limited time and resources.²⁴ Similarly, the Horticulture Taskforce noted examples did not reflect existing practice and past examples had not been reintroduced as part of the Part 10A award modernisation process in 2012.²⁵

[62] Conversely, the Ai Group did not oppose the inclusion of examples within the awards, provided the examples were relevant and accurate.²⁶

[63] In our view the inclusion of relevant and accurate examples will make modern awards easier to understand and for that reason will be included where appropriate.

12. We have concerns about the enforceability of such provisions and as a result, we would prefer that 'Examples' and 'Notes' are not included in the 'legally' enforceable document. We would be happy to see them in an 'annotated' version of the Award.
13. One matter of significant concern to the union interested parties with the proposed Part A clauses is that there seems to be some confusion with the use of the terms 'minimum rates of pay', 'hourly rates of pay' and 'ordinary hours of pay'. Careful consideration should be given to which is the appropriate term to use when utilising these terms and a definition of each of these terms should be included in the definitions so that users can fully understand the application of these important terms.

COMMENTS ON PROPOSED CLAUSES FROM PLAIN LANGUAGE DRAFT - 21 APRIL 2016

Table of Contents

14. We generally agree that the arrangement of the clauses provided in the table of contents is better than the current award and the exposure draft. We believe that Clause 35 Protection against pay reduction, should remain in Part 1 of the Award because it is important that the statement regarding employees not suffering a reduction in take home pay as a result of a variation to the award is at the front of the award where it is more likely users will see it. This is important because employees and employers would not be likely to search for a clause such as this in the Award.
15. The clause regarding employees not suffering a reduction in take home pay is contained in the current award at Clause 2.4 and the Exposure Draft at Clause 1.5. We believe that the placement of this clause should remain in Part 1 of the Award.

Clause 2 - Definitions

16. As provided in previous submissions⁹ we believe that the definitions should be included in the body of the award, preferably located at the front of the Award and not contained in an attached Schedule.

⁹ AM2014/209, Submission in response to the exposure draft, Pharmacy Industry Award, 28 January 2015, APESMA PN 39, SDA PN 3-5.

Clause 3 – The National Employment Standards and this award

17. We note that the Plain Language Draft of Clause 3.3 and 3.4 has taken into account the wording which had been agreed to by parties during discussions regarding the exposure draft. We don't have any issues with the plain language draft of clause 3.3 and 3.4, however, given feedback from users regarding the use of referencing we believe that the words '*for the purposes of 3.3*' which are contained in clause 3.4 are not necessary.
18. As this clause is a Part B clause, we may make additional comments during the Part B process once directions are issued.

Clause 4 Coverage

19. We believe that the coverage clause in the plain language draft is harder to understand and could create more confusion than clause 3 of the exposure draft. We also have concerns about the accuracy of the coverage clause and that the altered wording will cause confusion between coverage of the Pharmacy Industry Award and coverage of the Health Professionals Award.
20. We would like the opportunity to discuss these concerns further at a Conference. Although we would like to discuss clause 4 in more detail at conference, one suggestion we would make is in relation to Clause 4.5 of the Plain language draft. The wording of this clause is confusing and doesn't address the concerns of user testers. We would suggest the following more concise alternative wording:

4.5 *If you can't find a classification in this award that covers an employee they may be covered by another modern award.*

Clause 5 – Effect of variations made by the Fair Work Commission - Part B

21. We will address as part of the Part B process.

Clause 6 – Award flexibility for individual arrangements - Part B

22. We will address as part of the Part B process.

Clause 7 Facilitative provisions for flexible working practices

23. We will address this further as part of the Part B process when directed, however, we believe that whilst the plain language draft reflects the wording agreed to between the parties as part of the Exposure Draft process, clause 5.1 of the exposure draft is much clearer and simpler than clause 7.1 of the plain language draft.

Clause 8 Types of employment

Clause 8.2

24. Clause 8.2 may be clearer with the following wording:

'Before an employee starts work the employer must inform the employee, in writing, of the terms of employment including whether they are full time, part time or casual'

Clause 8.3 Moving between types of employment

25. We have some concerns about the proposed clause 8.3. Firstly, this clause should be placed after clause 11, that is, following all of the type of employment clauses.
26. We also have some concerns regarding the changed wording. We believe the following wording more accurately reflects the current clause:

8.3 b) Moving to part-time employment does not affect continuity of service or any leave entitlements.

8.3 c) A full-time employee who is granted their request to be given part-time work may return to full-time work at a future date agreed to in writing with the employer.

Clause 9 Full-time employment

27. The plain language draft has inserted the word 'ordinary' into this clause, which is not included in the current award. As the plain language draft and exposure draft do not define 'ordinary hours' it is difficult to comment on whether the change in wording

creates a change to the legal intent of the clause. This issue comes up throughout the exposure draft and plain language draft as the terms 'ordinary hours' and 'minimum hourly rates' are used without defining what they mean. Definitions and a review of the use of these terms throughout the plain language draft is necessary to ensure it has not changed the legal intent of the award.

28. As this clause is referenced in clause 20 - Overtime, it is important that the use of the term ordinary hours within clause 9.1 doesn't suggest that time worked up to 38 hours per week or 76 averaged over a fortnight do not attract a higher rate of pay regardless of when they are worked.
29. Full-time employment is also subject to a substantive claim by the SDA which will be outlined further in the submissions.

Clause 10 Part-time employment

Clause 10.1 and 10.2

30. We believe that Clause 6.4(a) of the exposure draft is much clearer than Clause 10.1 and 10.2 of the plain language draft and eliminates the need for cross referencing contained in the plain language draft which users have suggested they find confusing.

Clause 10.3 to 10.10

31. We have some concerns that the wording provided in the plain language draft may have the unintended consequence of altering the legal intent of the clause. We submit that either the wording proposed in the exposure draft be retained or that consideration be given to the following suggested wording based on the plain language draft:

10.3 Before a part-time employee starts work the employer must agree with the employee in writing to each of the following:

- a) the number of hours and actual start and finish times to be worked each day;*
- b) the days of the week on which the employee will work;*

c) *when meal breaks may be taken and their duration*

10.4 *The agreement must also provide that:*

a) *the minimum period for which the employee must be rostered to work on any shift is 3 consecutive hours; and*

b) *the employee is notified that any subsequent variation to the agreed terms must be in writing; and*

c) *for each ordinary hour worked, the employee must be paid in accordance with clause 16 – Wages and Clause 21 – Penalty Rates; and*

d) *for each hour worked in excess of the number of agreed hours worked under clause 10.3 must be paid at the overtime rate in accordance to 20.2 (Application of overtime for part-time employees.)*

10.5 *The employer must keep a written copy of the agreement under clause 10.3 and any variation to it and give a copy to the employee.*

10.6 *Subject to clause 10.8, the roster of a part-time employee, but not the number of hours agreed under clause 10.3, may be changed:*

a) *by the employer giving the employee 7 days, or in an emergency 48 hours, written notice of the change; or*

b) *at any time by the employer and employee by mutual agreement.*

10.7 *The roster of a part-time employee must not be changed:*

a) *from pay period to pay period; or*

b) *so as to avoid any award entitlement.*

32. Clauses 10.5 (b) of the plain language draft (amended above at 10.4(c)) needs to make reference to both clause 16 – Wages and Clause 21 – Penalty Rates as ordinary hours can be worked during times that attract the minimum rate or a penalty rate.

33. Clause 10.10 should be contained earlier in the clause as it outlines the maximum daily, weekly and fortnightly maximums a part-time employee can agree to work whether at the time of engagement or as additional hours.

Clause 11 Casual Employment

34. User testing indicated that cross referencing was not preferred. Cross referencing in this clause is unnecessary. The clause should read something like:

An employee that is not a full time or part time employee must be engaged and paid as a casual employee.

35. Clause 11.3 should also clearly say that a casual employee must be rostered to work a minimum of 3 hours.
36. We have raised the issue of the wording relating to the casual loading in previous submissions¹⁰ and this has not been addressed in either the exposure draft or the plain language draft. Casuals must be paid at the ordinary hourly rate, not just the minimum hourly rate, depending on when they work. Therefore, this clause needs to reference both clause 16 – Wages and Clause 21- Penalty Rates.

Clause 12 - Classification

37. We have no comments in relation to Clause 12.

Clause 13 – Ordinary Hours of Work

38. Given the concerns expressed in relation to cross referencing some consideration should be made to stating what is contained in the referenced clause 9.1, that is, work in excess of 38 hours per week or an average of 76 hours per fortnight, rather than providing the reference.

¹⁰ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/AM2014209-sub-SDA-150715.pdf>

39. We also have significant concerns that the changes proposed in the plain language draft have created a substantive change to entitlements. There is also no reference to casual employees in this clause.
40. Clause 13.3 to 13.5 should state that these provisions apply to all employees, as all employees under the current award are entitled to overtime when they work more than 12 hours in one day, outside of the spread of hours 7am to midnight, and when they work a broken shift, that is when hours worked are not continuous.
41. Clause 13.5 of the plain language draft has changed the entitlement to just being applicable to full-time and part-time employees. This is not how the clause is written in the current award or the exposure draft.
42. Clause 13 needs to be reviewed. The wording of Clause 13 also has implications for the SDA's substantive claims currently before the Casual and Part-time Full bench in relation to overtime, which will be outlined further in these submissions.

Clause 14 Rostering arrangements

43. We believe that the rostering clause, particularly in relation to working more than 5 days per week is confusing. We propose the following alternative wording:

14.1 The following rostering arrangements apply to full-time and part-time employees:

- a) employees must be rostered to work ordinary hours in such a way that they have 2 consecutive days off each week or 3 consecutive days off over a two week period.*
- b) employees must not be rostered to work ordinary hours on more than 5 days in a week, unless they are rostered to work ordinary hours on 6 days in one week and not more than 4 days in the following week.*
- c) employees must not be rostered to work (whether ordinary*
- d) hours or overtime) on more than 6 consecutive days;*

e) *employees rostered to work (whether ordinary hours or overtime) on up to 3 Sundays in a 4 week cycle must be rostered to have 3 consecutive days off every 4 weeks, including a Saturday and Sunday.*

44. We also believe that clause 8.3(b) of the exposure draft is clearer and easier to understand than clause 14.3 – 14.7 of the plain language draft, and therefore, the exposure draft clause should be retained.

Clause 15 Breaks

45. Clause 15.1 and 15.2 are more complicated than the exposure draft. Clause 15.1 and 15.2 should be deleted and replaced with:

An employee is entitled to breaks in accordance with the table below.

46. Then the words ‘column 1’ and ‘column 2’ should be deleted from the table so that just the titles remain.

Clause 16 Wages

Clause 16.1

47. The Exposure Draft clause 10.1 is much simpler and easier to understand than the re-drafted plain language clause 16.1. We believe that the exposure draft wording should be retained with the exception that the word ‘ordinary’ be deleted from 10.1.

Clause 16.2

48. The Exposure Draft clause 10.2 is preferable to the plain language clause 16.2 because it is expressed more simply and is easier to understand, particularly the use of the table.

Clause 16.3

49. We also have concerns Clause 16.3. The proposed plain language draft completely misses the point of the intention of this clause. This provision is not meant to define

which level of a course a student is at. The provisions of this clause are meant to indicate which level of the Student Pharmacist pay scale a student pharmacist must be paid at. The Exposure draft is preferable

Clause 16.4

50. Clause 16.4 a) should read:

'The employee will be paid either weekly or fortnightly'.

Clause 16.5

51. Clause 16.5 reflects the agreed wording regarding pay day.

Clause 16.6 and 16.7

52. During the Conference held on 27 April 2016 President Ross indicated that the Fair Work Commission (the Commission) was considering removing the National Training Wage and Supported Wage System provisions from each modern award and placing them into the modern Miscellaneous Award. The SDA is most concerned with this proposal and believes that, if adopted, it would lead to significant confusion and possibly increased lack of award compliance. HSU and APESMA while not directly affected support the SDA in raising this concern.
53. If the Commission decides to take the National Training Wage and Supported Wage System provisions out of each modern award a separate modern Award entitled the National Training Wage Award and the Supported Wage System Award should be created and that reference to these awards be placed in each modern award. Of course, the SDA would seek to be involved in any further discussions on this matter.

Clause 17 Annualised Salary (Pharmacist only)

54. We have not identified any concerns in relation to this clause.

Clause 18 Allowances

55. We believe the note under Clause 18 should be removed and replaced with the wording in 11.1 of the exposure draft.
56. The plain language re-draft of this clause is not simple and easy to understand and does not follow a logical sequence. We propose the following alternative wording:

18 Allowances

18.1 Employers must pay to an employee the allowances the employee is entitled to under this clause. See schedule C for a summary of monetary allowances and method of adjustment.

18.2 Meal allowances

*The employer must pay the employee a meal allowance of **\$17.46** or supply the employee with an adequate meal when:*

- a) the employee has worked 6 or more ordinary hours on any day; **and***
- b) the employee is required to work on that day overtime, or more than 1.5 hours beyond the time at which the employee ordinarily finishes work for the day, unless the hours worked were agreed under clause 10—Part-time employment; **and***
- c) the employee was not advised of the requirement mentioned in subparagraph (ii) on or before the previous day; **and***
- d) the employee cannot reasonably return home for a meal within the period of the meal break.*
- e) Where overtime referred to in clause 18.2(ii) exceeds 4 hours a further meal allowance of \$15.64 must be paid.*

Clause 18.2

57. Clause 18.2 should be rewritten to make it simpler to understand. The following provides some suggested wording:

'18.2 On premise Meal Allowance.

A pharmacist who is required to take a meal break on the premises so as to attend to urgent matters requiring the attention of a pharmacist must be paid an enhanced allowance of 150% of the minimum hourly rate of the pharmacist for the period of the break.

Clause 18.3

58. Clause 18.3 is more complex than the Exposure Draft. Clause 11.2(c) of the Exposure Draft is preferable.

Clause 18.4

59. Clause 18.4 should remove the word 'township' and replace it with:

'where the employee has to move their residence'.

60. There are examples of other Awards such as the Manufacturing Award and the Cement and Lime Award which refer to a transfer requiring 'change of residence' to identify the scope of the clause.

Clause 18.5

61. Clause 18.5 reflects the exposure draft.

Clause 18.6

62. Clause 18.6 reflects the exposure draft, however, we believe citing the clause number within clause 18.6(a) if unnecessary.

63. **Clause 20**

64. We have significant concerns in relation to clause 20, the overtime provision, in the plain language draft. The clause has significantly changed the overtime entitlement in the Award.

65. There have now been five drafts of the Pharmacy Industry Award released as part of the 4 yearly award review. The overtime clause in every draft is incorrect and has

changed the legal effect of the clause, severely reducing the entitlement employees currently have to overtime payments.

66. We note from the Statement¹¹ of Justice Ross on 8 December 2014 and the notes preceding the Exposure Draft that:

'The exposure drafts do not incorporate any substantive changes and do not represent the concluded view of the Commission on any issue' and 'This exposure draft does not seek to amend any entitlements under the Pharmacy award but has been prepared to address some of the structural issues identified in modern awards.'

67. We also note that in the Statement¹² of Justice Ross issued on 22 September 2015 that

*[3] The Pilot will involve the Commission engaging the services of a plain language expert to redraft the Pharmacy Award. **The expert will be instructed to redraft clauses without altering their legal effect.** The plain language draft will then be user-tested by individuals covered by the award.*

(Emphasis added)

68. We are concerned that the continual re-draft of the Award without proper consideration of the changed legal effect of clauses will result in a watering down of entitlements.
69. We are also concerned that the re-drafts of the overtime clause which are incorrect in both the exposure draft and the plain language draft will have the potential to influence the decision of the Full Bench as it may see the re-drafted clause as the accepted interpretation of legal effect of the current Award. We strongly submit that the clause has not been interpreted correctly when it has been re-drafted.

¹¹ [2014] FWC 8837, 8 December 2014

¹² [2015] FWC 6555, 22 September 2015

70. In previous submissions we have indicated that issues pertaining to overtime should be heard by the Casual and Part-time Full Bench. Given the concerns outlined above we now respectfully seek that the drafting and technical issues we identify below be heard during the Award stage.
71. The current Award provides overtime for **all** employees when they work:
- in excess of 38 hours per week or an average of 76 over two weeks
 - in excess of 12 hours per day
 - outside the spread of hours, that is, hours worked between midnight and 7am
 - a split shift, that is, where hours worked are not continuous, except for meal breaks
72. The plain language draft only provides payment of overtime for hours worked in excess of 38 per week (or 76 per fortnight), 12 hours per day and outside the spread of hours for full-time employees, and not part-time and casual employees. This is not what the current substantive entitlement is in the current award.
73. The provision for part-time employees is not complete and the clause has completely left out casual employees.
74. We also raised similar concerns in previous submissions because we believe that the exposure draft has also made a substantive change to the entitlement to overtime for all types of employment. We rely on this submission and all previous union submissions provided throughout the process in relation to the exposure draft.
75. Consistent with previous submissions¹³ regarding the exposure draft, the overtime provision should also reference Exposure draft clause 8.3(a) because payment of overtime also occurs when an employee works outside the “ordinary” parameters set by the rostering provisions contained in 8.3(a). Hours worked outside of these rostering

¹³ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/AM2014209-sub-SDA-150715.pdf>, paragraph 36-39.

parameters should attract overtime and this is what is currently being paid when employees work outside of these rostering provisions.

76. To address this anomaly clause 8.3(a) should also be included in the overtime clause 13.2(a) of the exposure draft (For the plain language draft Clause 14.1 should be referenced in the overtime clause 20). This provision applies to all permanent employees.
77. This clause needs to be reviewed for inconsistencies with the current award and considered in light of the claim before the Casual and Part-time Full Bench.
78. We also have concerns in relation to the deletion of clause 13.1 Reasonable overtime contained in the exposure draft and current award. We submit that the reasonable overtime clause needs to be retained. The Wallis Report¹⁴ indicated that employers and employees had a very limited awareness of the NES and when they were aware had a very vague understanding of the provisions. Those tested also indicated a preference for the NES provisions to be contained in the Award.
79. We believe that reasonable overtime should be explained as part of the overtime provision so that employees are aware of their right not to work overtime if it is unreasonable.
80. This is also consistent with submissions made by the SDA in response to the Plain Language Draft on 10 December 2015¹⁵.

Clause 20.3

81. The payment of overtime clause in the Exposure Draft, Clause 13.3 is clearer and easier to understand than Clause 20.3 of the plain language draft. The exposure draft clause should be retained.

Clause 20.4

¹⁴ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/AM2014209-report-FWC-210416.pdf>, p 37

¹⁵ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/AM2014209-sub-plainlanguage-SDA-101215.pdf> PN 79-84

82. We note the recent Full Bench Decision regarding Time off in lieu of overtime¹⁶ and that the decision indicates that draft variation determinations in relation to 21 of the 23 modern awards that contain a penalty basis TOIL term will be published soon. Therefore, we would like to reserve our right to comment once this draft determination has been published by the Full Bench.

Clause 21 Penalty Rates

83. Clause 21 of the Plain language draft is much more complicated to navigate than clause 14 of the Exposure Draft. The Exposure draft clause should be retained.

Schedule A Classification Definitions

84. We believe the classification definitions in the plain language proposal are more complex and not as easy to understand as the exposure draft. Schedule A of the exposure draft should be retained.

Schedule D & E

85. See submission at paragraph 52 for comments in relation to Schedule D and E.

Part B Clauses

86. The remaining clauses all fall under Part B. As these clauses will be subject to further directions we reserve our right to make comments in relation to these when directed to do so.

¹⁶ [2016] FWCFB 2602

UNION REMAINING SUBSTANTIVE MATTERS

87. The following substantive matters are still being pursued by the union parties.

SDA SUBSTANTIVE MATTERS STILL BEING PURSUED

Overtime

88. The SDA seeks to vary clause 26.2 (a)(i) Overtime, to ensure that there is no ambiguity as to the payment of overtime for all permanent and casual employees performing work which goes beyond the times and patterns considered 'ordinary' as per the award.
89. This matter is currently being dealt with as part of the Casual and Part-time Full Bench.
90. The Draft determination filed by the SDA on 17 July 2015 in response to directions issued as part of the Casual and Part-time Full Bench has been provided at Appendix 1.

Full-Time Employees

91. The current clause simply states:

Full-time Employees

A full-time employee is an employee who is engaged to work an average of 38 hours per week.

92. The SDA is seeking to vary clause 6.3 Full-time employees of the Exposure draft, to include the requirement for agreement in writing at the time of engagement on a regular pattern of work and the requirements for variation to the pattern of work, which is contained in the current Award for part-time employees at clause 12.2, 12.3 and 12.4 and the exposure draft at Clause 6.4.
93. This variation will ensure that all permanent employees are afforded the same protections regarding regular patterns of work.

94. The SDA also seeks to vary the full-time employment clause to include a minimum shift of 4 hours for full-time employees.
95. There is currently no minimum shift entitlement for full-time employees. Most pre-modern pharmacy awards contained minimum shift provisions for all employees, including full-time employees.
96. A Draft determination for this proposed variation has been based on the wording we have provided in this submission for part-time employees, in response to the plain language draft.
97. The draft determination can be found at Appendix 2.

Junior Rates

98. The SDA seeks to vary Clause 18 of the Award (Clause 10.2 of the exposure draft) to provide for the payment of junior rates to Pharmacy Assistant Level 1 employees only.
99. Where an employee is performing work at a higher classification and is recognised as having the necessary skills and competencies applicable for a higher classification they should be paid the full rate of pay to reflect these competencies.
100. Given the degree of skill, knowledge and responsibility required of employees classified above Level 1, it is inappropriate for junior rates to be applied.
101. A Draft determination for this proposed variation can be found at Appendix 3.

Blood and Bone Marrow Donor Leave – New Clause

102. The SDA is seeking to include a Blood and Bone Marrow Donor Leave clause into the Award.
103. Blood donation and Bone Marrow donation are essential community services which need to be supported through workplace entitlements to ensure people are able to make this donation.
104. The lack of minimum entitlements for this purpose restricts employees from being able to make these vital donations.

Blood Donor Leave:

105. The new clause would provide all permanent employees with 2 hours paid leave on a maximum of 4 occasions per year for the purpose of donating blood, and would be subject to certain notification and evidence requirements.
106. Casual employees would be entitled to be absent for 2 hours, up to 4 occasions per year without pay.

Bone Marrow Donor Leave:

107. The new clause would provide up to a maximum 4 days paid leave, without deduction of pay, to undertake any procedure necessary for the donation of bone marrow including blood tests for the purpose of becoming a registered donor, pre-donation procedures and the time required to be taken when a bone marrow donation is given.
108. Casual Employees would be entitled to be absent for the equivalent time provided to permanent employees without pay.
109. A Draft determination for this proposed variation can be found at Appendix 4.

APESMA SUBSTANTIVE MATTERS STILL BEING PURSUED

Work Value Increase in Pharmacist Rates of Pay

111. APESMA believes there have been significant changes in the nature of the work; the skill and responsibility requirements of the work done by pharmacists and the conditions under which this work is done since the work value of these classifications was last considered by the Commission.
112. Consistent with the provisions of s. 134, s. 135 and particularly s. 156 (3) and (4) (a), (b), and (c) of the *Fair Work Act 2009* APESMA is seeking an increase in the minimum rates of pay for the Intern, Pharmacist, Experienced Pharmacist, Pharmacist in Charge and Pharmacy Manager rates of pay contained in Clause 10.1 of the Exposure Draft.
113. As part of this work value claim we are also seeking the introduction of a new classification of Accredited Pharmacist. This is a new qualification that has been established for pharmacists in recent years and we believe the current classification structure does not adequately take into account the skill level and responsibility these people have.
114. APESMA will provide further submissions and evidence in support of this claim when required by the Commission.
115. A Draft Determination for this proposed variation can be found at Appendix 5

CPD Training and Registration

116. APESMA seeks the inclusion of a provision in the Award that provides for employers to provide financial assistance for employees to undergo CPD training so they can maintain their Registration as a Pharmacist in accordance with the CPD requirements of the Pharmacy Board of AHPRA. Such a benefit would be provided to part-time pharmacists on a pro-rata basis.
117. We are also seeking employer assistance in the payment of Registration fees so an employee Pharmacist can continue to practice as a pharmacist. Once again we would seek to have this benefit provided to part-time employees on a pro-rata basis.

118. APESMA will provide further submissions and evidence in support of this claim when required by the Commission.

119. A Draft Determination for this proposed variation can be found at Appendix 6

HSU SUBSTANTIVE MATTERS STILL BEING PURSUED

120. The HSU has no substantive claims that they are pursuing for this Award.

Katie Biddlestone

National Industrial Officer

SDA

Jacki Baulch

Senior Industrial Office

APESMA

Leigh Svendsen

Senior National Industrial Officer

HSU

MA000012 PRXXXXXX

FAIR WORK COMMISSION

DRAFT DETERMINATION

Fair Work Act 2009

s156 – 4 Yearly reviews of modern awards

4 yearly review of modern awards – Casual employment
(AM2014/197)

PHARMACY INDUSTRY AWARD 2010

MA000012

Pharmacy operations

PRESIDENT ROSS

MELBOURNE, DD MM 2016

Review of modern awards to be conducted.

A. Further to the Decision and Reasons for Decision <<DecisionRef>> in <<FileNo>>, it is determined pursuant to section 156(2)(b)(i) of the *Fair Work Act 2009*, that the *Pharmacy Industry Award 2010* be varied as follows.

1. Delete Clause 13.2 of the Exposure Draft issued by the Commission on 8 December 2015 and insert in lieu thereof the following:

13.2 Definition of overtime

- (a) For a full-time employee, overtime is paid for additional hours worked at the direction of the employer in excess of the ordinary number of hours prescribed in clause 8.2 and outside the rostering provisions contained in 8.3.
- (b) For a part-time employee, overtime is paid for additional hours worked at the direction of the employer in excess of the ordinary

number of hours prescribed in clause 8.2 or as prescribed in 6.4, and outside the rostering provisions contained in clause 8.3.

- (c) For a casual employee, overtime is paid for hours worked at the direction of the employer in excess of the ordinary number of hours prescribed in clause 8.2(a), 8.2(b), 8.2(c).
- (d) Casual employees shall receive overtime payments for work in excess of 38 hours per week.

B. This determination comes into force on and from DD MM 2016.

PRESIDING MEMBER

MA000012 PRXXXXXX

FAIR WORK COMMISSION

DRAFT DETERMINATION

Fair Work Act 2009

s156 – 4 Yearly reviews of modern awards

4 yearly review of modern awards

(AM2014/197)

PHARMACY INDUSTRY AWARD 2010

MA000012

Pharmacy operations

PRESIDENT ROSS

MELBOURNE, DD MM 2016

Review of modern awards to be conducted.

A. Further to the Decision and Reasons for Decision <<DecisionRef>> in <<FileNo>>, it is determined pursuant to section 156(2)(b)(i) of the *Fair Work Act 2009*, that the *Pharmacy Industry Award 2010* be varied as follows.

1. Delete Clause 6.3 of the Exposure Draft issued by the Commission on 9 October 2015 and insert in lieu thereof the following:

6.3 Full-time employment

6.3 (a) An employee who is engaged to work 38 hours per week (or 76 hours averaged over 2 consecutive weeks) is a full time employee.

6.3 (b) Before a full-time employee starts work the employer must agree with the employee in writing to each of the following:

- (i) the number of hours and actual start and finish times to be worked each day;

- (ii) the days of the week on which the employee will work;
- (iii) when meal breaks may be taken and their duration

6.3(c) The agreement must also provide that:

- (i) the minimum period for which the employee must be rostered to work on any shift is 4 consecutive hours;
- (ii) the employee is notified that any subsequent variation to the agreed terms must be in writing;
- (iii) for each ordinary hour worked, the employee must be paid in accordance with Clause 16 – Wages and Clause 21 – Penalty Rates.

6.3(d) The employer must keep a written copy of the agreement under clause 6.3(b) and any variation to it and give a copy to the employee.

6.3(d) The roster of a full-time employee may be changed:

- (a) by the employer giving the employee 7 days, or in an emergency 48 hours, written notice of the change; or
- (b) at any time by the employer and employee by mutual agreement.

6.3(e) The roster of a full-time employee must not be changed from pay period to pay period, or so as to avoid any award entitlement.

B. This determination comes into force on and from DD MM 2016.

PRESIDING MEMBER

MA000012 PRXXXXXX

FAIR WORK COMMISSION

DRAFT DETERMINATION

Fair Work Act 2009

s156 – 4 Yearly reviews of modern awards

4 yearly review of modern awards
(AM2014/197)

PHARMACY INDUSTRY AWARD 2010
MA000012

Pharmacy operations

PRESIDENT ROSS

MELBOURNE, DD MM 2016

Review of modern awards to be conducted.

A. Further to the Decision and Reasons for Decision <<DecisionRef>> in <<FileNo>>, it is determined pursuant to section 156(2)(b)(i) of the *Fair Work Act 2009*, that the *Pharmacy Industry Award 2010* be varied as follows.

1. Delete Clause 10.2 of the Exposure Draft issued by the Commission on 9 October 2015 and insert in lieu thereof the following:

10.2 Junior employees

- (a) A junior employee, aged under 21, who is employed as a Pharmacy Assistant Level 1 will be paid the following percentage for the Pharmacy Assistant Level 1 classification in clause 10—Minimum weekly wages:

Age	% of weekly wage
------------	-------------------------

Under 16 years of age	45
16 years of age	50
17 years of age	60
18 years of age	70
19 years of age	80
20 years of age	90

(b) Juniors, aged under 21, employed to work in all other pharmacy assistant classifications will be paid in accordance with the wage rates prescribed in Clause 10 Wages and Clause 21 Penalty Rates.

B. This determination comes into force on and from DD MM 2016.

PRESIDING MEMBER

MA000012 PRXXXXXX

FAIR WORK COMMISSION

DRAFT DETERMINATION

Fair Work Act 2009

s156 – 4 Yearly reviews of modern awards

4 yearly review of modern awards
(AM2014/197)

PHARMACY INDUSTRY AWARD 2010
MA000012

Pharmacy operations

PRESIDENT ROSS

MELBOURNE, DD MM 2016

Review of modern awards to be conducted.

A. Further to the Decision and Reasons for Decision <<DecisionRef>> in <<FileNo>>, it is determined pursuant to section 156(2)(b)(i) of the *Fair Work Act 2009*, that the *Pharmacy Industry Award 2010* be varied as follows.

1. Insert a new clause Blood Donor Leave and Bone Marrow Donor Leave:

BLOOD DONOR LEAVE

- x.1 A permanent employee will be entitled to up to 2 ordinary hours' paid Blood Donor Leave, without deduction of pay, on a maximum of four occasions per year for the purposes of donating blood.
- x.2 The employee shall notify his or her Employer as soon as possible of the time and date upon which they are requesting to be absent for the purpose of donating blood.
- x.3 Absences will be arranged by mutual agreement between the employee and employer, taking into account the requirements of the business.

- x.4 Upon request from the Employer proof that would satisfy a reasonable person of the attendance and duration of the absence will be required.
- x.5 Casual employees are entitled to be absent for 2 hours, up to 4 occasions per year without pay, for the purposes of donating blood.

BONE MARROW DONOR LEAVE

- x.1 A permanent employee will be entitled to up to 2 ordinary hours paid leave, without deduction of pay, on a maximum of 2 occasions per year to undertake blood tests for the purpose of becoming a registered bone marrow donor.
- x.2 A permanent employee will be entitled to a maximum of 3 days paid leave, without deduction of pay, on any occasion that a bone marrow donation is given.
- x.3 An employee will notify the employer as soon as possible of the time and date upon which they are requesting to be absent and as far as possible, will make arrangements for a bone marrow donation at a mutually agreed time, taking into account the requirements of the business.
- x.4 Upon request from the Employer proof that would satisfy a reasonable person of the attendance and the duration of the blood tests and bone marrow donation will be required.
- x.5 Casual Employees will be entitled to be absent for the equivalent time provided to permanent employees without pay.

- B.** This determination comes into force on and from DD MM 2016.

PRESIDING MEMBER

FAIR WORK COMMISSION

DRAFT DETERMINATION

Fair Work Act 2009

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

Pharmacy Industry Award 2010

[MA000012]

Pharmacy industry

COMMISSION MEMBER

MELBOURNE, XX MM 2016

Further to the Decision and Reasons for Decision <<DecisionRef>> in AM2014/209, it is determined pursuant to section 156(2)(b)(i) of the *Fair Work Act 2009*, that the *Pharmacy Industry Award 2010* be varied as follows:

[A] By deleting clause 10 1 (a) of the Pharmacy Industry Award 2014 Exposure Draft (9 October 2015 version) and replacing it with:

[1] 10.1 Adult Employees

- (a) An employer must pay adult employees the following minimum wages for ordinary hours worked by the employee:

Employee classification	Minimum weekly rate \$	Minimum hourly rate \$	Casual hourly rate \$
Pharmacy Assistants			
Level 1	721.50	18.99	23.74
Level 2	738.70	19.44	24.30
Level 3	764.90	20.13	25.16

Level 4	796.30	20.96	26.20-
Pharmacy Students			
1st year of course	721.50	18.99	23.74
2nd year of course	738.70	19.44	24.30
3rd year of course	764.90	20.13	25.16
4th year of course	796.30	20.96	26.20
Pharmacy Interns			
First half of training	994.37	26.17	32.71
Second half of training	1013.49	26.67	33.34
Pharmacist	1032.61	27.17	33.97
Experienced Pharmacist	1147.35	30.19	37.74
Pharmacist in Charge	1376.82	36.23	45.29
Accredited Pharmacist	1606.29	42.27	52.84
Pharmacist Manager	1606.29	42.27	52.84

[B] By including a new clause A.10 and renumbering clause A.10 to A.11 in Schedule A – Classification Definitions of the Pharmacy Industry Award 2014 Exposure Draft (9 October 2015 version) as follows:

[1] **Schedule A – Classification Definitions**

A.10 Accredited Pharmacist is a pharmacist who is the holder of an Accredited Pharmacist qualification who also undertakes professional services such as Home Medicine Reviews

A.11 Pharmacist Manager is a pharmacist who is responsible to the proprietor for all aspects of the business.

The determination shall operate on and from XX MM 2016

BY THE COMMISSION

FAIR WORK COMMISSION

DRAFT DETERMINATION

Fair Work Act 2009

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

Pharmacy Industry Award 2010

[MA000012]

Pharmacy industry

COMMISSION MEMBER

MELBOURNE, XX MM 2016

Further to the Decision and Reasons for Decision <<DecisionRef>> in AM2014/209, it is determined pursuant to section 156(2)(b)(i) of the *Fair Work Act 2009*, that the *Pharmacy Industry Award 2010* be varied as follows:

[A] By inserting a new Clause 10.7 of the Pharmacy Industry Award 2014 Exposure Draft (9 October 2015 version):

10.7 Pharmacist Training and Registration

- (a) In furtherance of the Registered Pharmacist's progress towards the acquisition of competencies there must be an annual review process. As a part of this, progress for the previous 12 months must be reviewed and objectives for the next 12 months should be mutually agreed, and set out in writing. This will also include any necessary training which the employee will be expected to undertake in order to maintain Registration as a pharmacist in accordance with the Pharmacy Board of the Australian Health Practitioner Regulation Authority requirements for Continuing Professional Development. The cost of such training must be borne by the employer. Part-time employees will be provided such assistance on a pro-rata basis.
- (b) In order for Pharmacist to maintain their Registration as a pharmacist in accordance with the Pharmacy Board of the Australian Health Practitioner Regulation Authority requirements the pharmacist's employer must pay their

annual Registration fee. Part-time employees will be provided with such assistance on a pro-rata basis.

The determination shall operate on and from XX MM 2016

BY THE COMMISSION