

s. 156 - Four Yearly Review of Modern Awards

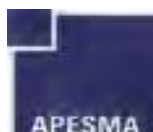
Pharmacy Industry Award 2010

AM2014/209 and AM2016/15

Joint Submission

Plain language draft – Pharmacy Industry Award

By



Shop Distributive and Allied Employees' Association (SDA)

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

Health Services Union (HSU)

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Lodged by:

Katie Biddlestone
SDA

katie@sda.org.au

Jacki Baulch
APESMA

jbaulch@professionalsaustralia.org.au

Leigh Svendsen
HSU

leighs@hsu.net.au

1. The Shop Distributive and Allied Employees' Association (SDA), the Association of Professional Engineers and Scientists Australia (APESMA) and the Health Services Union (HSU) makes these submissions on the – Pharmacy Industry Award – Plain Language Draft (10 November 2016) in accordance with the directions issued by the President in correspondence on 19 December 2016.

SUBMISSIONS IN RESPONSE TO DRAFTERS COMMENTS ON PAGE 9 OF SUMMARY – PART-TIME

2. There have been several issues raised in both written submissions and at the Full Bench hearing in relation to the operation of the current part-time clause and the changes arising from the plain language draft.
3. Page 8 and 9 of the summary of submissions outline parties concerns in relation to a number of issues identified with the plain language draft.
4. The first issue is in relation to clause 10.3. The parties believe that the new wording restricts the entitlements and the word 'only' should be removed. The drafter suggests that the word 'only' could be removed. The union parties submit that 'only' be removed.
5. The next issue relates to the drafters comments that clause 10.4 and 10.6 need to be separate so that one states what must be agreed and one states what must be included in the agreement. The union parties submit that the redrafting of the current part-time clause has led to changes to the legal effect and also identified some issues with the current award. The union parties have provided a draft clause which seeks to address the issues raised in written submissions and discussed at the Full Bench hearing.
6. The plain language draft has removed the 3 hour minimum shift as an obligation and instead only retained it in reference to what is stated in the agreement. The interested parties have made submissions that this needs to be included as a legal obligation.
7. The plain language draft has also omitted that an agreement must be made in writing before the variation occurs, as per the current clause 12.3. The interested parties have

made submissions that this should be retained. The drafter has not made any comment in relation to this.

8. The entire clause 12.3 of the current award has been left out of the plain language draft. The Guild have made submissions regarding this issue and the need for the specification that an agreement can be temporary or permanent be retained. The drafters comment was that it had been dealt with in clause 10.6(c). The union parties disagree with the drafter comment. We support the submissions of the Guild in relation to clause 12.3 of the current PIA.
9. This issue lead to much discussion at the recent hearing regarding the current construction of the Award and the construction of the plain language draft, particularly in relation to the payment for additional hours worked, depending on whether they are agreed hours or hours an employee is directed to work.
10. The union parties submit that this needs to be reviewed. We have attempted to resolve this in the proposed clause provided in Attachment A of this submission.
11. We also note that clause 10.6(b) replaces clause 12.7 but makes no reference to an employee being paid the rate for the prescribed classification. If clause 10.6(b) is going to be retained it needs to state that the employee must be paid 'at the appropriate classification' in accordance with clause 16.
12. On further review of the Part-time provision we also note that clause 10.4 has removed the words 'on a regular pattern of work'. We submit that these words are important because it is the regular pattern of work which determines that an employee is in fact part-time and not casual. The union parties submit that these words should be retained.
13. The Guild also made submissions that the plain language draft clause 10.8 alters the legal effect by stipulating that the number of hours agreed in accordance with 10.4 cannot be varied, when they can be by agreement in other provisions. While we agree that the number of hours can be varied by agreement in other provisions, the current clause

12.8(a) which 10.4 replaces also stipulates that the number of agreed hours cannot be altered by the employer.

14. We agree with the drafter comment that clause 10.8 of the plain language draft needs to be split into two separate clauses. One clause should deal with a change to the hours by the employer, which does not permit a change to the agreed number of hours and the second clause should deal with a change to the roster, including the number of hours, by mutual agreement.

15. The union parties have addressed this in clause 10.8, 10.9 and 10.10 of the re-draft at Attachment A of this submission.

16. The union parties have also identified an issue with the redraft of clause 12.11 of the current award which states that:

'A part time employee who has worked their agreed hours may agree to work additional hours.....as a casual employee and subject to the casual provisions of this award'.

17. The plain language re-draft at clause 10.10 states that 'The additional hours may be worked on the terms applicable to a casual employee'.

18. The union parties submit that the change in wording from 'work additional hours...as a casual employee' to 'on the terms applicable to a casual employee' may change the legal effect and will cause confusion.

19. We submit that in order to retain the current legal effect the current wording should be retained. We have provided this wording in the draft at Attachment A.

20. These comments relate to maintaining what is in the current provision of the award, however, we note that there are significant complexities with the operation of the current provision. Under the current clause an employee is effectively working under two concurrent contracts of employment, a permanent part-time contract and a casual contract. This raises potential issues in relation to rostering, working more than one shift

per day, and the interaction with the NES, particularly in relation to the accrual of leave for ordinary hours worked.

21. In most other awards an employee working additional hours would be paid overtime and not accrue leave for those additional hours worked, or in the General Retail Award agreed additional hours are paid at the ordinary rate but accrue leave.
22. While the draft we have provided seeks to maintain the current legal effect we do note the complexities of the current clause.

SUBMISSIONS IN RESPONSE TO DRAFTERS COMMENTS – PAGE 12 OF SUMMARY

23. Clause 25.4(a)(iv) of the current Pharmacy Industry Award states that:

An employee who regularly works Sundays will be rostered so as to have three consecutive days off each four weeks and the consecutive days off will include Saturday and Sunday.

24. During discussions regarding the Exposure Draft the Guild sought to define 'regular Sundays'. It was agreed by the parties that over a four week roster cycle an employee would need to be rostered to work at least three Sundays for the obligation to provide 3 consecutive days off including a Saturday and Sunday.
25. The interested parties provided the following agreed wording in submissions on 15 July 2015 in order to address this:

An employee may be rostered to work a maximum of 3 Sundays in any 4 week cycle and must have three consecutive days off every four weeks, including a Saturday and Sunday.

26. In reviewing the submissions of the Guild provided on 5 September 2016 and 21 November 2016, we agree that the current plain language clause which is based on our agreed words is not clear.

27. The SDA proposes the following wording as a means to clarify this:

An employee who works 3 Sundays in any 4 week cycle must have 3 consecutive days off every 4 weeks which must include Saturday and Sunday.

10. Part-time employment

Part-time provisions will be considered in common issue proceedings in matter [AM2014/196](#). Plain language draft subclauses can be revised/generated following a Full Bench determination of these matters.

- 10.1 An employee who is engaged to work less than 38 ordinary hours per week and whose hours of work are reasonably predictable is a part-time employee.
- 10.2 This award applies to a part-time employee in the same way that it applies to a full-time employee except as otherwise expressly provided by this award.
- 10.3 A part-time employee is entitled to payments in respect of annual leave, personal/carer's leave, compassionate leave or public holidays on a proportionate basis.
- 10.4 A part-time employee must be rostered to work a minimum of 3 consecutive hours on any shift.
- 10.5 For each ordinary hour worked, a part-time employee must be paid at the appropriate classification in accordance with clause 16—Minimum wages and in accordance with clause 21—Penalty rates for ordinary hours worked during periods specified in Table 5—Penalty rates.
- 10.6 At the time of engaging a part-time employee, the employer must agree in writing with the employee to a regular pattern of employment including each of the following:
 - (a) the number of hours to be worked each day;
 - (b) the days of the week on which the employee will work;
 - (c) the times at which the employee will start and finish work each day;
 - (d) when meal breaks may be taken and their duration;
 - (e) that any variation will be in writing in accordance with clause 12.

- (f) that all time worked in excess of agreed hours is paid at the overtime rate, except agreed additional hours as per 10.13.

10.7 The employer must keep a copy of the agreement and give another copy to the employee.

Part-time Roster Variations

10.8 The roster of a part-time employee, but not the number of hours agreed under clause 10.6(a), may be changed by the employer giving the employee 7 days, or in an emergency 48 hours, written notice of the change.

10.9 However, 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.

10.10 The rostered hours of a part-time employee may also be changed at any time by mutual agreement between the employer and the employee.

10.11 Any agreement to vary the regular pattern of work agreed to under clause 10.6 will be made in writing before the variation occurs. The variation will be retained by the employer and a copy given to the employee.

10.12 An agreement to vary hours agreed under clause 10.6(a) may be a permanent agreed variation to the pattern of work or a temporary agreed variation provided in clause 10.13.

10.13 A part-time employee who has worked the number of hours agreed under clause 10.6(a) may agree to work additional hours that are not reasonably predictable. The employee may agree to work the additional hours as a casual employee and subject to the casual employee provisions of the award.

10.14 For each hour worked in excess of the number of ordinary hours agreed under clause 10.6(a) and agreed additional hours under clause 10.13, the employee must be paid at the overtime rate in accordance with clause 20.2—Application of overtime for part-time employees.

10.15 However, the total number of hours agreed under clause 10.6(a) and 10.13 must not exceed the maximum daily hours specified in clause 13.3 or full-time employment hours specified in clause 9—Full-time employment.

NOTE: See clause 20—Overtime for rates applicable when agreed additional hours exceed the maximum daily hours or full-time employment hours.