

From: Chambers - Hatcher VP
Sent: Monday, 15 July 2019 10:04 AM
To: Scott Harris
Cc: AMOD
Subject: RE: AM 2016/28 4 Yearly Review of Modern Awards - Pharmacy Industry Award 2010

Dear Mr Harris,

I advise that the Full Bench's response to your email of 20 June 2019 is as follows:

The Full Bench's decision of 13 June ([2019] FWBC 3949) made it clear that:

- (1) it rejected the proposition that the new allowance should be payable only when HMRs or RMMRs are performed; and
- (2) the new allowance would be payable to pharmacists who are qualified to perform HMRs or RMMRs AND who are required to perform them as part of their normal duties.

The Guild's interpretation of the new allowance is not consistent with this.

In relation to the inclusion of the new allowance in the list of award entitlements that may be comprehended in an annualised wage arrangement, that may be dealt with in the process of issuing and responding to draft determinations arising from the Full Bench decision concerning annualised wage arrangements issued on 4 July 2019 ([2019] FWCFB 4368) – see paras [27] and [36].

Kind regards,

Ingrid Stear
Associate to Vice President Hatcher

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From: Scott Harris
Sent: Thursday, 20 June 2019 12:34 PM
To: Chambers - Hatcher VP <Chambers.Hatcher.VP@fwc.gov.au>
Cc: Sharlene Wellard <SWellard@meridianlawyers.com.au>
Subject: AM 2016/28 4 Yearly Review of Modern Awards - Pharmacy Industry Award 2010

Dear Associate

Four Yearly Review of Modern Awards – Pharmacy Industry Award

Thank you for your email letting us know that the determination will be released on Friday.

There are two other matters that have arisen from the Decision issued on 13 June ([2019] FWBC 3949) and the Guild is keen to ensure, consistent with the purpose of the Review, that effect variation clause is properly understood and that the clause proposed is not ambiguous.

At [12] of the Decisions the Commission sets out the clause it intends to include in the Pharmacy Industry Award. That is:

19.1 Home Medicine Reviews and Residential Medication Management Reviews

An employee classified as a Pharmacist, Experienced Pharmacist, Pharmacist in Charge or Pharmacist Manager who is required by the employer to perform Home Medicine Reviews or Residential Medication Management Reviews shall be paid an additional allowance of \$106.40 per week.

The Guild takes the view that the clause provides that the allowance is payable in any week that a pharmacist is required to perform HMRs or RMMRs. However having circulated the clause to a number of members for consideration, there is a need to confirm that the Guild's interpretation is correct and that an alternative interpretation is not correct. The alternative interpretation is that the allowance is to be paid every week to a pharmacist who is accredited to perform HMRs or RMMRs (whether or not they actually perform them every week).

The Guild is of the view that having regard to the fact that Pharmacy employers only receive government funding when an HMR or RMMRs is actually performed (they would not receive any funding in a week where no HMRs or RMMRs are performed) and that when not actually performing HMRs or RMMRs the pharmacist performs their usual duties, that it is appropriate that the allowance is only payable in any week that the pharmacist performs HMRs or RMMRs.

If the alternative interpretation is correct, the likely result will be that many employers (particularly those with pharmacies that do not perform high volumes of HMRs / RMMRs or perform them infrequently) will cease requiring employed pharmacists to provide HMRs and RMMRs. To avoid ambiguity the Guild would appreciate the Commission clarifying the intended application of the new clause, and if necessary change the wording of the clause to make the intended application clear.

As noted in the Decision at [7] the Guild submitted the new allowance should be able to be included in the list of matters that can be satisfied by the payment of annualised salary, which is provided for at clause 27 of the Pharmacy Industry Award. The Decision does not say whether the Award would be varied in that manner or not. The Guild anticipates that will be dealt with in the determination, however we simply draw it to the Commission's attention now for completeness.

The Guild will provide formal submissions or participate in any conference or hearing in relation to the above matters if the Commission considers it necessary or would assist.

Regards

Scott Harris

Workplace Relations, National Manager, PGA

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