

**From:** Jessica Light [<mailto:jligh@meridianlawyers.com.au>]  
**Sent:** Friday, 7 April 2017 5:56 PM  
**To:** Chambers - Hatcher VP  
**Cc:** Katie Biddlestone; Kate Thomson; Jacki Baulch; [rachell@hsu.net.au](mailto:rachell@hsu.net.au); [chrisk@business-sa.com](mailto:chrisk@business-sa.com); Sharlene Wellard  
**Subject:** Re: AM2016/28 – 4 Yearly Review of Modern Awards – Pharmacy Industry Award 2010 [ML-Legal.2008724.FID21138]

Dear Associate,

**Re: AM2016/28 – 4 Yearly Review of Modern Awards – Pharmacy Industry Award 2010**

We refer to the above matter in which we act for the Pharmacy Guild of Australia (“**the Guild**”) and the hearing of the SDA claim to vary the *Pharmacy Industry Award 2010* (“**PIA**”) to extend ‘terms of engagement provisions’ to full-time employees on Friday 31 March 2017. During this hearing his Honour Vice President Hatcher granted leave to the Guild to file submissions in relation to whether the ‘Terms of Engagement’ provisions sought by the SDA had been considered in the making of the PIA during award modernisation (see PN107 and PN108 of the transcript).

In July 2008 the [SDA made submissions \(enclosed\)](#) in relation to a proposed retail award covering community pharmacy which at page [9] relevantly states:

*“Full-time is self-explanatory, being a person working an average of 38 hours a week. Part-time employment reflects the approach adopted by the Australian Industrial Relations Commission in the award simplification of the Victorian Shops Award in which case a set of criteria were clearly articulated as being the parameters for defining a part-time employee.”*

Accompanying these submissions was [the SDA draft General Retail Award \(enclosed\)](#) which at clauses 14.2 and 14.3 contains provisions for full-time and part-time employees which largely reflect those presently found in the PIA.

By comparison, the [Guild’s draft modern award \(enclosed\)](#) at clause 6.3 set out a terms of engagement clause which applied to all employees engaged under the Award.

In its [submissions in reply to the Guild’s draft modern award dated August 2008 \(enclosed\)](#) the SDA made the comment that in the absence of the Guild proposing pay rates in its award, it was not possible for the SDA to comment on whether or not the hours of work, casual loadings, penalties or other conditions in the Guild proposed award constituted a fair minimum safety net for employees. The SDA did however submit as follows:

*“The approach of the SDA has been to use the entire resources of the union to put together a Modern Award for the entire Retail Industry which provides a fair and effective safety net of wages and conditions of employment.*

*The SDA’s resources include:*

- *our comprehensive knowledge of the history of federal and State awards given our pivotal role in retail, takeaway food, community pharmacy and hair and beauty awards,*
- *our first hand experience and in depth knowledge and understanding of the ways in which employers have used and abused various award provisions,*
- *our understanding of the practical needs of employees and employers across the whole of retail industry (in its broadest sense), and*

- *our appreciation of the requirements (both statutorily and pragmatically) of the Award Modernisation process.*

*The SDA has utilised these resources through engaging in a comprehensive internal discussion involving 3 full day meetings of National Officers, Branch Secretaries, National and Branch Industrial Officers, together with the preparation of internal drafts of a Modern Award and extensive online discussion across the union about the contents of the SDA Modern Award.*

*The Commission can have confidence in the SDA’s Modern Award for the entire Retail Industry.”*

In circumstances where the SDA proposed an award which limited terms of engagement provisions to part time employees, despite the fact that the Guild proposed terms of engagement provisions applying to all employees and the SDA has made the submission that their proposal constitutes a fair and effective safety net, the Guild submits that in the absence of any probative evidence directed at demonstrating the need for such the variation or why the terms no longer provide a fair and relevant safety net that the application to vary the PIA should be dismissed.

We note also that one aspect of the SDA Claim relates to the rostering of full-time employees and their notification. His Honour requested information in relation to the rostering practices in place across the Industry. Whilst the Guild remains opposed to the SDA Claim insofar as it applies to the terms of engagement provisions, the Guild has considered the appropriateness of the inclusion of a rostering provision which requires advance publication of rosters. The Guild is of the view that such a provision would be appropriate and proposes that the following be inserted into the PIA:

***“xx Notification of rosters***

*(a) The employer will exhibit staff rosters on a notice board at least 2 weeks in advance, which will show for each employee:*

- (i) the number of ordinary hours to be worked each week;*
- (ii) the days of the week on which work is to be performed; and*
- (iii) the commencing and ceasing time of work for each day of the week.*

*(b) The employer will retain superseded notices for twelve months. The roster will, on request, be produced for inspection by an authorised person.*

*(c) Due to unexpected operational requirements, an employee’s roster for a given day may be changed by mutual agreement with the employee prior to the employee arriving for work.*

*(d) Any permanent roster change will be provided to the employee in writing with a minimum seven days’ notice. Should the employee disagree with the roster change, they will be given a minimum of 14 days written notice instead of seven days, during which time there will be discussions aimed at resolving the matter in accordance with clause x—Dispute resolution, of this award.”*

Please don’t hesitate to contact the undersigned should you have any questions concerning our correspondence.

Regards,

**Jessica Light | Solicitor**



Level 6, 20 Bond Street, Sydney NSW 2000

**p:** 02 9018 9940 | **f:** 02 9018 9900 | **w:** [www.meridianlawyers.com.au](http://www.meridianlawyers.com.au)

*Meridian Lawyers Limited is an incorporated legal practice under the Legal Profession Acts of NSW, Victoria and Queensland.  
Not all of its principals are legal practitioner directors.*

**Sydney | Melbourne | Newcastle | Brisbane**