

---

**Fair Work Commission: 4 Yearly Review of Modern Awards**

**SUBMISSIONS**

**PHARMACY INDUSTRY AWARD 2010  
REVISED PLAIN LANGUAGE DRAFT  
PLAIN LANGUAGE MODERN AWARDS PILOT  
(AM2014/209)**

**25 MAY 2016**

**AUSTRALIAN BUSINESS INDUSTRIAL  
- and -  
THE NSW BUSINESS CHAMBER LTD**

## **1. BACKGROUND**

- 1.1 These submissions are filed on behalf of Australian Business Industrial (**ABI**) and the NSW Business Chamber Ltd (**NSWBC**) and relate to the plain language version of the *Pharmacy Industry Award 2010 (Award)* distributed on 21 April 2016.
- 1.2 ABI is a registered organisation under the *Fair Work (Registered Organisations) Act 2009* (Cth) and has some 3,900 members.
- 1.3 NSWBC is a recognised State registered association pursuant to Schedule 2 of the *Fair Work (Registered Organisation) Act 2009* (Cth) and has some 18,000 members.
- 1.4 ABI and NSWBC have a material interest in the Four Yearly Review of the Award given that both entities represent numerous employers who operate in the pharmacy industry.
- 1.5 ABI and NSWBC make these submissions primarily in relation to the plain language draft Award issued 21 April 2016. However, in accordance with the amended directions issued by the President on 16 May 2016, we confirm:
- (a) these submissions primarily relate to the Part A provisions of the draft Award which were the subject of prior consultation;
  - (b) ABI and NSWBC are concerned about some of the Part B provisions as currently drafted and reserve their rights to make further submissions should these provisions be used in other plain language projects;
  - (c) the remainder of the Part B provisions have not yet been re-drafted in accordance with the plain language principles and ABI and NSWBC reserve their rights to make submissions in relation to these provisions at a later time;
  - (d) ABI and NSWBC are not proposing any substantive claims or variations in relation to the Award generally and accordingly make no submissions in this regard.
- 1.6 We have also had the opportunity to review the draft submissions of BusinessSA in relation to this Award and confirm our in-principle support for those submissions.
- 1.7 The same numbering as the revised plain language Draft has been used throughout these submissions, except where otherwise indicated.

## **2. CLAUSE 4 - COVERAGE**

- 2.1 Clause 2.1 states that Schedule G - Definitions defines the expressions used in the Award, yet Clause 4 contains a lengthy and complicated definition of 'community pharmacy'.
- 2.2 ABI and NSWBC submit that the current version of this clause is unnecessarily complicated and hard to understand.
- 2.3 We note the Drafter's comment relating to clause 4.5 and the associated note, which deals with award coverage. We agree that this should be the subject of further user-testing to explore whether this issue can be simplified. Members of ABI and NSWBC report uncertainty as to coverage under the Award and the simplification of this clause should be further pursued.

## **3. CLAUSE 7 - FACILITATIVE PROVISIONS FOR FLEXIBLE WORKING PRACTICES**

- 3.1 We note the Drafter's comments about 'facilitative provisions' not being an expression which resonated with users. ABI and NSWBC endorse this commentary.

3.2 ABI and NSWBC submit however that the alternative proposed name ('index of provisions allowing variable application') is no better than the current title of the clause.

#### **4. CLAUSE 10 - PART-TIME EMPLOYMENT**

4.1 Clause 10.1 has had the reference to working fewer than 38 hours per week removed and replaced with a reference to the hours 'mentioned' in clause 9.1, entitled 'Full-time employment'.

4.2 ABI and NSWBC submit that the inclusion of the numerical value is preferable to requiring the users to 'cross-reference' between clauses/subclauses.

4.3 Further, clause 10.4 currently reads:

*Any agreement under clause 10.3 must state that any variation agreed by them to any of the matters mentioned in clause 10.3(a) to (d) must be in writing.*

4.4 As the reference to 'them' is to parties described in another clause, ABI and NSWBC submit the following wording would be preferable:

*Any agreement under clause 10.3 must state that any variation agreed by the employer and the employee to any of the matters mentioned in clause 10.3(a) to (d) must be in writing.*

#### **5. CLAUSE 14 - ROSTERING ARRANGEMENTS - FULL-TIME AND PART-TIME EMPLOYEES**

The addition of the words 'whether ordinary hours or overtime' in clause 14.1(e) is a departure from the wording in the current Award, and may give rise to a substantive change. Accordingly ABI and NSWBC submit that these words should be omitted.

5.1 Further, clause 14.3 contains the phrase 'is subject to', which we generally consider should be avoided in accordance with the plain language principles.

#### **6. CLAUSE 16 - WAGES**

6.1 Clause 16.3 should have its own subheading to clarify it refers to 'Pharmacy Students'.

#### **7. CLAUSE 18.1 - MEAL ALLOWANCES**

7.1 Clause 18.1(a)(ii) is difficult to understand, as currently drafted. ABI and NSWBC propose that this clause be the subject of further consideration, due to the inclusion of paragraph and sub-paragraph level provisions, which are not ideal and in keeping with the plain language principles.

#### **8. CLAUSE 20.3 - PAYMENT FOR OVERTIME**

8.1 There is no specific reference to the fact that casual loading is not payable on overtime worked by a casual employee (clause 13(c) in the exposure draft and clause 26.2(a)(iii) in the current Award). We submit that this should be reintroduced into this clause, for the avoidance of doubt.

#### **9. CLAUSE 23 - PERSONAL/CARER'S LEAVE AND COMPASSIONATE LEAVE**

9.1 The reference in clause 23.2 to 'for the reason mentioned in clause 23.1' makes the meaning of this clause difficult to establish. ABI and NSWBC submit that these words be replaced by the words used in clause 23.1.

**10. SCHEDULE A - CLASSIFICATION DEFINITIONS**

10.1 The definition of 'pharmacy assistant level 1' has been significantly altered, so that it is now defined by reference to the lack of characteristics found in other classifications. ABI and NSWBC submit that the exposure draft provision is easier to understand and should be retained.

**11. CONCLUSION**

11.1 In providing these comments, ABI and NSWBC seek to properly assist the Commission in the discharge of its discretion pursuant to section 156 of the *Fair Work Act 2009* (Cth).

11.2 If you have any questions in relation to these submissions, please contact Kate Thomson on (02) 4989 1003.



**Nigel Ward**  
**CEO + Director**

Australian Business Lawyers & Advisors Pty Limited  
(02) 9458 7286  
nigel.ward@ablawyers.com.au



**Kate Thomson**  
**Lawyer**

Australian Business Lawyers & Advisors Pty Limited  
(02) 4989 1003  
kate.thomson@ablawyers.com.au

**On behalf of Australian Business Industrial and the NSW Business Chamber Ltd**