



Business SA Submission

4 yearly review of
modern awards –
*Pharmacy Industry
Award* – Submissions in
reply

10 February 2017

Introduction

On 20 January 2017, the Full Bench of the Fair Work Commission (Commission) released a decision relating to the plain language drafting guidelines and award specific matters for the *Pharmacy Industry Award 2010*.¹ This decision provided a range of provisional views and highlighted issues regarding the *Pharmacy Industry Award*. Parties were invited to comment on the provisional views and issues highlighted.² **Comments from the Shop Distributive and Allied Employees' Association, the Association of Professional Engineers, Scientists and Managers Australia, and the Health Services Union (the Unions)** were made in a joint submission.³ The Pharmacy Guild of Australia (the Guild) also provided a response.⁴ Based on the submissions of the Unions and the Guild, Business SA is pleased to provide these submissions in reply.

Why this matter is important to South Australian businesses

As South Australia's Chamber of Commerce and Industry, Business SA is the peak business membership organisation in the State. Our members are affected by this matter in the following ways:

- South Australian businesses are impacted by any changes in the award system.
- South Australian employers and employees will jointly benefit from well drafted and effective modern awards, better enabling both parties to understand their rights and responsibilities.
- Small business owners make up a large proportion of our membership, these businesses are often **not able to devote the necessary resources to fully understand Australia's complex workplace regulations.**
- The modern award objective is to provide a fair and relevant minimum safety net of terms and conditions.⁵ Modern awards must be drafted such that those using the award are able to determine what they can expect and what is expected of them.
- The re-drafting process must not simplify awards such that they lose legal clarity. Certainty must prevail over simplicity.

For further information from Business SA's policy team, please contact Karen van Gorp, Senior Policy Adviser, or Chris Klepper, Policy Adviser, (08) 8300 0000 or at karenv@business-sa.com or chrisk@business-sa.com.

¹ [2017] FWCFB 344.

² Ibid [226].

³ [Joint submission](#) 6 February 2017.

⁴ [PGA submission](#) 7 February 2017.

⁵ *Fair Work Act 2009* (Cth) s 134(1).

Submissions in reply

1. Clause 2
 - 1.1. The Union parties have submitted the intention of the current on-hire provisions is that the host/client (the business which receives the on-hire labour) automatically acquires employer status under the *Pharmacy Industry Award* due to this arrangement.⁶ Business SA does not support this submission.
 - 1.2. As an industry award, rather than an occupational award, where the host is part of the community pharmacy industry (as defined in the award) coverage could indeed extend to that host. However, where an on-hire employee, a Pharmacist for example, is on-hired to a host outside the community pharmacy industry, the coverage clause of the *Pharmacy Industry Award* does not extend award coverage to that host. Such situations could occur where a Pharmacist is on-hired to an education body or to a hospital. In such situations, regardless which award (if any) may cover that host with regard to any other employees they engage, the on-hire arrangements will not automatically cause the *Pharmacy Industry Award* to cover that host.
 - 1.3. Business SA agrees with the Guild at [22] of their submission. Where a Pharmacist is on-hired to a host in a different industry (ie, not themselves covered by the *Pharmacy Industry Award*), the **host's award coverage would be different. It is not the intention of the on-hire clause** that the host will become covered by the *Pharmacy Industry Award* by virtue of this on-hire arrangement.
2. Clause 4
 - 2.1. Business SA agrees with the submissions of the Unions regarding deletion of the words 'by retail' in clause 4 - Coverage.⁷
3. Clause 10
 - 3.1. Business SA agrees with the submissions of the Unions⁸ and the Guild⁹ regarding clause 10. We share their view that no tension arises between clause 10.5 and 10.9.
 - 3.2. Business SA agrees with the Guild that a variation under clause 10.10 should also be in writing.¹⁰
4. Clause 11
 - 4.1. Business SA agrees with the submissions of the Guild¹¹ regarding a casual conversion clause for the *Pharmacy Industry Award*. Opportunity should be allowed for submissions regarding the insertion and form of any such clause.
5. Clause 14
 - 5.1. Business SA recognises the restriction in clause 14.1(e) identified by the Guild.¹² While Business SA does not have any wording to rectify this restriction we are open to further discussions between the parties to come to a workable amendment.

⁶ [Joint submission](#), [4]-[5].

⁷ [Joint submission](#), [6]-[7].

⁸ [Joint submission](#), [9].

⁹ [PGA submission](#), [23]-[27].

¹⁰ [PGA submission](#), [28].

¹¹ [PGA submission](#), [7]-[12].

¹² [PGA submission](#), [16].

6. Clause 16.2
 - 6.1. **Business SA agrees with the Union's submission that a table is an** appropriate format to present junior wages.¹³

7. Clause 21.1
 - 7.1. Business SA agrees with the Unions **that clause 21.1 has omitted the word 'days' from the revised** clause.¹⁴

Conclusion

Business SA thanks the Unions and the Guild for their submissions. Business SA also thanks the Commission for the opportunity to provide these submissions in reply.

¹³ [Joint submission](#), [25].

¹⁴ [Joint submission](#), [32].