



# STATEMENT

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

## **4 yearly review of modern awards**

(AM2014/209)

JUSTICE ROSS, PRESIDENT

MELBOURNE, 29 OCTOBER 2015

*Plain language modern awards pilot – Pharmacy Industry Award 2010*

### **Introduction**

[1] Section 156 of the *Fair Work Act 2009* (the Act) requires the Fair Work Commission (the Commission) to review all modern awards every four years. As part of the Review, the Commission is conducting a Plain language modern awards pilot (Pilot) to produce a plain language exposure draft based on the *Pharmacy Industry Award 2010* (the Pharmacy Award). The background and scope of the pilot were outlined in a Statement issued on 22 September 2015.<sup>1</sup>

[2] This statement attaches a timetable for the Pilot and the instructions for the Plain language drafting services and User testing services.

### **Background**

[3] Further to the Statement of 22 September 2015:

- on 25 September, the Commission published a report on the progress of the review of the Pharmacy Award, entitled ‘Further revised summary of submissions’;
- on 25 September, the Commission published a revised exposure draft of the Pharmacy Award reflecting updates resulting from Commission decisions and determinations as well as conferences between the parties entitled Revised exposure draft – 25 September 2015; and
- on 27 September 2015, the Commission circulated draft Instructions for plain language drafting and Instructions for user testing services to parties to AM2014/209 for comment. These instructions are at **Attachment B** and **Attachment C**.

[4] Parties to AM2014/209 provided comments on the draft Instructions. Following comments received, the Instructions were revised to include **Schedule A—Classification Definitions** in the list of award-specific clauses (see **Appendices to Attachment B and Attachment C**).

[5] Commission staff undertook a procurement process for the plain language drafting services and Mr Eamonn Moran QC PSM has been engaged to prepare a plain language exposure draft based on the updated Pharmacy Award exposure draft.

[6] A mention conference with parties to AM2014/209 was held on 29 October 2015 to finalise the timetable for the Pilot. The timetable is at **Attachment C**.

### **Next steps**

[7] Eamonn Moran QC PSM will draft plain language award-specific clauses (see list appended to **Attachment B and Attachment C**).

[8] Parties to matter AM2014/209 will be invited to provide feedback on the draft plain language award-specific clauses via a submission process and a conference prior to user testing with employers and employees covered by the Pharmacy Award.

[9] A report on the Pilot will be published in April 2016 along with the plain language draft of the Revised exposure draft. Parties will be invited to comment on the plain language exposure draft in the relevant Full Bench proceedings along with any other issues relating to the review of the award.

### PRESIDENT

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<sup>1</sup> [\[2015\] FWC 6555](#)

**Attachment A – Timetable: Plain language modern awards pilot (Pilot)**

<b>Event</b>	<b>Date</b>
Draft award-specific plain language clauses circulated to parties to AM2014/209 for comment	24 November 2015
Submissions on award-specific clauses due	No later than 4pm 10 December 2015
Summary of submissions published	14 December 2015
Conference of parties to AM2014/209 to discuss draft plain language award-specific clauses	9:30am 17 December 2015 (Sydney)
User testing of draft plain language award-specific clauses	January–March 2016
Report on the Pilot published	April 2016

## **Attachment B – Instructions for plain language re-drafting of the exposure draft based on the Exposure Draft Pharmacy Industry Award 2014**

### ***Background***

As part of the Award stage of the [4 yearly review of modern awards](#), the Fair Work Commission (Commission) will conduct a Plain language modern award pilot (Pilot) to produce a plain language exposure draft based on the Exposure Draft Pharmacy Industry Award 2014. The exposure draft is based on the *Pharmacy Industry Award 2010*.

The overarching objective of this project is to create a plain language version of the exposure draft that is both simpler and easier for end-users to understand than the *Pharmacy Industry Award 2010*.

Staff of the Commission originally prepared the exposure draft in December 2014. This instrument took account of findings from [Citizen co-design research](#) conducted on behalf of the Commission and other information and materials.

This instrument has recently been updated (September 2015) to take account of the submissions made to the Commission on a number of issues relating to the exposure draft since it was published in December 2014.

### ***Services required***

#### Drafting

The main service required is the production of a plain language draft of the Exposure Draft Pharmacy Industry Award 2014 which does not alter the legal effect of any clauses.

The exposure draft comprises award-specific clauses as well as standard model terms that have been determined by Full Bench decisions. Only the award-specific clauses will be subject to review by parties and user-testing as part of the Pilot. As such, the clauses in the exposure draft may be dealt with in tranches in order to expedite the drafting process and have been divided into Part A (award-specific clauses) and Part B (standard clauses).

The plain language draft must retain the structure/layout of the Exposure Draft Pharmacy Industry Award 2014, but it may change heading titles as appropriate.

The drafter will **not** be required to calculate minimum wage rates for presentation in the plain language draft. Rather, the drafter is to provide instruction to the Commission's contract manager(s) on how this information is to be presented. Commission staff will perform any required calculations for presentation in the plain language draft if required.

The drafter should refer to the 'Plain English Draft' submitted by the Plain English Foundation and comments submitted in relation to the 'Plain English Draft'. The plain language drafter should also refer to the current award to the extent that the objective of the Pilot is to produce a version that is simpler and easier for end-users to understand than the *Pharmacy Industry Award 2010*.

Key documents:

- [Exposure Draft Pharmacy Industry Award 2014](#) (Plain language exposure draft)
- [‘Plain English Draft’ submitted by the Pharmacy Guild of Australia](#) and comments on the draft submitted by the relevant unions
- [Pharmacy Industry Award 2010](#)

#### *Part A plain language draft*

The initial focus of plain language drafting should be the award-specific clauses of the Exposure Draft Pharmacy Industry Award 2014 (see **Appendix** for ‘Part A’ clauses).

The Part A plain language draft clauses may be subject to revisions, as outlined below, and will be subject to user-testing with employers and employees covered by the *Pharmacy Industry Award 2010*.

#### *Part B plain language draft*

Once award-specific clauses have been redrafted, standard clauses which have been subject to Full Bench Decisions should be redrafted (see **Appendix** for ‘Part B’ clauses).

The Part B draft clauses will **not** be user tested (or provided to parties for comment) as part of the Pilot; however, findings from user testing and comments from parties on the Part A clauses may be used to inform redrafting of these clauses as appropriate. The Part B draft clauses will be subject to future consultation processes with interested parties to the 4 yearly review following the publication of the report on the Pilot in April 2016.

#### **Revisions to Part A plain language draft clauses**

Following consultation with relevant parties, the Commission may require the drafter to amend Part A clauses.

The revised Part A clauses would then be the subject of user testing with employers and employees covered by the *Pharmacy Industry Award 2010*. If appropriate, the drafter would be encouraged to attend any focus group research activities to observe the feedback provided by end-users.

Further changes to the Part A clauses may be required to incorporate findings from user testing. Alternatively, recommendations for changes that take account of findings from the user testing would be required for inclusion in a final report on the Pilot.

The drafter may also provide recommendations on any changes to the structure/layout of the Exposure Draft Pharmacy Industry Award 2014 which could make it simpler and easier for end-users to understand. These recommendations would be incorporated into the final report on the Pilot.

#### ***Deliverables & indicative timing***

- Draft Part A clauses by **mid-late November 2015**.

- Revision of the Part A clauses to incorporate feedback from parties by **mid-January 2016**.
- Observe user testing focus groups (if appropriate) in **mid-February 2016**.
- Draft Part B clauses of the Exposure Draft Pharmacy Industry Award 2014 by **end-March 2016**.
- Review of findings from user testing and further revision of Part A clauses or provision of recommendations for changes to Part A clauses by **end-March 2016**.
- Tracking document attached to each version of the draft Plain language instrument that explains the amendments made.

## Appendix to Attachment B

### Part A—Award-specific clauses

These clauses of the Exposure Draft Pharmacy Industry Award 2014 *have not been* the subject of Full Bench Decisions and will be subject to review by parties and user testing as part of the Pilot.

#### Part 1—Application and Operation

1. Title and commencement
3. Coverage

#### Part 2—Types of Employment and Classifications

6. Types of employment
7. Classifications

#### Part 3—Hours of Work

8. Ordinary hours of work and rostering
9. Breaks

#### Part 4—Wages and Allowances

10. Minimum wages
11. Allowances

#### Part 5—Penalties and Overtime

13. Overtime
14. Penalties

### Schedule A—Classification Definitions

### Schedule G—Definitions

### Part B—Clauses that have been the subject of Full Bench Decisions

These clauses of the Exposure Draft Pharmacy Industry Award 2014 *have been* the subject of Full Bench Decisions and will not be subject to review by parties and user testing as part of the Pilot.

#### Part 1—Application and Operation

2. The National Employment Standards and this award
4. Award flexibility
5. Facilitative provisions

#### Part 4—Wages and Allowances

12. Superannuation

#### Part 6—Leave, Public Holidays and Other NES Entitlements

15. Annual leave
16. Personal/carer's leave and compassionate leave
17. Parental leave and related entitlements
18. Public holidays
19. Community service leave
20. Termination of employment
21. Redundancy

**Part 7—Consultation and Dispute Resolution**

22. Consultation

23. Dispute resolution

**Schedule B—Summary of Hourly Rates of Pay**

**Schedule C—Summary of Monetary Allowances**

**Schedule D—Supported Wage System**

**Schedule E—National Training Wage**

**Schedule F—2014 Part-day public holidays**



## **Attachment C – Instructions for plain language modern awards pilot: Testing the Plain Language Exposure Draft Pharmacy Industry Award 2014**

### ***Background***

As part of the Award stage of the [4 yearly review of modern awards](#), the Fair Work Commission (Commission) will conduct a Plain language modern award pilot (Pilot) to produce a plain language exposure draft based on the Exposure Draft Pharmacy Industry Award 2014. The exposure draft is based on the *Pharmacy Industry Award 2010*.

The overarching objective of this project is to create a plain language version of the exposure draft that is both simpler and easier for end-users to understand than the *Pharmacy Industry Award 2010*.

Staff of the Commission originally prepared the exposure draft in December 2014. This instrument took account of findings from [Citizen co-design research](#) conducted on behalf of the Commission and other information and materials.

The exposure draft was updated in September 2015 to take account of the submissions made to the Commission since it was first published and then re-drafted in plain language. The plain language draft has been subject to consultation with stakeholders and now needs to be tested with employers and employees who are covered by the *Pharmacy Industry Award 2010*.

### ***Services required***

#### User testing the Plain Language Exposure Draft Pharmacy Industry Award 2014

The main service required is an in-depth examination of if, and how, the Plain language instrument is simpler and easier for employers and employees to understand than the *Pharmacy Industry Award 2010*.

A key objective of the plain language drafting process has been to ensure that the Plain language instrument does not alter the legal effect of any clauses in the current award. The user testing is to complement this objective by examining the interpretation of clauses in the Plain language instrument and if there are any notable patterns across the employer and employee audiences.

All modern awards comprise some clauses that are specific to the award as well as standard clauses that appear in all awards. The instrument that is tested will include some clauses that have been drafted in plain language and some clauses (i.e. the standard clauses) that have not been subject to plain language redrafting. The user testing will focus on the award-specific clauses that have been redrafted in plain language. The **Appendix** indicates which clauses are award-specific and those that are standard clauses.

Key documents:

- [Plain Language Exposure Draft Pharmacy Industry Award 2014](#) (Plain language instrument)
- [Pharmacy Industry Award 2010](#)

The structure and layout of these instruments differs and some of the headings may vary. A document outlining which clauses from the Plain language instrument and the current award are directly comparable will be provided to the successful tenderer to assist with development of data collection tools.

### ***Proposed method and scope***

It is anticipated that a mixture of in-depth interviews and focus groups discussions would be suitable to meet the objectives of the research. The number of interviews and focus groups and the composition of the research sample will be determined by the Commission based on the research proposals received from tenderers.

It is anticipated that employers and employees covered by the *Pharmacy Industry Award 2010* will be included in the research. Other audiences, including advocates and advisors (e.g. accountants, book keepers, IR consultants) have not been considered a primary audience for the Plain language instrument and user-testing with these groups will not form part of user testing for the Pilot.

As demonstrated in the [Citizen co-design research](#) findings, the location of research participants is unlikely to have a significant influence on the key considerations of the proposed research. Therefore, to limit costs and maximise convenience for the Commission staff and others to observe focus groups, it's proposed that the focus group discussions be held in Melbourne, or Melbourne and one regional Victorian location within 1.5 hours of Melbourne (such as Bendigo or Geelong).

### ***In-depth interviews***

The interviews could be undertaken with employers in their workplace or where they would usually undertake administrative tasks such as processing payments and working out employee entitlements. The interviews could assess how the employers:

- presently source information about award conditions;
- locate and interpret information contained in the current award; and
- locate and interpret information contained in the Plain language instrument.

A mix of observational data and responses to open-ended questions posed by interviewers would be generated from the interviews and this data could be analysed together with data generated from focus group discussions.

### ***Focus groups***

The objective of the focus group research conducted with employers and employees (separately) would be to encourage discussion about the features of the Plain language instrument that research participants like, with particular reference to differences to the existing instrument, and ideas for improving the instrument to make simpler and easier to understand.

### ***Deliverables & indicative timing***

Importantly, the research would seek specific, actionable feedback about the Plain language instrument in order to build on the general insights obtained from the [Citizen co-design](#)

[research](#) about modern awards. The report produced from the research will highlight the features of the Plain language instrument that participants liked (i.e. should be retained) and any features that require improvement and how they could be improved in order to meet the plain language objectives.

The research supplier would undertake the data collection and will be responsible for the production of the draft and final report. Approximately 10 weeks have been allowed for collection and analysis of qualitative data and reporting the findings from the research.

It may be possible for the Commission or parties to the plain language drafting Pilot to source research participants or provide assistance with these services. Otherwise, these services are to be provided or sub-contracted by the research supplier. A further 2-3 weeks can be allowed in the project timings to source suitable research participants.

## Appendix to Attachment C

### **Award-specific clauses that will be redrafted in plain language**

These clauses of the Exposure Draft Pharmacy Industry Award 2014 are specific to the award and will be subject to plain language redrafting.

#### **Part 1—Application and Operation**

1. Title and commencement
3. Coverage

#### **Part 2—Types of Employment and Classifications**

6. Types of employment
7. Classifications

#### **Part 3—Hours of Work**

8. Ordinary hours of work and rostering
9. Breaks

#### **Part 4—Wages and Allowances**

10. Minimum wages
11. Allowances

#### **Part 5—Penalties and Overtime**

13. Overtime
14. Penalties

#### **Schedule A—Classification Definitions**

#### **Schedule G—Definitions**

### **Standard clauses that will be retained in the Plain language instrument that is tested**

These clauses of the Exposure Draft Pharmacy Industry Award 2014 will be the same or similar to what appears in the current award.

#### **Part 1—Application and Operation**

2. The National Employment Standards and this award
4. Award flexibility
5. Facilitative provisions

#### **Part 4—Wages and Allowances**

12. Superannuation

#### **Part 6—Leave, Public Holidays and Other NES Entitlements**

15. Annual leave
16. Personal/carer's leave and compassionate leave
17. Parental leave and related entitlements
18. Public holidays
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20. Termination of employment
21. Redundancy

#### **Part 7—Consultation and Dispute Resolution**

22. Consultation

23. Dispute resolution

**Schedule B—Summary of Hourly Rates of Pay**

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