

FAIR WORK COMMISSION

4 Yearly Review of Modern Awards

Matter No.: AM2014/209

Pharmacy Industry Award 2010

Submission in response to the Pharmacy Industry Award Exposure Draft

**Association of Professional Engineers, Scientists and Managers, Australia
(APESMA)**

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Lodged by: APESMA
Address: PO Box 1272, MELBOURNE VIC 3001
Tel: 03 9695 8804
Fax: 03 9695 8846
Email: jbaulch@professionalsaustralia.org.au

INTRODUCTION

1. This submission by the Association of Professional Engineers, Scientists and Managers Australia (APESMA) is made in response to the exposure draft released by the Fair Work Commission (FWC) for the *Pharmacy Industry Award 2010* (the Award) , and in accordance with the Statement issued by Justice Ross on 8 December 2014¹.
2. We note that in this Statement Justice Ross indicates that these exposure drafts are not intended to incorporate any substantive changes or to amend any entitlements under the current modern awards nor that they represent the concluded view of the Commission.

GENERAL COMMENTS ON EXPOSURE DRAFTS

3. This submission only addresses matters that affect employee pharmacists. APESMA supports the submissions of the SDA in relation to the interests of other employees covered by this award.
4. Generally APESMA sees the Exposure Draft for this Award as a great improvement on the current award. The way it is structured and the relatively simple language utilised, we believe, will result in a better understanding and compliance with the Award provisions.
5. There is a particular need for this Award to be simple and easy to understand because, whilst this is changing, a significant proportion of community pharmacy businesses do not employ human resources or industrial relations experts. The Fair Work Ombudsman conducted a national audit of compliance with the Pharmacy Industry Award 2010 in 2013 and found 25% of community pharmacies were not compliant with one or more of the Award provisions. This national audit followed an earlier audit by the Fair Work Ombudsman in Queensland that found that only 56% of pharmacies in that state were compliant with award provisions. Common non-compliance issues nationally included underpayment of penalty rates and casual loading; failing to include sufficient detail on pay slips; not keeping accurate records of hours staff worked; non-payment or underpayment of staff uniform allowances and

¹ [2014] FWC 8837

failure to provide minimum shift hours. We believe an award that is easier to understand will assist in achieving a higher level of compliance.

6. One area of concern we have with the current Award is that it contains no explanations of the provisions of the National Employment Standards (NES) and how they relate to the award. This has resulted in many employees and employers not knowing of their rights and obligations in relation to matters contained in the NES. We believe the addition of short explanations of NES provisions will greatly improve understanding and compliance.
7. Another change we support is the inclusion of pay rates expressed as hourly and weekly amounts and for there to be tables showing pay rates inclusive of casual loadings, penalty rates and overtime. It is common for employers and employees to define community pharmacy employees pay as an hourly amount. Individual Flexibility Agreements (IFA) and Annualised Salary Agreements are common arrangements for employee pharmacists so the provision of tables detailing rates of pay inclusive of loadings, penalties and overtime will be of great assistance.

COMMENTS ON SPECIFIC PROVISIONS IN EXPOSURE DRAFTS

Clause 1 Title and Interpretation - Take Home Pay

8. The Exposure Draft removes the provision contained at clause 2.4 of the current Award that states:

Neither the making of this award nor the operation of any transitional arrangements is intended to result in a reduction in the take-home pay of employees covered by the award. On application by or on behalf of an employee who suffers a reduction in take-home pay as a result of the making of this award or the operation of any transitional arrangements, the Fair Work Commission may make any order it considers appropriate to remedy the situation.

9. APESMA believes that it is not appropriate to remove the current take home pay provisions of the Award and requests that the Commission decide to include a reference to take home pay entitlements in the final version of the Award so it is clear

that there is no intent for employees to suffer a reduction in take home pay as a result of the review process.

Clause 2.3 - The National Employment Standards and This Award –Notice Boards

10. Clause 2.3 of the exposure draft requires employers to make copies of the Award and NES available to employees to whom they apply. The current Award, at clause 5, provides for copies of the Award and the NES to be made available to employees on a noticeboard which is conveniently located at or near the workplace or through electronic means, whichever makes them more accessible.
11. APESMA believes that the exposure draft should be varied to retain the current requirement for copies of the Award to be made available to employees through a notice board or electronically. This would ensure that these documents are easily accessible to all employees. We believe this is a particular requirement in community pharmacies because they do not usually employ human resources or industrial relations staff that employees can approach to obtain advice on their award and NES entitlements.
12. We note that in the Decision of the Full Bench of the FWC on 23 December 2014², in relation to the exposure drafts for Group 1A and Group 1B Awards, the Full Bench decided to vary the words in the Group 1A and Group 1B exposure drafts to read as follows:

‘The employer must ensure that copies of the award and the NES are available to all employees to whom they apply, either on a notice board which is conveniently located at or near the workplace or through accessible electronic means.’
13. APESMA believes this wording would be appropriate and requests that the exposure draft for the Pharmacy Industry Award be varied to reflect the wording contained in this Decision.

² [2014] FWCFB 9412 [29]

Clause 5 - Inclusion of Facilitative Provisions

14. APESMA believes the inclusion of facilitative provisions will assist employees and employers alike to understand what provisions of the Award can be varied and how they can be varied.
15. In their written submissions on 15 October 2014 in response to the exposure drafts released for Group 1A and 1B Awards³, the ACTU indicated that they believed an appropriate model of a facilitate provision is the provision contained in the Manufacturing and Associated industries and Occupations Award 2010 (Manufacturing Award) and exposure draft because this provision clarifies the distinction between when a facilitative provision can be used between an employer and an individual, and an employer and the majority of employees. It also provides a process for reaching and implementing any agreement.
16. We agree with them and request that the provision contained in the Manufacturing Award and exposure draft for that award be adopted as the appropriate facilitative provision for the Pharmacy Industry Award.

Clause 6.4 - Part-time employees

17. We note that the exposure draft appears to have inadvertently removed a significant provision in the definition of a part time employee. Currently the award provision at Clause 12.1 defines a part time employee as:

12.1 A part-time employee is an employee who:

- (a) works less than 38 hours per week; and*
- (b) has reasonably predictable hours of work.*

18. The exposure draft has deleted the word 'and' at the end of the existing clause 12.1(a).
19. We believe that any variation such as this could have a significant negative impact on the industry particularly as a high proportion of employees within community pharmacies are employed on a part-time basis.

³ (AM2014/64 & Ors) ACTU Submission: Stage 1 Exposure Drafts (15 October 2014)

20. We request that the word ‘and’ be added to this section of the part time work provision of the exposure draft.

Clause 6.4 - Part-time employees - Rosters

21. It would appear that the exposure draft has modified the existing variation to rosters provisions of the Award. This provision can be found at Clause 12.8(a) of the existing Award. It says that a part time employee’s roster can be varied by giving notice of alteration to the roster; either by giving seven days’ written notice or 48 hours’ written notice in the case of an emergency.
22. The provision at clause 6.4(f)(i) of the exposure draft does not provide for written notice to be provided when 48 hours’ notice is given in the case of an emergency.
23. APESMA requests that the existing arrangement be included in the exposure draft to ensure the proper operation of the variation to rosters arrangements for part-time employees.

Clause 10.4 - Annualised Salary (Pharmacists only)

24. We believe that the exposure draft at Clause 10.4(a) and 10.4(b) substantially changes the current award annualised salary provisions. These provisions are found at Clause 27.1 and 27.2 of the Award.
25. The current provisions state that:

27.1 An annualised salary for pharmacist employees may be developed. Such salary may be inclusive of overtime, penalty rates, payments for public holidays taken, annual leave taken, annual leave loading, meal allowance and meal break on call entitlements. Provided that the annual salary paid over a year was sufficient to cover what the employee would have been entitled to if all award entitlements had been complied with when calculated on an individual basis according to the hours worked.

27.2 Provided that in the event of termination of employment prior to completion of a year the salary paid during such period of employment

will be sufficient to cover what the employee would have been entitled to if all award entitlements had been complied with.

26. The clause in the exposure draft states that:

10.4 Annualised salary (Pharmacists only)

- (a) An annualised salary for pharmacist employees may be developed. The annual salary may be in satisfaction of any or all of the following provisions of the award:
- (i) *overtime;*
 - (ii) *penalty rates;*
 - (iii) *payments for public holidays taken;*
 - (iv) *annual leave taken;*
 - (v) *annual leave loading;*
 - (vi) *meal allowance entitlements.*
- (b) *The annual salary paid over a year must be no less than the amount the employee would have received under this award for the work performed over the year (or if the employment ceases before the completion of a year over such lesser period as has been worked).*
- (c) *When payment in accordance with this clause is adopted, the employer will keep a daily record of hours worked by the employee which will show the date and start and finish times of the employee for the day. The record will be countersigned weekly by the employee and will be kept at the place of employment for a period of at least six years.*
- (d) *The employee may be represented in discussions relating to the making of an agreement under clause 10.4 by either their union or nominated representative, and any agreement reached under this clause must be recorded in writing, and a copy retained by the employer.*

27. We believe the current provisions should be retained because they make it clear that an employee's annualised salary agreement must provide compensation for all the

provisions they have agreed to annualise. The way the exposure draft is written it could be interpreted that an employee can agree to annualise all of the provisions but receive compensation for only one of them.

28. It should also be noted that the current provision has been a provision applying to employee pharmacists since 1998 and consequently it is well understood and generally appropriately applied within the industry.

Clause 11.2 Expense related allowances - (a) Meal Allowance

29. In the exposure draft the FWC has requested clarification on the application of the Meal Allowance clause. The Commission has specifically asked for the parties' feedback on the application of clause 11.2(a)(iii) in relation to entitlements to receive meal allowances and the application of clause 11.2(a)(v) and 6.4(b)(vi), in light of Clause 6.4(c) which permits a permanent change to a part-time employee's regular hours.
30. APESMA understands that clause 11.2(a)(iii) applies to both 11.2(a)(i) and 11.2(a)(ii). This means that if an employee has been advised on the previous day of a requirement to work additional hours they are not entitled to receive a meal allowance.
31. It is our opinion that clause 11.2(a)(v) has no relationship with clause 6.4(b)(vi) or 6.4(c) because clause 11.2(a)(v) is meant to cover situations where the employee has been asked to perform additional hours without notice. Consequently the provisions relating to the a temporary or permanent change in part time employees' agreed hours cannot be relevant in this situation.

Clause 13 - Overtime

32. In the exposure draft the Commission asks the parties to provide information on whether a casual employee is entitled to receive overtime.
33. The current award at clause 26(2)(a) clearly indicates that casual employees are entitled to receive overtime payments.

34. APESMA supports the inclusion of a provision clarifying that casual employees are entitled to receive overtime and requests that the exposure draft be varied to reflect the provisions in the existing award so casual employees entitlement to overtime is clear.

Schedule A - Classification Definitions

35. The exposure draft changes the sequential order of various classification definitions from those appearing in the current award at clause 17 and Schedule B. This change in the sequential order of classification definitions is not reflected in the summary tables appearing in Schedule B of the exposure draft.
36. The classification definitions section of the exposure draft provides definitions for student pharmacists and intern pharmacists after those for all other award classifications. We do not believe this is appropriate because both the student pharmacist and intern pharmacist definitions are integral and frequently utilised classifications within the current award classification structure. Unlike in other industries student pharmacists are employed as permanent part-time employees and interns are employed on a permanent fulltime basis during their twelve month period of internship.
37. We request that the exposure draft be varied to reflect the current classification structure sequential order because these two types of employees are generally employed as permanent, ongoing employees either as full time workers or as part time workers and there are significant numbers of each employed within the industry.

Schedule B - Summary Wages Tables

38. Whilst we support the inclusion of summary tables to clarify minimum pay entitlements and the application of overtime and penalty rates we agree with the SDAs submission that these tables need to include some notes explaining their application or they could lead to unintentional breaches of the Award. This is particularly the case because some hours can be worked as ordinary hours at the minimum rate whilst in other cases the same hours will attract overtime or a penalty rate. We think it would be prudent if a note was included at the commencement of

these tables advising readers to refer to the relevant award clauses for an explanation of when the various forms of rates apply.

Schedule G - Definitions

39. We note that in the exposure draft the Definitions section has been moved from clause 3.1 of the current award to Schedule G in the exposure draft. We believe it would be more appropriate for the Definitions to remain at the start of the Award. We believe this would make it easier for readers to find them and believe they would be more likely to be read if they appeared before the substantive provisions to which they refer.

Exposure Draft - Inclusion of NES Summaries and a Payslips Provision.

40. APESMA strongly supports the inclusion of summaries of NES provisions and a new award provision detailing payslip obligations. We believe these inclusions will result in an increase in understanding of rights and entitlements and award compliance because it will be easier for those applying this award to obtain the information they need to do so and for employees covered by it to have a full understanding of their award entitlements.
41. In doing so, we recommend that the exact wording of these summaries be developed and agreed with relevant interested parties to the Pharmacy Industry Award prior to their inclusion in the award. This would ensure that they are easily understood and that they reflect the needs of the industry.

CONCLUSION

42. Generally APESMA sees the exposure draft for the Pharmacy Industry Award as a great improvement on the current award.
43. We note that there are a few changes that have occurred as a result of redrafting of various existing award provisions that will need to be rectified to ensure the current award entitlements are maintained and the award relevance is retained. We have outlined these matters in this submission.

44. APESMA sees the inclusion of summaries of the NES and the inclusion of a payslips provision into the exposure draft as a great improvement that will assist employees and employers alike to understand their rights and obligations. However, we would like to consult with other industry parties to develop and reach agreement on the appropriate wording for these inclusions.
45. Finally we note the Decision of the Full Bench of the FWC on 23 December 2014⁴ regarding the exposure drafts for Group 1 awards and request that the changes referred to in this Decision are also incorporated into the Pharmacy Industry Award exposure draft.



Submitted by:

Jacki Baulch

Senior Industrial Officer, National Office

APESMA

⁴ [2014] FWCFB 9412