

28 August 2015

**IN THE REVIEW OF THE PHARMACY INDUSTRY AWARD 2010 [AM 00012] (GROUP 2B)
AM 2014/209
SUBMISSIONS IN REPLY TO TECHNICAL AND DRAFTING ISSUES AND
OUTLINE OF SUBMISSIONS IN REPLY TO SUBSTANTIVE CLAIMS AND VARIATIONS**

We act for The Pharmacy Guild of Australia (The Guild).

We set out below The Guild's response to:

- 1) The technical and drafting issues raised by the Shop Distributive and Allied Employees Association (SDA) and supported by the Association of Professional Engineers, Scientists and Managers Australia (APESMA), as outlined in submissions filed on 15 July 2015; and
- 2) The substantive claims and variations proposed by the SDA and APESMA respectively.

TECHNICAL AND DRAFTING ISSUES

Inclusion of Summary Wage Tables

The Guild supports the inclusion of minimum rates tables that clearly set out what rate is payable for each hour of work including those that attract penalties.

The Guild is concerned that if rates are described as "minimum hourly rates" that the unintended consequence could be that any hourly rate paid in excess of the minimum rate becomes the Award rate. In effect, what were over Award payments become the Award rate.

It is not uncommon for pharmacy employers to pay over Award payments for ordinary hours of work, but to calculate overtime and penalty rates based on the ordinary hourly rate in the Award.

The Guild supports the inclusion of a definition of "minimum hourly rates", as long as that definition makes it clear that it is the specified minimum hourly rate (in a rate table) that is the Award rate and not anything in excess of it.

SYDNEY MELBOURNE NEWCASTLE BRISBANE

Casual Employment

Clause 6.5(c) in the Exposure Draft currently provides that for each ordinary hour worked by a casual they will be paid the minimum hourly rate and a loading of 25% of the minimum hourly rate.

The references to clause 10.1 and 14 that the SDA proposes be added to clause 6.5(c) are not necessary and the meaning of “and the specified time the hours are worked” is unclear.

If the SDA proposal was to be accepted (which The Guild says it should not), reference in clause 6.5(c) would also be made to clause 10.2, which deals with junior rates.

Although The Guild does not consider any amendment to 6.5(c) necessary, as an alternative the Guild proposes the following:

6.5(c) Casual Loading

- (i) *For each ordinary hour worked a casual employee must be paid:*
- *The minimum hourly rate set out at clause 10.1 for adult employees and 10.2 for junior employees; and*
 - *A loading of 25% of the minimum hourly rate, which is included in the penalty rates set out at clause 14.1 for the classification in which they are employed.*

The Guild does not support using the term “actual rate paid to a full-time employee” rather than “minimum hourly rate” at clause 6.5(c). The use of the words “actual rate paid to a full-time employee” in the current Award is confusing as the rate for full-time employees differs across classifications and may be different for employees at the same classification level as a consequence of Award payments or flexibility arrangements.

Definition of Overtime – drafting issues

The Guild is not opposed to clause 13.2(a), Definition of Overtime, being amended to include references to clauses 8.2(a) and 8.2(e) as proposed by the SDA. The clause would be as follows:

13.2 Definition of Overtime

(a) For a full-time employee, overtime is paid for additional hours worked at the direction of the employer in excess of the ordinary number of hours prescribed in clauses 8.2(a),(c),(d) and (e).

Definition of Overtime – Ambiguities and Anomalies

The SDA proposes that overtime should be payable for hours worked outside the rostering provisions set at clause 8.3 of the Exposure Draft.

The current Award does not provide that overtime is payable in the circumstances set out in

clause 8.3 of the Exposure Draft. There is no ambiguity or anomaly. Any proposal by the SDA that goes beyond reflecting what is in the current award is a substantive claim.

Overtime and Casual and Part-time Employees

The current Award does not set a maximum number of hours or days per week that a casual may work.

The current Award clause 25.2 provides that casual employees are entitled to overtime if they work outside the spread of hours (7am – midnight) or more than 12 hours per day, but not in any other circumstances. If they do work outside the spread of hours or more than 12 hours in a day clause 26.2(iii) applies which says that the casual loading is not payable on overtime.

The current Award provides that overtime is payable to part-time employees in the same circumstances that apply to casuals (clause 25) and if they work in excess of the hours agreed in accordance with clause 12.2(f).

To be consistent with the current Award the Exposure Draft needs to be amended. A new subclause (c) should be added to clause 13.2 and subclause (b) should be amended as follows:

13.2 Definition of Overtime

- (a)... [as above]*
- (b)... For a part-time employee, overtime is payable for additional hours worked at the direction of the employer in excess of the ordinary number of hours prescribed in clauses 8.2(a) and (c) or in excess of the agreed hours in accordance with clause 6.4(b)(vi)*
- (c) For a casual employee, overtime is payable for additional hours worked at the direction of the employer in excess of the ordinary number of hours prescribed in clauses 8.2(a) and (c)*

Any proposal by the SDA that goes beyond reflecting what is in the current award is a substantive claim.

SUBSTANTIVE ISSUES

Shop Distributive and Allied Employees Association

Overtime

The claim is based on there being an ambiguity in the current Award, which the Guild submits is not the case. The current Award appropriately sets out the circumstances in which overtime is payable. The claim is opposed.

Full-time Employees

The claim is opposed.

There is no minimum engagement for full-time employees in the current award.

Full-time employees are currently engaged on shifts of less than four hours. It suits the needs of the business and the employee.

Any proposal by the SDA that goes beyond reflecting what is in the current award is a substantive claim.

Junior Rates

The claim to limit junior rates to grade 1 only is opposed.

Limiting the application of junior rates would have an impact on the employment of junior employees, which is not desirable given the high level of youth unemployment, particularly in regional areas. Pharmacies are well placed to hire and train junior employees in all areas of Australia.

Junior employees do not have the life experience and skills (even if they have the technical competencies) to perform the work at the same level as an adult employee. It is appropriate that their rate be discounted accordingly.

Blood Donor Leave

This claim is opposed. It is a matter for discussion between each employer and employee and/ or a matter for bargaining. It should not form part of the minimum standards.

Bone Marrow Leave

This claim is opposed. It is a matter for discussion between each employer and employee and/ or a matter for bargaining. It should not form part of the minimum standards.

Association of Professional Engineers, Scientists and Managers Australia

Rates of Pay for Pharmacists

If this claim proceeds as indicated by the full bench and the President it will be a work value case.

Professional Services Allowance

This claim is opposed.

It is not correct to assume that the Federal Government funding provided to some pharmacies for some services covers the full cost of providing those services. A pharmacist is diverted away from other tasks to carry out those services.

The funded services, in any event, fall within the scope of existing duties of the pharmacist classification and no separate allowance should be payable for them.

Reimbursement of Expenses

The claim that employers should reimburse pharmacists for professional insurance and professional registration fees is opposed.

Professional insurance and professional registration are the responsibility of the pharmacist and it should remain the case that it is the pharmacist who bears the cost.

Within the industry it is common practice for employers to pay experienced pharmacists above Award entitlement and payments and the reimbursement of expenses should be left to negotiations about those matters. They should not form part of the minimum standards.

CPD Training and Study Leave

Registered pharmacists are required to undergo CPD training in order to maintain their own individual professional registration. Failure to do so, in accordance with the APRHA regulations, would result in loss of registration as a pharmacist which is an inherent requirement of the pharmacist to practice. It should not form part of the minimum award standards.

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