

**Fair Work Commission**

**Award Review 2014**

**Pharmacy Industry Award 2010**

**AM2014/209**



**Shop Distributive and Allied Employees' Association**

Submissions on technical and drafting  
issues related to the Pharmacy Industry  
Award Exposure Draft and outline of  
submissions on substantive claims

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**15 July 2015**

1. The Shop Distributive and Allied Employees' Association (SDA) makes these submissions on the technical and drafting issues related to the exposure draft released by the Fair Work Commission for the *Pharmacy Industry Award 2010* (Pharmacy Award), and an outline of submissions in relation to substantive claims being pursued, in accordance with the Statement and amended Directions issued by Justice Ross on 6 May 2015.
2. The SDA notes from the Statement of Justice Ross on 8 December 2014 and the notes preceding the Exposure Draft that the *'The exposure drafts do not incorporate any substantive changes and do not represent the concluded view of the Commission on any issue'* and *'This exposure draft does not seek to amend any entitlements under the Pharmacy award but has been prepared to address some of the structural issues identified in modern awards.'*
3. The SDA also notes the Full Bench Decisions issued on 23 December 2014<sup>1</sup> and 13 July 2015<sup>2</sup>, and more specifically the sections which relate to general drafting and technical issues common to multiple exposure drafts, and that these decisions will apply to the Pharmacy Industry Award.
4. The SDA relies on our submissions made in relation to the exposure draft on 28 January 2015 and submissions in reply on 18 February 2015. The SDA also supports the submissions made by the HSUA and APESMA in relation to this award.
5. These submissions will be provided in two parts. Firstly, we will make submissions regarding the technical and drafting issues related to the exposure draft. Secondly, we will make a brief outline of submissions in relation to the substantive claims we are pursuing.

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<sup>1</sup> [2014] FWCFB 9412

<sup>2</sup> [2015] FWCFB 4658

## **SDA submission regarding the technical and drafting issues related to the exposure draft.**

6. We will make submissions in relation to technical and drafting issues in three parts. Firstly, we will outline the drafting and technical issues on the exposure draft which have been agreed by the parties. Secondly, we will outline the issues raised in our previous submissions which we now withdraw. Thirdly, we will make submissions in relation to the issues we have been unable to reach agreement on.

### **Agreed Matters**

7. Following the submissions and submissions in reply of the parties, a conference held before Commissioner Bissett on 15 April 2015 and further discussions, the parties have been able to reach agreement on several technical and drafting issues identified.
8. These matters have been outlined in Attachment A of this submission. Attachment A also includes a list of the matters which have been dealt with by the Full Bench Decision<sup>3</sup> and matters withdrawn by the parties. The SDA does not intend to make further submissions in relation to these matters unless the Commission requires this.

### **Withdrawn matters**

9. Following discussion with parties the SDA withdraws our opposition to the exposure draft in relation to the following items in the summary of submissions document:
  - Item 14 – Definitions
  - Item 41 – Annualised Salaries
10. The SDA is satisfied with the wording provided in the exposure draft and does not intend to pursue the issues outlined in our previous submissions.

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<sup>3</sup> [2014] FWCFB 9412

## Outstanding matters where no agreement has been reached

11. The SDA will now make submissions in relation to those issues we have identified in the exposure draft which we believe create a substantive change to the provisions contained in the current award or potential ambiguities.

## Inclusion of summary wages tables

12. The SDA notes the Full Bench decision issued on 13 July 2015<sup>4</sup> and in particular paragraph 62 which states:

*[62] The Full Bench supports the inclusion of detailed schedules of hourly rates in modern awards but we agree that it is prudent to not adopt a 'one size fits all' approach and to develop rates tables in consultation with the interested parties. The complexities of rates in some awards (e.g. Vehicle Manufacturing, Repair, Services and Retail Award 2010 [43](#) do not lend themselves to being accurately and efficiently summarised in such a schedule. Further, the views of interested parties in awards such as the Manufacturing and Associated Industries and Occupations Award 2010<sup>44</sup> (the Manufacturing award) has led to a tailored schedule that relies on the interaction of the schedule with the more detailed provisions governing when a penalty or loading is payable, rather than inserting a complex and lengthy series of tables. Parties are encouraged to review the schedules and make submissions about the accuracy and utility of such schedules during the award stage for Groups 2, 3 and 4.*

13. The SDA is not opposed to the concept of including tables of hourly rates into the Award. However, there needs to be a distinction drawn between the minimum wages table at clause 10 of the exposure draft and how this interacts with the penalty rates table at clause 14, particularly in relation to the use of the term 'Ordinary Hours'.
14. The parties to this Award have commenced discussions around issues identified with the wages tables included in the Exposure Draft of the Award. Item 33 of Attachment A sets out where some agreement has been reached between the parties regarding these concerns, in particular the inclusion of a new 10.1(b) and 10.1(c).

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<sup>4</sup> [2015] FWCFB 4658

15. The new clause 10.1(b) refers to the summary of hourly rates provided in Schedule B of the Award, to ensure that employers and employees are aware that other rates may apply:

*10.4(b) A summary of hourly rates of pay including overtime and penalties is provided in Schedule B of this Award.*

16. This is consistent with the note contained in Clause 10 of the Exposure Draft.

17. The inclusion of a new clause 10.1(c) (see Attachment A), defines when a pharmacy student progresses to a new pay rate to ensure there are no ambiguities as to when they are recognised as commencing a new academic year and are paid as such.

18. To be consistent with the approach agreed to in clause 10, the SDA submits that it is also necessary to include the note contained in Clause 14 'See Schedule B for a summary of hourly rates of pay including overtime and penalties' be included as a new 14.1(b):

*14.1(b) A summary of hourly rates of pay including overtime and penalties is provided in Schedule B of this Award.*

19. The SDA notes that the Full Bench decision issued on 13 July 2015 provides for the inclusion of definitions of 'all purpose' and 'ordinary hourly rate of pay', as provided below:

*[47] We are not persuaded to depart from established practice in relation to the operation of all purpose payments and how they interact with an employee's rate of pay. Definitions of 'all purpose' and 'ordinary hourly rate of pay' will be inserted into all affected awards based on the wording in paragraphs [35] and [91]. Any issues as to whether a particular payment is payable for all purposes, and, in particular, whether an allowance should be added to a minimum rate before calculating a penalty or loading, will be dealt with on an award-by-award basis. Ultimately the resolution of these issues will turn on the construction of the relevant award and the context in which it was made.*

**(iii) Inclusion of hourly rates in wages tables in body of award**

*[48] Most exposure drafts have included hourly rates of pay in the wages tables in the body of the award where the award previously only provided weekly and/or annual rates. These rates are expressed as applying to “ordinary hours”.*

*[49] When an all purpose allowance is payable to all employees in all circumstances, that amount has been added to the minimum rate in the wage rates clause and expressed as the ordinary hourly rate (see for example the industry allowance payable to all employees in the draft [Premixed Concrete Award 2014](#) reproduced in paragraph [51]). However many all purpose allowances are only payable to certain employees in certain qualifying circumstances so the amount cannot be included as a ‘universal’ ordinary hourly rate. In these exposure drafts, a note has been inserted to the effect that the “Ordinary hourly rate is the minimum hourly rate of pay for an employee plus any allowance payable for all purposes to which the employee is entitled” (see for example the leading hand allowance payable to certain employees in the draft [Poultry Industry Award 2014](#)).*

*[54] In our view, the inclusion of hourly rates of pay in the body of the award is appropriate to ensure that awards are simple and easy to understand. The body of the award will contain the weekly rate of pay along with the minimum hourly rate. Where employees are entitled to other payments, these will be included in the schedule to the award. For example, if an award contains an all purpose allowance, the minimum rate will be included in the body of the award, with the ordinary hourly rate outlined in the schedule to the award.*

**(Emphasis added)**

20. The Pharmacy Award is not an affected Award, however, the SDA believes that the same approach should be used for consistency in the Pharmacy Award and a definition of minimum hourly rate and ordinary hours should be included in the Award.
21. The use of the terms ‘minimum hourly rate’ and ‘ordinary hours’ throughout the exposure draft, and in the summary wages table, creates confusion especially when read in conjunction with some clauses in the award such as clause 6.5(c) Casual loading.
22. The SDA submits that the Award would benefit from a definition of these terms in order to eliminate any ambiguities which may arise from the change in terms used and the inclusion of them in the summary wages tables.

### **Casual Employment**

19. Clause 6.5 of the Exposure Draft has reformulated the casual employment clause.
20. The SDA has no objection to 6.5(a) and 6.5(b) which sets out the definition of a casual employee. However, we have concerns in relation to the new casual loading provision 6.5(c).

21. The SDA also notes the Full Bench decision on 13 July 2015<sup>5</sup>:

*[70] In our view it is desirable that there be a consistent rule relating to the calculation of a casual loading which should apply across all awards. Our provisional view is that the position of certain employer parties outlined above at paragraph [69] is the preferred option that should be adopted across all awards. That is, the casual loading will not be calculated based on the ordinary hourly rate. The casual loading will be calculated as 25% of the minimum rate, with any all purpose allowance being added after that.*

*[72] Parties will be given further opportunity to address this issue on an award-by-award basis through the award stage. Further, interested parties will be provided with an opportunity to comment on the rule proposed in paragraph [70] applying across all awards (with an all purpose allowance). Submissions should be emailed to [amod@fwc.gov.au](mailto:amod@fwc.gov.au) by 4.00 pm on **Monday 3 August**. Any submissions in reply should be lodged by 4.00 pm on **Monday 17 August 2015**. A further hearing before the Full Bench will be listed at 10.00 am on **Thursday 27 August 2015**. (Emphasis added)*

22. Whilst the SDA has no concerns with the decision of the Full Bench and how it relates to the Pharmacy Industry Award, we do have concerns about the change of the term ‘actual’ used in the current Award, at Clause 13.2, to ‘minimum’ contained in Clause 6.5(c) of the Exposure Draft, as the two concepts are not the same.

23. The current award provides that:

*13.2 A casual will be paid both the **actual** hourly rate paid to a full-time employee and an additional 25% of the **ordinary** hourly rate for a full-time employee.*

24. The exposure draft clause 6.5(c) provides that:

*6.5(c) Casual Loading*

*(i) For each ordinary hour worked, a casual employee must be paid:*

- the **minimum** hourly rate; and*
- a loading of 25% of the **minimum** hourly rate*

*for the classification in which they are employed.*

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<sup>5</sup> [2015] FWCFB 4658

25. The change in the use of the term 'actual' to 'minimum' could be interpreted to provide a different entitlement to wages under the award. Although it is not the intention, the new clause could be interpreted to mean that a casual is only entitled to the minimum hourly rate plus the additional 25% casual loading and not the penalty rate which applies to ordinary hours worked which attract a penalty as per clause 14 (of the PIA exposure draft).
26. The SDA submits that the clause should retain the existing terminology and entitlements of the current award, that is, clause 6.5(c)(i) should state:

*6.5(c) Casual Loading*

*(i) For each ordinary hour worked, a casual employee must be paid:*

- *the **actual** hourly rate; and*
- *a loading of 25% of the **ordinary** hourly rate*

*for the classification in which they are employed.*

27. Alternatively, the wording contained in the exposure draft could be used providing the clause contained additional wording which clarifies that the rate could also include a penalty depending on when the ordinary hour is worked. For example:

*6.5(c) Casual Loading*

*(i) For each ordinary hour worked, a casual employee must be paid:*

- *the minimum hourly rate; and*
- *a loading of 25% of the minimum hourly rate*

*for the classification in which they are employed **and the specified time the hours are worked, as per clause 10.1 and clause 14 of this Award.***

### **Definition of overtime – drafting issues**

28. In drafting clause 13.2 Definition of overtime, the exposure draft has failed to reference all of the clauses in 8.2 which were included in the current award at 25.2 and 25.3.
29. The overtime clause in the current award, clause 26.2 states that:



**26.2 Overtime and penalty rates**

**(a) Overtime**

*Overtime means authorised additional hours performed at the direction of the employer:*

**(i)** *Hours worked in excess of the ordinary number of hours of work prescribed in clauses 25.2 and 25.3 are to be paid at time and half for the first two hours and double time thereafter. Overtime worked on a Sunday is to be paid at the Sunday rate of double time, and overtime worked on a public holiday is to be paid at the public holiday rate of double time and half.*

30. Clause 25.2 and 25.3 of the current award provide:

25.2 *Ordinary hours*

**(a) Ordinary hours may be worked, within the following spread of hours:**

<b>Days</b>	<b>Spread of Hours</b>
<b>Monday to Sunday</b>	<b>0am – midnight</b>

**(b)** *Hours of work on any day will be continuous, except for rest pauses and meal breaks and must not be more than 12 hours per day.*

25.3 *38 hour week rosters*

*A full-time employee will be rostered for an average of 38 hours per week, worked in any of the following forms:*

**(a)** *38 hours in one week; or*

**(b)** *76 hours in two consecutive weeks.*

**(emphasis added)**

31. Clause 13.2 of the exposure draft:

### 13.2 Definition of overtime

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

32. The exposure draft has left out 8.2(a) and 8.2(e):

#### 8.2 Ordinary hours and roster cycles

- (a) ***Ordinary hours may be worked between 7.00 am and midnight, Monday to Sunday.***
- (b) *Hours of work on any day will be continuous, except for rest breaks and meal breaks.*
- (c) *Hours of work must not exceed 12 hours per day.*
- (d) *The ordinary hours of work for a full-time employee will be 38 hours per week.*
- (e) ***A full-time employee's ordinary weekly hours may be averaged over a period of two consecutive weeks.***

33. Clause 13.2(a) has omitted 8.2(a) spread of hours, and 8.2(e) which allows for averaging over two consecutive weeks. These provisions were contained in clause 25.2(a) and 25.3 of the current award. Removing them fundamentally changes entitlements under this award, which is not what the exposure draft was supposed to do.

34. This makes a substantive change to the entitlement to overtime. As referenced in our submission at paragraph 2 the Statement of Justice Ross on 8 December 2014 and the notes preceding the Exposure Draft state that the *'The exposure drafts do not incorporate any substantive changes and do not represent the concluded view of the Commission on any issue'* and *'This exposure draft does not seek to amend any entitlements under the*

*Pharmacy award but has been prepared to address some of the structural issues identified in modern awards.'*

35. This is an obvious drafting error which needs to be remedied. The overtime clause needs to correctly reference clauses 8.2(a), 8.2(b), 8.2(c), 8.2(d) and 8.2(e) to remain consistent with the current award.

### **Definition of Overtime – Ambiguities and Anomalies**

36. In reviewing the award as part of the process relating to the exposure draft the SDA has identified some ambiguity and anomalies in relation to the overtime clause.
37. The SDA believes that payment of overtime should also occur when an employee works outside the “ordinary” parameters set by the rostering provisions contained in 8.3(a). Hours worked outside of these rostering parameters should attract overtime and this is what is currently being paid when employees work outside of these rostering provisions.
38. To address this anomaly clause 8.3(a) should also be included in the overtime clause 13.2(a).
39. The SDA believes that this is a technical and drafting issue which could be dealt with by either the Full Bench hearing on technical and drafting issues or as a substantive claim. The SDA does not have a preference as to how this should be heard and will be guided by views of the other parties involved and the Commission.

### **Overtime and casual and part-time employees**

40. The exposure draft has made significant changes to the overtime provisions in the Pharmacy Award which the SDA strongly opposes.
41. Clause 13.2(a) provides for overtime for a full-time employee and clause 13.2(b) provides overtime for a part-time employee. However, the clause does not provide a definition of when overtime applies to casual employees and it changes the entitlement to overtime for part-time employees.

42. The exposure draft contains a note below Clause 13.2, *'Should the award state when a casual employee is entitled to overtime?'* The SDA strongly submits that the award needs to state that a casual employee is entitled to overtime, as evidenced by current clause 26.2(a)(iii) *For casual employees the casual loading is not payable on overtime.*
43. The SDA, in its Outline of Variations made on 25 November 2014, has sought to 'vary clause 26.2 (a)(i) Overtime, to ensure that there is no ambiguity as to the payment of overtime for all permanent and casual employees performing work which goes beyond the times and patterns considered 'ordinary' as per the award.'<sup>6</sup>
44. The SDA submits that overtime in the Pharmacy Award applies to all employees performing work beyond the times and patterns considered 'ordinary', including casuals. As such, we strongly oppose the change in the definition of overtime included in the exposure draft.
45. Any definition of overtime provided in the Award should define when overtime is paid for both permanent **and** casual employees as overtime provisions apply to all employees.
46. The SDA also submits that the definition of overtime for part-time employees should not have been separated from full-time employees and that overtime is payable to part-time employees for additional hours worked prescribed in clause 8.2(a) outside the spread, 8.2(c) in excess of 12 hours per day, 8.2(d) more than 38 hours per week or 8.2(e) more than 76 hours over two consecutive weeks, and 6.4(b)(vi) all time worked in excess of agreed hours.
47. Clause 13.2(b) only provides for payment of overtime for part-time employees in accordance with 6.4(b)(vi).
48. The SDA submits that the Exposure Draft has made substantive changes to the entitlement to overtime in the Pharmacy Industry Award.
49. Given that we also have substantive claims in relation to overtime for part-time and casual employees the SDA submits that the issues identified in these submissions in relation to part-time and casual employees should also be dealt with by the Casual and Part-time Full Bench.

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<sup>6</sup> AM2014/209, SDA Outline of Variations, 25 November 2014.

## **Outline of submissions in relation to SDA substantive claims**

### **Overtime**

50. The SDA seeks to vary clause 26.2 (a)(i) Overtime, to ensure that there is no ambiguity as to the payment of overtime for all permanent and casual employees performing work which goes beyond the times and patterns considered 'ordinary' as per the award.
51. As per our comments above, the SDA submits that this issue would be more appropriately dealt with as part of the Casual and Part-time Full Bench.

### **Full-Time Employees**

52. The current clause simply states:

11. Full-time Employees

- A full-time employee is an employee who is engaged to work an average of 38 hours per week.

53. The SDA is seeking to vary clause 11 Full-time employees, to include the requirement for agreement in writing at the time of engagement on a regular pattern of work and the requirements for variation to the pattern of work, which is contained in the Award for part-time employees at clause 12.2, 12.3 and 12.4.
54. This variation will ensure that all permanent employees are afforded the same protections regarding regular patterns of work.
55. The SDA also seeks to vary clause 11 of the Award to include a minimum shift of 4 hours for full-time employees.
56. There is currently no minimum shift entitlement for full-time employees.

57. Most pre-modern pharmacy awards contained minimum shift provisions for all employees, including full-time employees.
58. The SDA submits that this matter need not be referred to a separately constituted Full Bench.
59. The SDA believes that this is an anomaly and as such we do not intend to lead any evidence in relation to this claim.

### **Junior Rates**

60. The SDA seeks to vary Clause 18 of the Award to provide for the payment of junior rates to Level 1 employees only.
61. Where an employee is performing work at a higher classification and is recognised as having the necessary skills and competencies applicable for a higher classification they should be paid the full rate of pay to reflect these competencies.
62. Given the degree of skill, knowledge and responsibility required of employees classified above Level 1, it is inappropriate for junior rates to be applied.
63. The SDA submits that this matter need not be referred to a separately constituted Full Bench. At this stage, we do not intend to provide witness statements or lead evidence in relation to this claim.

### **Blood and Bone Marrow Donor Leave – New Clause**

64. The SDA is seeking to include a Blood and Bone Marrow Donor Leave clause into the Award.
65. The SDA submits that this matter need not be referred to a separately constituted Full Bench. The SDA intends to provide some evidentiary material and witness statements in support of this claim, however we are unable to comment on the scope of the material at this time.

### **Blood Donor Leave:**

66. The new clause would provide all permanent employees with 2 hours paid leave on a maximum of 4 occasions per year for the purpose of donating blood, and would be subject to certain notification and evidence requirements.
67. Casual employees would be entitled to be absent for 2 hours, up to 4 occasions per year without pay.

### **Bone Marrow Donor Leave:**

68. The new clause would provide up to a maximum 4 days paid leave, without deduction of pay, to undertake any procedure necessary for the donation of bone marrow including blood tests for the purpose of becoming a registered donor, pre-donation procedures and the time required to be taken when a bone marrow donation is given.

69. Casual Employees would be entitled to be absent for the equivalent time provided to permanent employees without pay.
  
70. Blood donation and Bone Marrow donation are essential community services which need to be supported through workplace entitlements to ensure people are able to make this donation.
  
71. The lack of minimum entitlements for this purpose restricts employees from being able to make these vital donations.



**ATTACHMENT A - Pharmacy Industry Award – Exposure Draft – Agreed matters**

Item No	Exposure Draft	Agreed Wording
10	<p><b>1. The National Employment Standards and this award</b></p> <p><b>2.1</b> The <a href="#">National Employment Standards</a> (NES) and entitlements in this award contain the minimum conditions of employment for employees covered by this award.</p> <p><b>2.2</b> Where this award refers to a condition of employment provided for in the NES, the NES definition applies.</p> <p><b>2.3</b> The employer must ensure that copies of this award and the NES are available to all employees to whom they apply.</p>	<p><b>2. The National Employment Standards and this award</b></p> <p>The National Employment Standards (NES) and this award contain the minimum conditions of employment for employees covered by this award.</p> <p>Where this award refers to a condition of employment provided for in the NES, the NES definition applies.</p> <p><b>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.</b></p> <p><b>Where a pharmacy does not have a notice board, the award and the NES may be kept at an alternative location on the premises that is accessible to employees, including being kept with the pharmacy communication book.</b></p>

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**5. Facilitative provisions**

**5.1** A facilitative provision provides that the standard approach in an award provision may be departed from by agreement between an employer and an individual employee, or an employer and the majority of employees in the enterprise or part of the enterprise concerned. Facilitative provisions are not to be used as a device to avoid award obligations nor should they result in unfairness to an employee or employees covered by this award.

**5.2** Facilitative provisions in this award are contained in the following clauses:

Clause	Provision	Agreement between an
13.4(c)	Time off instead of	An individual
18.4	Substitution of public	An individual or the majority

**5. Facilitative provisions**

This award contains facilitative provisions which allow agreement between an employer and an individual employee on how specific award provisions are to apply at the workplace.

5.2 The following clauses have facilitative provisions:

Clauses	Provision
13.4(c)	Time off instead of payment
18.4	Substitution of public holidays

5.3 The agreement must be kept by the employer as a time and wages record.

**\*Please note - The current Award does not refer to agreement by the majority of employees which is why it is not included in the agreed clause.**

<p><b>19</b></p>	<p><b>6.4 Part-time employment</b></p> <p><b>(a)</b> A part-time employee:</p> <p>is engaged to work less than 38 hours per week;</p> <p>has reasonably predictable hours of work;</p> <p>except as provided elsewhere in this award, receives on a pro-rata basis pay and conditions equivalent to those of full-time employees who do the same kind of work.</p>	<p><b>6.4 Part-time employment</b></p> <p><b>(a)</b> A part-time employee:</p> <p>is engaged to work less than 38 hours per week; <u>and</u></p> <p>has reasonably predictable hours of work;</p> <p>except as provided elsewhere in this award, receives on a pro-rata basis pay and conditions equivalent to those of full-time employees who do the same kind of work.</p>
<p><b>20 &amp; 21</b></p>	<p><b>6.4(d)</b> For each ordinary hour worked, a part-time employee will be paid no less than the minimum hourly rate of pay for the relevant classification in clause 6.5(d).</p>	<p><b>6.4(d)</b> For each ordinary hour worked, a part-time employee will be paid <del>no less than</del> <del>no less than</del> the minimum hourly rate of pay for the relevant classification in clause <del>6.5(d)</del> <del>6.5(d)</del> <u>10.1</u>.</p>

<p><b>22&amp; 23</b></p>	<p><b>6.4(f) Rosters</b></p> <p><b>(i)</b> A part-time employee’s roster, but not the agreed number of hours, may be altered:</p> <p>by giving seven days’ written notice; or</p> <p>in the case of an emergency, by giving 48 hours’ notice; or</p> <p>at any time by mutual agreement between the employer and the employee.</p>	<p><b>6.4(f) Rosters</b></p> <p><b>(i)</b> A part-time employee’s roster, but not the agreed number of hours, may be altered:</p> <p>by <a href="#">the employer</a> giving <a href="#">the employee</a> seven days’ written notice; or</p> <p>in the case of an emergency, by <a href="#">the employer</a> giving <a href="#">the employee</a> 48 hours’ <a href="#">written</a> notice; or</p> <p>at any time by mutual agreement between the employer and the employee.</p>
<p><b>26</b></p>	<p><b>6.5(c)(ii)</b> The casual loading is paid instead of annual leave, paid personal leave, paid personal/carer’s leave, notice of termination, redundancy benefits and other entitlements of full-time or part-time employment.</p> <p><b>(iii)</b> The following provisions of this award to not apply to casual employees</p>	<p><b>Delete clause 6.5(c)(ii) and 6.5(c)(iii).</b></p>
<p><b>28</b></p>	<p><b>8.3(a)(v)</b> An employee who regularly works Sundays will be rostered to have three consecutive days off every four weeks and the consecutive days off will include Saturday and</p>	<p>An employee may be rostered to work a maximum of 3 Sundays in any 4 week cycle and must have three consecutive days off every four weeks, including a Saturday and Sunday.</p>

	Sunday.							
32	<p><b>9.3</b> An employee working 7.6 or more hours on any day will be entitled to an unpaid meal break of at least 30 minutes but no longer than one hour, plus two 10 minute paid rest breaks, provided that:</p> <p>the meal breaks are to be taken after at least 2.5 hours and not later than five hours work; and</p> <p>the rest breaks are not to be taken in the first hour of work or in the first hour after the meal break.</p>	<p><b>9.3</b> An employee working 7.6 or more hours on any day will be entitled to an unpaid meal break of at least 30 minutes but no longer than one hour, plus two 10 minute paid rest breaks, provided that:</p> <p>the meal breaks are to be taken after at least 2.5 hours and not later than five hours work; and</p> <p>the rest breaks are not to be taken in the first hour of work or in the first hour after the meal break.</p> <p><b>Insert table after 9.3</b></p> <table border="1" data-bbox="1272 991 1890 1361"> <thead> <tr> <th data-bbox="1272 991 1588 1066">Ordinary hours per day</th> <th data-bbox="1588 991 1890 1066">Break</th> </tr> </thead> <tbody> <tr> <td data-bbox="1272 1066 1588 1193">4 hours and up to and including 5 hours</td> <td data-bbox="1588 1066 1890 1193">One 10-minute paid rest break</td> </tr> <tr> <td data-bbox="1272 1193 1588 1361">More than 5 and less than 7.6 hours</td> <td data-bbox="1588 1193 1890 1361">One 10-minute paid rest break One 30 to 60-minute</td> </tr> </tbody> </table>	Ordinary hours per day	Break	4 hours and up to and including 5 hours	One 10-minute paid rest break	More than 5 and less than 7.6 hours	One 10-minute paid rest break One 30 to 60-minute
Ordinary hours per day	Break							
4 hours and up to and including 5 hours	One 10-minute paid rest break							
More than 5 and less than 7.6 hours	One 10-minute paid rest break One 30 to 60-minute							

					unpaid meal break																																																																	
				7.6 hours or more	Two 10-minute paid rest breaks One 30 to 60-minute unpaid meal break																																																																	
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<b>Pharmacy Interns</b>				First half of training	787.10	20.71	25.89
First half of training	787.	20.71	25.89	Second half of	814.00	21.42	26.78
Second half of	814.	21.42	26.78	<b>Pharmacist</b>	920.90	24.23	30.29
<b>Pharmacist</b>	920.	24.23	30.29	<b>Experienced</b>	1008.60	26.54	33.18
<b>Experienced</b>	1008.	26.54	33.18	<b>Pharmacist in</b>	1032.20	27.16	33.95
<b>Pharmacist in Charge</b>	1032.	27.16	33.95	<b>Pharmacist</b>	1150.30	30.27	37.84
<b>Pharmacist Manager</b>	1150.	30.27	37.84				

[10.1\(b\) A summary of hourly rates of pay including overtime and penalties is provided in Schedule B of this Award.](#)

[10.1\(c\) Each year of a pharmacy student's course commences on the first day of the relevant academic term. A pharmacy student's progression through the pay rate is in line with the student's progression through the course. If the pharmacy student completes subjects faster than the usual course progression for that year of study, the student will progress to the next pay rate even if they have not been on the previous pay rate for a year. A pharmacy student will not move to the next pay rate if they have](#)

		<p><u>not completed and passed all of the subjects required in the usual course progression for that year of study, even if they remain on the same pay rate for more than one year. Students undertaking a Master of Pharmacy will commence at the year 3 pay rate.</u></p>
<p><b>39</b></p>	<p><b>10.3 Payment of wages</b></p> <p>Wages will be paid either weekly or fortnightly, according to the actual hours worked for each week or fortnight.</p> <p>Section <u>536</u> of the Act requires the employer to give a pay slip to an employee within one working day of paying an amount to the employee in relation to the performance of work. The <u>Fair Work Regulations 2009</u> specify the information that must be included in a pay slip.</p>	<p><b>10.3 Payment of wages</b></p> <p>Wages will be paid either weekly or fortnightly, according to the actual hours worked for each week or fortnight.</p> <p><u>All wages shall be paid on a regular pay day within 4 days of the end of the pay period. The employer must notify the employee in writing as to which day is the pay day. Where for any reason the employer wishes to change the pay day, then the employer shall provide at least 4 weeks' written notice to the employee of such change.</u></p> <p><del>Section <u>536</u> of the Act requires the employer to give a pay slip to an employee within one working day of paying an amount to the employee in relation to the performance of work. The <u>Fair Work</u></del></p>



		<p><del>Regulations 2009 specify the information that must be included in a pay slip.</del></p> <p><del>Section 536 of the Act requires the employer to give a pay slip to an employee within one working day of paying an amount to the employee in relation to the performance of work. The <u>Fair Work Regulations 2009</u> specify the information that must be included in a pay slip.</del></p>
43	<p><b>Clause 10.5</b> Supported wage system</p> <p>For employees who because of the effects of a disability are eligible for a supported wage, see Schedule D – Supported Wage System.</p>	<p>Clause 10.5 Supported wage system</p> <p>For employees who <del>because of the effects of a disability because of the effects of a disability</del> are eligible for a supported wage, see Schedule D – Supported Wage System.</p>
44	<p><b>11.2(a)(iii)</b> This provision will not apply when the employer has advised the employee of the requirement to work overtime on the previous day.</p>	<p><del>provision</del> <del>This provision</del> <u>11.2(a)(i) and (ii)</u> will not apply when the employer has advised the employee of the requirement to work overtime the previous day.</p>
45	<p><b>Clause 11.2(a)(v)</b> Meal allowance</p>	<p>Maintain exposure draft wording.</p>

	No meal allowance will be payable where the additional hours are agreed hours as per clause 6.4(c).			
<b>*50</b>	<p><b>13.2 Definition of overtime</b></p> <p>For a full-time employee, overtime is paid for additional hours worked at the discretion of the employer in excess of the ordinary number of hours prescribed in clauses 8.2(c) and 8.2(d).</p>	<p><b>13.2 Definition of overtime</b></p> <p>For a full-time employee, overtime is paid for additional hours worked at the <del>discretion</del> <u>discretion-direction</u> of the employer in excess of the ordinary number of hours prescribed in clauses 8.2(c) and 8.2(d).</p> <p><b>(Please see note below -*50)</b></p>		
<b>54</b>	<p><b>14.2 On-premise meal allowance (Pharmacists only)</b></p> <p>A pharmacist who is required to attend to urgent matters during their meal break may be entitled to payment in accordance with clause 11.2(b).</p>	<b>Delete Clause</b> – already contained in clause 11.2(b)		
<b>56</b>	<p><b>20.2 Notice of termination by an employee</b></p> <p>The notice of termination required to be given by an employee is the same as that required of an employer,</p>	<p>The notice of termination required to be given by an employee is the same as that required of an employer, except that there is no requirement for employees over 45 years old to give additional notice.</p> <table border="1" data-bbox="1189 1331 2002 1398"> <tr> <td><b>Years of Service</b></td> <td><b>Period of Notice</b></td> </tr> </table>	<b>Years of Service</b>	<b>Period of Notice</b>
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	<p>except that there is no requirement for employees over 45 years old to give additional notice. If an employee fails to give the required notice, the employer may withhold any money due to the employee on termination under this award or the NES, an amount not exceeding the amount the employee would have been paid under this award in respect of the period of notice required by this clause, less any period of notice actually given by the employee.</p>	<table border="1" data-bbox="1189 193 2000 552"> <tr> <td data-bbox="1189 193 1659 264">Not more than 1 year</td> <td data-bbox="1659 193 2000 264">1 week</td> </tr> <tr> <td data-bbox="1189 264 1659 371">More than 1 year but not more than 3 years</td> <td data-bbox="1659 264 2000 371">2 weeks</td> </tr> <tr> <td data-bbox="1189 371 1659 478">More than 3 years but not more than 5 years</td> <td data-bbox="1659 371 2000 478">3 weeks</td> </tr> <tr> <td data-bbox="1189 478 1659 552">More than 5 years</td> <td data-bbox="1659 478 2000 552">4 weeks</td> </tr> </table> <p>If an employee fails to give the required notice, the employer may withhold any money due to the employee under this award or the NES, an amount not exceeding the amount the employee would have been paid under this award in respect of the period of notice required by this clause, less any period of notice actually given by the employee.</p>	Not more than 1 year	1 week	More than 1 year but not more than 3 years	2 weeks	More than 3 years but not more than 5 years	3 weeks	More than 5 years	4 weeks
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<p><b>57</b></p>	<p><b>21.1</b> Redundancy pay is provided for in the NES. The NES provides between zero and 16 weeks' redundancy pay upon redundancy, depending on length of service. Small business employers are excluded from the obligation to pay redundancy pay. For the full NES redundancy pay entitlement see <a href="#">ss.119–122</a> of the Act.</p> <p><b>21.2</b> A <b>small business employer</b> is defined in the Act as an</p>	<p><b>21.1</b> Redundancy pay is provided for in the NES. The NES provides between zero and 16 weeks' redundancy pay upon redundancy, depending on length of service. <b>Small business employers</b> are excluded from the obligation to pay redundancy pay. For the full NES redundancy pay entitlement see <a href="#">ss.119–122</a> of the Act.</p> <p><del><b>21.2</b> A <b>small business employer</b> is defined in the Act as an</del></p>								

	<p>employer that employs fewer than 15 employees. The way that the number of employees is calculated is set out in <a href="#">s.23</a> of the Act</p>	<p><del>employer that employs fewer than 15 employees. The way that the number of employees is calculated is set out in <a href="#">s.23</a> of the Act</del></p>
<p><b>60</b></p>	<p><b>Schedule A—Classification Definitions</b></p> <p><b>A.1 Pharmacy Assistant Level 1</b> is an employee who has commenced employment in a community pharmacy for the first time, or holds no qualifications in community pharmacy.</p> <p><b>A.2 Pharmacy Assistant Level 2</b> is an employee who has acquired the competencies listed for a holder of Certificate II in Community Pharmacy, as determined from time to time by the National Quality Council or any successor thereto.</p> <p><b>A.3 Pharmacy Assistant Level 3</b> is an employee who has acquired the competencies listed for a holder of Certificate III in Community Pharmacy,</p>	<p><b>Schedule A—Classification Definitions</b></p> <p><b>A.1 Pharmacy Assistant Level 1</b> is an employee who has commenced employment in a community pharmacy for the first time, or holds no qualifications in community pharmacy.</p> <p><b>A.2 Pharmacy Assistant Level 2</b> is an employee who has acquired the competencies listed for a holder of Certificate II in Community Pharmacy, as determined from time to time by the National Quality Council or any successor thereto.</p> <p><b>A.3 Pharmacy Assistant Level 3</b> is an employee who has acquired the competencies listed for a holder of Certificate III in Community Pharmacy, as</p>

<p>as determined from time to time by the National Quality Council or any successor thereto and who is required by the employer to work at this level.</p> <p>A Pharmacy Assistant who is a holder of Certificate III in Community Pharmacy may be required to supervise Pharmacy Assistants at Competency levels 1 and 2.</p> <p>A Dispensary Assistant will be paid as Pharmacy Assistant Competency Level 3.</p> <p>A pharmacy assistant, who for the majority of their duties is assisting with extemporaneous preparations working in a compounding lab or compounding section of a community pharmacy, will be paid as Pharmacy Assistant Competency Level 3.</p> <p><b>A.4 Pharmacy Assistant Level 4</b> is an employee who has acquired the competencies listed for a holder of Certificate IV in Community Pharmacy and who is required by the employer to work at this level. A Pharmacy Assistant Competency level 4 may be</p>	<p>determined from time to time by the National Quality Council or any successor thereto and who is required by the employer to work at this level.</p> <p><u>(a)</u> A Pharmacy Assistant who is a holder of Certificate III in Community Pharmacy may be required to supervise Pharmacy Assistants at Competency levels 1 and 2.</p> <p><u>(b)</u> A Dispensary Assistant will be paid as Pharmacy Assistant Competency Level 3.</p> <p><u>(c)</u> A pharmacy assistant, who for the majority of their duties is assisting with extemporaneous preparations working in a compounding lab or compounding section of a community pharmacy, will be paid as Pharmacy Assistant Competency Level 3.</p> <p><b>A.4 Pharmacy Assistant Level 4</b> is an employee who has acquired the competencies listed for a holder of Certificate IV in Community Pharmacy and who is required by the employer to work at this level. A Pharmacy Assistant Competency level 4 may be required to supervise Pharmacy Assistants at Competency levels 1, 2</p>
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<p>required to supervise Pharmacy Assistants at Competency levels 1, 2 and 3.</p> <p><b>A.5 Pharmacist</b> is a person who is registered as a pharmacist pursuant to the relevant State or Territory law.</p> <p><b>A.6 Experienced Pharmacist</b> is a Pharmacist who has gained at least four years full-time experience or the part-time equivalent as a Community Pharmacist.</p> <p><b>A.7 Pharmacist in Charge</b> is a pharmacist who assumes responsibility for the day to day supervision and functioning of a community pharmacy practice.</p> <p><b>A.8 Pharmacist Manager</b> is a pharmacist who is responsible to the proprietor for all aspects of the business.</p> <p><b>A.9 Pharmacy Student</b> means a person who is undertaking an accredited course of study</p>	<p>and 3.</p> <p><b><u>A.959 Pharmacy Student</u></b> means a person who is undertaking an approved program of study, under the Australian Health Practitioner Regulation National Law, <u>leading to registration as a pharmacist and who enters into a contract of employment with a proprietor of a pharmacy to work in that pharmacy.</u></p> <p><b><u>A.960 Pharmacy Intern</u></b> means a person who has satisfied the examination requirements for an accredited course of study leading to registration as a pharmacist and is engaging in the period of pre-registration training required under the <del>relevant State/Territory Pharmacy Act</del> <u>Australian Health Practitioner Regulation National Law .</u></p> <p><b><u>A.557 Pharmacist</u></b> is a person who is registered as a pharmacist pursuant to the relevant State or Territory law.</p> <p><b><u>A.668 Experienced Pharmacist</u></b> is a Pharmacist who has gained at least four years full-</p>
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leading to registration as a pharmacist and who enters into a contract of employment with a proprietor of a pharmacy to work in that pharmacy.

**Pharmacy Intern** means a person who has satisfied the examination requirements for an accredited course of study leading to registration as a pharmacist and is engaging in the period of pre-registration training required under the relevant State/Territory Pharmacy Act.

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**A.779 Pharmacist in Charge** is a pharmacist who assumes responsibility for the day to day supervision and functioning of a community pharmacy practice.

**A.8810 Pharmacist Manager** is a pharmacist who is responsible to the proprietor for all aspects of the business.

~~**A.9 Pharmacy Student** means a person who is undertaking an accredited course of study leading to registration as a pharmacist and who enters into a contract of employment with a proprietor of a pharmacy to work in that pharmacy.~~

~~**Pharmacy Intern** means a person who has satisfied the examination requirements for an accredited course of study leading to registration as a pharmacist and is engaging in the period of pre-registration training required under the relevant State/Territory Pharmacy Act.~~

62	Schedule G - Definitions  removal of default fund employee	Retain definition of default fund employee as per Full Bench decision of the FWC [2013] FWCFB 10016.  <b>Default fund employee</b> means an employee who has no chosen fund within the meaning of the <i>Superannuation Guarantee (Administration) Act 1992</i> (Cth)

\*50 – Agreement to this wording only relates to the PGA claim that the word ‘discretion’ be changed to ‘direction’. Please refer to submission.

#### Matters dealt with by the Full Bench Decision

Item	Clause/Issue
3	General
4	NES Summaries – (to be discussed re annotated version)
5	Illustrative examples - (to be discussed re annotated version)
6	Payslips - (to be discussed re annotated version)
7	Expression of pay rates – rounding (annotated version)
8	Supersession
9	Take home pay provision
12	Casual employment



55	Public holidays
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### Matters Withdrawn

Item	Clause/issue
2 (APESMA)	N/A
14(APESMA/SDA)	Definitions
36 (Bus SA)	Calculation to rates (annotated version)
38 (PGA)	Junior employee rates (annotated version)
41(SDA)	Annualised salary
46 (PGA)	Clothing Allowance
47(PGA)	Superannuation (annotated version)
58 (HSUA)	classifications
59 (PGA)	Classifications – alignment of training
63 (PGA)	'national system' definition (annotated version)