

4 Yearly Review of Modern Award – Penalty Rates (AM2014/305)

TRANSITIONAL ARRANGEMENTS

SUBMISSIONS OF THE PHARMACY GUILD OF AUSTRALIA

1. The Pharmacy Guild of Australia (**the Guild**) makes these submissions in accordance with 4 yearly review of modern awards – Penalty Rates [2017] FWCFB 1001.
2. These submissions are made only in relation to the variations to the *Pharmacy Industry Award 2010 (PIA)*.

Transitional Arrangements

3. The Guild acknowledges the provisional view of the Full Bench that appropriate transitional arrangements for the reduction in penalty rates are necessary to mitigate the hardship caused to employees who work on Sundays.¹
4. The lay evidence of the pharmacy employers supported the proposition that the current level of penalty rates has led employers to perform work on Sundays and public holidays which would usually be performed by employees to reduce costs² and to take measures to reduce labour costs associated with trading at times when penalty rates apply³ and that a reduction in penalty rates was likely to lead to:
 - a. an increase in the level and range of services offered on Sundays and public holidays;
 - b. extended operating hours on Sundays and public holidays; and
 - c. a consequential increase in employment (in terms of hours worked by existing employees or the engagement of new employees).⁴
5. Further, the lay evidence of the pharmacy employers demonstrated that the current penalty rates regime in the PIA has led employers to take measures to reduce labour costs associated with trading times when penalty rates apply, in particular by imposing operational limitations such as reducing trading hours or lowering staffing levels and implementing service delivery restrictions.⁵ When read in conjunction with those findings at paragraph [4] above, it is apparent that to some extent the reduction in Sunday penalty rates in the PIA will be to offset by the opportunity to work additional hours.
6. Having regard to these considerations, the Guild submit that the change to the Sunday penalty rate for fulltime and part-time employees should be introduced in two equal

¹ 4 yearly review of modern awards – Penalty Rates [86] and [2021]

² Ibid [1766]

³ Ibid [1767].

⁴ Ibid [1769]

⁵ Ibid [1767]

instalments of 25%, each taking effect from the first full pay period on or after 1 July, being the same time as changes that may occur to the minimum hourly rates as a consequence of annual wage reviews.

7. As such, the Guild respectfully submits that, for fulltime and part-time employees to whom the PIA applies, the Sunday penalty should be set at:
 - a. 175% of the minimum hourly rate, from the first full pay period on or after 1 July 2017.
 - b. 150% of the minimum hourly rate, from the first full pay period on or after 1 July 2018.
8. Further, the Guild respectfully submits that, for casual employees to whom the PIA applies, the Sunday penalty should be set at:
 - c. 200% of the minimum hourly rate, from the first full pay period on or after 1 July 2017.
 - d. 175% of the minimum hourly rate, from the first full pay period on or after 1 July 2018.
9. The Guild is of the view that if the reduction in the penalty rate for Sunday work was to occur in more than two instalments or if the introduction of the reduction was delayed for 12 months as proposed by the Productivity Commission⁶ this would reduce the opportunity to achieve the benefits set out in paragraphs [4] and [5] above.
10. The Guild agrees with the provisional view expressed by the Full Bench not to order a general 'red circling' or 'grandfathering' term to preserve the Sunday penalty rates for all existing employees.⁷ Further, the Guild agrees that the consequence of such a term would be that different employees of the one employer may be employed on different terms and conditions and that this would add to the regulatory burden on business (a relevant consideration under s.134(1)(f) of the *Fair Work Act 2009 (Act)*⁸).

Take-Home Pay Orders

11. The Guild submits that the Commission cannot include a term in a modern award that provides for take home pay orders arising from the change to Sunday penalty rates.
12. When the Commission may include a term in a modern award providing for take home pay orders is prescribed in the Act⁹ and regulations¹⁰. Take home pay orders are limited

⁶ 4 yearly review of modern awards – Penalty Rates [2017] FWCFB 1001 [86] and [2021]

⁷ Ibid [2021 (ii)]

⁸ Ibid [2040]

⁹ *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*

¹⁰ *Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009*

to orders to remedy 'modernisation related' reductions, resulting from the making of the modern award.

13. If, contrary to the Guild's submission, take home pay orders are available, any term in the PIA providing for such an order should:
 - a. be limited to employees whose take home pay has been reduced as a consequence of the change in the Sunday penalty rate only (and not due to any other reason) where that reduction is not minor or insignificant;
 - b. be confined to employees who were employed and regularly worked a Sunday over the 12 months from 1 July 2016 to 30 June 2017;
 - c. define regularly worked Sundays as 34 Sundays¹¹ in the 12 months from 1 July 2016 to 30 June 2017; and
 - d. be limited to employees who have not been adequately compensated in other ways for the reduction.

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¹¹ See *Re Shift Re Shift Workers Case* [1972] AR 633