

**From:** Jessica Light [mailto:jligh@meridianlawyers.com.au]  
**Sent:** Monday, 27 March 2017 5:27 PM  
**To:** AMOD  
**Subject:** Re: AM2014/305 – 4 Yearly Review of Modern Awards – Penalty Rates Case [ML-Legal.2008724.FID21138]

Dear AMOD,

**Re: AM2014/305 – 4 Yearly Review of Modern Awards – Penalty Rates Case**

We refer to the above matter in which we act for the Pharmacy Guild of Australia (“**the Guild**”) in relation to the *Pharmacy Industry Award 2010* (“**PIA**”).

In accordance with the Full Bench Decision in *4 yearly review of modern awards – Penalty Rates* [2017] FWCFB 1001 the Full Bench decided to reduce the public holiday penalty rates from 250% to 225% for full-time and part-time employees and 275% to 250% for casual employees covered by the PIA effective from 1 July 2017. A draft determination was issued by the Bench (“**Draft Determination**”) on 17 March 2017 in relation to the variations to the PIA public holiday penalty rates for comment by the interested parties.

Whilst the Guild supports the making of a Determination reducing the public holiday penalty rates from 250% to 225% for full-time and part-time employees and 275% to 250% for casual employees covered by the PIA effective from 1 July 2017, the Guild submits that the proposed wording in the Draft Determination has unnecessarily altered the legal effect of the PIA. Specifically, the Draft Determination has combined clauses 31.2 and 31.3 of the PIA and the phrase “for hours worked on a public holiday or substituted day” in the Draft Determination applies only to full-time or part-time employees, but not to a casual employee as under the PIA currently.

The PIA is also being redrafted in plain language in the context of the 4 yearly review and it will therefore be subject to significant alteration within a relatively short time frame. The most recent iteration of the ‘plain language’ version of the PIA (dated 25 January 2017) (“**Exposure Draft**”) contains, at clause 25.3, provisions in relation to public holiday substitution in terms broadly similar to those contained at clause 31.2 of the PIA, but the public holiday penalty rates (and penalty rates generally) are found in a table at clause 21.3 of the Exposure Draft.

The Guild submits it is preferable that the current wording at clause 31 of the PIA is retained until the plain language version of the PIA is finalised, but that the quantum of the penalty rate provided at clause 31.3 be altered (effective from 1 July 2017) as follows:

**31. Public holidays**

*31.1 Public holidays are provided for in the NES.*

*31.2 An employer and the employee may by agreement substitute another day for a public holiday. Where there is no agreement the employer may substitute another day but not so as to give an employee less time off work*

*than the employee would have had if the employee had received the public holiday.*

*31.3 Work on a public holiday must be compensated by payment at the rate of ~~250%~~ 225% (casuals ~~275%~~ 250%) of the minimum rate.*

Regards,

**Jessica Light | Solicitor**



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