



20 March 2018

ANNUALISED WAGE ARRANGEMENTS AM2016/13

Background

1. This submission is made following the Fair Work Commission (Commission) Full Bench decision [2018] FWCFB 154 of 20 February 2018.
2. In accordance with the directions, parties are invited to make submissions in relation to:
 - a. the terms of the provisions being appropriate to be adopted as model annualised wage arrangement provisions;
 - b. if existing annualised wage arrangement provisions in a modern award should be varied to reflect any of the proposed model terms (subject to the conclusions stated later in this decision concerning the specific claims advanced in these proceedings);
 - c. if any modern award which does not currently contain an annualised wage arrangement should be varied to include one of the proposed model clauses; and
 - d. if annualised wage provisions are capable of having any practical application to part-time employees (including any proposals to that end).
3. These proceedings require the Commission to determine whether the operation of the *Fair Work Act 2009* (Cth) (FW Act) requires the modern awards to be varied to include a model annualised wage clause.

Award Modernisation

4. During the award modernisation processes, The Pharmacy Guild of Australia (the Guild), the Shop Distributive and Allied Employees Association (SDA) and the Association of Professional Engineers, Scientists and Managers Australia (APESMA) made a joint application to vary the *Pharmacy Industry Award 2010* (PIA) in relation to an annualised salary provision.
5. The variation proposed by the parties was designed to reflect the circumstances of the industry and was approved by the Commission in a Full Bench decision on 22 December 2009¹.
6. Clause 27 of the PIA was amended by a Commission decision² to extend the annualised salary provisions from 'Pharmacist classifications only' to include the Pharmacy Assistants level 4 classification during the 4 yearly review process. This variation was agreed between all parties.

Modern Award Objectives

¹ [2009] AIRCFB 978

² [2017] FWCFB 4029

7. The Guild submits that Clause 27 of the PIA meets the objective in s134 of the FW Act that satisfies the elements of s139(1)(f) of the FW Act by including appropriate safeguards to ensure employees are not disadvantaged, and provides a safety net of conditions in a simple and straightforward manner.
8. The Guild does not support the provisional view of the Commission to vary Clause 27 of the PIA as it is our submission that the changes would impose a rigid and onerous obligation on employers.
9. It should be noted that no evidence has been provided to the Commission which gives indication that Clause 27 of the PIA has not operated or been applied in a manner other than as clearly expressed and ensures the employees are not disadvantaged.
10. The Guild submits that the proposed model clause does not meet the modern award objective in relation to:
 - a. s134(1)(f) - the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and
 - b. s134(1)(g) - the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards.

The 'outer limit' variation

11. The Commission has proposed that a model clause should be inserted into modern awards having regard to the conclusions reached in [2018] FWCFB 154³.
12. The Commission has proposed the inclusion of provisions that require employers to specify "*the outer limits number of ordinary hours which would attract the payment of a penalty rate under the award and the outer limit number of overtime hours which the employee would be required to work in a pay period or roster cycle without being entitled to an amount in excess of the annualised wage*".
13. The Guild submits that this clause is not necessary to ensure employees are not disadvantaged. Clause 27 of the PIA is reasonably detailed in terms and matters that can be included in any annualised salary agreement. The requirement to provide this information to the employee and retain the necessary records provides a clear reference against the actual worked hours. If there is an issue with the arrangement, the PIA dispute resolution process (Clause 9) would commence.
14. The lack of practicability including the requirements of the modern award objective⁴, an 'outer limit' requirement would be onerous and difficult to fully determine for each particular situation. Implementing a single formula for an 'outer limit' calculation would prove to be onerous and would remove the flexibility goal that the Clause 27 of the PIA is intended to achieve.
15. Given the lack of practical application and the inflexibility that would arise from the inclusion of the 'outer limits' provisions, the Guild submits that the proposed variations in all the proposed model

³ [129]

⁴ S134(1)(f), 134(1)(g)

clauses is unnecessary and is not keeping with the modern award objective for being simple and easy to understand.

Record keeping and reconciliation

16. The Guild submits that the proposed record keeping and reconciliation requirement as outlined in the model clause would unavoidably give rise to inflexible work practices and remove any benefit to the employer of entering into an annualised wage arrangement with the employees, as it would not streamline or annualise the payroll. The proposal would increase the regulatory burden on employers in managing their employment arrangements.
17. Under this proposed provision, employment costs would be impacted in that the employee may work more overtime in one pay period and receive addition remuneration to their annualised wage, and in the next pay period they may work less hours than those agreed, but still receive the annualised wage.
18. The Guild submits that the clause is not necessary to ensure employees are not disadvantaged as Clause 27 of the PIA provide details that the annualised salary must not result in an employee being paid less over a year or if the employment is terminated before a year is completed than would have been the case if an annualised salary had not been agreed. In addition, an employer must keep a record of the hours worked each day.
19. The Guild submits that the model clause is not a viable alternative to the existing clause, and places increased regulatory burden on the employer by enforcing the requirement to calculate remuneration on an annual basis from the commencement of the annualised salary. This would therefore require the employer to perform calculations on an ongoing basis throughout the year, rather than in line with the annual wage review as is currently common practice. The administrative resources required to adequately meet this clause would also decrease productivity for the employer and leave little incentive for employers to enter into annualised salary arrangements with their employers.
20. The Guild submits that the model clause is also more complex than the existing clause which would lead to fewer employers and employees taking up the opportunity of an annualised wage.

Conclusion

21. The Guild submits that the proposed model clauses extend well beyond what is necessary for a 'fair and relevant minimum safety net' for the modern awards and NES.
22. The model clause would impose an increased regulatory burden, is impractical and would impose significant additional costs and constraints onto business.

Scott Harris
Workplace Relations, National Manager
The Pharmacy Guild of Australia