

15 July 2015

**REVIEW OF THE PHARMACY INDUSTRY AWARD 2010
AM2014/209
COMPREHENSIVE SUBMISSIONS ON TECHNICAL AND DRAFTING ISSUES
OUTLINE OF SUBMISSIONS IN RELATION TO SUBSTANTIVE CLAIMS**

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

We set out below the submissions of the Guild in accordance with first direction in this matter issued on 6 May 2015 ([2015] FWC 3148) in relation to the *Pharmacy Industry Award 2010* (the Award).

TECHNICAL AND DRAFTING ISSUES

1. The Guild and other parties who have an interest in the Award have worked together and identified a number of technical and drafting issues and agreed on how those matters can be rectified.
2. The Shop Distributive and Allied Employees Association (SDA) have prepared a table setting out the agreed changes and have told us that it will attach that table to its submissions.
3. The Guild expects that the table (which we have seen before filing) will reflect the agreement between the parties, however if it does not the Guild will raise the matter in the reply submissions to be filed on 21 August 2015.
4. There are no other technical or drafting matter alterations to the Exposure Draft pressed by the Guild, however the Guild will respond to any issues raised by others in its reply submissions to be filed on 21 August 2015.
5. The Guild has provided the parties and the Commission with a “plain English” version of the Exposure Draft. It is not intended that the plain English version will change the operation or meaning of any Award clauses, simply that it be in language that is simple and easy for small business operators and employees to understand. The parties have agreed to consider the plain English draft once the technical and drafting issues with the Exposure Draft are finalised.

OUTLINE OF SUBSTANTIVE CLAIMS

6. The Guild is pursuing the following substantive claims:

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- I. A provision allowing for employees to be directed to take annual leave in the case of a close down.
- II. Annualised salary for pharmacy assistants.
- III. Minimum shift for part-time and casual school students to be set at 90 minutes per shift.
- IV. Penalty rates.

Direction to take Annual Leave for Close Down

7. In its decision dated 11 June 2015, the annual leave Full Bench indicated that the Award stage of the four yearly review would be an appropriate forum for parties wishing to pursue the insertion of a close down provision.
8. The Guild is seeking to insert the model “close-down” provision pressed by the Employer Groups as part of the annual leave proceedings into the Award.
9. The purpose of the proposed provision is to enable pharmacy businesses to shut down, and require annual leave to be taken, at a time that reflects service delivery fluctuations and best suits employees.
10. Many pharmacies trade in shopping centres which are closed over the Christmas and New Year period, and pharmacies located in those shopping centres are unable to stay open if the centre is closed due to leasing regulations.
11. A close down provision in the Award will mean pharmacist proprietors are able to require that annual leave is to be taken by employees when the pharmacy is closed down due to the shopping centre being closed.
12. The Guild submits that a close down provision will also enable an employer to close down on days such as Easter Sunday, Christmas Day and Boxing Day that are not declared public holidays, and to direct employees to take annual leave to spend time with family and friends on those days. Providing employees with time off for rest and recreation will encourage the efficient and productive performance of work.
13. An annual close down also benefits employers by providing a mechanism through which they may reduce leave liability, which in turn has a positive impact on productivity, employment costs and the regulatory burden.

Annualised Salary for Pharmacy Assistants

14. The Guild submits that clause 10.4 Annualised Salary should apply to pharmacy assistants (currently limited to pharmacists).
15. The clause provides that the employee must not receive less under the annualised salary arrangement than under award generally. This is an adequate safe guard to ensure the employee would not be worse off.
16. The extension of the application of the clause to pharmacy assistants would ease the administrative burden on community pharmacist operators, who are predominantly small businesses.

17. The Guild's proposal would allow employees who are not pharmacists, to access the flexible annualised salary arrangements.

Minimum Shift for School Students

18. The current minimum daily engagement for part-time and casual employees is three hours. The ACTU seeks a four hour minimum shift engagement.
19. The Guild proposes that the daily minimum hours should be set at 90 minutes, if all of the following circumstances apply:
 - I. The employee is a fulltime secondary student and employed or is to be employed as a pharmacy assistant;
 - II. The employee is engaged to work between the hours of 3pm and 6.30pm on a day which they are required to attend school;
 - III. The employee agrees to work, and a parent or guardian of the employee agrees to allow the employee to work a shorter period than three hours; and
 - IV. Employment of a longer period of the engagement is not possible either because of the operational requirements of the employer or the unavailability of the employee.
20. School students are not available to work for three hours after school, for reasons that include school finishing times and pharmacy trading hours. In many cases pharmacies cannot offer three hours' work for operational reasons.
21. Many of the state based awards applying to pharmacy assistants immediately before the Award provided for a two hour minimum shift or allowed the employer and the employee to agree on a shift of less than three hours.
22. Work in pharmacies provides students with an appropriate school to work transition. It allows them the opportunity for employment. It allows students who are considering tertiary studies in pharmacy to obtain work experience that would assist them with that decision.
23. Pharmacy owners have stopped employing school students because of the current three hour minimum daily engagement. This is alarming having regard to the high youth unemployment rate, particularly in rural and regional areas.
24. This matter has been included in the list of matters to be dealt with by the part-time and casual full bench in AM2014/197 and AM2014/196. In accordance with the directions set in those matters the Guild will file a draft determination on 17 July 2015.

Penalty Rates and Public Holidays

25. The Guild has filed a draft determination in matter AM2014/305 seeking changes to weekend and public holiday penalty rates. Submissions and evidence in relation to that matter have and will continue to be filed by the Guild in accordance with the directions set in that matter.

26. The Guild will participate in the public holidays matter AM 2014/301 and will comply with the directions set in that matter.

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