

# Business SA Submission

## Pharmacy Industry Award 2010 - Revised Plain Language Draft Plain Language Modern Awards Pilot AM2014/209

25 May 2016

## **Why this matter is important to South Australian businesses**

As South Australia's Chamber of Commerce and Industry, Business SA is the peak business membership organisation in the State. Our members are affected by this matter in the following ways:

- In the current economic environment SA employers need certainty that the award is not going to change unnecessarily.
- SA employers and employees will benefit from a well-considered, plain language *Pharmacy Industry Award* enabling both parties to clearly understand their rights and responsibilities.
- Awards applying to SA employers and employees should not inadvertently have their legal meaning changed as a consequence of the plain language process.
- Any plain language principles arising from this pilot should appropriately balance the need for general comprehension and legal clarity.

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## Pharmacy Industry Award 2010

1. No claims regarding **substantive variations** have been made by Business SA.
2. This submission relates to the Part A provisions of the draft Award.
3. Business SA is concerned about several of the **Part B provisions** drafted in this Award. Business SA reserves its rights to make further submissions regarding these Part B provisions in accordance with the timetable foreshadowed by the Statement of His Honour, Justice Ross issued 6 May 2016.
4. Business SA also reserves its rights to make submissions regarding Part B provisions which have not yet been redrafted.
5. The submissions that follow relate to the **Pharmacy Industry Award 2015 (Plain English Exposure Draft)**<sup>1</sup> attached to the *Report from Plain language modern award pilot* (the Report) published on April 2016. Business SA has identified the following issues regarding the exposure draft:
  - 5.1 **Clause 4.1(b) Coverage** – Business SA submits the wording of this sub-clause be restricted to “if required, is registered under relevant legislation for the regulation of pharmacies”.
  - 5.2 **Clause 5 Facilitative provisions** – Business SA submits that the alternative clause title option listed in the Drafter comments column of the Report “Index of provisions allowing variable application” would not be appropriate. Business SA notes the Drafter’s comments that “Facilitative Provisions” did not resonate with the parties and submits the suggested title be replaced with “Options for Flexible Working Practices”.
  - 5.3 **Clause 13.5 Hours of Work** - Business SA notes that the rewording of this provision provides no maximum hours for casual employees and suggests that the current wording [*Exposure Draft Pharmacy Industry Award 2014 revised 21 September 2015*] regarding a 12 hour per day maximum be retained.
  - 5.4 **Clause 14.1 Rostering Arrangements** – Business SA notes that the words ‘whether ordinary hours or overtime’ have been added to 14.1(e). This is a substantive change as the working of Sundays at overtime has not been contemplated as part of this clause previously. Business SA submits these words be removed.
  - 5.5 **Clause 14.3 Rostering arrangements** states that “clause 14.1 is **subject to** any different arrangements agreed by the employer and employee at the written request of the employee”. This wording seems no plainer than the exposure draft provisions “The rostering requirements in clause 8.3(a) will not apply where an employee makes a written request and the employer agrees to other arrangements”, and the current award [*Pharmacy Industry Award 2014*] “A requirement will not apply where the employee requests in writing and the employer agrees to other arrangements, which are to be recorded in the time and wages records”. In fact, in each version the provision changes somewhat. The current award provides for a variation to a “rostering requirement” and the exposure draft enables only a complete replacement of the rostering arrangements. The plain language version is closer to the intent of the current award but the use of the phrase ‘subject to’ appears less plain than the words “a rostering requirement will not apply...”.  
Business SA submits the wording be amended to read “Rostering Arrangements may be changed at the written request of the employee and with the agreement of the employer.”

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<sup>1</sup> **Note:** Unless otherwise stated, all clauses refer to the 21 April 2016 plain language exposure draft.

- 5.6 Sub Clauses 15.3 and 15.4 in clause 15 Breaks** refer to the provisions currently in sub-sub-clause 28.3 (a) and (b) and reflected in the 25 September 2015 exposure draft as 9.3 (a) and (b). By numbering the sub-sub-clauses 15.3 and 15.4 the plain language version applies the restrictions to the entire clause rather than just the provisions for employees who work 7.6 or more hours. Business SA submits these sub clauses be made sub-sub-clauses by either renumbering them as 15.2.1 and 15.2.2 or by explaining they only apply to sub clause 15.2.
- 5.7 Clause 16.1 Wages table 3. Minimum Wages for Employees** - Business SA appreciates the feedback from users in relation to this clause but notes that, by reversing the columns in this clause, as has been proposed in the plain language draft, parties may be misled as to the correct method of calculating the minimum hourly rate. That being, that the minimum hourly rate is calculated from the minimum weekly rate divided by 38. By placing the minimum weekly rate after the minimum hourly rate, it appears that the weekly rate is derived from the hourly rate, which provides a different figure.
- 5.8 Clause 16.3 Wages** refers to pharmacy students. Business SA proposes this sub clause be given a heading to reflect this content, as has occurred at 16.4 and 16.5 as a result of user testing feedback. This may also be applied to a range of other sub clauses. Awards will be accessed electronically more often in the future and the content will be able to be found and hyperlinked to the relevant subclause.
- 5.9 Clause 17 Annualised Salary** has been varied at 17.1(a) which, in the current award and the exposure draft, refers to the salary being inclusive of overtime now refers to the salary being inclusive of overtime rates. Business SA submits this change is unnecessary and not as clear as the current provisions.
- 5.10 Clause 18.1(a)(ii)** relating to meal allowances may need a colon after the words “on that day” and a semi colon after “overtime” or some other form of rewording to ensure the sub clause is easily understood.
- 5.11 Clause 18.1(c)** refers to the number of hours required to be worked to provide the employee with an additional meal allowance. The number “4” should be replaced by the word “four”.
- 5.12 Schedule A Classification Definitions A.1** pharmacy assistant level 1 has been significantly altered removing all reference to the employees lack of qualifications and employment experience in community pharmacies. Business SA submits this be removed and the 25 September exposure draft provision reapplied.

## Conclusion

Business SA supports a considered approach to the translation of industrial awards to plain language and looks forward to continued involvement in this matter.

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