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**Fair Work Commission: 4 Yearly Review of Modern Awards**

**SUBMISSIONS IN REPLY**

**PHARMACY INDUSTRY AWARD 2010  
PLAIN LANGUAGE MODERN AWARDS PILOT  
(AM2014/209)**

**9 DECEMBER 2015**

**AUSTRALIAN BUSINESS INDUSTRIAL  
- and -  
THE NSW BUSINESS CHAMBER LTD**

**1. BACKGROUND**

- 1.1 These comments are provided by Australian Business Industrial (**ABI**) and the NSW Business Chamber Ltd (**NSWBC**) and relate to the plain language version of the *Pharmacy Industry Award 2010 (Award)* distributed for comment on 27 November 2015.
- 1.2 ABI is a registered organisation under the *Fair Work (Registered Organisations) Act 2009* (Cth) and has some 4,200 members.
- 1.3 NSWBC is a recognised State registered association pursuant to Schedule 2 of the *Fair Work (Registered Organisation) Act 2009* (Cth) and has some 18,000 members.
- 1.4 ABI and NSWBC have a material interest in the Four Yearly Review of the Award given that both entities represent numerous employers who operate in the pharmacy industry.
- 1.5 We provide these comments on the draft plain language award-specific clauses in accordance with the Statement issued by the Fair Work Commission (**FWC**) on 29 October 2015.

**2. COMMENTARY**

- 2.1 We have not commented on all the re-drafted clauses. We have confined our comments to those clauses we believe remain unclear and may need to be amended, or where there is risk the legal meaning of the clause may have become altered or confused.

**3. CLAUSE 4 - COVERAGE:**

- 3.1 The word ‘community’ has been removed from clause 4.1(a). The clause now reads that the Award covers ‘employers in the pharmacy industry throughout Australia’.
- 3.2 The removal of the word ‘community’ from this clause (as in, the Award covers employers in the ‘community pharmacy industry’) represents a substantive change to the coverage of the Award and is not consistent with later clauses such as 4.2(a) and (b).
- 3.3 The removal of this word makes it less clear that the award covers community pharmacies to the exclusion of other pharmacies (i.e. those in hospitals).
- 3.4 The word ‘community’ should be reinserted into clause 4.1(a).

**4. CLAUSE 7.6 - PART-TIME EMPLOYMENT**

- 4.1 The meaning of Clause 7.6(a) is, with respect, unclear. We propose the following wording as an alternative:

*Subject to this award, the pay and conditions on which a part-time employee is engaged must proportionately be the same as those for a full-time employee engaged to do the same kind of work.*

- 4.2 Clause 7.6(g) contains a lot of information which makes it difficult to understand on first reading. We suggest it could be split into two sentences.

**5. CLAUSE 10 - ROSTERING ARRANGEMENTS**

- 5.1 Clause 10.3 includes the legalistic expression ‘to the extent that’. We propose the following wording as an alternative:

*Clause 10.1 does not apply where the employer and employee agree different arrangements at the written request of the employee.*

- 5.2 Clause 10.6 is difficult to understand. We propose the following wording as an alternative:

*An agreement under clause 10.3 may specify that it terminates on a particular date, or at the end of a specified period.*

- 5.3 Clause 10.7 makes the request for an arrangement the subject of the clause, whereas we believe that it is the arrangement (at the employee’s request) that is important. We propose the following wording as an alternative:

*An employee cannot be required, as a condition of employment, to make an arrangement under clause 10.3.*

- 5.4 Clause 10.8 does not contain any information about ‘an agreement under clause 7.6(b)’; just the reference. We propose that the words ‘about the employee’s agreed pattern of work’ also be included.

**6. CLAUSE 11 - BREAKS**

- 6.1 Clause 11.1 is wordy and hard to understand on first reading. We propose the following wording:

*An employee who works the number of ordinary hours on any one day specified in an item of column 1 of Table 1 is entitled to a break or breaks as specified opposite that item in column 2.*

**7. CLAUSE 12 - WAGES**

- 7.1 We propose that clause 12.1(d) be included after Table 2. The references at (a)-(c) are already somewhat difficult to follow and this is further complicated by the extra figures contained at (d).

**8. CLAUSE 13 - ANNUAL SALARY FOR PHARMACISTS**

- 8.1 We propose that Clause 13(e) should have the word ‘on’ inserted, so that it reads:

*...showing the times at which the pharmacist started and finished work on that day.*

**9. CLAUSE 14.1 - MEAL ALLOWANCES**

- 9.1 As is the case for clause 10.8, clause 14.1(d) does not contain any information about ‘an agreement under clause 7.6’, just the reference. We propose that the words ‘about the employee’s agreed pattern of work’ also be included.

**10. CLAUSE 14.4 - MOVING EXPENSES**

10.1 We agree with the Drafter's comment that there are unresolved issues with this clause which need to be addressed.

**11. CLAUSE 16 - OVERTIME**

11.1 Clause 16.3 is complicated. We submit that it should be the subject of further consideration to see if it can be simplified.

11.2 Clause 16.7 is not clear on whether the time off should be taken instead of or in addition to a period of paid annual leave. The previous version of the clause states that the time off may be 'taken as part of annual leave'. It appears the intention is that the accrued time off be taken in addition to the paid leave being taken by the employee, and we suggest the wording be amended to make this clearer.

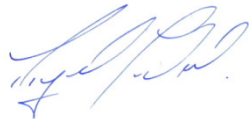
**12. CLAUSE 17 - PENALTY RATES**

12.1 Clause 17.1 is complicated. We submit that it should be the subject of further consideration to see if it can be simplified.

**13. CONCLUSION**

13.1 In providing these comments, ABI and NSWBC seek to properly assist the Commission in the discharge of its discretion pursuant to section 156 of the *Fair Work Act 2009* (Cth).

13.2 If you have any questions in relation to these submissions, please contact Kate Thomson on (02) 4989 1003.



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**On behalf of Australian Business Industrial and the NSW Business Chamber Ltd**