

Summary of submissions

This document provides a summary of submissions from the following parties on the revised plain language draft of the Pharmacy Industry Award 2014 exposure draft dated 21 April 2016 pursuant to the amended directions issued 16 May 2016. Submissions were received from the following interested parties:

- Australian Business Industrial and the NSW Business Chamber LTD (**ABI and NSW Business Chamber**)
- Business SA (**Business SA**)
- Pharmacy Guild of Australia (**PGA**)
- Shop Distributive and Allied Employees' Association (SDA), Association of Professional Engineers, Scientists and Managers, Australia (APESMA) and Health Services Union (HSU) (**SDA and others**)

This document summarises comments provided by parties on several issues in relation to the plain language modern awards pilot and processes to deal with the plain language draft of the Pharmacy Industry Award 2014 exposure draft. Comments on the plain language draft clauses are presented in a comparison table that includes the Pharmacy Industry Award exposure draft (25 September 2015) in the first column, the Plain language draft (revised 21 April 2016) in the second column and comments from interested parties in the third column. Edits to the Plain language draft (revised 21 April 2016) made by the drafters are tracked in red text.

The sequence of comparison tables follows the Plain language draft (second column).

Summaries of submissions received in relation to substantive claims and variations being pursued have been added to the *further revised summary of submissions* document.

Summary of submissions about AM2014/209 and the plain language modern awards pilot

Business SA (p. 2):

- Any plain language principles arising from the pilot should appropriately balance the need for general comprehension and legal clarity.

SDA and others (paras 3–4 and 8):

- The interested union parties were hoping that the user testing process would test proposed clauses with a broad and representative group of employees and employers and were hopeful that the user testing would test people's understanding of how pharmacy specific clauses operated.
- The user testing Plain Language Award Pilot conducted by the Wallis group (Wallis Report)³ and the Supplementary Information on this Report indicate that the proposed clauses were tested on a very small group of people and seem to have been tested for what words are preferred – not people's understanding of the clauses.
- The interested union parties see the primary reason for conducting an exercise to create a plain language award as one where the award is rewritten into terms that are easier to understand – not necessarily terms that people prefer. In light of the lack of testing for understanding we are unsure if the proposed clauses will assist users to better understand their rights and obligations.
- The interested union parties have identified clauses in the plain language draft (revised 21 April 2016) which have changed the legal effect of the current award.
- The interested union parties note that there are still outstanding matters with the Exposure Draft of 9 October 2015 that need to be addressed and resolved.
- Interested union parties request that the Commission establish a process for resolving these matters as soon as possible so substantive claims can be addressed and the finalisation of the review of the *Pharmacy Industry Award 2010* achieved.
- Some matters still outstanding with the exposure draft include casual loading, minimum and ordinary hours definitions and overtime.

Summary of submissions about process for considering plain language draft Part B clauses

ABI and NSW Business Chamber (para. 1.5):

- ABI and NSWBC are concerned about some of the Part B provisions as currently drafted and reserve their rights to make further submissions should these provisions be used in other plain language projects.
- ABI and NSWBC reserve their rights to make submissions in relation to the Part B clauses not published with the report from the plain language modern awards pilot at a later time.

Business SA (paras 3–4):

- 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.

- Business SA also reserves its rights to make submissions regarding Part B provisions clauses not published with the report from the plain language modern awards pilot.

PGA (paras 31–33):

- The Guild is broadly supportive of the inclusion of plain language versions of the Part B clauses in the PIA.
- Due to the commonality of the Part B clauses and the likely inclusions of these provisions in any other awards to be redrafted in plain language, the Guild intends to make submissions concerning the Part B clauses in accordance with the timetable foreshadowed by the Statement of His Honour, Justice Ross issued 6 May 2016.
- The Guild submits that following consultation with interested parties it would be appropriate to conduct employee and employer user testing of the Part B provisions as has occurred with the Part A provisions of the PIA.

SDA and others (paras 5 and 86):

- The union interested parties have provided comment on proposed ‘Part A’ clauses only because they are aware that the proposed ‘Part B’ clauses will be the subject of wider discussions amongst a larger group of interested parties.
- The union interested parties believe that any comments made at this stage in relation to the Part B clauses may cause confusion and frustrate the process of reaching resolution on plain language award provisions.
- The union interested parties would seek to be involved in the wider discussions on the Part B clauses when these discussions take place.
- The union interested parties reserve their rights to further comment on the Part A clauses and comment on the Part B clauses when a full draft containing all clauses is provided.

Summary of general submissions about the plain language draft

SDA and others (paras 10–12 and 13):

- Concerns raised about the enforceability of Notes in the modern award, we would prefer that ‘Examples’ and ‘Notes’ are not included in the ‘legally’ enforceable document. The union interested parties would be happy to see them in an ‘annotated’ version of the award.
- Concerned about confusion with the use of the terms ‘minimum rates of pay’, ‘hourly rates of pay’ and ‘ordinary hours of pay’. Careful consideration should be given to which is the appropriate term to use when utilising these terms and a definition of each of these terms should be included in the definitions so that users can fully understand the application of these important terms.

PGA (para. 15):

- The introduction of multiple hyperlinks to external documents or clauses will cause confusion and ambiguity to employers and employees as it is normally available in a paper based version in the workplace. Therefore, sufficient content should be retained in this Award to avoid any potential issues.

Summary general submissions about plain language draft clauses

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Plain language draft (revised 21 April 2016)	Comments received
<p>Part 1—Application and Operation</p> <p>1. Title and commencement</p> <p>1.1 This award is the <i>Pharmacy Industry Award 2014</i>.</p> <p>1.2 amended in accordance with para [11] [2014] FWCFB 9412 and para [8] of [2015] FWCFB 4658</p> <p>1.2 This modern award, as varied, commenced operation on 1 January 2010. A variation to this award does not affect any right, privilege, obligation or liability that a person acquired, accrued or incurred under the award as it existed prior to the variation.</p> <p>1.3 Schedule G—Definitions sets out definitions that apply in this award.</p> <p>1.4 The monetary obligations imposed on employers by this award may be absorbed into overaward payments. Nothing in this award requires an employer to maintain or increase any overaward payment.</p> <p>1.5 inserted in accordance with para [16] of [2014] FWCFB 9412</p> <p>1.5 Neither the making of this award nor the operation of any transitional arrangements is intended to result in a reduction in the take-home pay of employees covered by the award. On application by or on behalf of an employee who suffers a reduction in take-home pay as a result of the making of this award or the operation of any transitional arrangements, the Fair Work Commission may make any order it considers appropriate to remedy the situation.</p>	<p>Part 1—Application and Operation of this award</p> <p>1. Title and commencement</p> <p>1.1 This is the <i>Pharmacy Industry Award [2016]</i>.</p> <p>1.2 This award comes into operation on [insert date].</p> <p>2. Definitions</p> <p>2.1 <u>Schedule G—Definitions</u> defines expressions used in this award.</p>	<p>Part A</p> <ul style="list-style-type: none"> • SDA and others (paras 16 and 27): Definitions should be included in the body of the award, preferably located at the front of the Award and not contained in an attached Schedule. See also item 14 of the Revised summary of submissions. Definitions and a review of definitions throughout the plain language draft is necessary to ensure it has not changed the legal intent of the award.
<p>2 The National Employment Standards and this award</p> <p>2.1 amended in accordance with para [25] [2014] FWCFB 9412</p> <p>2.1 The National Employment Standards (NES) and this award contain the minimum conditions of employment for employees covered by this award.</p> <p>2.2 Where this award refers to a condition of employment provided for in the NES, the NES definition applies.</p> <p>2.3 The employer must ensure that copies of this award and the NES are available to all employees to whom they apply, either on a notice board which is conveniently located at or near the workplace or through accessible electronic means.</p> <p>2.4 Where a pharmacy does not have a notice board, the award and the NES may be kept at an alternative location on the premises that is accessible to employees, including being kept with the pharmacy communication book.</p>	<p>3. The National Employment Standards and this award</p> <p>3.1 This award, together with the National Employment Standards, contains the minimum conditions of employment for employees covered by this award.</p> <p>NOTE: The National Employment Standards are made up of 10 minimum standards applicable to employees covered by an award. See Part 2-2 of the Fair Work Act.</p> <p>3.2 Where this award uses an expression that is defined in the National Employment Standards, the expression has the same meaning in this award as it has there.</p> <p>3.3 An employer must make sure that employees can access a copy of this award and the National Employment Standards.</p> <p>3.4 For the purpose of clause <u>3.3</u> the employer may either place a copy on a notice board or in another convenient place at the community pharmacy (for example, with the pharmacy communication book) or provide electronic access to a copy from the community pharmacy.</p>	<p>Part B</p> <ul style="list-style-type: none"> • SDA and others (para. 17): Given feedback from users regarding the use of referencing the words in clause 3.4 'for the purposes of 3.3' are not necessary.

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Plain language draft (revised 21 April 2016)	Comments received
<p>3 Coverage</p> <p>3.1 This industry award covers employers throughout Australia in the community pharmacy industry and their employees in the classifications listed in Schedule A—Classification Definitions to the exclusion of any other modern award.</p> <p>3.2 Community pharmacy means any business conducted by the employer in premises:</p> <p>(a) that are registered under the relevant State or Territory legislation for the regulation of pharmacies; or</p> <p>(b) are located in a State or Territory where no legislation operates to provide for the registration of pharmacies;</p> <p>and</p> <p>(c) that are established either in whole or in part for the compounding or dispensing of prescriptions or vending any medicines or drugs; and</p> <p>(d) where other goods may be sold by retail</p>	<p>4. Coverage</p> <p>4.1 In this industry award community pharmacy means a business to which each of the following applies:</p> <p>(a) the business is established wholly or partly for compounding or dispensing prescriptions or selling medicines or drugs by retail to the general public from the premises on which the business is conducted, whether or not other goods are so sold from those premises;</p> <p>(b) if required to be registered under legislation for the regulation of pharmacies in force in the place in which the premises on which the business is conducted are located, the business is so registered;</p> <p>(c) the business is not owned by a hospital or other public institution, or operated by government, unless medicines or drugs are sold by retail to the general public from the premises on which the business is conducted.</p> <p>4.2 This industry award covers, to the exclusion of any other modern award:</p> <p>(a) employers in the community pharmacy industry throughout Australia; and</p> <p>(b) employees (with a classification defined in <u>Schedule A—Classification Definitions</u>) of employers mentioned in paragraph (a).</p>	<p>Part A</p> <ul style="list-style-type: none"> • ABI and NSW Business Chamber (para. 2.2): The plain language version is unnecessarily complicated and hard to understand. • Business SA (para. 5.1): The wording of 4.1(b) be restricted to “if required, is registered under relevant legislation for the regulation of pharmacies.” • PGA (paras 9 and 10): Clause 4.4(b) uses the word “enterprise instrument” which has not been defined in the FW Act and should reworded as “enterprise agreement”. Amendment to clause 4.1(c) with the insertion of complete new sentence and content has the potential to disturb the coverage of the award and should be retained as: <i>The award does not cover employment in a pharmacy owned by a hospital or other public institution, or operated by government, where their goods or services are not sold by retail to the general public.</i> • SDA and others (para. 19): The coverage clause in the plain language draft is harder to understand and could create more confusion than clause 3 of the exposure draft. Concerned about the accuracy of the coverage clause and that the altered wording will cause confusion between coverage of the Pharmacy Industry Award and coverage of the Health Professionals Award.
<p>3.3 This award does not cover employment in:</p> <p>(a) a pharmacy owned by a hospital or other public institution; or</p> <p>(b) a pharmacy operated by government,</p> <p>where their goods or services are not sold by retail to the general public.</p>	<p>4.3 This industry award also covers:</p> <p>(a) on-hire employees working in the community pharmacy industry (with a classification defined in <u>Schedule A—Classification Definitions</u>) and the on-hire employers of those employees; and</p> <p>(b) trainees employed by a group training employer and hosted</p>	<p>Part A</p>

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Plain language draft (revised 21 April 2016)	Comments received
<p>3.4 This award covers any employer which supplies labour on an on-hire basis in the industry set out in clause 3.1 in respect of on-hire employees in classifications covered by this award, and those on-hire employees, while engaged in the performance of work for a business in that industry. This subclause operates subject to the exclusions from coverage in this award.</p> <p>3.5 This award covers employers which provide group training services for trainees engaged in the industry and/or parts of industry set out at 3.1 and those trainees engaged by a group training service hosted by a company to perform work at a location where the activities described in clause 3.1 are being performed. This subclause operates subject to the exclusions from coverage in this award.</p> <p>3.6 This award does not cover:</p> <p>(a) employees excluded from award coverage by the <i>Fair Work Act 2009</i> (Cth) (the Act);</p> <p>(b) employees who are covered by a modern enterprise award or an enterprise instrument (within the meaning of the <i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i> (Cth)), or employers in relation to those employees; or</p> <p>(c) employees who are covered by a State reference public sector modern award or a State reference public sector transitional award (within the meaning of the <i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i> (Cth)), or employers in relation to those employees.</p>	<p>by an employer covered by this award to work in the community pharmacy industry (with a classification defined in <u>Schedule A—Classification Definitions</u>) and the group training employers of those trainees.</p> <p>4.4 However, this industry award does not cover any of the following:</p> <p>(a) employees excluded from award coverage by the Fair Work Act;</p> <p>NOTE: See <u>section 143(7)</u> of the Fair Work Act.</p> <p>(b) employees covered by a modern enterprise award or an enterprise instrument;</p> <p>(c) employees covered by a State reference public sector modern award or a State reference public sector transitional award;</p> <p>(d) employers of employees mentioned in paragraph (a), (b) or (c).</p>	
<p>Note deleted in accordance with para [29] [2014] FWCFB 9412</p> <p>3.7 Where an employer is covered by more than one award, an employee of that employer is covered by the award classification which is most appropriate to the work performed by the employee and to the environment in which the employee normally performs the work.</p> <p>NOTE: Where there is no classification for a particular employee in this award it is possible that the employer and that employee are covered by an award with occupational coverage.</p>	<p>4.5 If an employer is covered by more than one award, an employee of the employer is covered by the award that is most appropriate to the work performed by the employee and the industry in which they work.</p> <p>NOTE: An employee working in the community pharmacy industry who is not covered by this industry award may be covered by an award with occupational coverage.</p>	<p>Part A</p> <ul style="list-style-type: none"> • ABI and NSW Business Chamber (para. 2.3): Clause 4.5 should be the subject of further user testing to explore whether the issue of award coverage could be simplified. • SDA and others (para. 20): Clause 4.5 suggested alternate wording to address concerns from user testing: 'If you can't find a classification in this award that covers an employee they may be covered by another modern award.'

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Plain language draft (revised 21 April 2016)	Comments received																		
<p><i>Clause 1.2 is reproduced here for comparative purposes</i></p> <p>1.2 This modern award, as varied, commenced operation on 1 January 2010. A variation to this award does not affect any right, privilege, obligation or liability that a person acquired, accrued or incurred under the award as it existed prior to the variation.</p>	<p>5. Effect of variations made by the Fair Work Commission</p> <p>5.1 A variation of this award made by the Fair Work Commission does not affect any right, privilege, obligation or liability acquired, accrued or incurred under this award.</p>	<p>Part B</p>																		
<p>4. Award flexibility</p>	<p>6. Award flexibility for individual arrangements</p>	<p>Part B</p> <p><i>Provisions not reproduced in 21 April 2016 publication.</i></p>																		
<p>5. Facilitative provisions</p> <p>5.1 and 5.2 amended in accordance with para [42] [2014] FWCFB 9412 and parties agreement</p> <p>5.1 This award contains facilitative provisions which allow agreement between an employer and an individual employee on how specific award provisions are to apply at the workplace.</p> <p>5.2 The following clauses have facilitative provisions:</p> <table border="1" data-bbox="284 968 1012 1163"> <thead> <tr> <th>Clause</th> <th>Provision</th> </tr> </thead> <tbody> <tr> <td>13.4(c)</td> <td>Time off instead of payment</td> </tr> <tr> <td>18.3</td> <td>Substitution of public holidays</td> </tr> </tbody> </table> <p>5.3 The agreement must be kept by the employer as a time and wages record.</p>	Clause	Provision	13.4(c)	Time off instead of payment	18.3	Substitution of public holidays	<p>7. Facilitative provisions for flexible working practices</p> <p>7.1 <u>Table 1—Index of facilitative provisions</u> lists the provisions of this award (facilitative provisions) that allow an employer and an individual employee to agree on how the provision is to apply in relation to the employment.</p> <p>Table 1 – Index of facilitative provisions</p> <table border="1" data-bbox="1190 911 2021 1293"> <thead> <tr> <th>Column 1</th> <th>Column 2</th> <th>Column 3</th> </tr> <tr> <th>Clause reference</th> <th>Provision</th> <th>Agreement between an employer and:</th> </tr> </thead> <tbody> <tr> <td><u>20.4</u></td> <td>Time off instead of payment</td> <td>an individual employee</td> </tr> <tr> <td><u>25.1</u></td> <td>Substitution of public holidays</td> <td>an individual employee</td> </tr> </tbody> </table> <p>7.2 The employer must keep a copy of an agreement under clause <u>20.4</u> or <u>25.1</u> as a time and wages record.</p>	Column 1	Column 2	Column 3	Clause reference	Provision	Agreement between an employer and:	<u>20.4</u>	Time off instead of payment	an individual employee	<u>25.1</u>	Substitution of public holidays	an individual employee	<p>Part B</p> <ul style="list-style-type: none"> SDA and others (para. 23): Clause 5.1 of the exposure draft is much clearer and simpler than clause 7.1 of the plain language draft. Business SA (para. 5.2): Suggest the following title “Options for Flexible Working Practices” ABI and NSW Business Chamber (paras 3.1 and 3.2): Endorses the drafter’s comments about ‘facilitative provisions’ not being an expression that resonated with users. Alternative proposed name (‘index of provisions allowing variable application’) is no better than the current title of the clause. PGA (para. 12): Instead of a standalone clause, the content should be directly linked to the Flexible Working Arrangements provisions.
Clause	Provision																			
13.4(c)	Time off instead of payment																			
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<p>Part 2—Types of Employment and Classifications</p> <p>6. Types of employment</p> <p>6.1 Employees under this award will be employed in one of the following categories:</p> <p>(a) full-time;</p> <p>(b) part-time; or</p> <p>(c) casual.</p> <p>6.2 At the time of engagement, an employer will inform each employee of the terms of their engagement and, in particular, whether they are to be full-time, part-time or casual.</p>	<p>Part 2—Types of employment and classifications</p> <p>8. Types of employment</p> <p>8.1 An employee covered by this award must be one of the following:</p> <p>(a) a full-time employee;</p> <p>(b) a part-time employee;</p> <p>(c) a casual employee.</p> <p>8.2 At the time of engaging an employee, the employer must inform the employee of the terms on which they are engaged, including whether they are engaged as a full-time, part-time or casual employee.</p>	<p>Part A</p> <ul style="list-style-type: none"> SDA and others (para. 24): Clause 8.2 may be clearer with the following wording: ‘Before an employee starts work the employer must 																		

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<p><i>Note: Clause 6.3(h) reproduced here for comparative purposes.</i></p> <p>(h) Conversion of existing employees</p> <p>(i) No full-time or casual employee will be transferred by an employer to part-time employment without the written consent of the employee.</p> <p>(ii) Where such transfer occurs all leave entitlements accrued will be deemed to be continuous.</p> <p>(iii) A full-time employee who requests part-time work and is given such work may revert to full-time employment on a specified future date by agreement with the employer. This agreement is to be recorded in writing.</p>	<p>8.3 Moving between types of employment</p> <p>(a) A full-time or casual employee can only become a part-time employee with the employee’s written consent.</p> <p>(b) Moving to part-time employment does not affect the continuity of any leave entitlements.</p> <p>(c) A full-time employee:</p> <p>(i) may request to be given part-time work; and</p> <p>(ii) may return to full-time employment at a date agreed in writing with the employer.</p>	<p>inform the employee, in writing, of the terms of employment including whether they are full time, part time or casual’</p> <ul style="list-style-type: none"> • SDA and others (paras 25 and 26): This clause should be placed after clause 11. The following wording better reflects the current clause: <i>‘8.3 b) Moving to part-time employment does not affect continuity of service or any leave entitlements.</i> <i>8.3 c) A full-time employee who is granted their request to be given part-time work may return to full-time work at a future date agreed to in writing with the employer.’</i> • PGA (paras 13 and 14): Clause 8.3(c) should contain a reference to s65 of the FW Act. Clause 8.3(c) reworded to remove any potential issue where an employee request for part time work is requested or no agreement is achieved to return to full time employment.
<p>6.3 Full-time employment</p> <p>A full-time employee is engaged to work an average of 38 hours per week.</p>	<p>9. Full-time employment</p> <p>9.1 An employee who is engaged to work 38 ordinary hours per week (or 76 ordinary hours over 2 consecutive weeks) is a full-time employee.</p>	<ul style="list-style-type: none"> • PGA (paras 16 and 17): Submits that the definition from Exposure Draft should be retained as the “definition and interpretation could cause potential issues regarding employment classifications and entitlements, e.g. casual employee has worked 76 hours in a fortnight is converted to a full time employee.” • SDA and others (paras 27 and 28): ‘Ordinary hours’ used without defining what this means – definition necessary to ensure it has not changed legal intent of award. As this clause is referenced in clause 20—Overtime, it is important the term ‘ordinary hours’ does not suggest that time worked up to 38 hours per week or 76 averaged over a fortnight do not attract a higher rate of pay regardless of when they are worked.

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<p>6.4. Part-time employees</p> <p>(a) A part-time employee:</p> <p>(i) is engaged to work less than 38 hours per week; and</p> <p>(ii) has reasonably predictable hours of work;</p> <p>(iii) except as provided elsewhere in this award, receives on a pro-rata basis pay and conditions equivalent to those of full-time employees who do the same kind of work.</p> <p>(b) At the time of engagement, the employer and the part-time employee will agree, in writing, on a regular pattern of work, specifying at least:</p> <p>(i) the hours worked each day;</p> <p>(ii) which days of the week the employee will work;</p> <p>(iii) the actual starting and finishing times of each day;</p> <p>(iv) that any variation will be in writing;</p> <p>(v) that the minimum daily engagement is three hours;</p> <p>(vi) all time worked in excess of agreed hours is paid at the overtime rate; and</p> <p>(vii) the times of taking and the duration of meal breaks.</p>	<p>10. Part-time employment</p> <p>10.1 An employee who is engaged to work for fewer ordinary hours than mentioned in clause 9.1 and whose hours of work are reasonably predictable is a part-time employee.</p> <p>10.2 Subject to this award, the pay and conditions on which a part-time employee is engaged must, proportionately, be the same as those of a full-time employee engaged to do the same kind of work.</p> <p>10.3 At the time of engaging a part-time employee, the employer must agree in writing with the employee to each of the following:</p> <p>(a) the number of hours to be worked each day;</p> <p>(b) the days of the week on which the employee will work;</p> <p>(c) the times at which the employee will start and finish work each day;</p> <p>(d) when meal breaks may be taken and their duration.</p> <p>10.4 Any agreement under clause 10.3 must state that any variation agreed by them to any of the matters mentioned in clause 10.3(a) to (d) must be in writing.</p>	<p>Part A</p> <ul style="list-style-type: none"> • ABI and NSW Business Chamber (paras 4.1 and 4.2): Clause 10.1 - Prefer the numerical value of working fewer than 38 hours per week rather than the cross-reference to clause 9.1. • PGA (para. 18): Clause 10.2 suggested wording “Subject to this Award, a part time employee’s pay and conditions are a pro rata amount of which a full time employee receives when engaged to the same kind of work” • SDA and others (para. 30): Clause 6.4(a) of the exposure draft is much clearer than Clause 10.1 and 10.2 of the plain language draft and eliminates the need for cross referencing • ABI and NSW Business Chamber (paras 4.3–4.4): Clause 10.4 – prefer this alternate wording: ‘Any agreement under clause 10.3 must state that any variation agreed by <u>the employer and the employee</u> to any of the matters mentioned in clause 10.3(a) to (d) must be in writing.’ • SDA and others (para. 31): Clauses 10.3 to 10.10 - wording provided in the plain language draft may have unintended consequence of altering the legal intent of the clause. Suggest that wording of exposure draft be retained or consideration given to suggested wording below: ‘10.3 Before a part-time employee starts work the employer must agree with the employee in writing to each of the following: a) the number of hours and actual start and finish times to be worked each day; b) the days of the week on which the employee will work;

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		<p>c) when meal breaks may be taken and their duration</p> <p>10.4 The agreement must also provide that:</p> <p>a) the minimum period for which the employee must be rostered to work on any shift is 3 consecutive hours; and</p> <p>b) the employee is notified that any subsequent variation to the agreed terms must be in writing; and</p> <p>c) for each ordinary hour worked, the employee must be paid in accordance with clause 16 – Wages and Clause 21 – Penalty Rates; and</p> <p>d) for each hour worked in excess of the number of agreed hours worked under clause 10.3 must be paid at the overtime rate in accordance to 20.2 (Application of overtime for part-time employees.)</p>

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<p>(c) Variation to regular pattern of work</p> <p>(i) Any agreement to vary the regular pattern of work will be made in writing before the variation occurs.</p> <p>(ii) Any agreement to vary the agreed hours may be either a permanent agreed variation to the pattern of work or a temporary agreed variation (e.g. a single shift or roster period). The varied hours will be the ‘agreed hours’ for the purposes of clause 6.4(d).</p> <p>(iii) The agreement and variation will be retained by the employer and a copy given to the employee.</p> <p>(d) For each ordinary hour worked, a part-time employee will be paid the minimum hourly rate of pay for the relevant classification in clause 10.1.</p> <p>(e) An employer is required to roster a part-time employee for a minimum of three consecutive hours on any shift.</p> <p>(f) Rosters</p> <p>(i) A part-time employee’s roster, but not the agreed number of hours, may be altered:</p> <ul style="list-style-type: none"> • by the employer giving the employee seven days’ written notice; or • in the case of an emergency, by the employer giving the employee 48 hours’ written notice; or • at any time by mutual agreement between the employer and the employee. <p>(ii) Rosters will not be changed from week to week, or fortnight to fortnight.</p> <p>(iii) Rosters will not be changed to avoid any award entitlements.</p> <p>(g) An employee who does not meet the definition of a part-time employee and who is not a full-time employee will be paid as a casual employee in accordance with clause 6.5—Casual employment.</p>	<p>10.5 An agreement under clause 10.3 must also state each of the following:</p> <p>(a) the minimum period for which the employee may be rostered to work on any shift is 3 consecutive hours;</p> <p>(b) for each ordinary hour worked, the employee must be paid in accordance with clause 16—Wages;</p> <p>(c) for each hour worked in excess of the number of ordinary hours agreed under clause 10.3 and 10.9, the employee must be paid at the overtime rate in accordance with clause 20.2 (Application of overtime for part-time employees).</p> <p>10.6 The employer must keep a copy of any agreement under clause 10.3 or variation of it and give another copy to the employee.</p> <p>10.7 Subject to clause 10.8, the roster of a part-time employee, but not the number of hours agreed under clause 10.3, may be changed:</p> <p>(a) by the employer giving the employee 7 days, or in an emergency 48 hours, written notice of the change; or</p> <p>(b) at any time by the employer and employee by mutual agreement.</p> <p>10.8 The roster of a part-time employee must not be changed:</p> <p>(a) from pay period to pay period; or</p> <p>(b) so as to avoid any award entitlement.</p>	<p>Part A</p> <ul style="list-style-type: none"> • PGA (para. 19): Clause 10.5(b) be deleted as the content is contained in Clause 16. Submits that clause 10.5(c) be moved to clause 10.3(e). • SDA and others (para. 32): Clauses 10.5 (b) of the plain language draft (amended above at 10.4(c)) needs to make reference to both Clause 16 – Wages and Clause 21 – Penalty Rates as ordinary hours can be worked during times that attract the minimum rate or a penalty rate. • SDA and others (para. 31): Clauses 10.3 to 10.10 - wording provided in the plain language draft may have unintended consequence of altering the legal intent of the clause. Suggest that wording of exposure draft be retained or consideration given to suggested wording below: 10.5 The employer must keep a written copy of the agreement under clause 10.3 and any variation to it and give a copy to the employee. 10.6 Subject to clause 10.8, the roster of a part-time employee, but not the number of hours agreed under clause 10.3, may be changed: a) by the employer giving the employee 7 days, or in an emergency 48 hours, written notice of the change; or b) at any time by the employer and employee by mutual agreement. 10.7 The roster of a part-time employee must not be changed: a) from pay period to pay period; or b) so as to avoid any award entitlement.’

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Plain language draft (revised 21 April 2016)	Comments received
<p>(i) Additional hours as casual hours</p> <p>A part-time employee who has worked their agreed hours may agree to work additional hours which are not reasonably predictable up to the daily, weekly or fortnightly maximum ordinary hours as a casual employee. These extra hours will be subject to the casual employee provisions of this award.</p>	<p>10.9 A part-time employee who has worked the number of hours agreed under clause <u>10.3</u> may agree to work additional hours that are not reasonably predictable on the terms applicable to hours worked by a casual employee.</p>	<p>Part A</p> <ul style="list-style-type: none"> • PGA (para. 20): A full stop should appear after the word “predictable”. <p>The last sentence from clause 6.4 of the Exposure Draft should be added to the end of clause 10.9.</p>
	<p>10.10 However, the total number of hours agreed under clauses <u>10.3</u> and <u>10.9</u> must not exceed 12 on any day or 38 in a week (or 76 over 2 consecutive weeks).</p>	<p>Part A</p> <ul style="list-style-type: none"> • SDA and others (para. 33): Sub-clause 10.10 should be contained earlier in the clause as it outlines the maximum daily, weekly and fortnightly maximums a part-time employee can agree to work whether at the time of engagement or as additional hours.
<p>6.5 Casual employment</p> <p>(a) A casual employee is an employee who is engaged and paid as a casual employee.</p> <p>(b) A casual employee does not have an entitlement to reasonably predictable hours of work.</p> <p>(c) Casual loading</p> <p>For each ordinary hour worked, a casual employee must be paid:</p> <ul style="list-style-type: none"> • the minimum hourly rate; and • a loading of 25% of the minimum hourly rate for the classification in which they are employed. <p>(d) Casual employees will be paid at the termination of each engagement, but may agree to be paid weekly or fortnightly.</p> <p>(e) The minimum daily engagement for a casual employee is three hours.</p>	<p>11. Casual employment</p> <p>11.1 An employee who is not covered by clause <u>9</u> or clause <u>10.1</u> may be engaged and paid as a casual employee.</p> <p>11.2 A casual employee does not have an entitlement to reasonably predictable hours of work.</p> <p>11.3 The minimum number of hours for which a casual employee may be rostered to work on any day is 3.</p> <p>11.4 An employer must pay a casual employee for each hour worked a loading of 25% on top of the minimum hourly rate otherwise applicable under clause <u>16—Wages</u>.</p> <p>NOTE: Column 2 of <u>Table 3—Minimum Wages for employees</u> shows the minimum hourly rate to which the casual loading applies. If an employee is classified as a Pharmacy Assistant, and aged under 21 years see also clause <u>16.2—Junior wages (Pharmacy Assistants only)</u>.</p> <p>11.5 The pay period of a casual employee is as determined under clause <u>16.4</u>.</p>	<p>Part A</p> <ul style="list-style-type: none"> • PGA (paras 21 and 22): Clause 11.2 should be re-worded to include “... <i>have an entitlement or expectation</i>” Clause 11.3 should be re-worded to include “... <i>a casual employee can be rostered to work on any day is 3 consecutive hours</i>” • SDA and others (paras 34–36): User testing indicated that cross referencing was not preferred. Cross referencing in this clause is unnecessary. The clause should read something like: <i>An employee that is not a full time or part time employee must be engaged and paid as a casual employee.</i> Clause 11.3 should also clearly say that a casual employee must be rostered to work a minimum of 3 hours. Casuals must be paid at the ordinary hourly rate, not just the minimum hourly rate, depending on when they work. Therefore, this clause needs to reference both clause 16 – Wages and Clause 21- Penalty Rates.
<p>7. Classifications</p>	<p>12. Classification</p>	<p>Part A</p>

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Plain language draft (revised 21 April 2016)	Comments received
<p>7.1 All employees covered by this award must be classified according to the structure set out in Schedule A—Classification Definitions. Employers must advise their employees in writing of their classification and of any changes to their classification.</p> <p>7.2 The classification by the employer must be according to the skill level or levels required to be exercised by the employee in order to carry out the principal functions of the employment as determined by the employer.</p>	<p>12.1 An employer must classify an employee covered by this award in accordance with <u>Schedule A—Classification Definitions</u>.</p> <p>12.2 The classification must be based on the skill level that the employee is required to exercise in order to carry out the principal functions of the employment.</p> <p>12.3 Employers must notify employees in writing of their classification and of any change to it.</p>	
<p>Part 3—Hours of Work</p> <p>8. Ordinary hours of work and rostering</p> <p>8.1 This clause does not operate to limit, increase or in any way alter the trading hours of any employer as determined by the relevant State or Territory legislation.</p> <p>8.2 Ordinary hours and roster cycles</p> <p>(a) Ordinary hours may be worked between 7.00 am and midnight, Monday to Sunday.</p> <p>(b) Hours of work on any day will be continuous, except for rest breaks and meal breaks.</p> <p>(c) Hours of work must not exceed 12 hours per day.</p> <p>(d) The ordinary hours of work for a full-time employee will be 38 hours per week.</p> <p>(e) A full-time employee’s ordinary weekly hours may be averaged over a period of two consecutive weeks.</p> <p>(f) The ordinary hours of work for a part-time or casual employee will be in accordance with clause 6—Types of employment.</p>	<p>Part 3—Hours of Work</p> <p>13. Ordinary hours of work</p> <p>13.1 The ordinary hours of work for a full-time employee are as set out in clause <u>9.1</u>.</p> <p>13.2 The ordinary hours of work for a part-time employee are as agreed under clause <u>10</u>.</p> <p>13.3 Ordinary hours may be worked on any day between 7.00 am and midnight.</p> <p>13.4 Ordinary hours of work are continuous, except for rest breaks and meal breaks.</p> <p>13.5 The maximum number of ordinary hours that can be worked by a full-time or part-time employee on any day is 12.</p>	<p>Part A</p> <ul style="list-style-type: none"> • <u>SDA and others</u> (paras 38–42): Concerned that the changes proposed in the plain language draft have created a substantive change to entitlements No reference to casual employees. Clause 13.1 – Given user concerns in relation to cross referencing, state what is contained in the referenced clause 9.1, that is, work in excess of 38 hours per week or an average of 76 hours per fortnight. Clause 13.3 to 13.5 should state that these provisions apply to all employees, as all employees under the current award are entitled to overtime when they work more than 12 hours in one day, outside of the spread of hours 7am to midnight, and when they work a broken shift, that is when hours worked are not continuous. Clause 13.5 of the plain language draft has changed the entitlement to just being applicable to full-time and part-time employees. Wording of Clause 13 has implications for the SDA’s substantive claims currently before the Casual and Part-time Full Bench in relation to overtime. • <u>Business SA</u> (para. 5.3): The rewording of clause 13.5 provides no maximum hours for casual employees. Suggest that current wording of the Exposure Draft be retained regarding a 12 hour per hour maximum. • <u>PGA</u> (para. 23): Submits that clause 13.5 be re-worded to say “<i>The maximum number of hours an employee can work consecutive or in a split shift per day is 12</i>”.

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Plain language draft (revised 21 April 2016)	Comments received
<p>8.3 Rostering—Permanent employees</p> <p>(a) The following roster requirements will apply to permanent employees:</p> <p>(i) Ordinary hours will be rostered to provide employees with two consecutive days off each week or three consecutive days off in a two week period.</p> <p>(ii) Ordinary hours and any reasonable additional hours may not be rostered over more than six consecutive days.</p> <p>(iii) Except as provided for in clause 8.3(a)(iv), ordinary hours may not be rostered over more than five days in a week.</p> <p>(iv) Ordinary hours may be rostered on six days in one week where ordinary hours are rostered on no more than four days in the following week.</p> <p>(v) An employee may be rostered to work on a maximum of three Sundays in any four week cycle and must have three consecutive days off every four weeks, including a Saturday and Sunday.</p>	<p>14. Rostering arrangements—full-time and part-time employees</p> <p>14.1 The following rostering arrangements apply to full-time and part-time employees:</p> <p>(a) employees must be rostered to work ordinary hours in such a way that they have:</p> <p>(i) 2 consecutive days off each week; or</p> <p>(ii) 3 consecutive days off over 2 consecutive weeks;</p> <p>(b) subject to paragraph (c), employees must not be rostered to work ordinary hours on more than 5 days in a week;</p> <p>(c) employees may be rostered to work ordinary hours on 6 days one week if they are rostered to work ordinary hours on no more than 4 days the following week;</p> <p>(d) employees must not be rostered to work (whether ordinary hours or overtime) on more than 6 consecutive days;</p> <p>(e) employees rostered to work (whether ordinary hours or overtime) on up to 3 Sundays in a 4 week cycle must be rostered to have 3 consecutive days off every 4 weeks, including a Saturday and Sunday.</p> <p>14.2 Clause 14.1(e) does not apply to a part-time employee who has agreed under clause 10 to work Saturday or Sunday (or both) each week and have at least 2 consecutive days off.</p>	<p>Part A</p> <ul style="list-style-type: none"> Business SA (para. 5.4): 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. SDA and others (para. 43): Rostering clause is confusing (esp. regarding employees who work more than 5 days per week) and have suggested alternate wording: ‘14.1 The following rostering arrangements apply to full-time and part-time employees: a) employees must be rostered to work ordinary hours in such a way that they have 2 consecutive days off each week or 3 consecutive days off over a two week period. b) employees must not be rostered to work ordinary hours on more than 5 days in a week, unless they are rostered to work ordinary hours on 6 days in one week and not more than 4 days in the following week. c) employees must not be rostered to work (whether ordinary d) hours or overtime) on more than 6 consecutive days; e) employees rostered to work (whether ordinary hours or overtime) on up to 3 Sundays in a 4 week cycle must be rostered to have 3 consecutive days off every 4 weeks, including a Saturday and Sunday.’ ABI and NSW Business Chamber (para. 5): The words ‘whether ordinary hours or overtime’ in clause 14.1(e) departs from wording in the current Award, and may give rise to a substantive change, so should be omitted.

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Plain language draft (revised 21 April 2016)	Comments received												
<p>(b) Alternative rostering arrangements</p> <p>(i) 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.</p> <p>(ii) The agreement must be recorded in the time and wages record.</p> <p>(iii) It cannot be a condition of employment that an employee make a request for alternative rostering arrangements.</p> <p>(iv) An employee may terminate the agreement by giving four weeks' notice to the employer. The notice does not need to be given where the agreement terminates on an agreed date or at the end of an agreed period. This provision does not apply to part-time employees' agreed pattern of work under clause 6.4(b).</p> <p>(v) The rostering provision of clause 8.3(a)(v) does not apply to a part-time employee whose agreed hours under clause 6.4(b)(ii) provide that the employee will:</p> <ul style="list-style-type: none"> • work on either or both Saturday and Sunday each week; and • have at least two consecutive days off work each week. 	<p>14.3 Clause <u>14.1</u> is subject to any different arrangements agreed by the employer and employee at the written request of the employee.</p> <p>14.4 Different arrangements agreed under clause <u>14.3</u> must be recorded in the time and wages record.</p> <p>14.5 The employee may end an agreement under clause <u>14.3</u> at any time by giving the employer 4 weeks written notice unless the agreement was made under clause <u>10.3</u> (part-time arrangements agreed in writing on engagement).</p> <p>14.6 An agreement under clause <u>14.3</u> may provide that it ends on a particular day or at the end of a particular period.</p> <p>14.7 An employee cannot be required as a condition of employment to agree to an arrangement under clause <u>14.3</u>.</p>	<p>Part A</p> <ul style="list-style-type: none"> • Business SA (para. 5.5): 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...". Submits that wording of clause 14.3 be amended to read "Rostering Arrangements may be changed at the written request of the employee and with the agreement of the employer." • ABI and NSW Business Chamber (para. 5.1): Clause 14.3 contains the phrase 'is subject to' which should be avoided in accordance with plain language principles. • SDA and others (para. 44): Clause 8.3(b) of the exposure draft is clearer and easier to understand than clause 14.3 – 14.7 of the plain language draft. 												
<p>9. Breaks</p> <p>9.1 An employee working four or more hours on any day will be entitled to a 10 minute paid rest break.</p> <p>9.2 An employee working more than five hours on any day will be entitled to an unpaid meal break of at least 30 minutes but no more than one hour, plus a 10 minute paid rest break.</p> <p>9.3 An employee working 7.6 or more hours on any day will be entitled to an unpaid meal break of at least 30 minutes but no longer than one hour, plus two 10 minute paid rest breaks, provided that:</p> <p>(a) the meal breaks are to be taken after at least 2.5 hours and not later than five hours work; and</p> <p>(b) the rest breaks are not to be taken in the first hour of work or in the first hour after the meal break.</p> <table border="1" data-bbox="350 1732 1086 1873"> <thead> <tr> <th>Ordinary hours per day</th> <th>Break</th> </tr> </thead> <tbody> <tr> <td>4 hours and up to and including 5 hours</td> <td>One 10 minute paid rest break</td> </tr> </tbody> </table>	Ordinary hours per day	Break	4 hours and up to and including 5 hours	One 10 minute paid rest break	<p>15. Breaks</p> <p>15.1 This clause gives an employee an entitlement to meal breaks and rest breaks.</p> <p>15.2 An employee who works the number of hours on any one day specified in an item of column 1 of <u>Table 2—Entitlements to meal and rest breaks</u> is entitled to a break or breaks as specified in column 2.</p> <p>Table 2—Entitlements to meal and rest break(s)</p> <table border="1" data-bbox="1219 1501 1991 1873"> <thead> <tr> <th>Column 1</th> <th>Column 2</th> </tr> <tr> <th>Hours worked</th> <th>Breaks</th> </tr> </thead> <tbody> <tr> <td>At least 4 but not more than 5</td> <td>One 10 minute paid rest break</td> </tr> <tr> <td>More than 5 but less than 7.6</td> <td>One 10 minute paid rest break One 30 to 60 minute unpaid meal break</td> </tr> </tbody> </table>	Column 1	Column 2	Hours worked	Breaks	At least 4 but not more than 5	One 10 minute paid rest break	More than 5 but less than 7.6	One 10 minute paid rest break One 30 to 60 minute unpaid meal break	<p>Part A</p> <ul style="list-style-type: none"> • SDA and others (paras 45 and 46): Clause 15.1 and 15.2 should be deleted and replaced with: <i>'An employee is entitled to breaks in accordance with the table below.</i> Then the words 'column 1' and 'column 2' should be deleted from the table so that just the titles remain.
Ordinary hours per day	Break													
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<p>Part 4—Wage and Allowances</p> <p>10. Minimum wages</p> <p>10.1 Adult employees</p> <p>(a) An employer must pay adult employees the following minimum wages for ordinary hours worked by the employee:</p> <table border="1"> <thead> <tr> <th>Employee classification</th> <th>Minimum weekly rate \$</th> <th>Minimum hourly rate \$</th> <th>Casual hourly rate \$</th> </tr> </thead> <tbody> <tr> <td>Pharmacy Assistants</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Level 1</td> <td>721.50</td> <td>18.99</td> <td>23.74</td> </tr> <tr> <td>Level 2</td> <td>738.70</td> <td>19.44</td> <td>24.30</td> </tr> <tr> <td>Level 3</td> <td>764.90</td> <td>20.13</td> <td>25.16</td> </tr> <tr> <td>Level 4</td> <td>796.30</td> <td>20.96</td> <td>26.20</td> </tr> <tr> <td>Pharmacy Students</td> <td></td> <td></td> <td></td> </tr> <tr> <td>1st year of course</td> <td>721.50</td> <td>18.99</td> <td>23.74</td> </tr> <tr> <td>2nd year of course</td> <td>738.70</td> <td>19.44</td> <td>24.30</td> </tr> <tr> <td>3rd year of course</td> <td>764.90</td> <td>20.13</td> <td>25.16</td> </tr> <tr> <td>4th year of course</td> <td>796.30</td> <td>20.96</td> <td>26.20</td> </tr> <tr> <td>Pharmacy Interns</td> <td></td> <td></td> <td></td> </tr> <tr> <td>First half of training</td> <td>806.80</td> <td>21.23</td> <td>26.54</td> </tr> </tbody> </table>	Employee classification	Minimum weekly rate \$	Minimum hourly rate \$	Casual hourly rate \$	Pharmacy Assistants				Level 1	721.50	18.99	23.74	Level 2	738.70	19.44	24.30	Level 3	764.90	20.13	25.16	Level 4	796.30	20.96	26.20	Pharmacy Students				1st year of course	721.50	18.99	23.74	2nd year of course	738.70	19.44	24.30	3rd year of course	764.90	20.13	25.16	4th year of course	796.30	20.96	26.20	Pharmacy Interns				First half of training	806.80	21.23	26.54	<p>Part 4—Wages and Allowances</p> <p>16. Wages</p> <p>16.1 An employer must pay an employee in accordance with <u>Table 3—Minimum wages for employees</u> for ordinary hours worked by the employee:</p> <p>(a) for a full-time employee with a classification specified in column 1, wages at the minimum weekly rate specified opposite that classification in column 3; and</p> <p>(b) for a part-time employee with a classification specified in column 1, wages at the minimum hourly rate specified opposite that classification in column 2.</p> <p>NOTE: Provisions for calculating wages for an employee who is classified as a pharmacy assistant and aged under 21 years is at clause <u>16.2—Junior wages (pharmacy Assistants only)</u>.</p> <p>Table 3—Minimum wages for employees</p> <table border="1"> <thead> <tr> <th>Column 1 Employee classification</th> <th>Column 2 Minimum hourly rate</th> <th>Column 3 Minimum weekly rate</th> </tr> </thead> <tbody> <tr> <td>pharmacy assistant</td> <td></td> <td></td> </tr> <tr> <td>level 1</td> <td>\$18.99</td> <td>\$721.50</td> </tr> <tr> <td>level 2</td> <td>\$19.44</td> <td>\$738.70</td> </tr> <tr> <td>level 3</td> <td>\$20.13</td> <td>\$764.90</td> </tr> <tr> <td>level 4</td> <td>\$20.96</td> <td>\$796.30</td> </tr> <tr> <td>pharmacy student</td> <td></td> <td></td> </tr> <tr> <td>1st year of course</td> <td>\$18.99</td> <td>\$721.50</td> </tr> </tbody> </table>	Column 1 Employee classification	Column 2 Minimum hourly rate	Column 3 Minimum weekly rate	pharmacy assistant			level 1	\$18.99	\$721.50	level 2	\$19.44	\$738.70	level 3	\$20.13	\$764.90	level 4	\$20.96	\$796.30	pharmacy student			1 st year of course	\$18.99	\$721.50	<p>Part A</p> <ul style="list-style-type: none"> • SDA and others (para. 47): The Exposure Draft clause 10.1 is much simpler and easier to understand, hence should be reinstated but with the word 'ordinary' deleted. • Business SA (para. 5.7): 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.
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First half of training	806.80	21.23	26.54																																																																											
Column 1 Employee classification	Column 2 Minimum hourly rate	Column 3 Minimum weekly rate																																																																												
pharmacy assistant																																																																														
level 1	\$18.99	\$721.50																																																																												
level 2	\$19.44	\$738.70																																																																												
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<table border="1" data-bbox="350 254 1092 611"> <tr> <td>Second half of training</td> <td>834.40</td> <td>21.96</td> <td>27.45</td> </tr> <tr> <td>Pharmacist</td> <td>943.90</td> <td>24.84</td> <td>31.05</td> </tr> <tr> <td>Experienced Pharmacist</td> <td>1,033.80</td> <td>27.21</td> <td>34.01</td> </tr> <tr> <td>Pharmacist in Charge</td> <td>1,058.00</td> <td>27.84</td> <td>34.80</td> </tr> <tr> <td>Pharmacist Manager</td> <td>1,179.10</td> <td>31.03</td> <td>38.79</td> </tr> </table> <p data-bbox="284 636 1092 699">(b) A summary of hourly rates of pay including overtime and penalties is provided in Schedule B of this Award.</p>	Second half of training	834.40	21.96	27.45	Pharmacist	943.90	24.84	31.05	Experienced Pharmacist	1,033.80	27.21	34.01	Pharmacist in Charge	1,058.00	27.84	34.80	Pharmacist Manager	1,179.10	31.03	38.79	<table border="1" data-bbox="1219 254 2012 890"> <tr> <td>2nd year of course</td> <td>\$19.44</td> <td>\$738.70</td> </tr> <tr> <td>3rd year of course</td> <td>\$20.13</td> <td>\$764.90</td> </tr> <tr> <td>4th year of course</td> <td>\$20.96</td> <td>\$796.30</td> </tr> <tr> <td>pharmacy intern</td> <td></td> <td></td> </tr> <tr> <td>1st half of training</td> <td>\$21.23</td> <td>\$806.80</td> </tr> <tr> <td>2nd half of training</td> <td>\$21.96</td> <td>\$834.40</td> </tr> <tr> <td>pharmacist</td> <td>\$24.84</td> <td>\$943.90</td> </tr> <tr> <td>experienced pharmacist</td> <td>\$27.21</td> <td>\$1,033.80</td> </tr> <tr> <td>pharmacist in charge</td> <td>\$27.84</td> <td>\$1,058.00</td> </tr> <tr> <td>pharmacist manager</td> <td>\$31.03</td> <td>\$1,179.10</td> </tr> </table> <p data-bbox="1219 919 2024 1075">NOTE: <u>Schedule B—Summary of hourly rates of pay</u> contains a summary of hourly rates of pay, including casual wages, overtime and penalty rates. Provisions for calculating wages for casual employees are at clause <u>11.4</u>, overtime at clause <u>20</u> and penalty rates at clause <u>21</u>.</p>	2 nd year of course	\$19.44	\$738.70	3 rd year of course	\$20.13	\$764.90	4 th year of course	\$20.96	\$796.30	pharmacy intern			1 st half of training	\$21.23	\$806.80	2 nd half of training	\$21.96	\$834.40	pharmacist	\$24.84	\$943.90	experienced pharmacist	\$27.21	\$1,033.80	pharmacist in charge	\$27.84	\$1,058.00	pharmacist manager	\$31.03	\$1,179.10	
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<p data-bbox="172 1100 522 1129">10.2 Junior employees</p> <p data-bbox="284 1159 1092 1251">Junior employees will be paid the following percentage of the appropriate wage rate for pharmacy assistant classifications in clause 10—Minimum weekly wages:</p> <table border="1" data-bbox="284 1255 1092 1587"> <thead> <tr> <th>Age</th> <th>% of weekly wage</th> </tr> </thead> <tbody> <tr> <td>Under 16 years of age</td> <td>45</td> </tr> <tr> <td>16 years of age</td> <td>50</td> </tr> <tr> <td>17 years of age</td> <td>60</td> </tr> <tr> <td>18 years of age</td> <td>70</td> </tr> <tr> <td>19 years of age</td> <td>80</td> </tr> <tr> <td>20 years of age</td> <td>90</td> </tr> </tbody> </table>	Age	% of weekly wage	Under 16 years of age	45	16 years of age	50	17 years of age	60	18 years of age	70	19 years of age	80	20 years of age	90	<p data-bbox="1107 1100 1768 1129">16.2 Junior wages (Pharmacy Assistants only)</p> <p data-bbox="1219 1159 2024 1285">An employer must pay an employee, who is classified as a pharmacy assistant and aged under 21 years at the following percentage of the minimum rate that would otherwise be applicable under <u>Table 3—Minimum wages for employees</u>:</p> <p data-bbox="1219 1310 1656 1621"> (a) 45% for an under 16 year old; (b) 50% for a 16 year old; (c) 60% for a 17 year old; (d) 70% for an 18 year old; (e) 80% for a 19 year old; (f) 90% for a 20 year old. </p>	<p data-bbox="2036 1100 2131 1129">Part A</p> <ul data-bbox="2089 1201 2481 1230" style="list-style-type: none"> • SDA and others (para. 48): <p data-bbox="2131 1264 2873 1327">Prefers the Exposure Draft Clause 10.2 – simpler and easier to understand.</p>																																				
Age	% of weekly wage																																																			
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<p data-bbox="284 1659 1092 1904">(c) Each year of a pharmacy student’s course commences on the first day of the relevant academic term. A pharmacy student’s progression through the pay rate is line with the student’s progression through the course. If the pharmacy student completes subjects faster than the usual course progression for that year of study, the student will progress to the next pay rate even if they have not been on the previous pay rate for a year. A pharmacy student will not</p>	<p data-bbox="1107 1659 2024 1722">16.3 The following applies for determining which year of a course a pharmacy student is in:</p> <p data-bbox="1219 1747 2024 1894"> (a) a year of a course begins on the first day of the relevant academic year; (b) a pharmacy student moves to the pay rate applicable to a year of a course from the first day of the relevant academic </p>	<p data-bbox="2036 1659 2131 1688">Part A</p> <ul data-bbox="2089 1717 2451 1747" style="list-style-type: none"> • Business SA (para. 5.8): <p data-bbox="2131 1776 2873 1839">Clause 16.3 should have a heading and that this may also be relevant to other sub clauses.</p>																																																		

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Plain language draft (revised 21 April 2016)	Comments received
<p>move to the next pay rate if they have not completed and passed all of the subjects required in the usual course progression for that year of study, even if they remain on the same pay rate for more than one year. Students undertaking a Master of Pharmacy will commence at the 3rd year pay rate.</p>	<p>year in which the student progresses to that year of the course, irrespective of how long that takes;</p> <p>(c) a pharmacy student in the first year of a Master of Pharmacy course is treated as being in the 3rd year of a course.</p>	<ul style="list-style-type: none"> • ABI and NSW Business Chamber (para. 6.1): Clause 16.3 should have its own subheading to clarify it refers to 'Pharmacy Students'. • SDA and others (para. 49): The redrafting of this provision alters its legal meaning. It is not meant to define a student's course level, but to indicate at which level of the Student Pharmacist Pay Scale a student pharmacist must be paid. The Exposure draft is preferable.
<p>10.3 Payment of wages</p> <p>(a) Wages will be paid either weekly or fortnightly, according to the actual hours worked for each week or fortnight.</p> <p>(b) All wages will be paid on a regular pay day within four days of the end of the pay period. The employer must notify the employee in writing as to which day is the pay day. Where for any reason the employer wishes to change the pay day, then the employer shall provide at least four weeks' written notice to the employee of such change.</p> <p>10.3(b) re pay slips deleted in accordance with para [35] [2014] FWCFB 9412</p>	<p>16.4 Pay period</p> <p>(a) The employer may determine the pay period of an employee as being either weekly or fortnightly.</p> <p>(b) Wages must be paid for a pay period according to the number of hours worked by the employee in the period.</p> <p>NOTE: Hours of work may be measured over 2 consecutive weeks. See clause 10.10 (maximum total number of hours for part-time employment).</p> <p>16.5 Pay day</p> <p>(a) Wages must be paid on a regular pay day no later than 4 days after the end of the pay period.</p> <p>(b) Employers must notify employees in writing about which day is the regular pay day.</p> <p>(c) The regular pay day of an employee may only be changed by the employer giving the employee 4 weeks written notice.</p>	<p>Part A</p> <ul style="list-style-type: none"> • SDA and others (para. 50): Clause 16.4(a) suggested rewording: <i>'The employee will be paid either weekly or fortnightly.'</i> • PGA (para. 24): The application of clause 16.5 is not clear and queries whether the provision required to be undertaken for every single pay day or as a once off provision. • SDA and others (para. 51): Clause 16.5 reflects the agreed working regarding pay day.

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<p>10.5 Supported wage system</p> <p>For employees who are eligible for a supported wage, see Schedule D—Supported Wage System.</p> <p>10.6 National training wage</p> <p>For employees undertaking a traineeship, see Schedule E—National Training Wage.</p>	<p>16.6 For employees eligible for a supported wage, see Schedule D—Supported Wage System.</p> <p>16.7 For employees undertaking a traineeship, see Schedule E—National Training Wage.</p>	<p>Part A</p> <ul style="list-style-type: none"> • SDA and others (paras 52 and 53): <p>During the Conference held on 27 April 2016 President Ross indicated that the Fair Work Commission was considering removing the National Training Wage and Supported Wage System provisions from each modern award and placing them into the modern Miscellaneous Award. The SDA is concerned with this proposal. The SDA would seek to be involved in any further discussions on this matter.</p>
<p>10.4 Annualised salary (Pharmacists only)</p> <p>(a) An annualised salary for pharmacist employees may be developed. The annual salary may be in satisfaction of any or all of the following provisions of the award:</p> <ul style="list-style-type: none"> (i) overtime; (ii) penalty rates; (iii) payments for public holidays taken; (iv) annual leave taken; (v) annual leave loading; (vi) meal allowance; and (vii) meal break on call entitlements. <p>(b) The annual salary paid over a year must be no less than the amount the employee would have received under this award for the work performed over the year (or if the employment ceases before the completion of a year over such lesser period as has been worked).</p> <p>(c) When payment in accordance with this clause is adopted, the employer will keep a daily record of hours worked by the employee which will show the date and start and finish times of the employee for the day. The record will be countersigned weekly by the employee and will be kept at the place of employment for a period of at least six years.</p> <p>(d) The employee may be represented in discussions relating to the making of an agreement under clause 10.4 by either their union or nominated representative, and any agreement</p>	<p>17. Annualised salary (Pharmacists only)</p> <p>17.1 A pharmacist may agree in writing with their employer to be paid an annualised salary that satisfies this award in relation to all or any of the following matters:</p> <ul style="list-style-type: none"> (a) overtime rates; (b) penalty rates; (c) payments for public holidays; (d) payments for annual leave; (e) annual leave loading; (f) meal allowances; (g) on premise meal allowances. <p>17.2 A pharmacist may be represented by a union or other representative nominated by them in any discussion about the making of an agreement under clause 17.1.</p> <p>17.3 An annualised salary must not result in a pharmacist being paid less over a year than would have been the case if an annualised salary had not been agreed.</p> <p>17.4 The employer must keep a copy of any agreement under clause 17.1 and give another copy to the pharmacist.</p> <p>17.5 The employer must keep a record of hours worked each day by a pharmacist who has entered into an agreement under clause 17.1 showing the times at which the pharmacist started and finished work that day.</p> <p>17.6 A record mentioned in clause 17.1 must be:</p>	<p>Part A</p> <ul style="list-style-type: none"> • Business SA (para. 5.9): <p>Submits that the current award and the exposure draft has been varied from referring to the salary being inclusive of <u>overtime</u> now refers to the salary being inclusive of <u>overtime rates</u>. Business SA submits this change is unnecessary and not as clear as the current provisions.</p>

<u>EXPOSURE DRAFT – Pharmacy Industry Award 2014</u> (revised 25 September 2015)	Plain language draft (revised 21 April 2016)	Comments received
reached under this clause must be recorded in writing, and a copy retained by the employer.	<ul style="list-style-type: none"> <li data-bbox="1219 264 1843 296">(a) countersigned weekly by the pharmacist; and <li data-bbox="1219 317 1917 348">(b) kept at the place of employment for at least 6 years. 	

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Plain language draft (revised 21 April 2016)	Comments received
<p>11. Allowances</p> <p>11.1 Employers must pay to an employee the allowances the employee is entitled to under this clause. See Schedule C for a summary of monetary allowances and method of adjustment.</p> <p>11.2 Expense related allowances</p> <p>(a) Meal allowance</p> <p>(i) An employee who has worked six hours or more during ordinary time and who is then consecutively required to work overtime, or beyond the employee’s ordinary time of ending work, for more than one and a half hours, will be:</p> <ul style="list-style-type: none"> • supplied with an adequate meal by the employer; or • paid a meal allowance of \$17.46. <p>(ii) Where overtime referred to in clause 11.2(a)(i) exceeds four hours a further meal allowance of \$15.64 will be paid.</p> <p>(iii) Clauses 11.2(a)(i) and (ii) will not apply when the employer has advised the employee of the requirement to work overtime on the previous day.</p> <p>(iv) No meal allowance will be payable where any employee could reasonably return home for a meal within the period allowed.</p> <p>(v) No meal allowance will be payable where the additional hours are agreed hours as per clause 6.4(c).</p>	<p>18. Allowances</p> <p>NOTE: <u>Schedule C—Summary of Allowances</u> contains a summary of meal allowances, clothing allowances and motor vehicle allowances.</p> <p>18.1 Meal allowances</p> <p>(a) Clause 18.1 applies to an employee to whom each of the following applies:</p> <p>(i) the employee has worked 6 or more ordinary hours on any day;</p> <p>(ii) the employee is required to work on that day overtime, or more than 1.5 hours beyond the time at which the employee ordinarily finishes work for the day, unless the hours worked were agreed under <u>clause 10—Part-time employment</u>;</p> <p>(iii) the employee was not advised of the requirement mentioned in subparagraph <u>(ii)</u> on or before the previous day;</p> <p>(iv) the employee cannot reasonably return home for a meal within the period of the meal break.</p> <p>(b) The employer must:</p> <p>(i) pay the employee a meal allowance of \$17.46; or</p> <p>(ii) supply the employee with an adequate meal.</p> <p>(c) If the number of hours worked under a requirement mentioned in clause <u>18.1(a)(ii)</u> exceeds 4, the employer must pay the employee a further meal allowance of \$15.64.</p>	<p>Part A</p> <ul style="list-style-type: none"> • Business SA (para. 5.10): Clause 18.1(a)(ii) needs 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.. • ABI and NSW Business Chamber (para. 7.1): Clause 18.1(a)(ii) is difficult to understand, especially the inclusion of paragraph and sub-paragraph levels. • Business SA (para. 5.11): Clause 18.1(c) that the number 4 should be replaced with the word “four”. • SDA and others (paras 55 and 56): The note under Clause 18 should be removed and replaced with the wording in 11.1 of the exposure draft. Re-drafted clause not simple and easy to understand and does not follow a logical sequence. Proposed alternative wording: <i>‘18 Allowances</i> <i>18.1 Employers must pay to an employee the allowances the employee is entitled to under this clause. See schedule C for a summary of monetary allowances and method of adjustment.</i> <i>18.2 Meal allowances</i>

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Plain language draft (revised 21 April 2016)	Comments received
		<p><i>The employer must pay the employee a meal allowance of \$17.46 or supply the employee with an adequate meal when:</i></p> <p><i>a) the employee has worked 6 or more ordinary hours on any day; and</i></p> <p><i>b) the employee is required to work on that day overtime, or more than 1.5 hours beyond the time at which the employee ordinarily finishes work for the day, unless the hours worked were agreed under clause 10—Part-time employment; and</i></p> <p><i>c) the employee was not advised of the requirement mentioned in subparagraph (ii) on or before the previous day; and</i></p> <p><i>d) the employee cannot reasonably return home for a meal within the period of the meal break.</i></p> <p><i>e) Where overtime referred to in clause 18.2(ii) exceeds 4 hours a further meal allowance of \$15.64 must be paid.’ (bold emphasis SDA, sic)</i></p>
<p>(b) On-premise meal allowance (Pharmacists only)</p> <p>A pharmacist who is required to take their meal break on the premises for the purpose of attending to urgent matters requiring the input of a qualified pharmacist will be paid at 150% of the minimum hourly rate for the period of the meal break, regardless of other penalties that apply on that day.</p>	<p>18.2 On-premise meal allowance</p> <p>(a) Clause 18.2 applies to a pharmacist who is required to take a meal break on the premises so as to be available to attend to urgent matters requiring the involvement of a pharmacist.</p> <p>(b) The employer must pay the pharmacist at the enhanced hourly rate for the period of the meal break, regardless of any other payments, penalty rates or allowances to which the pharmacist is entitled.</p> <p>(c) In paragraph <u>(b)</u>, the enhanced hourly rate means 150% of the minimum hourly rate of the pharmacist. See column 2 of <u>Table 3—Minimum wages for employees</u>.</p>	<ul style="list-style-type: none"> • PGA (para. 25): Clause 18.2(b) be reworded to say <i>“The employee must pay the pharmacist at the enhanced hourly rate for the period of the meal break, notwithstanding clause 17.1 – Annualised Salary of this Award, regardless of other payments, penalty rates or allowances to which the pharmacists is entitled”.</i> • SDA and others (para. 57): Re-drafted clause not simple and easy to understand. Proposed alternative wording: ‘18.2 On premise Meal Allowance. <i>A pharmacist who is required to take a meal break on the premises so as to attend to urgent matters requiring the attention of a pharmacist must be paid an enhanced allowance of 150% of the minimum hourly rate of the pharmacist for the period of the break.’</i>
<p>(c) Special clothing</p> <p>(i) Where the employer requires an employee to wear any protective or special clothing such as a uniform or other clothing the employer will reimburse the employee for the cost of purchasing the special clothing and the cost of replacement items, when replacement is due to normal wear and tear. This provision will not apply where the special clothing is supplied and/or paid for by the employer.</p>	<p>18.3 Clothing allowance</p> <p>(a) The employer must reimburse an employee who is required to wear special clothing, such as a uniform or protective clothing, for the cost of purchasing any such clothing (including purchasing replacement clothing due to normal wear and tear) that is not supplied or paid for by the employer.</p> <p>(b) If special clothing that is required to be worn by an</p>	<ul style="list-style-type: none"> • SDA and others (para. 58): Clause 18.3 is more complex than the Exposure Draft. Clause 11.2(c) of the Exposure Draft is preferable.

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Plain language draft (revised 21 April 2016)	Comments received
<p>(ii) Where an employee is required to launder any special clothing, the employer who provided that clothing will arrange for its cleaning or will pay:</p> <ul style="list-style-type: none"> • \$6.25 per week to a full-time employee; or • \$1.25 per shift to a part-time or casual employee. 	<p>employee needs to be laundered, the employer must undertake the laundering at no cost to the employee or pay the employee an allowance of:</p> <p>(i) \$6.25 each week for a full-time employee; or</p> <p>(ii) \$1.25 each shift for a part-time or casual employee.</p>	
<p>(d) Transfer of employee expenses</p> <p>Where an employer transfers an employee from one township to another, the employer will be responsible for and will pay the whole of the moving expenses, including fares and transport charges, for the employee and the employee’s family.</p> <p>(e) Transport allowance</p> <p>Where an employer requests an employee to use their own motor vehicle in the performance of their duties the employee will be paid an allowance of \$0.78 cents per kilometre.</p>	<p>18.4 Moving expenses</p> <p>(a) Clause 18.4 applies if an employer transfers an employee from one township to another.</p> <p>(b) The employer is responsible for, and must pay, the total cost of moving the employee and the employee’s family, including fares and other transport charges.</p> <p>18.5 Motor vehicle allowance</p> <p>If an employer requests an employee to use their own motor vehicle in performing their duties, the employer must pay the employee an allowance of \$0.78 for each kilometre travelled.</p>	<ul style="list-style-type: none"> • PGA (para. 26): A detailed explanation in the document should be given about retaining the term ‘township’. The lack of definition could result in confusion and ambiguity as to whether this entitlement is applicable including the amount payable. • SDA and others (para. 59): Clause 18.4 should remove the word ‘township’ and replace it with: <i>‘where the employee has to move their residence’.</i>
<p>(f) Transport of employees reimbursement</p> <p>(i) An employee will be reimbursed the cost of a taxi fare between the place of employment and the employee’s usual place of residence where:</p> <ul style="list-style-type: none"> • the employee commences and/or finishes work before 7.00 am or after 10.00 pm; and • the employee’s regular means of transport is not available; and • the employee is unable to arrange their own alternative transport. <p>(ii) Clause 11.2(f)(i) will not apply if the employer provides or arranges proper transportation to and or from the employee’s usual place of residence at no cost to the employee.</p>	<p>18.6 Taxi fare reimbursement</p> <p>(a) Clause 18.6 applies to an employee to whom each of the following applies:</p> <ul style="list-style-type: none"> (i) the employee starts work before 7.00 am or finishes work after 10.00 pm; (ii) the employee’s regular means of transport is not available; (iii) the employee is unable to arrange their own alternative means of transport; (iv) a proper means of transport to or from the employee’s usual place of residence is not provided to, or arranged for, the employee by the employer at no cost to the employee. <p>(b) The employer must reimburse the employee the cost they incurred in taking a taxi between the place of employment and the employee’s usual place of residence.</p>	<ul style="list-style-type: none"> • SDA and others (para. 62): Citing the clause number within clause 18(6)(a) is unnecessary.
<p>12. Superannuation</p>	<p>19. Superannuation</p>	<p>Part B</p>
<p>Part 5—Penalties and Overtime</p>	<p>Part 5—Overtime and Penalty Rates</p>	<p>Part A</p>

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Plain language draft (revised 21 April 2016)	Comments received
<p>13. Overtime ...</p> <p>13.2 Definition of overtime</p> <p>(a) For a full-time employee, overtime is paid for additional hours worked at the direction of the employer in excess of the ordinary number of hours prescribed in clauses 8.2(a) to 8.2(e).</p> <p>(b) For a part-time employee, overtime is payable in accordance with clause 6.4(b)(vi).</p>	<p>20. Overtime</p> <p>20.1 Application of overtime for full-time employees</p> <p>(a) An employer must pay a full-time employee at the overtime rate for any hours worked at the direction of the employer:</p> <p>(i) in excess of the number of hours mentioned in clause <u>9.1</u> (full-time hours) or <u>13.5</u> (maximum daily hours); or</p> <p>(ii) between midnight and 7.00 am.</p> <p>20.2 Application of overtime for part-time employees</p> <p>(a) An employer must pay a part-time employee at the overtime rate for any hours worked in excess of the number of hours that the employee has agreed to work under clause <u>10—</u> <u>Part-time employment</u>.</p>	<ul style="list-style-type: none"> • SDA and others (paras 64–80): <p>Overtime provisions are incorrect and changed the legal effect by severely reducing employees’ overtime entitlements.</p> <p>Concerned that the re-drafts of the overtime clause which are incorrect in both the exposure draft and the plain language draft will have the potential to influence the decision of the Full Bench as it may see the re-drafted clause as the accepted interpretation of legal effect of the current Award. We strongly submit that the clause has not been interpreted correctly when it has been re-drafted.</p> <p>Request drafting and technical issues to be heard during the Award stage by the casual and part-time Full Bench.</p> <p>The plain language draft only provides payment of overtime for hours worked in excess of 38 per week (or 76 per fortnight), 12 hours per day and outside the spread of hours for full-time employees, not part-time and casual employees.</p> <p>The overtime provision should also reference Exposure draft clause 8.3(a) because payment of overtime also occurs when an employee works outside the “ordinary” parameters set by the rostering provisions contained in 8.3(a). Hours worked outside of these rostering parameters should attract overtime and this is what is currently being paid when employees work outside of these rostering provisions.</p> <p>Clause 14.1 should be referenced in the overtime clause 20.</p>
<p><i>Clause 13.1 is reproduced here for comparative purposes</i></p> <p>13.1 Reasonable overtime</p> <p>(a) Subject to clause 13.1(b) an employee other than a casual employee may be required to work reasonable overtime at the applicable overtime rate.</p> <p>(b) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable having regard to:</p> <p>(i) any risk to employee health and safety;</p> <p>(ii) the employee’s personal circumstances including any family responsibilities;</p> <p>(iii) the needs of the workplace or enterprise;</p>	<p>NOTE: Under the National Employment Standards (see section 62 of the Fair Work Act) an employee may refuse to work additional hours if they are unreasonable. Section 62 sets out factors to be taken into account in determining whether the additional hours are reasonable or unreasonable.</p>	<p>Part A</p> <ul style="list-style-type: none"> • SDA and others (paras 78 and 79): <p>Concerned about the deletion of this clause. The Wallis Report indicated that employers and employees had a very limited awareness of the NES and when they were aware had a very vague understanding of the provisions. Those tested also indicated a preference for the NES provisions to be contained in the Award.</p> <p>Reasonable overtime should be explained as part of the overtime provision so that employees are aware of their right not to work overtime if it is unreasonable.</p>

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<p>(iv) the notice (if any) given by the employer of the overtime and by the employee of their intention to refuse it; and</p> <p>(v) any other relevant matter.</p>																						
<p>13.3 Payment for overtime</p> <p>(a) The employer will pay to an employee the following rates for overtime worked during the specified period:</p> <table border="1" data-bbox="353 569 1095 926"> <thead> <tr> <th>For overtime worked on</th> <th>Overtime rate % of minimum hourly rate</th> </tr> </thead> <tbody> <tr> <td>Monday to Saturday—first 2 hours</td> <td>150</td> </tr> <tr> <td>Monday to Saturday—after 2 hours</td> <td>200</td> </tr> <tr> <td>Sunday—all day</td> <td>200</td> </tr> <tr> <td>Public holiday—all day</td> <td>250</td> </tr> </tbody> </table> <p>(b) The penalty rates in clause 14.1 are not cumulative on overtime rates.</p> <p>(c) Casual loading is not payable on overtime worked by a casual employee.</p>	For overtime worked on	Overtime rate % of minimum hourly rate	Monday to Saturday—first 2 hours	150	Monday to Saturday—after 2 hours	200	Sunday—all day	200	Public holiday—all day	250	<p>20.3 Payment of overtime</p> <p>(a) The overtime rate mentioned in clauses <u>20.1</u> and <u>20.2</u> is the relevant percentage specified in column 2 of <u>Table 4—Overtime rates</u> (depending on when the overtime was worked as specified in column 1) of the minimum hourly rate of the employee, under clause <u>16—Wages</u>.</p> <p>Table 4—Overtime rates</p> <table border="1" data-bbox="1288 726 1982 1171"> <thead> <tr> <th>Column 1 For overtime worked on</th> <th>Column 2 Overtime rate</th> </tr> </thead> <tbody> <tr> <td>Monday to Saturday—first 2 hours</td> <td>150%</td> </tr> <tr> <td>Monday to Saturday—after 2 hours</td> <td>200%</td> </tr> <tr> <td>Sunday—all day</td> <td>200%</td> </tr> <tr> <td>Public holiday—all day</td> <td>250%</td> </tr> </tbody> </table>	Column 1 For overtime worked on	Column 2 Overtime rate	Monday to Saturday—first 2 hours	150%	Monday to Saturday—after 2 hours	200%	Sunday—all day	200%	Public holiday—all day	250%	<p>Part A</p> <ul style="list-style-type: none"> PGA (paras 27 and 28): Clause 20.3 contains the incorrect terminology to explain the application of overtime rates and should be worded: “<i>The overtime penalty percentage rates specified in column 2 of Table 4 – Overtime Rates (depending upon when the overtime was worked as specified in column 1) are applicable to the provisions of clauses 20.1 and 20.2 on the minimum hourly rate of the employee, under clause 16 – Wages.</i>” SDA and others (para. 81): The payment of overtime clause in the Exposure Draft, Clause 13.3 is clearer and easier to understand than Clause 20.3 of the plain language draft. The exposure draft clause should be retained. ABI and NSW Business Chamber (para. 8.1): There is no longer a specific reference that casual loading is not payable on overtime (clause 13(c) in the exposure draft and clause 26.2(a)(iii) in the current Award). This should be reintroduced into this clause, to avoid doubt.
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<p>13.4 Time off instead of payment</p> <p>(a) An employee may elect, with the consent of the employer, to take time off instead of receiving payment for overtime.</p> <p>(b) Time off instead of payment will be taken at a mutually convenient time and within four weeks’ of the overtime being worked.</p> <p>(c) Despite clause 13.4(b), where agreed between the employer and employee, time off instead of payment may be accumulated and taken as part of annual leave.</p> <p>(d) For each hour of overtime worked, an employee who elects to take time off instead of payment will be entitled to a period of time off equal to the time worked multiplied by the applicable overtime rate for the period in which the overtime was worked (e.g. where the overtime rate is 150%, one hour of overtime equals one and a half hours of time off, or where the rate is 200%, two hours).</p>	<p>20.4 Time off instead of payment</p> <p>(a) With the consent of the employer, an employee may choose to take time off instead of being paid for overtime.</p> <p>(b) The period of time off to which an employee is entitled for each hour of overtime worked is the relevant percentage of that hour specified in column 2 of <u>Table 4—Overtime rates</u> (depending on when the hour was worked as specified in column 1).</p> <p>EXAMPLE: An employee who worked 2 hours of overtime on a Tuesday that was not a public holiday is entitled to time off of 3 hours ((2 x 150) ÷ 100).</p> <p>(c) Time off must be taken:</p> <p>(i) within the period of 4 weeks after the overtime is worked; and</p>	<p>Part A</p> <ul style="list-style-type: none"> SDA and others (para. 82): Noted the recent Full Bench Decision regarding Time off in lieu of overtime¹⁶ and would like to reserve right to comment once draft determination has been published by the Full Bench. 																				

<u>EXPOSURE DRAFT – Pharmacy Industry Award 2014</u> (revised 25 September 2015)	Plain language draft (revised 21 April 2016)	Comments received
	<p style="padding-left: 40px;">(ii) at a time within that period agreed by the employer and employee.</p> <p style="padding-left: 40px;">(d) Despite paragraph <u>(c)</u>, the employer and employee may agree that time off may be accumulated and included in a period during which an employee takes paid annual leave.</p>	

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<p>14. Penalties</p> <p>14.1 Penalty rates</p> <p>The employer will pay to an employee the following rates for all ordinary hours worked during the specified periods:</p> <table border="1" data-bbox="284 447 1092 1335"> <thead> <tr> <th>Hours worked</th> <th>Penalty rate</th> <th>Casual penalty rate (inclusive of casual loading)</th> </tr> <tr> <th colspan="3">% of minimum hourly rate</th> </tr> </thead> <tbody> <tr> <td colspan="3">Monday to Friday</td> </tr> <tr> <td>Before 8.00 am</td> <td>150</td> <td>175</td> </tr> <tr> <td>Between 7.00 pm and 9.00 pm</td> <td>125</td> <td>150</td> </tr> <tr> <td>Between 9.00 pm and midnight</td> <td>150</td> <td>175</td> </tr> <tr> <td colspan="3">Saturday</td> </tr> <tr> <td>Before 8.00 am</td> <td>200</td> <td>225</td> </tr> <tr> <td>Between 8.00 am and 6.00 pm</td> <td>125</td> <td>150</td> </tr> <tr> <td>Between 6.00 pm and 9.00 pm</td> <td>150</td> <td>175</td> </tr> <tr> <td>Between 9.00 pm and midnight</td> <td>175</td> <td>200</td> </tr> <tr> <td>Sunday—all day</td> <td>200</td> <td>225</td> </tr> <tr> <td>Public holidays—all day</td> <td>250</td> <td>275</td> </tr> </tbody> </table> <p>See Schedule B for a summary of hourly rates of pay including overtime and penalties.</p>	Hours worked	Penalty rate	Casual penalty rate (inclusive of casual loading)	% of minimum hourly rate			Monday to Friday			Before 8.00 am	150	175	Between 7.00 pm and 9.00 pm	125	150	Between 9.00 pm and midnight	150	175	Saturday			Before 8.00 am	200	225	Between 8.00 am and 6.00 pm	125	150	Between 6.00 pm and 9.00 pm	150	175	Between 9.00 pm and midnight	175	200	Sunday—all day	200	225	Public holidays—all day	250	275	<p>21. Penalty rates</p> <p>21.1 This clause sets out higher rates of pay (penalty rates) for hours worked at specified times or on specified days that are not required to be paid at the overtime rate.</p> <p>NOTE: Hours worked in excess of ordinary hours are required to be paid at the overtime rate. See clause <u>20—Overtime</u>.</p> <p>21.2 Penalty rates are not cumulative on overtime rates.</p> <p>21.3 An employer must pay an employee in accordance with <u>Table 5—Penalty rates</u> for hours worked by the employee during a period specified in column 1 of that Table:</p> <p>(a) for a full-time or part-time employee, at the percentage specified in column 2 of <u>Table 5—Penalty rates</u> of the minimum hourly rate applicable, according to the classification of the employee under clause <u>16—Wages</u>; or</p> <p>(b) for a casual employee, at the percentage specified in column 3 of <u>Table 5—Penalty rates</u> of the minimum hourly rate of the employee, under clause <u>16—Wages</u>.</p> <p>NOTE: <u>Table 3—Minimum wages for employees</u> shows the minimum hourly rate applicable under clause 16.1. If an employee is classified as a pharmacy assistant and aged under 21, see also clause <u>16.2—Junior wages (Pharmacy Assistants only)</u>.</p> <p>Table 5—Penalty rates</p> <table border="1" data-bbox="1219 1171 1982 1896"> <thead> <tr> <th>Column 1 For hours worked on</th> <th>Column 2 Full-time and part-time penalty rate</th> <th>Column 3 Casual penalty rate (inclusive of casual loading)</th> </tr> </thead> <tbody> <tr> <td colspan="3">Monday to Friday</td> </tr> <tr> <td>Between 7.00 am and 8.00 am</td> <td>150%</td> <td>175%</td> </tr> <tr> <td>Between 7.00 pm and 9.00 pm</td> <td>125%</td> <td>150%</td> </tr> <tr> <td>Between 9.00 pm and midnight</td> <td>150%</td> <td>175%</td> </tr> <tr> <td colspan="3">Saturday</td> </tr> <tr> <td>Between 7.00 am and 8.00 am</td> <td>200%</td> <td>225%</td> </tr> <tr> <td>Between 8.00 am</td> <td>125%</td> <td>150%</td> </tr> </tbody> </table>	Column 1 For hours worked on	Column 2 Full-time and part-time penalty rate	Column 3 Casual penalty rate (inclusive of casual loading)	Monday to Friday			Between 7.00 am and 8.00 am	150%	175%	Between 7.00 pm and 9.00 pm	125%	150%	Between 9.00 pm and midnight	150%	175%	Saturday			Between 7.00 am and 8.00 am	200%	225%	Between 8.00 am	125%	150%	<p>Part A</p> <ul style="list-style-type: none"> SDA and others (para. 83): <p>Clause 21 of the Plain language draft is much more complicated to navigate than clause 14 of the Exposure Draft. The Exposure draft clause should be retained.</p>
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<p data-bbox="166 751 1095 783">Part 6—Leave, Public Holidays and Other NES Entitlements</p> <p data-bbox="166 810 457 842">15. Annual leave</p> <p data-bbox="166 867 1095 930">15.1 substituted in accordance with para [35] [2014] FWCFB 9412; Note inserted in accordance with para [94] of [2015] FWCFB 4658</p> <div data-bbox="290 936 1044 1003" style="border: 1px solid black; padding: 2px;"> <p data-bbox="290 961 1044 993">This annual leave provision may be affected by AM2014/47</p> </div> <p data-bbox="290 1035 1095 1192">NOTE: Where an employee is receiving overaward payments such that the employee’s base rate of pay is higher than the rate specified under this award, the employee is be entitled to receive the higher rate while on a period of paid annual leave (see ss.16 and 90 of the Act).</p> <p data-bbox="166 1220 774 1251">15.1 Annual leave is provided for in the NES.</p> <p data-bbox="166 1276 813 1308">15.2 Additional leave for certain shiftworkers</p> <p data-bbox="290 1333 1095 1459">A shiftworker, for the purposes of the NES, is an employee who is a seven day shiftworker who is regularly rostered to work on Sundays and public holidays in a business in which shifts are continuously rostered 24 hours a day for seven days a week.</p> <p data-bbox="166 1486 566 1518">15.3 Annual leave loading</p> <p data-bbox="290 1543 1095 1690">(a) During a period of annual leave an employee will receive a loading calculated on the wage prescribed in clause 10—Minimum wages of this award in addition to their minimum rate of pay. Annual leave loading payment is payable on leave accrued.</p> <p data-bbox="290 1717 724 1749">(b) The loading will be as follows:</p> <p data-bbox="350 1774 557 1806">(i) Day work</p> <p data-bbox="427 1833 1095 1896">Employees who would have worked on day work only had they not been on leave—17.5% or the relevant</p>	<p data-bbox="1107 751 1567 783">Part 6—Leave and Public Holidays</p> <p data-bbox="1107 810 1391 842">22. Annual leave</p> <p data-bbox="1107 867 2027 930">NOTE: The National Employment Standards set out the entitlements for annual leave. See <u>Part 2.2, Division 6 of the Fair Work Act</u>.</p> <p data-bbox="1107 955 2027 1171">NOTE: Under the National Employment Standards the employer must pay an employee on paid annual leave at their base rate of pay for their ordinary hours of work for the period of the leave. If an employer pays at a higher rate of pay for ordinary hours worked than the minimum rate of pay under this award, an employee’s base rate of pay will be higher than the minimum rate of pay under this award for ordinary hours worked. See <u>section 16 of the Fair Work Act</u> for the definition of “base rate of pay”.</p> <p data-bbox="1107 1197 2027 1260">22.1 For the purposes of the National Employment Standards a shiftworker is an employee who is:</p> <p data-bbox="1219 1285 2027 1438">(a) employed in a community pharmacy at which shifts are continuously rostered 24 hours a day for 7 days a week; and (b) regularly rostered to work on Sundays and public holidays.</p> <p data-bbox="1107 1463 2027 1589">NOTE: The National Employment Standards provides for 5 weeks of paid annual leave if an award defines or describes the employee as a shiftworker for the purposes of the National Employment Standards. See <u>section 87 of the Fair Work Act</u>.</p> <p data-bbox="1107 1614 1495 1646">22.2 Annual leave loading</p> <p data-bbox="1219 1671 2027 1797">(a) An employer must pay an employee for each period of accrued paid annual leave taken by the employee an annual leave loading on each hour that the employee would have worked had the employee not been on annual leave.</p> <p data-bbox="1219 1822 1801 1854">(b) The amount of an annual leave loading is:</p> <p data-bbox="1288 1879 2027 1911">(i) 17.5% of the minimum hourly rate applicable,</p>	<p data-bbox="2039 751 2131 783">Part B</p>															

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<p>weekend penalty rates, whichever is the greater but not both.</p> <p>(ii) Shiftwork</p> <p>Employees who would have worked on shiftwork had they not been on leave—a loading of 17.5% or the shift loading (including relevant weekend penalty rates) whichever is the greater but not both.</p> <p>15.4 Paid leave in advance of accrued entitlement</p> <p>(a) An employer may allow an employee to take annual leave either wholly or partly in advance before the leave has accrued.</p> <p>(b) Where paid leave has been granted to an employee in excess of the employee’s accrued entitlement, and the employee subsequently leaves or is discharged from the service of the employer before completing the required amount of service to account for the leave provided in advance, the employer is entitled to deduct the amount of leave in advance still owing from any remuneration payable to the employee upon termination of employment.</p>	<p>according to the classification of the employee, under clause <u>16—Wages</u>; or</p> <p>(ii) the higher percentage of that rate that the employee is entitled to be paid under clause <u>21—Penalty rates</u>.</p> <p>22.3 An employer may allow an employee to take a period of paid annual leave before the employee has accrued an entitlement to the leave.</p> <p>22.4 If, on the termination of the employee’s employment, the employee has not accrued an entitlement to a period of paid annual leave already taken, the employer may deduct from any money due to the employee on termination an amount equal to the amount already paid to the employee in respect of that paid annual leave taken.</p>	
<p>16. Personal/carer’s leave and compassionate leave 16.1 substituted in accordance with para [35] [2014] FWCFB 9412</p> <p>16.1 Personal/carer’s leave and compassionate leave are provided for in the NES.</p> <p>16.2 Evidence requirements</p> <p>(a) For the purposes of s.107(3) of the Act, an employee is entitled to one day’s absence per year for leave of the kind in s.97(a) of the Act (unfit for work because of personal illness or injury) without being required to provide a statutory declaration as to the reasons for the absence.</p> <p>(b) Where any absence exceeds three consecutive days, the employer may require the production of a medical certificate from a legally qualified medical practitioner.</p> <p>16.3 Casual employees</p> <p>(a) A casual employee is entitled to be unavailable for work or to leave work to care for a person who:</p> <p>(i) is sick and requires care and support; or</p> <p>(ii) requires care due to an emergency.</p> <p>(b) 48 hours’ absence is allowed by right, with additional absence by agreement.</p>	<p>23. Personal/carer’s leave and compassionate leave</p> <p>NOTE: The National Employment Standards set out the entitlements for personal/carer’s leave and compassionate leave. See <u>Part 2.2, Division 7 of the Fair Work Act</u>.</p> <p>23.1 An employee, other than a casual employee, is entitled to take one day of paid personal/carer’s leave for each year of service if the employee is not fit to work because of a personal illness, or personal injury, affecting the employee without having to provide any kind of evidence that the leave is taken for that reason.</p> <p>23.2 If an employee, other than a casual employee is absent on paid personal/carer’s leave for a single continuous period in excess of 3 days for the reason mentioned in clause <u>23.1</u>, the employer may require the employee to produce a medical certificate from a registered medical practitioner.</p> <p>23.3 A casual employee is entitled to be unavailable for work, or to leave work, for a single continuous period of up to 48 hours to provide care or support to a person who requires it because of a personal illness, or emergency, affecting the person.</p> <p>23.4 The employer and a casual employee may agree to extend the period mentioned in clause <u>23.1</u>.</p> <p>23.5 An employer must not fail to re-engage a casual employee because the employee has exercised an entitlement under clause <u>23.1</u>.</p>	<p>Part B</p> <ul style="list-style-type: none"> • ABI and NSW Business Chamber (para. 9.1): In Clause 23.2, ‘For the reason mentioned in clause 23.1’ makes the meaning of this clause difficult to establish. Replace with words used in clause 23.1 • PGA (para. 29): Submits that there are incorrect links in 23.4, 23.5 and 23.6. Clause numbers needs to be reworded to say “23.3” instead of “23.1”.

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<p>(c) The employer must not fail to re-engage a casual employee because the employee has accessed the entitlement under this clause.</p> <p>(d) Casual employees are not entitled to paid leave under clause 16.3(a).</p>	<p>23.6 A casual employee is not entitled to be paid for a period of leave taken under clause <u>23.1</u>.</p>	
<p>17. Parental leave and related entitlements 17 substituted in accordance with para [35] [2014] FWCFB 9412 Parental leave and related entitlements are provided for in the NES.</p>	<p>24. Parental leave and related entitlements NOTE: The National Employment Standards set out the parental leave and related entitlements of employees. See <u>Part 2.2, Division 5 of the Fair Work Act</u>.</p>	Part B
<p>18. Public holidays 18.1 substituted in accordance with para [35] [2014] FWCFB 9412</p> <p>18.1 Public holiday entitlements are provided for in the NES.</p> <p>18.2 Where an employee works on a public holiday they will be paid in accordance with clause 14.1—Penalty rates.</p> <p>18.3 Substitution of public holidays by agreement The employer and an individual 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 the employee less time off work than the employee would have had if the employee had received the public holiday.</p>	<p>25. Public holidays NOTE: The National Employment Standards set out entitlements in relation to working on public holidays. See <u>Part 2.2, Division 10 of the Fair Work Act</u>.</p> <p>NOTE: Clause <u>21—Penalty rates</u> provides for penalty rates to be paid for hours worked on a public holiday. See also <u>Schedule F—[2016] part-day public holidays</u>.</p> <p>25.1 Substitution of public holidays</p> <p>(a) An employer and an employee may agree in writing to substitute another day for a public holiday.</p> <p>(b) The employer may determine to substitute another day for a public holiday in the absence of agreement between the employer and the employee.</p> <p>(c) However, a determination under paragraph (b) must not result in the employee having less time off than the employee would have had if the employee had not been rostered to work on the public holiday.</p>	Part B
<p>19. Community service leave 19 substituted in accordance with para [35] [2014] FWCFB 9412 Community service leave is provided for in the NES.</p>	<p>26. Community service leave NOTE: The National Employment Standards set out community service leave entitlements of employees. See <u>Part 2.2, Division 8 of the Fair Work Act</u>.</p>	Part B
<p><i>Clauses 22 and 23 reproduced here for comparative purposes</i></p> <p>Part 7—Consultation and Dispute Resolution</p> <p>22. Consultation</p> <p>23. Dispute resolution</p>	<p>Part 7—Consultation and Dispute Resolution</p> <p>27. Consultation about major workplace change</p> <p>28. Consultation about changes to rosters or hours of work</p> <p>29. Dispute resolution</p>	Part B <i>Provisions not reproduced in 21 April 2016 publication.</i>

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Plain language draft (revised 21 April 2016)	Comments received																				
<p><i>Clause 20 is reproduced here for comparative purposes</i></p> <p>20. Termination of employment</p> <p>20.1 Notice of termination is provided for in the NES.</p> <p>20.2 Notice of termination by an employee The notice of termination required to be given by an employee is the same as that required of an employer, except that there is no requirement on the employee to give additional notice based on the age of the employee concerned.</p> <table border="1" data-bbox="290 594 961 821"> <thead> <tr> <th>Years of service</th> <th>Period of notice</th> </tr> </thead> <tbody> <tr> <td>Not more than 1 year</td> <td>1 week</td> </tr> <tr> <td>More than 1 year but not more than 3 years</td> <td>2 weeks</td> </tr> <tr> <td>More than 3 years but not more than 5 years</td> <td>3 weeks</td> </tr> <tr> <td>More than 5 years</td> <td>4 weeks</td> </tr> </tbody> </table> <p>If an employee fails to give the required notice, the employer may withhold any money due to the employee on termination under this award or the NES, an amount not exceeding the amount the employee would have been paid under this award in respect of the period of notice required by this clause, less any period of notice actually given by the employee.</p>	Years of service	Period of notice	Not more than 1 year	1 week	More than 1 year but not more than 3 years	2 weeks	More than 3 years but not more than 5 years	3 weeks	More than 5 years	4 weeks	<p>Part 8—Termination of employment and Redundancy</p> <p>30. Termination of employment NOTE: The National Employment Standards set out requirements for notice of termination by an employer. See <u>Part 2.2, Division 11 of the Fair Work Act</u>.</p> <p>30.1 Notice of termination by an employee</p> <p>(a) An employee must give the employer written notice of termination in accordance with <u>Table 6—Period of notice</u> of at least the period specified in Column 2 according to the period of continuous service of the employee specified in Column 1.</p> <p>Table 6—Period of Notice</p> <table border="1" data-bbox="1196 709 1902 1073"> <thead> <tr> <th>Column 1 Employee's period of continuous service with the employer at the end of the day the notice is given</th> <th>Column 2 Period of notice</th> </tr> </thead> <tbody> <tr> <td>Not more than 1 year</td> <td>1 week</td> </tr> <tr> <td>More than 1 year but not more than 3 years</td> <td>2 weeks</td> </tr> <tr> <td>More than 3 years but not more than 5 years</td> <td>3 weeks</td> </tr> <tr> <td>More than 5 years</td> <td>4 weeks</td> </tr> </tbody> </table> <p>(b) If an employee fails to give the required period of notice in accordance with <u>Table 6—Period of notice</u>, the employer may deduct the amount that would otherwise be payable to the employee (on termination under this award or the National Employment Standards) for the period of notice not given by the employee.</p>	Column 1 Employee's period of continuous service with the employer at the end of the day the notice is given	Column 2 Period of notice	Not more than 1 year	1 week	More than 1 year but not more than 3 years	2 weeks	More than 3 years but not more than 5 years	3 weeks	More than 5 years	4 weeks	<p>Part B</p>
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<p><i>Clause 21 is reproduced here for comparative purposes</i></p> <p>21. Redundancy</p> <p>21.1 Redundancy pay is provided for in the NES.</p>	<p>31. Redundancy NOTE: The National Employment Standards set out requirements for Redundancy pay. See <u>Part 2.2, Division 11, Subdivision B of the Fair Work Act</u>.</p> <p>NOTE: Clause <u>27—Consultation about major workplace change</u> sets out requirements to consult about major workplace change, including changes that may involve redundancy.</p>	<p>Part B</p>																				
<p><i>Clause 21.2 is reproduced here for comparative purposes</i></p> <p>21.2 Transfer to lower paid duties</p> <p>Where an employee is transferred to lower paid duties by reason of redundancy, the same period of notice must be given as if the employment had been terminated and the employer may, at the employer's option, make payment instead. The payment will be equal to the difference between the former ordinary time rate of pay and the ordinary time rate of pay for the number of weeks of notice still owing.</p>	<p>32. Transfer to lower paid job on redundancy NOTE: The National Employment Standards Notice set out Notice of termination and redundancy pay requirements. See <u>Part 2.2, Division 11 of the Fair Work Act</u>.</p> <p>32.1 This clause applies if the employer:</p> <p>(a) no longer requires the job (the old job) being performed by an employee to be performed by anyone; and</p> <p>(b) wishes to transfer the employee to a new job (the new job) at a lower classification and lower hourly rate of pay.</p>	<p>Part B</p>																				

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Plain language draft (revised 21 April 2016)	Comments received
	<p>32.2 The employee is entitled to be given written notice of the transfer to a new classification of the same minimum period of notice as the employee would be entitled to for a notice of termination.</p> <p>32.3 If the employer transfers the employee to the new classification before the end of the minimum period of notice, the employee is entitled to receive a payment from the employer.</p> <p>32.4 The amount of payment to which the employee is entitled under clause 32.3 is the difference between A and B where:</p> <p>(a) A is the full rate of pay for the hours the employee would have worked in the old job had the employee continued to be employed in that job until the end of the minimum period of notice; and</p> <p>(b) B is the full rate of pay to which the employee is entitled for working in the new job until the end of the minimum period of notice.</p> <p>NOTE: See <u>section 18 of the Fair Work Act</u> for the meaning of “full rate of pay”.</p>	
<p><i>Clause 21.3 is reproduced here for comparative purposes</i></p> <p>21.3 Employee leaving during notice period</p> <p>An employee given notice of termination in circumstances of redundancy may terminate their employment during the period of notice. The employee is entitled to receive the benefits and payments they would have received under this clause had they remained in employment until the expiry of the notice, but is not entitled to payment instead of notice.</p>	<p>33. Employee leaving during redundancy notice period</p> <p>33.1 This clause applies if an employee has been given written notice of termination of employment by their employer in circumstances in which the employee is entitled to redundancy pay. (See <u>section 119 of the Fair Work Act</u>).</p> <p>33.2 The employee may terminate their employment at any time during the minimum period of notice required to be given by their employer. (See <u>section 117 of the Fair Work Act</u>).</p> <p>33.3 The requirement for the employer to pay the employee at the full rate of pay for the hours the employee would have worked had the employee continued to be employed until the end of the minimum period of notice is not affected by the early termination of employment by the employee.</p> <p>NOTE: See <u>section 18 of the Fair Work Act</u> for the meaning of “full rate of pay”.</p>	<p>Part B</p>
<p><i>Clauses 20.3 and 21.4 are reproduced here for comparative purposes</i></p> <p>20.3 Job search entitlement</p> <p>Where an employer has given notice of termination to an employee, an employee must be allowed up to one day’s time off without loss of pay for the purpose of seeking other employment. The time off is to be taken at times that are convenient to the employee after consultation with the employer.</p> <p>21.4 Job search entitlement</p> <p>(a) An employee given notice of termination in circumstances of redundancy must be allowed up to one day’s time off without loss of pay during each week of notice for the purpose of seeking other employment.</p>	<p>34. Job search entitlement</p> <p>34.1 Where an employer has given an employee written notice of termination of employment, the employer must allow the employee paid time off of up to one day over the period of notice for the purpose seeking other employment.</p> <p>34.2 However, clause <u>34.3</u> applies if an employee has been given written notice of termination of employment in circumstances in which the employee is entitled to redundancy pay.</p> <p>NOTE: See <u>section 119 of the Fair Work Act</u>.</p> <p>34.3 The employer must allow the employee, during the minimum period of notice, paid time off of up to one day each week for the</p>	<p>Part B</p>

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<p>(b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee must, at the request of the employer, produce proof of attendance at an interview or they will not be entitled to payment for the time absent. For this purpose a statutory declaration is sufficient.</p> <p>(c) This entitlement applies instead of clause 20.3.</p>	<p>purpose of seeking other employment.</p> <p>NOTE: See section 117 of the Fair Work Act.</p> <p>34.4 If the employee is allowed paid time off of more than one day per week during the <i>minimum period of notice</i> for the purpose of the employee seeking other employment, the employee must, at the request of the employer, produce proof of attendance at a job interview.</p> <p>34.5 A statutory declaration is sufficient for the purpose of clause 34.4.</p> <p>34.6 An employee who fails to produce proof when required under clause 34.4 is not entitled to be paid for the time off in excess of one day per week.</p> <p>34.7 Time off under this clause is to be taken at times that are convenient to the employee after consultation with the employer.</p>	
<p><i>Clause 1.5 is reproduced here for comparative purposes.</i></p> <p>1.5 inserted in accordance with para [16] of [2014] FWCFB 9412</p> <p>1.5 Neither the making of this award nor the operation of any transitional arrangements is intended to result in a reduction in the take-home pay of employees covered by the award. On application by or on behalf of an employee who suffers a reduction in take-home pay as a result of the making of this award or the operation of any transitional arrangements, the Fair Work Commission may make any order it considers appropriate to remedy the situation.</p>	<p>Part 9—Miscellaneous matters</p> <p>35. Protection against pay reduction</p> <p>35.1 The making of this award, or of any variation of it, is not intended to result in the take-home pay of an employee covered by it being reduced.</p> <p>35.2 An application may be made to the Fair Work Commission by or on behalf of an employee who suffers a reduction mentioned in clause 35.1.</p> <p>35.3 On an application under clause 35.2, the Fair Work Commission may make any order that it considers appropriate to ensure that the take-home pay of the employee is not reduced.</p>	<p>Part B</p> <ul style="list-style-type: none"> • SDA and others (para 14): <p>Clause 35 Protection against pay reduction, should remain in Part 1 of the award because it is important that the statement regarding employees not suffering a reduction in take home pay as a result of a variation to the award is at the front of the award where it is more likely users will see it. This is important because employees and employers would not be likely to search for a clause</p>
<p>Schedule A—Classification Definitions</p> <p>A.1 Pharmacy Assistant Level 1 is an employee who has commenced employment in a community pharmacy for the first time, or holds no qualifications in community pharmacy.</p> <p>A.2 Pharmacy Assistant Level 2 is an employee who has acquired the competencies listed for a holder of Certificate II in Community Pharmacy, as determined from time to time by the National Quality Council or any successor thereto.</p> <p>A.3 Pharmacy Assistant Level 3 is an employee who has acquired the competencies listed for a holder of Certificate III in Community Pharmacy, as determined from time to time by the National Quality Council or any successor thereto and who is required by the employer to work at this level.</p> <p>(a) A Pharmacy Assistant who is a holder of Certificate III in Community Pharmacy may be required to supervise Pharmacy Assistants at Competency levels 1 and 2.</p>	<p>Schedule A—Classification Definitions</p> <p>A.1 pharmacy assistant level 1 is an employee working as a pharmacy assistant in a community pharmacy who is not covered by any other classification in this Schedule.</p> <p>A.2 pharmacy assistant level 2 is an employee who has acquired the competencies required to be the holder of a Certificate II in Community Pharmacy, as determined by the National Quality Council or a successor body.</p> <p>A.3 pharmacy assistant level 3 is an employee who has acquired the competencies required to be the holder of a Certificate III in Community Pharmacy, as determined by the National Quality Council or a successor body, and who is required by the employer to work at this level.</p> <p>A pharmacy assistant level 3 may be required by the employer to:</p> <p>(a) supervise pharmacy assistants levels 1 or 2; or</p>	<p>Part A</p> <ul style="list-style-type: none"> • ABI and NSW Business Chamber (para. 10.1): <p>The definition of ‘pharmacy assistant level 1’ has been significantly altered, so that it is now defined by reference to the lack of characteristics found in other classifications. The exposure draft provision is easier to understand and should be retained.</p> <ul style="list-style-type: none"> • Business SA (para. 5.12): <p>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.</p> <ul style="list-style-type: none"> • PGA (para. 30): <p>Clause A.2, A.7 and A.8 needs to include the words “who is</p>

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<p>(b) A Dispensary Assistant will be paid as Pharmacy Assistant Competency Level 3.</p> <p>(c) A Pharmacy Assistant, who for the majority of their duties is assisting with extemporaneous preparations working in a compounding lab or compounding section of a community pharmacy, will be paid as Pharmacy Assistant Competency Level 3.</p> <p>A.4 Pharmacy Assistant Level 4 is an employee who has acquired the competencies listed for a holder of Certificate IV in Community Pharmacy and who is required by the employer to work at this level. A Pharmacy Assistant Competency level 4 may be required to supervise Pharmacy Assistants at Competency levels 1, 2 and 3.</p>	<p>(b) assist a pharmacist in the dispensing section of a community pharmacy; or</p> <p>(c) work in a compounding lab or compounding section of a community pharmacy assisting with extemporaneous preparations as the major part of their duties.</p> <p>A.4 pharmacy assistant level 4 is an employee who has acquired the competencies required to be the holder of a Certificate IV in Community Pharmacy, as determined by the National Quality Council or a successor body, and who is required by the employer to work at this level.</p> <p>A pharmacy assistant level 4 may be required by the employer to supervise pharmacy assistants levels 1, 2 or 3.</p>	<p>required to work at this level and employed in such a position” to remove any potential conflict or issues on when an employee is entitled to the correct remuneration level.</p> <ul style="list-style-type: none"> • SDA and others (para. 84): <p>The classification definitions in the plain language proposal are more complex and not as easy to understand as the exposure draft. Schedule A of the exposure draft should be retained.</p>
<p>A.5 Pharmacy Student means a person who is undertaking an approved program of study, under the Australian Health Practitioner Regulation National Law, leading to registration as a pharmacist and who enters into a contract of employment with a proprietor of a pharmacy to work in that pharmacy.</p> <p>A.6 Pharmacy Intern means a person who has satisfied the examination requirements for an accredited course of study leading to registration as a pharmacist and is engaging in the period of pre-registration training required under the Australian Health Practitioner Regulation National Law.</p> <p>A.5 Pharmacist is a person who is registered as a pharmacist pursuant to the relevant State or Territory law.</p> <p>A.6 Experienced Pharmacist is a Pharmacist who has gained at least four years full-time experience or the part-time equivalent as a Community Pharmacist.</p> <p>A.7 Pharmacist in Charge is a pharmacist who assumes responsibility for the day to day supervision and functioning of a community pharmacy practice.</p> <p>A.8 Pharmacist Manager is a pharmacist who is responsible to the proprietor for all aspects of the business.</p>	<p>A.5 pharmacy student is an employee who is undertaking training as part of an approved program of study, as defined by section 5 of the Health Practitioner Regulation National Law.</p> <p>A.6 pharmacy intern is an employee who has satisfied the examination requirements of an accredited program of study, as defined by section 5 of the Health Practitioner Regulation National Law, and who is undertaking clinical training.</p> <p>A.7 pharmacist is an employee registered under the Health Practitioner Regulation National Law to practise in the pharmacy profession (other than as a student).</p> <p>A.8 experienced pharmacist is an employee who is a pharmacist with at least 4 years full-time experience (or the part-time equivalent) in a community pharmacy.</p> <p>A.9 pharmacist in charge is an employee who is a pharmacist who assumes responsibility for the day to day supervision and functioning of the community pharmacy.</p> <p>A.10 pharmacist manager is an employee who is a pharmacist who is responsible to the owner of the community pharmacy for all aspects of the business.</p>	<p>Part A</p> <ul style="list-style-type: none"> • PGA (para. 30): <p>Clause A.2, A.7 and A.8 needs to include the words “who is required to work at this level and employed in such a position” to remove any potential conflict or issues on when an employee is entitled to the correct remuneration level.</p>

<u>EXPOSURE DRAFT – Pharmacy Industry Award 2014</u> (revised 25 September 2015)	Plain language draft (revised 21 April 2016)	Comments received
Schedule B—Summary of Hourly Rates of Pay	Schedule B—Summary of Hourly Rates of Pay	Part B <i>Provisions not reproduced in 21 April 2016 publication.</i> No substantive changes to the exposure draft planned.
Schedule C—Summary of Monetary Allowances	Schedule C—Summary of Allowances	Part B <i>Provisions not reproduced in 21 April 2016 publication.</i> No substantive changes to the exposure draft planned.
Schedule D—Supported Wage System	Schedule D—Supported Wage System	Part B <i>Provisions not reproduced in 21 April 2016 publication.</i>
Schedule E—National Training Wage	Schedule E—National Training Wage	Part B <i>Provisions not reproduced in 21 April 2016 publication.</i>
Schedule F—2014 Part-day public holidays	Schedule F—[2016] part-day public holidays	Part B <i>Provisions not reproduced in 21 April 2016 publication.</i>

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Plain language draft (revised 21 April 2016)	Comments received
<p>Schedule G—Definitions</p> <p>In this award, unless the contrary intention appears:</p> <p>Act means the <i>Fair Work Act 2009</i> (Cth)</p> <p>community pharmacy means any business conducted by the employer in premises:</p> <ul style="list-style-type: none"> • that are registered under the relevant State or Territory legislation for the regulation of pharmacies; or • are located in a State or Territory where no legislation operates to provide for the registration of pharmacies; <p>and</p> <ul style="list-style-type: none"> • that are established either in whole or in part for the compounding or dispensing of prescriptions or vending any medicines or drugs; and • where other goods may be sold by retail. 	<p>Schedule G—Definitions</p> <p>Fair Work Act means the <i>Fair Work Act 2009</i> (Cth)</p> <p>community pharmacy, see clause <u>4.1</u>.</p>	<p>Part A</p> <ul style="list-style-type: none"> • SDA and others (paras 16 and 27): <p>Definitions should be included in the body of the award, preferably located at the front of the Award and not contained in an attached Schedule.</p> <p>Definitions and a review of definitions throughout the plain language draft is necessary to ensure it has not changed the legal intent of the award.</p>
<p>defined benefit member has the meaning given by the <i>Superannuation Guarantee (Administration) Act 1992</i> (Cth)</p> <p>default fund employee means an employee who has no chosen fund within the meaning of the <i>Superannuation Guarantee (Administration) Act 1992</i> (Cth)</p>		<p>Part B</p> <p><i>Provisions not reproduced in 21 April 2016 publication.</i></p>
<p>employee means national system employee within the meaning of the Act</p> <p>employer means national system employer within the meaning of the Act</p> <p>exempt public sector superannuation scheme has the meaning given by the <i>Superannuation Industry (Supervision) Act 1993</i> (Cth)</p> <p>MySuper product has the meaning given by the <i>Superannuation Industry (Supervision) Act 1993</i> (Cth)</p> <p>NES means the National Employment Standards as contained in <u>sections 59 to 131</u> of the <i>Fair Work Act 2009</i> (Cth)</p> <p>on-hire means the on-hire of an employee by their employer to a client, where such employee works under the general guidance and instruction of the client or a representative of the client</p> <p>Definition of ‘small business employer’ deleted as a result of para [35] [2014] FWCFB 9412</p> <p>standard rate means the minimum weekly wage for a Pharmacy Assistant Level 3 in clause 10</p>	<p>employee means a national system employee as defined by <u>section 13</u> of the Act.</p> <p>employer means a national system employer as defined by <u>section 14</u> of the Act.</p> <p>enterprise instrument has the meaning given by subitem 2(1) of Schedule 6 to the <i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i> (Cth).</p> <p>on-hire employer means a person who carries on a business of employing individuals for the purpose of on-hiring them to an end-user employer.</p> <p>on-hire employee means an employee of an on-hire employer who is on-hired to an employer covered by this award.</p> <p>State reference public sector modern award has the meaning given by subitem 3(2) of Schedule 6A to the <i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i> (Cth).</p> <p>State reference public sector transitional award has the meaning given by subitem 2(1) of Schedule 6A to the <i>Fair Work (Transitional Provisions and Consequential Amendments) Act</i></p>	<p>Part A</p>

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	<p>2009 (Cth).</p> <p>National Employment Standards, see <u>Part 2-2 of the Fair Work Act</u>. An extracts of <u>section 61 of the Fair Work Act</u> is reproduced below.</p> <p>The National Employment Standards are minimum standards applying to employment of employees.</p> <p>The minimum standards relate to the following matters:</p> <ul style="list-style-type: none"> (a) maximum weekly hours (Division 3); (b) requests for flexible working arrangements (Division 4); (c) parental leave and related entitlements (Division 5); (d) annual leave (Division 6); (e) personal/carer's leave and compassionate leave (Division 7); (f) community service leave (Division 8); (g) long service leave (Division 9); (h) public holidays (Division 10); (i) notice of termination and redundancy pay (Division 11); (j) Fair Work Information Statement (Division 12). <p>Divisions 3 to 12 of the Fair Work Act constitute the National Employment Standards.</p> <p>Table 1—Index of facilitative provisions means the Table in clause 7.1.</p> <p>Table 2—Entitlements to meal and rest breaks means the Table in clause 15.2.</p> <p>Table 3—Minimum wages for employees means the Table in clause 16.1.</p> <p>Table 4—Overtime rates means the Table in clause 20.3.</p> <p>Table 5—Penalty rates means the Table in clause 21.3.</p> <p>Table 6—Period of notice means the Table in clause 30.1.</p>	