

Document dated 13/02/17 replaced - amendment made to correct error in paragraph [12].



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**REVIEW OF THE PHARMACY INDUSTRY AWARD 2010
AM2014/209, AM2016/15
SUBMISSION ON REVISED EXPOSURE DRAFT AND [2017] FWCFB 344**

Background:

- 1 We refer to the above matter in which we act for the Pharmacy Guild of Australia ("**the Guild**").
- 2 This submission in reply is made following the Full Bench decision [2017] FWCFB 344 of 20 January 2017 ("**Decision**").
- 3 In accordance in the Decision, parties are invited to make submissions in reply in relation to the submissions of parties concerning the preliminary views expressed by the Full Bench and any further comments on the revised exposure draft dated 20 January 2017 ("**Revised Exposure Draft**") of the *Pharmacy Industry Award 2010* ("**PIA**").
- 4 These submissions are made in reply to those of the Shop Distributive and Allied Employees' Association, the Association of Professional Engineers, Scientists and Managers and the Health Services Union dated 6 February 2017 ("**Union Submissions**").
- 5 Unless otherwise stated, clause references throughout our submissions are to the Revised Exposure Draft.

Clause 4 – Coverage:

- 6 The Guild agrees with the position at paragraph [4] of the Union Submissions that the intention of the current provision is an employer provided with labour from a third party, such as a labour hire company, is an employer covered by an award, The Guild does not however agree with the view at paragraph [5] of the Union Submissions that the intention is that an employer who is supplied labour acquires that status merely by being supplied with the labour.
- 7 Clause 4.5 of the PIA provides as follows:

4.5 This award covers any employer which *supplies labour on an on-hire basis in the industry set out in clause 4.1* 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 (emphasis added).

- 8 Clause 4.1 of the PIA relevantly provides that the award covers employers in the community pharmacy industry and their employees. Coverage is restricted to employees of employers in the industry; it does not extend merely to an employee who performs work in the classification structure set out in the award. Further on-hire employees are only covered whilst engaged in the performance of work for a business in that industry.
- 9 As the PIA is an industry award and not an occupational award, the determining factor in the relevant award coverage is whether the employer is in the industry, not the employee. The Guild reiterates its submission that the intention of the current provision is that the person to whom labour is supplied must also to be an employer covered by the award.
- 10 If the Commission is concerned the Revised Exposure Draft has made the current application of these provisions unclear, the Guild submits that clause 4.3 should be replaced by clause 4.5 of the PIA.

Clause 10 – Part-time employment:

- 11 The Union Submissions at paragraph [10] argue that a reference to clause 10.5 should be included at 10.8(b) and 10.10; the Guild submits this change is unnecessary.
- 12 In response to the proposed variation at paragraph [11] of the Union Submissions, the Guild submit the words ‘on regular pattern of work’ are not required to be retained at clause 10.4 in order to establish that the employee is part-time. The agreement under clause 10.4 establishes the hours, days and times of work, and therefore a regular pattern of work is established through the operation of these requirements.

Clause 11 – Casual employment:

- 13 At paragraph [18] of the Unions Submissions it is suggested that a casual conversion clause consistent with the Transitional Provision at Appendix A9 of the PIA should be included in the Revised Exposure Draft. The Guild does not support the inclusion of this clause and notes that this was transitional provision which has not had any legal application in the community pharmacy industry since 1 July 2014.
- 14 Whilst the Guild does not oppose the inclusion of a casual conversion clause into the Revised Exposure Draft, it continues to reserve its position and rely on its submissions dated 7 February 2017 with respect of the form of a casual conversion clause until the Bench has provided the parties with a clause for consideration. We reiterate our request that parties are given the opportunity to advance submissions and if necessary adduce evidence concerning the form of casual conversion clause for inclusion in the PIA.

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