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Business SA Submission

4 yearly review of
modern awards –
*Pharmacy Industry
Award* – Further
submissions

6 February 2017

Introduction

On 20 January 2017, the Full Bench of the Fair Work Commission (Commission) released a decision relating to the plain language drafting guidelines and award specific matters for the *Pharmacy Industry Award 2010*.¹ This decision provided a range of provisional views and highlighted issues regarding the *Pharmacy Industry Award*. A revised *Pharmacy Industry Award* exposure draft was released shortly after the decision. Parties were invited to comment on the provisional views and issues highlighted.² Business SA is pleased to provide this submission in response.

Why this matter is important to South Australian businesses

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

- South Australian businesses are impacted by any changes in the award system.
- South Australian employers and employees will jointly benefit from well drafted and effective modern awards, better enabling both parties to understand their rights and responsibilities.
- Small business owners make up a large proportion of our membership, these businesses are often not able to devote the necessary resources to fully understand **Australia's complex workplace** regulations.
- The modern award objective is to provide a fair and relevant minimum safety net of terms and conditions.³ Modern awards must be drafted such that those using the award are able to determine what they can expect and what is expected of them.
- The re-drafting process must not simplify awards such that they lose legal clarity. Certainty must prevail over simplicity.

For further information from Business SA's policy team, please contact Karen van Gorp, Senior Policy Adviser, or Chris Klepper, Policy Adviser, (08) 8300 0000 or at karenv@business-sa.com or chrisk@business-sa.com.

¹ [2017] FWCFB 344.

² Ibid [226].

³ *Fair Work Act 2009* (Cth) s 134(1).

Responses to invitation for comment

1. [76] – **Provisional view re ‘on-hire’ definitions**
Business SA supports the Commission’s decision to replace the definitions of ‘on-hire employer’ and ‘on-hire employee’ with the single definition of ‘on-hire’ as exists in clause 3.1 of the current award.
2. [77] – Intended outcome of on-hire provision
In response to the Commission’s invitation at [77] Business SA submits ‘some other outcome is intended.’ The current provision does not require or intend that the person to whom labour is supplied is an employer covered by the award. The on-hire arrangement does not need the client to be covered by the *Pharmacy Industry Award* and neither does the client become covered by the award through the on-hire arrangement. Business SA submits this outcome is the intended operation of the on-hire definition found in the current award and should be reflected in the revised exposure draft.

Clause 4.1 states the award covers employers in the community pharmacy industry and their employees classified in clause 16. If the client does not employ anyone then they are not an ‘employer’ for the purpose of clause 4.1. As such the client will not be covered by the *Pharmacy Industry Award*. An on-hire arrangement could be made with an on-hire employer to provide an on-hire employee. The employment relationship exists between the on-hire employer and that on-hired employee. No employment relationship exists between the client and that on-hire employee for the purpose of clause 4.1.

Clause 4.5 provides award coverage to the on-hire employer and the on-hire employee. The award covers any employer which supplies labour on an on-hire basis (the on-hire employer) in the industry set out in clause 4.1. The industry set out in clause 4.1 is the community pharmacy industry. This industry is defined in clause 3. The on-hire employee will be covered by the *Pharmacy Industry Award* if they are in a classification covered by this award (in clause 16), by operation of clause 4.5..

No part of clause 4.5 states the client (end-user business) must be covered by the *Pharmacy Industry Award*, nor does it state that client business will become covered by the award.

Clause 4.3(a) of the exposure draft operates in a similar manner. Through this clause, the on-hire employee working in the community pharmacy industry (and classified under the award) is covered by the *Pharmacy Industry Award*. The on-hire employer of that on-hire employee will also be covered by the *Pharmacy Industry Award* through clause 4.3(a). No part of clause 4.3(a) suggests the person to whom labour is supplied is to also be either an employer or covered by the award or that they will become so due to this on-hire arrangement.

As demonstrated above, neither the current award nor the exposure draft suggest the person to whom labour has been supplied must be covered by the award or will become so covered due to the supply of the on-hire employee. The on-hire provisions establish that the on-hire employer will be covered by the *Pharmacy Industry Award* in respect to the on-hire employee. Regardless which award (if any) may cover the person to whom labour has been supplied with regard to any other employees that person may engage, the on-hire arrangements described above do not automatically cause the *Pharmacy Industry Award* to cover that person.

3. [142] – Revised clause 13.4
Business SA supports the proposed amendment to clause 13.4.
4. [156] – Revised clause 14.1(e)
Business SA supports the proposed amendment to clause 14.1(e).

Conclusion

Business SA thanks the Fair Work Commission for the opportunity to comment on these provisional views and issues.