

22 December 2016

**REVIEW OF THE PHARMACY INDUSTRY AWARD 2010
AM2014/209, AM2016/15
SUBMISSION ON REVISED EXPOSURE DRAFT QUESTIONS**

- 1 We refer to the above matter in which we act for the Pharmacy Guild of Australia ("**the Guild**").
- 2 This submission is made in accordance with the Directions of his Honour Justice Ross of 19 December 2016 ("**Directions**").
- 3 In accordance in the Directions, parties are invited to provide submissions in relation to the drafters comments on the revised summary of submissions concerning the *Pharmacy Industry Award 2016* ("**Revised Exposure Draft**") of the *Pharmacy Industry Award 2010* ("**PIA**") dated 1 December 2016. Our submissions also address those questions posed by the Full Bench at the Hearing of this matter on 15 December 2016.

Clause 4 - Coverage

- 4 The Guild has made a number of previous submissions to the effect that Clause 4 of the Revised Exposure Draft significantly alters the current coverage of the PIA.
- 5 We reiterate our concern that Clause 4.1(a) of the Revised Exposure Draft has altered the legal effect of the coverage provisions by introducing the requirement that medicines and drugs are sold by retail in a business that is established for compounding or dispensing of prescriptions. The PIA does not currently require that all goods and medicines are sold by retail, rather clause 3 of the PIA provides that a community pharmacy is:

a business established either in whole or in part for the compounding or dispensing of prescriptions or vending any medicines and drugs;

*where **other goods may** be sold by retail* (emphasis added).
- 6 In previous submissions the legal effect of the PIA has been changed as the PIA does not require medicine and drugs to be sold by retail, it simply recognises that goods other than medicine and drugs may be sold by retail.
- 7 The Guild proposes the following:

*"In this industry award **community pharmacy** means a business to which each of the following applies:*

(a) the business is established wholly or partly for the compounding of medicines or the dispensing of prescriptions or the selling of medicines and where other goods may be sold 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;

(b) if required to be registered under relevant State or Territory legislation for the regulation of pharmacies where the premise is located, the business is so registered;

(c) the business is not owned by a hospital or other public institution, or operated by government, where the medicines or drugs or services are not sold by retail to the general public.

- 8 In previous submissions the legal effect of the PIA has been changed as the PIA does not require medicine and drugs to be sold by retail, it simply recognises that goods other than medicine and drugs may be sold by retail.

Clause 10 – Part-time employment:

- 9 The Guild appreciates that the Drafter has sought to address some of the concerns raised in relation to part time employment. However, with respect the drafter has failed to remedy some significant alterations to the legal effect of the provisions relating to part time employment at clause 12 of the PIA.
- 10 Whilst the drafter indicates clause 10.6(b) of the revised exposure draft is dealt with by clause 26.2 of the PIA, we respectfully disagree. Clause 26.2 of the PIA relates to overtime where an employee has been directed by the employer to undertake additional hours in excess of the employee's contractual agreed hours or varied contractual hours.
- 11 In accordance with the PIA however, additional hours worked by a part time employee are not automatically considered overtime to which clause 10.6(c) applies. Rather, clause 12.11 of the PIA allows a part time employee to agree to additional hours as casual hours. In these circumstances clause 10.6(c) of the Revised Exposure Draft would not apply.
- 12 The drafter has appears to have attempted to address this within clause 10.10, however has failed to include the additional provisions at clause 12.11 which limit the hours to ordinary hours as provided for elsewhere in the award.

Clause 14 - Rostering arrangements – full-time and part-time employees:

- 13 In reference to the drafter's comments in addressing the points raised by the Guild at PN821 of 17 December 2015 the Guild agrees that transcript does indicate that the Guild did agree to Justice Ross terminology, however this was only for the purposes of user testing and should not be taken to an agreement to the provision generally. The parties agreed to the proposal based upon the provisions still including the terms '*regularly works Sundays*' to ensure the clause is not applied to a one off arrangement.
- 14 The drafter has highlighted the issues where good intentions between all parties to simplify terminology used in the Award has been altered the intent due to the simple omission of words.
- 15 The omission of these words has changed the legal effect of the award, by requiring an employer to roster an employee for three consecutive days off each four weeks including a

Saturday and Sunday, even if an employee is only rostered on a Sunday once, in circumstances where such an obligation does not presently exist.

16 The Guild proposed the Clause 14.1(e) be altered in the following format:

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:*

(i) *2 consecutive days off each week; or*

(ii) *3 consecutive days off over 2 consecutive weeks;*

(b) *employees must not be rostered to work ordinary hours on more than 5 days in a week;*

(c) *despite paragraph (b), 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;*

(d) *employees must not be rostered to work (whether ordinary hours or overtime) on more than 6 consecutive days;*

(e) *employees rostered to 'regularly work' Sundays (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.*

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