

Summary of submissions – plain language award-specific clauses

This document provides an updated summary of submissions on the revised plain language draft dated 10 November 2016 pursuant to directions issued 9 November 2016 from the following interested parties:

- Joint submission outlining consent positions from the Pharmacy Guild of Australia, Association of Professional Engineers, Scientists and Managers, Australia (APESMA), Australian Business Industrial and the NSW Business Chamber, Business SA, Health Services Union (HSU) and Shop Distributive and Allied Employees' Association (SDA)
- Australian Business Industrial and the NSW Business Chamber submissions
- Business SA Submissions
- Pharmacy Guild of Australia submissions
- SDA, APESMA and HSU submissions

Comments on the plain language draft award-specific clauses are presented in comparison tables. The comparison tables include the current award in the first column, the revised Pharmacy Industry Award exposure draft (dated 10 November 2016) in the second column. The third column includes summarised comments from interested parties and the drafter's response. **Comments and changes since the [9 November 2016 summary](#) are shown in red.**

The sequence of the comparison tables follows the revised exposure draft (second column).

General submissions about the plain language draft award-specific clauses

[ABI and NSW Business Chamber](#)

Submits that the majority of the issues they have raised in previous submissions on the plain language draft award-specific clauses have been satisfactorily resolved.

[SDA and others](#)

Submit that they continue to have concerns over the use of "Examples" and "Notes" in the plain language draft award-specific clauses.

Drafter comment: Notes, examples, guides, etc. are commonly used in legal instruments. They are integral to the plain language drafting style we have adopted (e.g. notes are used in the new Annual leave provisions). They are not intended to have legal effect. (See [Draft Guideline](#) 3.14)

A statement could be included in awards that says notes, guides and examples do not have legal effect—they are for information only.

Submit that feedback received from award users is that cross-referencing to clause numbers without the inclusion of clause titles is difficult to understand and that it would be easier to understand if cross-references contained clause titles as well as clause numbers.

[Business SA](#)

Submits that 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 award such that they lose legal clarity. Certainty must prevail over simplicity.

Comparison tables

CURRENT AWARD—Pharmacy Industry Award 2010 (PIA)	Revised exposure draft (10 November 2016) (revised ED)	Submissions comments
<p style="text-align: center;">Table of Contents</p> <p>Part 1—Application and Operation</p> <ol style="list-style-type: none"> 1. Title 2. Commencement and transitional 3. Definitions and interpretation 4. Coverage 5. Access to the award and the National Employment Standards 6. The National Employment Standards and this award 7. Award flexibility <p>Part 2—Consultation and Dispute Resolution</p> <ol style="list-style-type: none"> 8. Consultation 9. Dispute resolution <p>Part 3—Types of Employment and Termination of Employment</p> <ol style="list-style-type: none"> 10. Employment categories 11. Full-time employees 12. Part-time employees 13. Casual employment 14. Termination of employment 15. Redundancy <p>Part 4—Classifications and Wage Rates</p> <ol style="list-style-type: none"> 16. Classifications 17. Minimum weekly wages 18. Junior rates 19. Allowances 20. Accident make-up pay 21. Superannuation 22. Payment of wages 23. Supported wage system 24. National training wage <p>Part 5—Ordinary Hours of Work</p> <ol style="list-style-type: none"> 25. Hours of Work 26. Overtime 27. Annualised salary (Pharmacists only) 28. Breaks <p>Part 6—Leave and public holidays</p> <ol style="list-style-type: none"> 29. Annual leave 30. Personal/carer’s leave and compassionate leave 31. Public holidays 	<p style="text-align: center;">Table of Contents</p> <p>Part 1—Application and Operation of this award</p> <ol style="list-style-type: none"> 1. Title and commencement 2. Definitions 3. The National Employment Standards and this award 4. Coverage 5. Effect of variations made by the Fair Work Commission 6. Award flexibility for individual arrangements 7. Facilitative provisions for flexible working practices <p>Part 2—Types of Employment and Classifications</p> <ol style="list-style-type: none"> 8. Types of employment 9. Full-time employment 10. Part-time employment 11. Casual employment 12. Classifications <p>Part 3—Hours of Work</p> <ol style="list-style-type: none"> 13. Ordinary hours of work 14. Rostering arrangements—full-time and part-time employees 15. Breaks <p>Part 4—Minimum Wages and Allowances</p> <ol style="list-style-type: none"> 16. Minimum wages 17. Annualised salary (Pharmacists only) 18. Allowances 19. Superannuation <p>Part 5—Overtime and penalty rates</p> <ol style="list-style-type: none"> 20. Overtime 21. Penalty rates <p>Part 6—Leave and Public Holidays</p> <ol style="list-style-type: none"> 22. Annual leave 23. Personal/carer’s leave and compassionate leave 24. Parental leave and related entitlements 25. Public holidays 26. Community service leave <p>Part 7—Consultation and Dispute Resolution</p> <ol style="list-style-type: none"> 27. Consultation about major workplace change 28. Consultation about changes to rosters or hours of work 29. Dispute resolution 	

CURRENT AWARD—Pharmacy Industry Award 2010 (PIA)	Revised exposure draft (10 November 2016) (revised ED)	Submissions comments
<p>32. Community service leave</p> <p>...</p> <p>Schedule B—Classification Definitions</p> <p>Schedule C—Supported Wage System</p> <p>Schedule D—National Training Wage</p> <p>Schedule E—Part-day Public Holidays</p>	<p>Part 8—Termination of employment and Redundancy</p> <p>30. Termination of employment</p> <p>31. Redundancy</p> <p>32. Transfer to lower paid job on redundancy</p> <p>33. Employee leaving during redundancy notice period</p> <p>34. Job search entitlement</p> <p>Schedule A—Classification Definitions</p> <p>Schedule B—Summary of Hourly Rates of Pay</p> <p>Schedule C—Summary of Monetary Allowances</p> <p>Schedule D—Supported Wage System</p> <p>Schedule E—National Training Wage</p> <p>Schedule F—Part-day Public Holidays</p>	
<p>Part 1—Application and Operation</p> <p>1. Title</p> <p>This award is the <i>Pharmacy Industry Award 2010</i>.</p> <p>2. Commencement and transitional</p> <p>2.1 This award commences on 1 January 2010.</p> <p>2.2 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>...</p> <p>2.4 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>...</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 modern award commenced operation on 1 January 2010.</p> <p>1.3 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><i>Note: some transitional arrangements removed — obsolete</i></p>	<p>Clause 1.3 is common to other awards—for consultation in 2017.</p>

CURRENT AWARD—Pharmacy Industry Award 2010 (PIA)	Revised exposure draft (10 November 2016) (revised ED)	Submissions comments
<p>3. Definitions and interpretation</p> <p>3.1 In this award, unless the contrary intention appears:</p> <p>Act means the <i>Fair Work Act 2009</i> (Cth)</p> <p>agreement-based transitional instrument has the meaning in the <i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i> (Cth)</p> <p>award-based transitional instrument has the meaning in the <i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i> (Cth)</p> <p>community pharmacy (replicated below in the coverage clause— 4)</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>defined benefit member has the meaning given by the <i>Superannuation Guarantee (Administration) Act 1992</i> (Cth)</p> <p>Division 2B State award has the meaning in Schedule 3A of the <i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i> (Cth)</p> <p>Division 2B State employment agreement has the meaning in Schedule 3A of the <i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i> (Cth)</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>enterprise award-based instrument has the meaning in the <i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i> (Cth)</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 sections 59 to 131 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>standard rate means the minimum weekly wage for a Pharmacy Assistant Level 3 in clause 17. Where an allowance is specified as payable on an hourly basis, a reference to standard rate means 1/38th of the weekly wage referred to above.</p>	<p>2. Definitions</p> <p>In this award:</p> <p>Act means the <i>Fair Work Act 2009</i> (Cth)</p> <p>community pharmacy, see clause 4.1.</p> <p>employee means a national system employee as defined by section 13 of the Act.</p> <p>employer means a national system employer as defined by section 14 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>Fair Work Regulations means the <i>Fair Work Regulations 2009</i> (Cth)</p> <p>National Employment Standards (NES), see Part 2-2 of the <u>Act</u>. Divisions 3 to 12 of the <u>Act</u> constitute the National Employment Standards. An extract of section 61 of the <u>Act</u> is reproduced below.</p> <p>The National Employment Standards are minimum standards applying to employment of employees. 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>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>standard rate means the minimum wage for a pharmacy assistant level 3 in clause 16—Minimum wages.</p>	<p>Interested parties (para 7): Submit that the expression “unless contrary intention appears” aids award user understanding and the phrase itself serves no harm when inactive and serves an important function when utilised. It should be reinstated unless it can be guaranteed that every award will, when re-drafted in plain language and in the future, contain no contrary or specialised definitions.</p> <p>Drafter comment: The trend in legislative drafting has been to omit "unless the contrary intention appears" from definition clauses as the case law clearly establishes that is the situation anyway without those additional words. Plain language experts also hold the view that inserting it creates a doubt in the mind of readers. It is not possible to guarantee that a defined term means throughout exactly as it is defined even though that is clearly the desirable outcome.</p> <p>Interested parties (paras 7–8): Submit that the definition of “on-hire employer” should be included in the Exposure Draft. The omission of this definition from the Exposure Draft appears to be an oversight on the part of the plain language drafter and further that the exclusion of the definition of ‘on-hire’ is contrary to the intention of the plain language drafting principal to make the award easier for users to understand.</p> <p>SDA and others (submission of 21/11/16 paras 10–11): Further, the definition of on-hire employer should end with the words ‘covered by this award’.</p> <p>Drafter comment: This is a matter to be decided with standard and common clauses. These comments from the parties will be included when that matter is considered.</p>

CURRENT AWARD—Pharmacy Industry Award 2010 (PIA)	Revised exposure draft (10 November 2016) (revised ED)	Submissions comments
<p>transitional minimum wage instrument has the meaning in the <i>Fair Work (Transitional Provisions and Consequential Amendments) Act 2009</i> (Cth)</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 2009</i> (Cth).</p> <p>Table 2—Entitlements to meal and rest breaks means the Table in clause 15.2.</p> <p>Table 3—Minimum wages 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>5. Access to the award and the National Employment Standards</p> <p>The employer must ensure that copies of this award and the NES are available to all employees to whom they apply either on a noticeboard which is conveniently located at or near the workplace or through electronic means, whichever makes them more accessible.</p> <p>6. The National Employment Standards and this award</p> <p>The NES and this award contain the minimum conditions of employment for employees covered by this award.</p>	<p>3. The National Employment Standards and this award</p> <p>3.1 The National Employment Standards (NES) and this award contain the minimum conditions of employment for employees covered by this award.</p> <p>3.2 Where this award refers to a condition of employment provided for in the NES, the NES definition applies.</p> <p>3.3 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>3.4 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>Common clause — for consultation in 2017.</p> <p>Business SA (submission of 2/10/16, paras 1.2 and 1.3): Suggested wording for the Pharmacy Industry Award, although has acknowledged that consultation on this common clause will take place via a separate process in 2017.</p>
<p>4. Coverage</p> <p><i>Definition of community pharmacy reproduced for comparative purposes:</i></p> <p>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>4.1 This award covers employers throughout Australia in the community pharmacy industry, and their employees in the classifications listed in</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>Business SA (submission of 2/10/16, para 1.4): Submits that clauses 4.1 and 4.2 of the revised ED should be reversed so that the clause begins by stating who the award does and does not cover.</p> <p>Drafter comment: ordinary drafting practice is to put a definition first. However, it is a reasonable suggestion to reverse clauses 4.1 and 4.2.</p> <p>PGA (submission of 5/9/16, para 12 and submission of 21/11/16, para 10 and para 14): Submits that clause 4.1 of the plain language draft should be replaced with the definition in the PIA. Submits that the legal effect of the community pharmacy definition set out in clause 4.1(a) has been altered by introducing a requirement that medicines and drugs be sold by retail. Further, submits that Clause 4.1(c) alters the legal effect by excluding a pharmacy owned by a hospital or other public institution only where medicines or drugs are sold by retail, the reference to 'services' has been excluded.</p> <p>Drafter comment: The linkages between the various paragraphs of the definition of "community pharmacy" needed to be clarified. The definition as it was originally drafted may have been read as though the last 2 subclasses only applied to subclass (b). Further, the goods that are relevant to a "community pharmacy" are medicines and drugs. Clause 4.1 of the PIA, in referring to "goods or services" is unnecessarily broad. A pharmacy owned by a hospital or</p>

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<p>clause 16—Classifications of this award to the exclusion of any other modern award. 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.</p> <p>4.2 The award does not cover an employee excluded from award coverage by the Act.</p> <p>4.3 The award does not cover 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.</p> <p>4.4 The award does not cover 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>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.</p> <p>4.6 This award covers employers which provide group training services for trainees engaged in the industry and/or parts of industry set out at clause 4.1 and those trainees engaged by a group training service hosted by a company to perform work at a location where the activities described herein are being performed. This subclause operates subject to the exclusions from coverage in this 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>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 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 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: See section 143(7) of the Act.</p>	<p>other public institution, or operated by government, is a "community pharmacy" if it sells medicines or drugs by retail to the general public. The omission of the former reference to "services" is of no consequence.</p> <p>Business SA (submission of 2/10/16, para 1.5): Submits that the word "and" be inserted after 4.1(a) and 4.1(b) to demonstrate that (a) to (c) are not linked and each must apply.</p> <p>Drafter comment: The earlier practice was to include a conjunction only after the penultimate clause or paragraph. That was replaced by a practice of including them after each paragraph. The use of "each of the following" in the lead-in words renders conjunctions unnecessary. It is not good drafting practice to use unnecessary words so either the lead-in words should be included <u>or</u> the conjunctions.</p> <p>The parties are invited to express a preference, however, in order to achieve consistency within and across awards, the Full Bench may choose to consider the issue during the standard and common issue stage.</p> <p>SDA and others (submission of 21/11/16 paras 20, submission of 5/10/16, paras 8-13): Clause 4.1(c) should be amended to include the words 'dispensed and' before the words 'sold by retail' to ensure clarity about coverage. Submits that the legal effect of the exclusion clause has been altered in because it does not refer to medicines and drugs being dispensed by the pharmacy located in a hospital or other public institution. SDA also submitted that where medicines and drugs are not dispensed for retail to the general public the employee pharmacists would be covered by the <i>Health Professionals and Support Services Award 2010</i> and has proposed wording.</p>
<p>4.7 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 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>Common clause —for consultation in 2017.</p>
<p><i>No provisions in current award.</i></p>	<p>5. Effect of variations made by the Fair Work Commission</p> <p>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>Common clause —for consultation in 2017.</p>
<p>7. Award flexibility</p> <p><i>Standard clause - provision not reproduced</i></p>	<p>6. Award flexibility for individual arrangements</p> <p><i>Standard clause - provision not reproduced</i></p>	<p><i>Standard clause. Plain language draft standard clauses will be dealt with in matter AM2016/15 . Directions issued 17 August 2016.</i></p>
<p><i>No clause in current award.</i></p>	<p>7. Facilitative provisions for flexible working practices</p> <p>7.1 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>Common clause —for consultation in 2017.</p>

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	<p>7.2 The following clauses have facilitative provisions:</p> <table border="1" data-bbox="1130 212 1855 407"> <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>7.3 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	
Clause	Provision							
13.4(c)	Time off instead of payment							
18.3	Substitution of public holidays							
<p>Part 3—Types of Employment and Classifications</p> <p>10. Employment categories</p> <p>10.1 Employees under this award will be employed in one of the following categories:</p> <ul style="list-style-type: none"> (a) full-time employees; (b) part-time employees; or (c) casual employees. <p>10.2 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><i>Note: Clause 12.10 reproduced here for comparative purposes.</i></p> <p>12.10 Conversion of existing employees</p> <p>No full-time or casual employee will be transferred by an employer to part-time employment without the written consent of the employee. Provided that where such transfer occurs all leave entitlements accrued will be deemed to be continuous. 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 and recorded in writing.</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> <ul style="list-style-type: none"> (a) a full-time employee; (b) a part-time employee; (c) a casual employee. <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>8.3 Moving between types of employment</p> <ul style="list-style-type: none"> (a) A full-time or casual employee can only become a part-time employee with the employee’s written consent. (b) Moving to part-time employment does not affect the continuity of any leave entitlements. (c) A full-time employee: <ul style="list-style-type: none"> (i) may request to become a part-time employee; and (ii) may return to full-time employment at a date agreed in writing with the employer. <p>NOTE: See section 65 of the <u>Act</u> for information about requests for flexible working arrangements.</p>	<p>SDA and others (submission of 5/9/2016, paras 14–15, submission of 21/11/16 paras 21–22): Submits that this clause does not relate to s.65 of Act, which provides for requests for flexible working arrangements under a prescribed set of circumstances. Linking this clause to s.65 of the Act may suggest that an employee may need to meet the eligibility and procedural requirements determined by that section of the Act for them to be able to make a request. Submits that note should be removed as, at the very least, it may cause confusion and ambiguity about access to this entitlement.</p> <p>Drafters comment: agrees that this note should be taken out.</p>						
<p>11. Full-time employees</p> <p>A full-time employee is an employee who is engaged to work an average of 38 hours per week.</p>	<p>9. Full-time employment</p> <p>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>	<p>NOTE: The SDA is pursuing changes to the effect of this clause.</p>						

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<p>12. Part-time employees</p> <p>12.1 A part-time employee is an employee who:</p> <p>(a) works less than 38 hours per week; and</p> <p>(b) has reasonably predictable hours of work.</p> <p>12.2 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>(a) the hours worked each day;</p> <p>(b) which days of the week the employee will work;</p> <p>(c) the actual starting and finishing times of each day;</p> <p>(d) that any variation will be in writing;</p> <p>(e) that the minimum daily engagement is three hours;</p> <p>(f) all time worked in excess of agreed hours is paid at the overtime rate; and</p> <p>(g) the times of taking and the duration of meal breaks.</p> <p>12.3 Any agreement to vary the regular pattern of work will be made in writing before the variation occurs. Any agreement to vary the agreed hours may also be either a permanent agreed variation to the pattern of work or may be a temporary agreed variation, e.g. a single shift or roster period. Such a variation will be agreed hours for the purposes of clause 12.2(f).</p> <p>12.4 The agreement and variation to it will be retained by the employer and a copy given by the employer to the employee.</p> <p>12.5 An employer is required to roster a part-time employee for a minimum of three consecutive hours on any shift.</p> <p>12.6 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 13—Casual employment.</p> <p>12.7 A part-time employee employed under the provisions of this clause will be paid for ordinary hours worked at the rate of 1/38th of the weekly rate prescribed for the class of work performed.</p> <p>12.8 Rosters</p> <p>(a) A part-time employee's roster, but not the agreed number of hours, may be altered by the giving of notice in writing of seven days or in the case of an emergency, 48 hours, by the employer to the employee. The rostered hours of part-time employees may also be altered at any time by mutual agreement between the employer and the employee.</p> <p>(b) Rosters will not be changed from week to week, or fortnight to fortnight, nor will they be changed to avoid any award entitlements.</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—Full-time employment 38 per week and whose hours of work are reasonably predictable is a part-time employee.</p> <p>10.2 This award applies to a part-time employee in the same way that it applies to a full-time employee except as otherwise provided by this award.</p> <p>10.3 A part-time employee is only entitled to payments in respect of annual leave, personal/carer's leave, compassionate leave or public holidays on a proportionate basis.</p> <p>10.4 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>10.5 Any agreement under clause <u>10.4</u> must state that any variation agreed by the employer and the employee to any of the matters mentioned in clause <u>10.4(a)</u> to <u>(d)</u> must be in writing.</p> <p>10.6 An agreement under clause <u>10.4</u> 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 <u>16—Minimum wages</u> and in accordance with clause <u>21—Penalty rates</u> for ordinary hours worked during periods specified in <u>Table 5—Penalty rates</u>;</p> <p>(c) for each hour worked in excess of the number of ordinary hours agreed under clause <u>10.4</u> and <u>10.10</u>, the employee must be paid at the overtime rate in accordance with clause <u>20.2—Application of overtime for part-time employees</u>.</p> <p>10.7 The employer must keep a copy of any agreement under clause <u>10.4</u> or variation of it and give another copy to the employee.</p> <p>10.8 The roster of a part-time employee, but not the number of hours agreed under clause <u>10.4</u>, 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>NOTE: The PGA are pursuing changes to the effect of this clause, including new subclauses via the part-time employment common issue matter.</p> <p>Interested parties (para 9): Submit that the cross-referencing at clause 10.1 is unnecessary and appears contrary to the plain language drafting principals to make the award easier for users to understand.</p> <p>Drafter comment: Agree – the plain language draft has been amended as marked.</p> <p>Interested parties (para 10): Submit that clause 10.2 is unclear and confusing and that the award does not apply to PT employees in the same way as FT employees generally. The wording at clause 12.9 of the PIA be used.</p> <p>Drafter comment: This comment overlooks the fact that what was covered by clause 12.9 is now covered by a combination of clauses 10.2 and 10.3. Together they are to the same effect as clause 12.9 but keep the different concepts separate.</p> <p>Interested parties (para 11): Submit that clause 10.3 is worded so as to restrict the entitlements of part-time employees and may be contrary to the NES.</p> <p>Drafter comment: The general approach is to use the present indicative so the use of "will" should be avoided. While not wrong, we could omit "only". Clause 10.3 is an example of an "otherwise provided" clause (see clause 10.2).</p> <p>Interested parties (para 12): Submit that the separation of items that are required to be included in an agreement in clause 10.4 and 10.6 of the Exposure Draft could lead to employers inadvertently failing to include the required items in an agreement. The Interested Parties propose that these clauses be combined to provide for all the matters which are required to be included in the relevant agreement.</p> <p>Drafter comment: The intention of the plain language redraft is to clearly set out which items must be agreed upon and which items must be included in the agreement. Conflating the two would lead to confusion. Clause 10.4 deals with what must be agreed while clauses 10.5 and 10.6 state matters that must be included in the agreement but do not relate to variable matters that must be agreed. This was explained in the document published on 27 November 2015.</p> <p>PGA (submission of 21/11/16, para 18): Submits that the plain language draft only requires the employer to notify an employee that the minimum engagement is 3 hour but that an employer is not obliged to roster the employee for a minimum of 3 hours.</p> <p>SDA (submission of 21/11/16, para 34): Submits that clause 10.6 provide the legal requirement to provide a 3 hour minimum shift. Submits that clause 12.5 of the current award should be retained.</p> <p>Drafter comment: clause 10.6 of the plain language draft requires that an agreement must state a minimum 3 hour shift.</p> <p>Interested parties (para 14): Submit that the plain language draft does not provide that variations to regular patterns of work are to be by written agreement.</p> <p>Drafter comment: This matter is dealt with at clause 10.5.</p>

CURRENT AWARD—Pharmacy Industry Award 2010 (PIA)	Revised exposure draft (10 November 2016) (revised ED)	Submissions comments
<p>12.9 Award entitlements</p> <p>A part-time employee will be entitled to payments in respect of annual leave, public holidays, personal/carer’s leave and compassionate leave arising under the NES, or this award, on a proportionate basis. Subject to the provisions contained in this clause all other provisions of the award relevant to full-time employees will apply to part-time employees.</p> <p>12.10 Conversion of existing employees</p> <p>No full-time or casual employee will be transferred by an employer to part-time employment without the written consent of the employee. Provided that where such transfer occurs all leave entitlements accrued will be deemed to be continuous. 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 and recorded in writing.</p> <p>12.11 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 of work provided by the award, as a casual employee and subject to the casual employee provisions of this award. Nothing in this clause prevents such agreement between the parties.</p>	<p>10.9 However, 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>10.10 A part-time employee who has worked the number of hours agreed under clause <u>10.4</u> may agree to work additional hours that are not reasonably predictable. The additional hours may be worked on the terms applicable to a casual employee.</p> <p>10.11 However, the total number of hours agreed under clauses <u>10.4</u> and <u>10.10</u> must not exceed the maximum daily hours specified in clause <u>13.3</u> or full-time employment hours specified in <u>9—Full-time employment</u>.</p> <p>NOTE: See clause <u>20—Overtime</u> for rates applicable when agreed additional hours exceed the maximum daily hours or full-time employment hours.</p>	<p>PGA (submission of 21/11/16, para 19): Submits that the clause 10.5 does not specify that a variation could be temporary or permanent and that the variation would be agreed hours at ordinary rates.</p> <p>SDA (submission of 21/11/16, para 29 and para 32): Submits that clause 10.5 does not make it clear that the agreement must be made in writing before the variation occurs and that it does not make it clear that variations may be permanent or temporary. Submits that clause 12.3 of the current award should be retained.</p> <p>PGA (submission of 5/9/16, para 26): Submits that clause 10.4 of the revised ED should be varied. Clause 12.3 of PIA refers to 12.2(f) and provides that all time worked in excess of the agreed hours is paid at the overtime rate. This provision has not been included in revised ED. It is a necessary and useful signpost that part-time hours may be varied by agreement and can be varied subject to a time limit. This provides certainty regarding length of time for which any agreed variation would apply. These words, and the appropriate reference to the overtime provision should be included at the end of clause 10.4.</p> <p>Drafter comment: This is dealt with at clause 10.6(c)</p> <p>PGA (submission of 5/9/16, para 24): Submits that clause 10.6(b) of revised ED is a new obligation and should be removed.</p> <p>Drafter comment: This obligation currently exists in the award at 26.2. It has been included for completeness.</p> <p>PGA (submission of 5/9/16, para 27): Submits that clause 10.8 of the revised ED alters the legal effect by stipulating that the number of hours agreed in accordance with 10.4 cannot be varied (when they can be altered by agreement via other provisions). Clause 10.8 should be reworded to preserve the capacity for agreement to alter the number of hours worked.</p> <p>Drafter comment: Agrees with the PGA comment. The exception for the agreed number of hours should only relate to paragraph (a). It would be best to split it into two subclauses. The first one being the current 10.8 minus paragraph (b). The second one providing that the roster of a part-time employee, including the number of hours agreed under clause 10.4, may be changed at any time by the employer and employee by mutual agreement.</p> <p>SDA and others (submission of 5/9/11, paras 20-22, submission of 21/11/16 para 26): Submits that clause 12.6 of the PIA does not appear to be reflected in the revised ED. It is important because it establishes that if an employee meets the definition of FT or PT employment then they’re engaged as such (and if they don’t they should be classified and paid as a casual). This is particularly relevant where a “casual” is working or expects to work reasonably predictable hours in which case they should be paid and have access to the entitlement provided to PT or FT employees.</p> <p>Drafter comment: Clause 12.6 of the Pharmacy Industry Award is the definition of a casual employee and is dealt with in clause 11.1. The definitions and payment arrangements should be left to the clause dealing with casuals. (See also comments against clause 11.1)</p>

CURRENT AWARD—Pharmacy Industry Award 2010 (PIA)	Revised exposure draft (10 November 2016) (revised ED)	Submissions comments
<p>13 Casual employment</p> <p>13.1 A casual employee is an employee engaged as such and who does not have an expectation or entitlement to reasonably predictable hours of work.</p> <p>13.2 A casual will be paid both the actual hourly rate paid to a full-time employee and an additional 25% of the ordinary hourly rate for a full-time employee.</p> <p>13.3 Casual employees will be paid at the termination of each engagement, but may agree to be paid weekly or fortnightly.</p> <p>13.4 The minimum daily engagement of a casual is three hours.</p>	<p>11. Casual employment</p> <p>11.1 An employee who is not covered by clause <u>9—Full-time employment</u> or clause <u>10—Part-time employment</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 consecutive hours.</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—Minimum wages</u>.</p> <p>NOTE: Column 2 of <u>Table 3—Minimum wages</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 An employer must pay a casual employee for each ordinary hour worked during the periods specified in clause <u>21—Penalty rates</u> the casual penalty rate (inclusive of casual loading) specified in column 3 of <u>Table 5—Penalty rates</u>.</p> <p>NOTE: The 25% loading for casual employees applies to ordinary hours worked. The casual loading is not payable on overtime worked as specified in clause <u>20—Overtime</u>.</p> <p>11.6 The pay period of a casual employee is as determined under clause <u>16.4—Pay period</u>.</p>	<p><u>Interested parties</u> (para 15): Submit that the plain language draft should make it clear that a casual employee is one specifically engaged as a casual and is not a part-time or full-time employee.</p> <p>Drafter comment: This matter is dealt with at clause 11.1.</p> <p>PGA (submission of 5/9/16, para 28): Submits that clause 12.6 of PIA uses the expression “will” and that “may” in clause 11.1 of the revised ED is not the correct substitute for “will”. The expression “may” should be replaced with “must”.</p> <p>Business SA (submission of 2/10/16, para 1.6): Submits that clause 11.1 of revised ED has changed the operation of this clause because under the PIA a casual employee is one specifically engaged as a casual employee. Consequently, any award conditions regarding casual employment will apply to those employees specifically engaged to be casual employees. The effect of clause 11.1 of the revised ED clause is as a “default” or “catch-all” clause whereby an employee will be casual when clauses 9 or 10 do not apply rather than specifically engaging an employee as a casual. This changes the operation of 13.1 of the PIA unnecessarily. The expression engaging casuals “as such” in clause 13.1 of the PIA works in concert with clause 10.2 of the PIA and reduces the risk of conflict regarding employment status. Further, the PIA approach is standard across many awards and it is not necessary for the plain language re-drafting process to vary this approach. The PIA words should be retained or could be amended as follows: “A casual employee is an employee engaged as such and who is not covered by clause 9—Full time employment or clause 10—Part-time employment”.</p> <p>SDA and others (submission of 22/07/16 paras 23–31, submission of 21/11/16 paras 44–45): Submits that changing of the word ‘is’ (see clause 13.1 of the PIA) to ‘may’ in clause 11.1 of the plain language draft is a change to the legal effect of the award. Submits that if an employee has an expectation or entitlement to reasonably predictable hours of work they are to be deemed a part-time or full-time employee. Changing the wording alters the legal effect of the clause as it relates to how an employee is engaged to work depending on the predictability of the hours they work. SDA submits that the PGA interprets 13.1 of the PIA as a casual conversion clause (ref Casual and PT Full Bench PN279 & 280). The wording of the PIA should be retained to ensure the legal effect remains unchanged. Further, the SDA made a deliberate decision not to seek a casual conversion clause because the parties had a common interpretation of the casual clause.</p> <p><u>Interested parties</u> (para 16): Submit that clause 11.2 should include the words ‘expectation or’.</p> <p>Drafter comment: It is understood that many casual employees do have reasonably predictable hours of work. The award states what a casual is entitled to, regardless of their expectations.</p> <p><u>Interested parties</u> (para 17): Submit that the draft should state that the minimum engagement is 3 consecutive hours.</p> <p>Drafter comment: This represents a change from the award, however, if the parties are in agreement this would clarify the entitlement.</p>

CURRENT AWARD—Pharmacy Industry Award 2010 (PIA)	Revised exposure draft (10 November 2016) (revised ED)	Submissions comments				
<p>16. Classifications</p> <p>16.1 All employees covered by this award must be classified according to the structure set out in Schedule B—Classification Definitions. Employers must advise their employees in writing of their classification and of any changes to their classification.</p> <p>16.2 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. Classification</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>Interested parties (para 18): Submit clause 12.2 should include the term ‘the classification by the employer’.</p> <p>Drafter comment: Clause 12.1 makes it clear that classification is done by the employer. It is not good drafting practice to use unnecessary words.</p>				
<p>Part 5—Ordinary Hours of Work</p> <p>25. Hours of work</p> <p>25.1 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>25.2 Ordinary hours</p> <p>(a) Ordinary hours may be worked, within the following spread of hours:</p> <table border="0" data-bbox="201 919 1006 1014"> <thead> <tr> <th data-bbox="201 919 736 955">Days</th> <th data-bbox="742 919 1006 955">Spread of Hours</th> </tr> </thead> <tbody> <tr> <td data-bbox="201 976 736 1014">Monday to Sunday</td> <td data-bbox="742 976 1006 1014">7.00 am – midnight</td> </tr> </tbody> </table> <p>(b) Hours of work on any day will be continuous, except for rest pauses and meal breaks and must not be more than 12 hours per day.</p> <p>25.3 38 hour week rosters</p> <p>A full-time employee will be rostered for an average of 38 hours per week, worked in any of the following forms:</p> <p>(a) 38 hours in one week; or</p> <p>(b) 76 hours in two consecutive weeks.</p>	Days	Spread of Hours	Monday to Sunday	7.00 am – midnight	<p>Part 3—Hours of Work</p> <p>13. Ordinary hours of work</p> <p>13.1 Ordinary hours may be worked on any day between 7.00 am and midnight.</p> <p>13.2 Ordinary hours of work are continuous, except for rest breaks and meal breaks as specified in clause <u>15—Breaks</u>.</p> <p>13.3 The maximum number of ordinary hours that can be worked on any day is 12.</p> <p>13.4 The maximum number of ordinary hours of work for a full-time employee per week (or as averaged over 2 consecutive weeks) are as set out in clause <u>9—Full-time employment</u>.</p> <p>13.5 The maximum number of ordinary hours of work for a part-time employee per week are as agreed under clause <u>10—Part-time employment</u>.</p>	<p>NOTE: The SDA are pursuing changes to the effect of these provisions via the casual employment common issue matter which could result in revisions/additions to this clause.</p> <p>Interested parties (para 19): Submit remove the cross reference at clause 13.4 regarding full-time employment and include the term ‘engaged to work less than 38 hours per week’.</p> <p>Drafter comment: Clause 9 does not purport to set out a maximum number of ordinary hours but in effect defines a full-time employee as someone who is engaged to work 38 per week or 76 over 2 weeks. Clause 13.4 then states that those hours are the maximum number of ordinary hours over those periods. They are thus doing slightly different things. As clause 13.4 very much relies on the concept underlying clause 9 it seems sensible to cross-refer to it.</p> <p>That said, it would not be wrong in principle to expressly state the maximum numbers. A judgement must be made in each case. Relevant factors include how far apart the provisions are and the level of complexity involved in repeating the concept. In this case it is pretty straightforward. But if the concept involved interlocking provisions it would be inefficient to set them all out again. It is also to be noted that clause 13.5 involves looking back at clause 10.</p> <p>PGA (submission of 5/9/16, para 31 and submission of 21/11/16, para 10 and para 20): Submits that clause 13.5 alters the legal meaning of the PIA because in clause 10.10 of the revised ED a part-time employee may agree to work additional hours that are not reasonably predictable but which are in excess of their agreed hours under clause 10.4. The hours are worked on the terms applicable to a casual employee. Any such additional hours under clause 10.10 are not necessarily overtime, unless in accordance with clause 10.11 they exceed the max daily hours or weekly full-time hours provided for in the award. When read in isolation, clause 13.5 fails to account for this capacity for part-time employees to agree to work additional hours which may not be overtime hours. Clause 13.5 is not in PIA and could change the legal effect of the award and should be deleted.</p>
Days	Spread of Hours					
Monday to Sunday	7.00 am – midnight					

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<p>25.4 Rostering—Permanent employees</p> <p>(a) The following roster requirements will apply to permanent employees:</p> <p>(i) Ordinary hours will be rostered so as to provide an employee 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) Ordinary hours may not be rostered over more than five days in a week, provided that 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>(iv) An employee who regularly works Sundays will be rostered so as to have three consecutive days off each four weeks and the consecutive days off will include Saturday and Sunday.</p> <p>(b) A requirement will not apply where the employee requests in writing and the employer agrees to other arrangements, which are to be recorded in the time and wages records. It cannot be made a condition of employment that an employee make such a request.</p> <p>(c) An employee can terminate the agreement by giving four weeks' notice to the employer. The notice need not be given where the agreement terminates on an agreed date or at the end of an agreed period. For the avoidance of doubt this provision does not apply to part-time employees' agreed pattern of work under clause 12.2.</p> <p>(d) The rostering provision of clause 25.4(a)(iv) does not apply to a part-time employee whose agreed hours under clause 12.2(b) provides that the employee will work on either or both Saturday and Sunday each week and where the agreement provides that the employee will have at least two consecutive days off work each week.</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) employees must not be rostered to work ordinary hours on more than 5 days in a week;</p> <p>(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;</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—Part-time employment to work Saturday or Sunday (or both) each week and have at least 2 consecutive days off.</p> <p>14.3 At the written request of the employee, the employer and the employee may agree to rostering arrangements that are different to those in clause 14.1.</p> <p>14.4 Different arrangements agreed under clause 14.3 must be recorded in the time and wages record.</p> <p>14.5 The employee may end an agreement under clause 14.3 at any time by giving the employer 4 weeks written notice unless the agreement was made under clause 10.4 (part-time arrangements agreed in writing on engagement).</p> <p>14.6 An agreement under clause 14.3 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 14.3.</p>	<p>Business SA (submission of 2/10/16, para 1.4): Submits that at clause 14.1(e) the words “whether ordinary hours or overtime” are not present in the PIA and this is a substantive change because the PIA does not contemplate working of Sundays during overtime hours for the purpose of this clause.</p> <p>PGA (submission of 5/9/16, para 32 and submission of 21/11/16, para 10 and para 21): Submits that clause 14.1(e) has omitted the words “regularly works Sundays”, found at 25.4 of the PIA. This omission changes the legal effect by requiring an employer to roster an employee for 3 consecutive days off each 4 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.</p> <p>Drafter comment: Clause 14.1(e) is not a clause drafted by the plain language expert, rather it is the clause agreed in the conference of 17 December 2015 (transcript para 821). In relation to the issue of the words in clause “whether ordinary hours or overtime”, the discussion during the conference and submissions of the PGA, SDA and HSU appears to support the view that this is the intended operation (SDA and other unions submission of 13 May 2016, para 43).</p> <p>Interested parties (para 20): Submit the word ‘written’ at clause 14.5 is a technical error and should be removed.</p> <p>Drafter comment: Agrees the word ‘written’ should be taken out.</p>

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<p>28. Breaks</p> <p>28.1 All employees working four or more hours on any day will be entitled to a 10 minute paid rest pause.</p> <p>28.2 All employees working more than five hours on any day will be entitled to an unpaid meal break of not less than 30 minutes and no greater than one hour duration plus a 10 minute paid rest pause.</p> <p>28.3 All employees working 7.6 or more hours on any day will be entitled to an unpaid meal break of not less than 30 minutes and no greater than one hour duration plus two 10 minute paid rest pauses.</p> <p>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;</p> <p>(b) the rest pauses are not to be taken in the first hour of work or in the first hour after the meal break.</p>	<p>15. Breaks</p> <p>15.1 Clause 15 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="1130 485 1902 1136"> <thead> <tr> <th data-bbox="1130 485 1478 562">Column 1 Hours worked</th> <th data-bbox="1478 485 1902 562">Column 2 Breaks</th> </tr> </thead> <tbody> <tr> <td data-bbox="1130 562 1478 674">At least 4 but not more than 5</td> <td data-bbox="1478 562 1902 674">One 10 minute paid rest break</td> </tr> <tr> <td data-bbox="1130 674 1478 827">More than 5 but less than 7.6</td> <td data-bbox="1478 674 1902 827">One 10 minute paid rest break One 30 to 60 minute unpaid meal break</td> </tr> <tr> <td data-bbox="1130 827 1478 1136">7.6 or more</td> <td data-bbox="1478 827 1902 1136">Two 10 minute paid rest breaks (not to be taken in the first hour of work or in the first hour of resuming work after a meal break) One 30 to 60 minute unpaid meal break (to be taken within the first 5 hours of work but not before the first 2.5 hours)</td> </tr> </tbody> </table> <p>15.3 An unpaid meal break must be taken within the first 5 hours of work, but not before the first 2.5 hours.</p> <p>15.4 A paid rest break cannot be taken:</p> <p>(a) in the first hour of work; or</p> <p>(b) in the first hour of resuming work after an unpaid meal break.</p>	Column 1 Hours worked	Column 2 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	7.6 or more	Two 10 minute paid rest breaks (not to be taken in the first hour of work or in the first hour of resuming work after a meal break) One 30 to 60 minute unpaid meal break (to be taken within the first 5 hours of work but not before the first 2.5 hours)	<p>Interested parties (para 21): Submit the inclusion of wording explaining the tables at clause 15 unnecessarily complicates the clause.</p> <p>Drafter comment: Explaining how the table works adds to certainty and clarity. This approach is common in legislative drafting The table number facilitates cross-referencing to it.</p> <p>Interested parties (para 22): Submit a technical error has been introduced at clause 15.3 and 15.4 which introduces restrictions concerning the timing of breaks that were not previously contained in the award.</p> <p>Drafter comment: It would seem that the proviso to clause 28.3 of the award only applies to shifts of 7.6 hours or more so that qualification needs to be added. It may be simpler to add the qualification in column 2. So after "Two 10 minute paid rest breaks" add "(not to be taken in the first hour of work or in the first hour of resuming work after a meal break)" and after "One 30 to 60 minute unpaid meal break" add "(to be taken within the first 5 hours of work but not before the first 2.5 hours)".</p>				
Column 1 Hours worked	Column 2 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													
7.6 or more	Two 10 minute paid rest breaks (not to be taken in the first hour of work or in the first hour of resuming work after a meal break) One 30 to 60 minute unpaid meal break (to be taken within the first 5 hours of work but not before the first 2.5 hours)													
<p>17. Minimum weekly wages</p> <table border="1" data-bbox="201 1549 744 1906"> <thead> <tr> <th data-bbox="201 1549 617 1612">Classifications</th> <th data-bbox="617 1549 744 1612">Per week \$</th> </tr> </thead> <tbody> <tr> <td data-bbox="201 1612 617 1675">Pharmacy Assistants</td> <td></td> </tr> <tr> <td data-bbox="201 1675 617 1738">Level 1</td> <td data-bbox="617 1675 744 1738">\$738.80</td> </tr> <tr> <td data-bbox="201 1738 617 1801">Level 2</td> <td data-bbox="617 1738 744 1801">\$756.40</td> </tr> <tr> <td data-bbox="201 1801 617 1864">Level 3</td> <td data-bbox="617 1801 744 1864">\$783.30</td> </tr> <tr> <td data-bbox="201 1864 617 1906">Level 4</td> <td data-bbox="617 1864 744 1906">\$815.40</td> </tr> </tbody> </table>	Classifications	Per week \$	Pharmacy Assistants		Level 1	\$738.80	Level 2	\$756.40	Level 3	\$783.30	Level 4	\$815.40	<p>Part 4—Wages and Allowances</p> <p>16. Minimum wages</p> <p>16.1 An employer must pay an employee the minimum hourly wage specified in column 2 (or for a full-time employee the minimum weekly wage specified in column 3) in accordance with the employee classification specified in column 1 of <u>Table 3—Minimum wages</u>.</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>NOTE: The APESMA is pursuing additional classifications and minimum wages (see item 34 of the submission summary).</p> <p>Interested parties (para 23): Submit wording in the exposure draft at clause 16.1 as easier to understand.</p> <p>Drafter comment: precision has been favoured here in order to explain how the table operates. Further, use of the word “adult” in the exposure draft is likely to confuse people because the ordinary use of the word relates to a person over the age of 18. In this award junior rates apply to people aged 20 years and younger. The note under clause 16.1 clarifies that in some clause 16.2 provides for junior rates for particular employees.</p>
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<p>18. Junior rates</p> <p>Junior employees will be paid the following percentage of the appropriate wage rate for pharmacy assistant classifications in clause 17—Minimum weekly wages:</p> <table border="1" data-bbox="92 365 1003 743"> <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> <p><i>Clause inserted - proposed new provision in Exposure Draft (cl 10.1(c)) as follows:</i></p> <p>(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 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>	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>16.2 Junior wages (Pharmacy Assistants only)</p> <p>An employer must pay an employee, who is classified as a pharmacy assistant and aged under 21 years, at least at the following percentage of the minimum rate that would otherwise be applicable under <u>Table 3—Minimum wages</u>:</p> <ul style="list-style-type: none"> (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>16.3 Pharmacy students</p> <p>The following applies for determining which year of a course a pharmacy student is in for the purpose of <u>Table 3—Minimum wages</u>:</p> <ul style="list-style-type: none"> (a) a year of a course begins on the first day of the relevant academic term; (b) a pharmacy student in the first year of a Master of Pharmacy course is treated as being in the 3rd year of a course; (c) progress through the pharmacy student classification wages is in line with progress through a course; (d) progress through a course for the purpose of paragraph (c) is determined by completing and passing all subjects for a year of a course. <p>NOTE: A pharmacy student can progress to the next pharmacy student classification wage in less than one year if all subjects for a year of a course are completed and passed in less than one year. A pharmacy student remains at the wage specified for a year of a course until all the required subjects are completed and passed.</p>	<p>NOTE: The SDA is pursuing changes to the effect of this subclause.</p> <p><u>Interested parties</u> (para 24): Submit the clause 16.2 should be in the format of a table rather than a list.</p> <p>Drafter comment: The need for an explanation of how a table operates will affect whether the junior wages provisions are simpler and easier to understand as they are presently drafted, or in the table format. User-testing found that the paragraph format was just as easy to use as the table format.</p>
Age	% of weekly wage															
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<p>22. Payment of wages</p> <p>Wages will be paid weekly or fortnightly according to the actual hours worked for each week or fortnight.</p> <p><i>Clause inserted - proposed new provision in Exposure Draft as follows:</i></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>16.4 Pay period</p> <ul style="list-style-type: none"> (a) The employer may determine the pay period of an employee as being either weekly or fortnightly. (b) Wages must be paid for a pay period according to the number of hours worked by the employee in the period. <p>NOTE: Hours of work may be measured over 2 consecutive weeks.</p> <p>NOTE: The Fair Work Regulations set out the requirements for pay records and the content of payslips including the requirement to separately identify any allowance paid. See Part 3–6, Division 3—Employer obligations in relation to employee records and pay slips.</p>															

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	<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>16.6 For employees eligible for a supported wage, see <u>Schedule D—Supported Wage System</u>.</p> <p>16.7 For employees undertaking a traineeship, see <u>Schedule E—National Training Wage</u>.</p>	
<p>27. Annualised salary (Pharmacists only)</p> <p>27.1 An annualised salary for pharmacist employees may be developed. Such salary may be inclusive of overtime, penalty rates, payments for public holidays taken, annual leave taken, annual leave loading, meal allowance, and meal break on call entitlements. Provided that the annual salary paid over a year was sufficient to cover what the employee would have been entitled to if all award entitlements had been complied with when calculated on an individual basis according to the hours worked.</p> <p>27.2 Provided that in the event of termination of employment prior to completion of a year the salary paid during such period of employment will be sufficient to cover what the employee would have been entitled to if all award entitlements had been complied with.</p> <p>27.3 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>27.4 The employee may be represented in the discussions in relation to the making of an Agreement under this clause by either their union or nominated representative, and any agreement reached under this clause must be recorded in writing, and a copy retained by the employer.</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> <p>(a) overtime;</p> <p>(b) penalty rates;</p> <p>(c) payments for public holidays;</p> <p>(d) payments for annual leave;</p> <p>(e) annual leave loading;</p> <p>(f) meal allowances;</p> <p>(g) on premise meal allowances.</p> <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 <u>17.1</u>.</p> <p>17.3 An annualised salary must not result in a pharmacist being paid less over a year (or, if the pharmacist's employment is terminated before a year is completed, over the period of that employment) 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 <u>17.1</u> 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 <u>17.1</u> showing the times at which the pharmacist started and finished work that day.</p> <p>17.6 A record mentioned in clause <u>17.1</u> must be:</p> <p>(a) countersigned weekly by the pharmacist; and</p> <p>(b) kept at the place of employment for at least 6 years.</p>	<p>NOTE: The PGA is pursuing changes to the effect of this clause (see item 42 of the submissions summary) that may result in revisions/additions to this clause.</p> <p>Interested parties (para 26): Submit that clause 27.2 of the original award is missing from the plain language draft.</p> <p>Drafter comment: Agrees that clause 27.2 of the award is not addressed in the revised ED. It could be dealt with in clause 17.3 by adding after "over a year" the words "(or, if the pharmacist's employment is terminated before a year is completed, over the period of that employment)".</p> <p>SDA and others (submission of 21/11/16 para 55): Submits that the new draft with brackets is now longer and more complex than the current award clause.</p>

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<p>19. Allowances</p> <p>19.1 Meal allowance</p> <p>(a) An employee who has worked six hours or more during ordinary time and who is then consecutively required to work overtime, or after the employees ordinary time of ending work, for more than one and a half hours will be either supplied with an adequate meal by the employer or be paid a meal allowance of \$17.85. Where such overtime work exceeds four hours a further meal allowance of \$15.99 will be paid.</p> <p>(b) This provision will not apply in circumstances where the employer has advised the employee of the requirement to work overtime on the previous day.</p> <p>(c) No meal allowance will be payable where any employee could reasonably return home for a meal within the period allowed.</p> <p>(d) No meal allowance will be payable where the additional hours are agreed hours as per clause 12.3.</p>	<p>18. Allowances</p> <p>NOTE: <u>Schedule C—Summary of Allowances</u> contains a summary of monetary allowances and methods of adjustment.</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 (ii) 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 \$17.85; 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 \$15.99.</p>	<p>Interested parties (para 27): Clause 18 is prefaced by a ‘note’ rather than an explanatory clause concerning the remainder of the provisions in this clause. We submit it is preferable to revert the wording proposed in the Summary of Submissions on the basis that it is simpler and more easy to understand.</p> <p>Drafter comment: Clauses should only contain enforceable content.</p> <p>SDA and others (<u>submission of 5/10/16</u>, para 49): Submits that clause 18.1 of the revised ED is not consistent with the modern awards objective of being simple and easy to understand and does not follow a logical sequence. Alternate wording proposed.</p> <p>Drafter comment: During testing with award users, participants expressed frustration when they spent time trying to understand a provision only to discover that it did not apply to them. For this reason the clause was re-drafted so that users can ascertain whether or not they need to read on before they work out what the entitlements are.</p> <p>Interested parties (para 28): Submit the it would be clearer for the user, if the word “and” was used between clauses 18.1(a)(i) to 18.1(a)(iii). This amendment, in tandem with the preamble of 18.1(a) makes clear that each element must apply for an employee to be entitled to this allowance.</p> <p>Drafter comment: The earlier practice was to include a conjunction only after the penultimate clause or paragraph. That was replaced by a practice of including them after each paragraph. The use of "each of the following" in the lead-in words renders conjunctions unnecessary. It is not good drafting practice to use unnecessary words so either the lead-in words should be included <u>or</u> the conjunctions.</p> <p>The parties are invited to express a preference, however, in order to achieve consistency within and across awards, the Full Bench may choose to consider the issue during the standard and common issue stage.</p>
<p>19.2 On-premise meal allowance (Pharmacists only)</p> <p>An employee 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 time and a half 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 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 <u>regardless of other penalty rates</u> to which the pharmacist is entitled.</p> <p>(c) In paragraph (b), the enhanced hourly rate means 150% of the minimum hourly wage of the pharmacist. See column 2 of <u>Table 3—Minimum wages</u>.</p>	<p>Interested parties (para 29): Submit clauses 18.2(b) and (c) have unnecessarily complicated the operation of clause 19.2 of the PIA and introduced the concept of an ‘enhanced hourly rate’ which has no industrial meaning and is a concept foreign to users of the PIA. We submit that clause 18.2(b) should be reworded: “the employer must pay the pharmacists at a penalty rate of 150% for the period of the meal break, regardless of any other penalty rates to which the pharmacist is entitled.</p> <p>Drafter comment: For precision, the clause should clearly identify the minimum hourly rate that is to be enhanced. This can be achieved by a specific reference to the Table in clause 10.</p> <p>The reference to "regardless of any other payments, penalty rates or allowances" will be changed to “regardless of other penalty rates to which the pharmacist is entitled”.</p>

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<p>19.3 Special clothing</p> <p>(a) Where the employer requires an employee to wear any protective or special clothing such as a uniform dress or other clothing then the employer will reimburse the employee for any cost of purchasing such 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>(b) Where an employee is required to launder any special uniform, dress or other clothing, the employer who provided that special clothing will arrange for its cleaning or will pay the employee the following applicable allowance:</p> <p>(i) for a full-time employee - \$6.25 per week;</p> <p>(ii) for a part-time or casual employee - \$1.25 per shift.</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 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>19.4 Transfer of employee reimbursement</p> <p>Where any 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>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>19.5 Transport allowance</p> <p>Where an employer requests an employee to use their own motor vehicle in the performance of their duties such employee will be paid an allowance of \$0.78 per kilometre.</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>	
<p>19.6 Transport of employees reimbursement</p> <p>Where an employee commences and/or ceases work after 10.00 pm on any day or prior to 7.00 am on any day and the employee's regular means of transport is not available and the employee is unable to arrange their own alternative transport, the employer will reimburse the employee for the cost of a taxi fare from the place of employment to the employee's usual place of residence. This 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> <p>(i) the employee starts work before 7.00 am or finishes work after 10.00 pm;</p> <p>(ii) the employee's regular means of transport is not available;</p> <p>(iii) the employee is unable to arrange their own alternative means of transport;</p> <p>(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> <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>	<p>Interested parties (para 30): Submit the it would be clearer for the user, if the word "and" was used between clauses 18.1(a)(i) to 18.1(a)(iii). This amendment, in tandem with the preamble of 18.1(a) makes clear that each element must apply for an employee to be entitled to this allowance.</p> <p>Drafter comment: The earlier practice was to include a conjunction only after the penultimate clause or paragraph. That was replaced by a practice of including them after each paragraph. The use of "each of the following" in the lead-in words renders conjunctions unnecessary. It is not good drafting practice to use unnecessary words so either the lead-in words should be included <u>or</u> the conjunctions.</p> <p>The parties are invited to express a preference, however, in order to achieve consistency within and across awards, the Full Bench may choose to consider the issue during the standard and common issue stage.</p> <p>Business SA (submission of 2/10/16, para 1.12): Submits that the legal effect of clause 19.6 of the PIA has been altered in 2 ways by clause 18.6 of the revised ED. The expression 'and/or' in the PIA has been replaced with 'or' in the revised ED and this narrows the employee's entitlement to the reimbursement. The expression "from the place of employment" and "to the employee's usual place of residence" is clearly interpreted as only applying to a single direction whereas the expression "between" used in the revised ED could be interpreted to apply to travel in either direction (work to home or home to work).</p>

CURRENT AWARD—Pharmacy Industry Award 2010 (PIA)	Revised exposure draft (10 November 2016) (revised ED)	Submissions comments
		<p>PGA (submission of 5/9/16, para 33.2): Submits that it agrees with Business SA’s sub in relation to clause 18.6 of the revised ED.</p> <p>Drafter comment: Provisions should not include both cumulative and exclusive provisions. It is not good drafting practice to use “and/or” in drafting. The last sentence in the original clause suggests that the clause was intended to operate to and from the employee’s usual place of residence. (See Draft Guideline 5.6)</p>
<p>21. Superannuation</p> <p><i>Standard clause - provision not reproduced</i></p>	<p>19. Superannuation</p> <p><i>Standard clause - provision not reproduced</i></p>	
<p>26. Overtime</p> <p>26.1 Reasonable overtime</p> <p>(a) Subject to clause 26.1(b) an employer may require an employee other than a casual to work reasonable overtime at overtime rates in accordance with the provisions of this clause.</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>(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><i>Provisions not re-drafted for revised exposure draft</i></p>	
<p>26. Overtime</p> <p>...</p> <p>26.2 Overtime and penalty rates</p> <p>(a) Overtime</p> <p>Overtime means authorised additional hours performed at the direction of the employer:</p> <p>(i) Hours worked in excess of the ordinary number of hours of work prescribed in clauses 25.2 and 25.3 are to be paid at time and half for the first two hours and double time thereafter. Overtime worked on a Sunday is to be paid at the Sunday rate of double time, and overtime worked on a public holiday is to be paid at the public holiday rate of double time and half.</p> <p>(ii) The rates provided by clause 26.2(b) and (c) will not be cumulative on overtime rates.</p>	<p>Part 5—Overtime and Penalty Rates</p> <p>20. Overtime</p> <p>NOTE: Under the National Employment Standards (see section 62 of the <u>Act</u>) an employee may refuse to work additional hours if they are unreasonable. <u>Section 62</u> sets out factors to be taken into account in determining whether the additional hours are reasonable or unreasonable.</p> <p>20.1 Application of overtime for full-time employees</p> <p>An employer must pay a full-time employee at the overtime rate for any hours worked at the direction of the employer:</p> <p>(a) in excess of the number of hours specified in clause <u>9—Full-time employment</u> or <u>13.3</u> (maximum daily hours); or</p> <p>(b) between midnight and 7.00 am.</p> <p>20.2 Application of overtime for part-time employees</p> <p>An employer must pay a part-time employee at the overtime rate for</p>	<p>NOTE: The SDA is pursuing changes to the effect of this clause via the casual employment common issue matter which may result in revisions/additional paragraphs in clause 20.3.</p> <p>PGA (submission of 5/9/16, para 34): Submits that the note should be removed from Clause 20 of the revised ED because the Commission determined that any summaries of NES entitlements or links to legislation would not be included in legal instruments. Inclusion of the note is contrary to that Decision [2014] FWCFB 9412.</p> <p>Drafter comment: The Note at the beginning of the clause does not purport to be a summary of, or operate as a link to, the NES but merely to point the reader to section 62.</p> <p>PGA (submission of 5/9/16, para 35): Submits that interested parties have been consulting on the overtime provisions and these issues may be resolved by consent. If so, clause 20 of the revised ED could be simplified significantly. These matters should be further explored at the conference on 26/9/16.</p> <p>SDA and others (submission of 5/9/11, paras 53–60): Submits that the overtime clause has a different legal effect from the PIA because it does not reference</p>

CURRENT AWARD—Pharmacy Industry Award 2010 (PIA)	Revised exposure draft (10 November 2016) (revised ED)	Submissions comments										
<p>(iii) For casual employees the casual loading is not payable on overtime.</p>	<p>any hours worked at the direction of the employer:</p> <p>(a) in excess of the number of hours that the employee has agreed to work under clause 10.4 and 10.10 (part-time employment); or</p> <p>(b) between midnight and 7.00 am.</p> <p>NOTE: A part-time employee can agree to work additional ordinary hours under clause 10.10 on the terms applicable to hours worked by a casual employee up to the maximum hours set out in clause 13.3 (maximum daily hours) and clause 9—Full-time employment.</p> <p>20.3 Application of overtime for casual employees</p> <p>(a) An employer must pay a casual 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 specified in 13.3 (maximum daily hours);</p> <p>(ii) between midnight and 7.00 am.</p> <p>(b) The casual loading prescribed in clause 11—Casual employment is not payable on overtime worked by a casual employee.</p> <p>20.4 Payment of overtime</p> <p>(a) An employer must pay an employee for all overtime worked as prescribed in clause 20.1 to 20.3 the overtime rate specified in column 2 of Table 4 in accordance with when the overtime was worked as specified in column 1 of that table.</p> <p>(b) The overtime rate specified in column 2 of Table 4 must be applied to the applicable minimum wage for the employee classification in accordance with clause 16—Minimum wages.</p> <p>Table 4—Overtime rates</p> <table border="1" data-bbox="1130 1234 1893 1476"> <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> <p>NOTE: Schedule B—Summary of Hourly Rates of Pay sets out the overtime rate hourly wage for all employee classifications according to when overtime is worked.</p>	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>clause 13.2 that “ordinary hours of work are continuous, except for rest breaks as specified in clause 15—Breaks”. Without reference to clause 13.2, an employer could roster for more than one shift on any day without an entitlement to overtime. This is a substantial variation from the PIA provisions. Clause 20.1, 20.2 and 20.3 should all reference clause 13.2.</p> <p>Drafter comment: The award must be read as a whole and clause 13.2 does not need to be referenced to be applicable. Similarly with clause 10.10 and 14. A Note is sufficient to draw the reader's attention to clause 10.10.</p> <p>SDA and others (submission of 21/11/16 paras 61): Submits that the parties consent position is that all employees are entitled to overtime: in excess of 38 hours per week (or 76 ordinary hours over two consecutive weeks) or in excess of 12 hours per day as specified in clause 13.3 (maximum daily hours) or that are not continuous, except for rest breaks and meal breaks as specified in clause 15-Breaks or between midnight and 7.00 am or outside the rostering arrangements as specified in clause 14.1.</p> <p>SDA and others (submission of 21/11/16 paras 61): Submits that the parties consent position is that, in addition to the above, part-time employees are entitled to overtime when they work hours in excess of the hours agreed in clause 10.4 and 10.10.</p> <p>SDA and others (para 68): Submits that clause 20.4 is not clearer and easier to understand than clause 13.3 in the ED—9/10/15 and that this earlier draft should be used.</p> <p>Drafter comment: See drafters comments regarding precision at clause 16.</p>
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<p>26.3 Time off instead of payment</p> <p>(a) Time off instead of payment for overtime may be provided if an employee so elects and it is agreed by the employer.</p> <p>(b) Such time off instead of payment will be taken at a mutually convenient time and within four weeks of the overtime being worked or, where agreed between the employee and the employer, may be accumulated and taken as part of annual leave.</p>	<p>20.5 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 Table 4—Overtime rates (depending on when the hour was worked as specified in column 1).</p>	<p>NOTE: This subclause is being considered in common issue proceedings in matter AM2014/300. Draft determination issued 15 September 2016.</p>										

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<p>(c) Time off instead of payment will equate to the overtime rate i.e. if the employee works one hour overtime and elects to take time off instead of payment the time off would equal one and a half hours or, where the rate of pay for overtime is double time, two hours.</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 $((2 \times 150) \div 100)$.</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>(ii) at a time within that period agreed by the employer and employee.</p> <p>(d) Despite paragraph (c), 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>																									
<p><i>Note: Clause 26.2 reproduced here for comparative purposes.</i></p> <p>(b) Morning and Evening work Monday to Friday</p> <p>A loading of 50% (casuals 75%) will apply for hours worked before 8.00 am and a loading of 25% (casuals 50%) for hours between 7.00 pm to 9.00 pm. A loading of 50% will apply to hours worked from 9.00 pm to midnight (casuals 75%).</p> <p>(c) Saturday work</p> <p>A loading of 100% (casuals 125%) will apply for hours worked before 8.00 am, and a loading of 25% (casuals 50%) will apply for hours of work from 8.00 am to 6.00 pm on a Saturday. A loading of 50% (casuals 75%) will apply from 6.00 pm to 9.00 pm, and a loading of 75% (casuals 100%) for hours from 9.00 pm to midnight.</p> <p>(d) Sunday work</p> <p>A 100% (casuals 125%) loading will apply for all hours of work on a Sunday.</p>	<p>21. Penalty rates</p> <p>21.1 Clause 21 sets out higher rates of pay (penalty rates) for ordinary hours worked at specified times or on specified days.</p> <p>NOTE: Clause <u>20—Overtime</u> prescribes overtime rates for hours worked in excess of, or outside ordinary hours.</p> <p>21.2 Penalty rates are not cumulative on overtime rates.</p> <p>21.3 Payment of penalty rates</p> <p>(a) An employer must pay an employee in accordance with column 2 of <u>Table 5—Penalty rates</u> for hours worked by the employee during a period specified in column 1 of that table; and</p> <p>(b) The penalty rate specified in column 2 of <u>Table 5</u> must be applies applied to the applicable minimum wage for the employee classification in accordance with clause <u>16—Minimum wages</u>.</p> <p>NOTE: <u>Table 3—Minimum wages</u> shows the minimum hourly wage 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="1124 1402 1893 1917"> <thead> <tr> <th>Column 1</th> <th>Column 2</th> <th>Column 3</th> </tr> <tr> <th>For hours worked on</th> <th>Full-time and part-time penalty rate</th> <th>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> </tbody> </table>	Column 1	Column 2	Column 3	For hours worked on	Full-time and part-time penalty rate	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%	<p>PGA (submission of 5/9/16, para 36): Submits that use of the term “higher rates of pay (penalty rates)” at clause 21.1 of revised ED should be replaced with “penalty rates” because clause 21 does not deal with rates of pay, it prescribes penalty rates applicable to the minimum rates of pay prescribed by the PIA for work at particular times.</p> <p>Drafter comment: The payment of penalty rates results in the employee receiving a higher rate of pay. That said, we could substitute "penalty rates" for "higher rates of pay (penalty rates)" without loss of meaning.</p> <p>SDA and others (submission of 5/10/16, paras 69-70): Submits that clause 21 of the revised ED is much more complicated to navigate than clause 14 of the ED—9/10/15 and this version should be used. If the wording in clause 21.3 of the revised ED is retained, then reference to column 3 casual penalty rate needs to be included. Clause 21.3 of the revised ED makes no reference to the casual penalty rate contained in Table 5.</p> <p>Drafter comment: See drafters comments regarding precision at clause 16.</p> <p>Interested parties (para 31): Submit that there is a technical error at clause 21.3(b) and the word “applies” should be replaced with “applied”.</p> <p>Drafter comment: Agrees that the word ‘applies’ should be replaced with ‘applied’.</p>
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<p data-bbox="112 537 537 569">Part 6—Leave and Public Holidays</p> <p data-bbox="112 585 317 617">29. Annual leave</p> <p data-bbox="142 646 655 678">29.1 Annual leave is provided for in the NES.</p> <p data-bbox="142 716 498 747">29.2 Definition of shiftworker</p> <p data-bbox="219 772 982 926">For the purpose of the additional week of annual leave provided for in the NES, a shiftworker 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="142 957 454 989">29.3 Annual leave loading</p> <p data-bbox="219 1014 967 1146">During a period of annual leave an employee will receive a loading calculated on the rate of wage prescribed in clause 17—Minimum weekly wages of this award. Annual leave loading payment is payable on leave accrued.</p> <p data-bbox="219 1192 566 1224">The loading will be as follows:</p> <p data-bbox="201 1249 1003 1493">(a) Day work: Employees who would have worked on day work only had they not been on leave—17.5% or the relevant weekend penalty rates, whichever is the greater but not both.</p> <p data-bbox="201 1367 1003 1493">(b) Shiftwork: 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 data-bbox="142 1524 730 1556">29.4 Paid leave in advance of accrued entitlement</p> <p data-bbox="219 1581 967 1860">An employer may allow an employee to take annual leave either wholly or partly in advance before the leave has accrued. 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 data-bbox="1026 548 1442 579">Part 6—Leave and Public Holidays</p> <p data-bbox="1026 604 1285 636">22. Annual leave</p> <p data-bbox="1026 661 1887 789">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="1026 814 1581 846">22.1 Annual leave is provided for in the NES.</p> <p data-bbox="1026 871 1611 903">22.2 Additional leave for certain shiftworkers</p> <p data-bbox="1130 928 1923 1056">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="1026 1081 1383 1113">22.3 Annual leave loading</p> <p data-bbox="1130 1138 1923 1287">(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="1130 1312 1546 1344">(b) The loading will be as follows:</p> <p data-bbox="1205 1369 1389 1400">(i) Day work</p> <p data-bbox="1270 1425 1923 1524">Employees who would have worked on day work only had they not been on leave—17.5% or the relevant weekend penalty rates, whichever is the greater but not both.</p> <p data-bbox="1205 1549 1389 1581">(ii) Shiftwork</p> <p data-bbox="1270 1606 1923 1734">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 data-bbox="1026 1759 1656 1791">22.4 Paid leave in advance of accrued entitlement</p> <p data-bbox="1130 1816 1923 1881">(a) An employer may allow an employee to take annual leave either wholly or partly in advance before the leave has accrued.</p>	<p data-bbox="1947 537 2427 569">Common clause —for consultation in 2017.</p> <p data-bbox="1947 1749 2852 1814">Clause 29.4 of the PIA has been varied. The next version of the ED will reflect these changes along with new annual leave provisions.</p>															

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	<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>30. Personal/carer's leave and compassionate leave</p> <p>30.1 Personal/carer's leave and compassionate leave are provided for in the NES.</p> <p>30.2 For the purposes of s.107(3) of the Act, an employee is entitled to a maximum of one single day absence a 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 such absence. Where any absence exceeds three consecutive days the employer may require the production of a medical certificate of a legally qualified medical practitioner.</p> <p>30.3 Casual employees are entitled to be not available for work or to leave work to care for a person who is sick and requires care and support or who requires care due to an emergency. Such leave is unpaid. A minimum of 48 hours absence is allowed by right with additional absence by agreement. An employer must not fail to re-engage a casual employee because the employee has accessed the entitlement under this clause.</p>	<p>23 Personal/carer's leave and compassionate leave</p> <p>23.1 Personal/carer's leave and compassionate leave are provided for in the NES.</p> <p>23.2 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>23.3 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>(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 23.3(a).</p>	<p>Common clause—for consultation in 2017.</p>
<p><i>No clause in current award.</i></p>	<p>24. Parental leave and related entitlements</p> <p>Parental leave and related entitlements are provided for in the NES.</p>	<p>Common clause—for consultation in 2017.</p>
<p>31. Public holidays</p> <p>31.1 Public holidays are provided for in the NES.</p> <p>31.2 An employer and the 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 an employee less time off work than the employee would have had if the employee had received the public holiday.</p>	<p>25. Public holidays</p> <p>25.1 Public holiday entitlements are provided for in the NES.</p> <p>25.2 Where an employee works on a public holiday they will be paid in accordance with clause 21.34—Penalty rates.</p>	<p>Common clause—for consultation in 2017.</p> <p>Interested parties (para 32): Submit that at clause 25.2 of the revised ED there appears to be an incorrect reference to clause 21.1. The cross-reference should be to Table 5 in clause 21.3.</p> <p>Drafter comment: Agrees that the cross-reference should be to clause 21.3 not clause 21.1.</p>

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<p>31.3 Work on a public holiday must be compensated by payment at the rate of 250% (casuals 275%) of the minimum rate.</p>	<p>25.3 Substitution of public holidays by agreement</p> <p>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>32. Community service leave</p> <p>Community service leave is provided for in the NES.</p>	<p>26. Community service leave</p> <p>Community service leave is provided for in the NES.</p>	<p>Common clause—for consultation in 2017.</p>
<p>Part 2—Consultation and Dispute Resolution</p> <p>8. Consultation</p> <p>9. Dispute resolution</p> <p><i>Standard clause – structural changes, but no change to drafting - provisions not reproduced</i></p>	<p>Part 7—Consultation and Dispute Resolution</p> <p>27. Consultation about major workplace change</p> <p>28. Consultation about changes to rosters and hours of work</p> <p>29. Dispute resolution</p> <p><i>Standard clause – structural changes, but no change to drafting - provisions not reproduced</i></p>	<p><i>Standard clause. Plain language draft standard clauses will be dealt with in matter AM2016/15 . Directions issued 17 August 2016.</i></p>
<p>14. Termination of employment</p> <p>15. Redundancy</p> <p><i>Standard clause – structural changes, but no change to drafting - provisions not reproduced</i></p>	<p>30. Termination of employment</p> <p>31. Redundancy</p> <p>32. Transfer to lower paid duties on redundancy</p> <p>33. Employee leaving during redundancy notice period</p> <p>34. Job search entitlement</p> <p><i>Standard clause – structural changes, but no change to drafting - provisions not reproduced</i></p>	<p><i>Standard clause. Plain language draft standard clauses will be dealt with in matter AM2016/15 . Directions issued 17 August 2016.</i></p>

CURRENT AWARD—Pharmacy Industry Award 2010 (PIA)	Revised exposure draft (10 November 2016) (revised ED)	Submissions comments
<p>Schedule B—Classification Definitions</p> <p>B.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>B.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>B.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>(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>B.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.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>B.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>B.5 Pharmacist is a person who is registered as a pharmacist pursuant to the relevant State or Territory law.</p> <p>B.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>B.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>B.8 Pharmacist Manager is a pharmacist who is responsible to the proprietor for all aspects of the business.</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 has not acquired the competencies required to hold a qualification in Community Pharmacy and 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 perform any of the following duties:</p> <p>(a) supervise pharmacy assistants levels 1 or 2; or</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>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>NOTE: The APESMA is pursuing additional classifications.</p> <p>PGA (submission of 5/9/16, para 39 and submission of 21/11/16, para 10 and para 14): Submits that A.3 of the revised ED has altered the legal operation of clause B.3 of the PIA. Clause B.3 of the PIA refers to a person who is engaged as a “Dispensary Assistant” being paid as a “Pharmacy Assistant Competency Level 3”. By comparison, A.3 refers to an employee “required by the employer to... assist a pharmacist in the dispensing section of a community pharmacy”. The “Dispensary Assistant” term is commonly used in the industry. In practice, an employee would not be classified at level 3 until they have been engaged in the role of “Dispensary Assistant”. PGA’s and SDA’s prior submissions both record the agreement reached between the interested parties regarding classification definition for “Pharmacy Assistant level 3”.</p> <p>Drafter comment: I think it wrong to introduce a reference to a "classification" of Dispensary Assistant without any definition of it. The reference to assisting a pharmacist in the dispensing section would seem to convey the necessary meaning.</p> <p>Interested parties (para 33) PGA (submission of 21/11/16, para 24): Submit that The reference to section 5 of the Health Practitioner Regulation National Law in clauses A.5 and A.6 of revised exposure draft is incorrect. We note there is no uniform Health Practitioner Regulation National Law, although each state has legislation modelled on Queensland legislation. While each state has legislation defining the meaning of ‘pharmacy student’ and ‘pharmacy intern’, these definitions may not be contained at section 5 of the legislation. The removal of the words “section 5” from each of these definitions would ameliorate this error.</p> <p>Drafter comment: To remove the reference to section 5 is unhelpful to readers. Is there any State that does not have the definitions in section 5?</p>

CURRENT AWARD—Pharmacy Industry Award 2010 (PIA)	Revised exposure draft (10 November 2016) (revised ED)	Submissions comments
<i>Proposed new provision</i>	Schedule B—Summary of Hourly Rates of Pay <i>Schedule not reproduced</i>	Common clause —for consultation in 2017.
<i>Proposed new provision</i>	Schedule C—Summary of Monetary Allowances <i>Schedule not reproduced</i>	Common clause —for consultation in 2017.
Schedule C—Supported Wage System <i>Standard clause - no change - provision not reproduced</i>	Schedule D—Supported Wage System <i>Schedule not reproduced</i>	Common clause —for consultation in 2017.
Schedule D—National Training Wage Appendix D1: Allocation of Traineeships to Wage Levels <i>Standard clause - no change - provision not reproduced</i>	Schedule E—National Training Wage <i>Schedule not reproduced</i>	Common clause —for consultation in 2017.
Schedule E—2014 Part-day public holidays <i>Standard clause - no change - provision not reproduced</i>	Schedule F—2016 Part-day Public Holidays <i>Schedule not reproduced</i>	Common clause —for consultation in 2017.
3. Definitions and interpretation	Schedule G—Definitions <i>Moved to clause 2 – not reproduced</i>	The Definitions have been moved to clause 2 of the revised ED.