

4 March 2015

**THE PHARMACY GUILD COMMENTS ON THE EXPOSURE DRAFT OF THE PHARMACY
INDUSTRY AWARD 2014
IN THE REVIEW OF THE PHARMACY INDUSTRY AWARD 2010 [AM 000012] (GROUP 2B)
AM 2014/209**

We act for The Pharmacy Guild of Australia (The Guild).

We set out below The Guild's response to the comments on the Exposure Draft made by other interested organisations. The numbering used in the respective organisations' submissions has been adopted for ease of reference.

Australian Business Industrial / NSW Business Chamber (submissions filed on 2 February 2015)

Paragraph number	The Guild Response
58	Support
59	Support
60	Oppose The proposed clause correctly reflects the current award and is not ambiguous. Clause 8.3(a)(iii) provides that an employee may not be rostered over more than five days a week, unless, in accordance with clause 8(3)(iv) the employee works six days in one week and no more than four days the next.
61	Support
62	Support
63	Support
64	Oppose The current award does not set a maximum number of hours per week that a casual employee may work. So overtime is not payable on a weekly basis. However, clause 25.2 applies to all employees and provides that the hours of work must not be more than 12 hours per day. Casual employees are entitled to overtime if they work more than 12 hours per day, but not in any other circumstances. Clause 26.2(iii) makes it clear that the casual loading is not payable on overtime.
65	Support

SYDNEY MELBOURNE NEWCASTLE BRISBANE

Association of Professional Engineers, Scientists and Managers Australia (submissions filed on 28 January 2015)

Paragraph number	The Guild Response
8 - 9	Oppose Obsolete and unnecessary
10	Oppose The Guild supports the words proposed in the Exposure Draft that the employer must ensure that copies of the award and NES are available to all employees to whom they apply. This is not prescriptive and while it allows for both noticeboards and electronic means (in the current award) it also allows for other options, such as the provision of a hardcopy of the award in a folder on a shelf. Most community pharmacies are small businesses and do not have noticeboards or computers available for use by employees at all times.
14 - 16	Oppose The term “facilitative provision” has a meaning to industrial relations practitioners; it is not a term likely to be understood by small business operators or employees. Community pharmacy small business operators will not look for a clause called “facilitative provisions” to find out how the application of the award may be altered. They are accustomed to, for example, looking at the part-time clause to see how agreements can be made to vary part-time arrangements. Where an employer and employee(s) may vary the application of the award, it is appropriate that the ability to do so be reflected in the in the clause itself, rather than (or in addition to) a separate facilitative provision.
17-20	Support The Guild does not believe the removal of the word “and” varies the effect of the clause, but it is not opposed to it being retained.
21-23	Support The word “written” has been removed, as has the fact that the rosters can be varied “by the employer”. The Guild supports amending the clause so that it reflects the current award clause 12.8.
25	Oppose The annualised salary clause in the Exposure Draft does not alter the meaning of the current clause. It is common for employers and employees to annualise some award provisions in an annual salary, but to rely on the award for some entitlements not captured in the salary. For example, an annual salary may include payment for penalty rates, public holiday payments, meal breaks and annual leave loading, but not take into account overtime. Overtime may be paid as

	<p>it is worked in accordance with the award.</p> <p>The current award provides that an annualised salary “may be inclusive” of a list of entitlements. It does not require the annual salary arrangement to cover all of the listed entitlements. The proposed words in the Exposure Draft “in satisfaction of any or all” of the listed entitlements is consistent with the current clause.</p>
29 - 31	Support
32 - 34	APESMA does not say when casuals should get overtime. The Guild’s position is that the current award provides that casuals get overtime if they work more than the daily hour set out in clause 25.2 only.
38	<p>Disagree</p> <p>Hourly rate tables assist in the payment of correct rates and they are available from both The Guild and the Fair Work Ombudsman.</p>
39	<p>Disagree</p> <p>When the definitions are at the front the reader just flicks past them to get to the substance of the Award. The more usual place for readers to find definitions (or a glossary of terms) is at the end of a document.</p> <p>The Guild’s position is that on the electronic copy of the Award, all defined words should have a hyperlink to the definitions section.</p>
40-41	The Guild understands this issue has been dealt with by the Commission.

Shop, Distributive and Allied Employees’ Association (submissions filed on 28 January 2015)

Paragraph number	The Guild Response
3-5	<p>Oppose</p> <p>See response to paragraph 39 of the APESMA submissions above.</p>
6	Support inclusion
7-13	<p>Oppose</p> <p>See response to paragraph 10 of the APESMA submissions above.</p>
14-20	<p>Oppose</p> <p>See response to paragraphs 14 -16 of the APESMA submission above.</p>
21-30	The Guild is not opposed to the inclusion of minimum rates tables that clearly set out what rate is payable for each hour of work including those that attract penalties.
31 - -33 and 35 - 40	The Guild understands this has largely been dealt with by the Commission, but is not opposed to the inclusion of accurate summaries (in light of the fact that the NES is not a standalone document, but rather sections of the <i>Fair Work Act</i>).
34	<p>Support</p> <p>However “small business” should be shown in bold (so readers know</p>

	that they need to look for a definition) and hyperlinked to the definition.
41 – 44	Support The Guild generally supports the inclusion of examples and references to assist employers and employees understand their rights and obligations.
45 - 47	Support
48	Support
49 - 54	Support See response to paragraphs 21 -23 of the APESMA submissions.
55 - 60	Oppose The use of the term “minimum hourly rate” in the exposure draft is clearer than the current award. The use of the word “actual rate paid to a fulltime employee” in the current award is confusing as the rate for fulltime employees differs across classifications and may be affected by over-award payments or flexibility arrangements.
61 -69	The Guild understands the Commission has dealt with this issue
70 – 76	Oppose See response to paragraph 64 of the ABI and paragraphs 32-24 of the APESMA submissions above.
77- 85	Oppose See response to paragraph 25 of the APESMA submissions above.
86 – 95	Support
96 – 97	Support

Health Services Union (submissions filed on 28 January 2015)

Paragraph number	The Guild Response
39	Oppose See response to paragraph 25 of the APESMA submissions above.
40	Support
41	See response to paragraph 64 of the ABI and paragraphs 32-24 of the APESMA submissions above.

Other Comments

Commissioned Plain English Draft of the Award

The Guild has commissioned the services of the Plain English Foundation to make comment on the Exposure Draft and to provide recommendations as to whether any of the award clauses could be more clearly expressed. They have not been engaged to provide a complete re-write of the Award. They are working within the Commission guidelines regarding layout.

The first set of the Plain English Foundation recommendations was received on 17 February 2015 (ahead of the end of March 2015 which was originally anticipated). The Guild will review the recommendations and circulate them with the other interested parties shortly. The Guild maintains that the review by the Plain English Foundation is not inconsistent with the Exposure Draft review process adopted by the Commission and it will not delay the completion of the review of the Award.

Illustrative Examples

The Guild understands that in the Group 1 proceedings number of parties made submissions on whether illustrative examples should be included in awards and that the Commission decided ([2014] FWCFB 9412 [63]) that relevant and accurate examples will make modern awards easier to understand and be included where appropriate.

The community pharmacy sector is primarily made up of small businesses that do not employ specialist human or industrial relations personnel. The Guild submits that employers and employees in the sector would benefit from the inclusion of examples throughout the Award.

In the comments on the Exposure Draft filed on 28 January 2015 The Guild identified where, throughout the Exposure Draft relevant examples should be included. The Guild will circulate the text of the examples proposed to the other interested parties for comment.

Conference with a single member

On 10 February 2015 a conference was convened before Commissioner Bisset. The Guild appreciates the Commissioner's assistance. The conference enabled the parties to more fully explain their positions and narrowed the areas of disagreement.

Following the conference the interested organisations agreed to consider their position on a number of matters. The discussions between the parties are ongoing, however a further conference before Commissioner Bisset may be beneficial before the matter proceeds to hearing.

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