



13th June 2018

FAMILY FRIENDLY WORK ARRANGEMENTS SUBMISSION – 13 June 2018 - AM2015/2

Background

1. This submission is made following the Fair Work Commission (Commission) Full Bench statement [2018] FWCFB 2443 of 3 May 2018.
2. In accordance with the directions, parties are invited to make comments in relation to draft Family Friendly Work Arrangements model clause.

Draft Family Friendly Work Arrangements Model Clause

3. The Pharmacy Guild of Australia (the Guild) notes that the provisional model based upon section 65 of the *Fair Work Act 2009*, has introduced a range of additional requirements to be considered.
4. The Guild notes that the provisional model clause is a term about s139(1)(b) and s65 for 'flexible working arrangements, particularly for employees with family and caring responsibilities'.
5. The Guild submits that the provisional model clause is not a permitted term under s55(1) as the provisional model clause X.3 would operate to exclude s65 in that they negate the employer's right under s65(2) not to consider a request for flexible working arrangements until the employee has worked with them for 12 months. The Guild position is consistent with decision in [2015] FWCFB 3023.
6. Similarly, clauses X.9 and X.10 may operate to exclude s65 in that it removes the employer's right under s65(5) to refuse an employee's request for altered working arrangements on reasonable business grounds – particularly X.9 where the employer must seek to confer with the employee and genuinely reach an arrangement to accommodate the employee's circumstances.
7. A modern award must only contain terms that are permitted or required under 136(1), whilst incidental terms can be included however only to the extent to assist a particular terms to operate (142(1)(b)).

8. While, the draft model clause adds to the provisions outlined in s65, it is the Guild's view that based upon the paragraph 392 of [2018] FWCFB 1692, it cannot be argued in a practical sense that the proposed inclusions are essential for s65 to operate.
9. In further consideration, s138 indicates a modern award may include terms that are permitted only to the extent necessary to achieve the modern award objectives and the minimum wages objective.
10. The modern award objectives at s134(1)(d) and (f) provide consideration for the proposed additional changes to s65 obligations on an employer and the business operations. The proposed changes will place a restraint on when and/or how an employer may refuse a request for flexible working arrangements that effects the operating requirements of the business. Similarly the increased regulatory burden, especially for a small business, when consideration, consulting with and refusing a flexible working arrangement request places significant impose on the business operations.
11. It is the Guild's view that the inclusion of the changes to the s65 as proposed by the draft model clause is not permitted under s136 and potentially contrary to the s134.

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The Pharmacy Guild of Australia