

EXPOSURE DRAFT—PHARMACY INDUSTRY AWARD 2015

PLAIN LANGUAGE DRAFT

Table of Contents

Part 1— Application and Operation.....	3
1. Title	3
2. Definitions	3
3. The National Employment Standards and this award	3
4. Coverage.....	3
5. Award flexibility	4
6. Facilitative provisions	4
Part 2— Types of employment and classifications.....	4
7. Types of employment.....	4
8. Classifications	6
Part 3— Hours of Work.....	6
9. Ordinary hours of work	6
10. Rostering arrangements.....	7
11. Breaks.....	7
Part 4— Wages and Allowances	8
12. Wages	8
13. Annual salary for pharmacists.....	10
14. Allowances	10
15. Superannuation.....	12
Part 5— Overtime and Penalty Rates.....	12
16. Overtime.....	12
17. Penalty rates	14
Part 6— Leave, Public Holidays and Other NES Entitlements	14
18. Annual leave.....	15
19. Personal/carer’s leave and compassionate leave.....	15
20. Parental leave and related entitlements	15
21. Public holidays	15
22. Community service leave	15

Plain Language Draft—Exposure Draft Pharmacy Industry Award 2014

23.	Termination of employment	15
24.	Redundancy	15
Part 7— Consultation and Dispute Resolution		15
25.	Consultation	15
26.	Dispute resolution	15
Schedule A —Classification Definitions.....		16
Schedule B —Summary of Hourly Rates of Pay		17
Schedule C —Summary of Monetary Allowances		18
Schedule D —Supported Wage System		19
Schedule E —National Training Wage		20
Schedule F —2014 Part-day public holidays.....		21
Schedule G —Definitions.....		22

Part 1—Application and Operation

1. Title

1.1 This is the *Pharmacy Industry Award* [2016].

1.2 This award comes into operation on [*insert date*].

Clauses 1.2, 1.4 and 1.5 of the Exposure Draft Pharmacy Industry Award 2014 (revised 25 September 2015) will be dealt with in Part B of the process

2. Definitions

Schedule G—Definitions defines expressions used in this award.

3. The National Employment Standards and this award

This clause will be dealt with in Part B of the process

4. Coverage

4.1 This award covers, to the exclusion of any other modern award:

- (a) employers in the community pharmacy industry throughout Australia; and
- (b) employees (with a classification defined in Schedule A—Classification Definitions) of employers mentioned in clause 4.1(a).

4.2 This award also covers:

- (a) on-hire employees working in the community pharmacy industry (with a classification defined in Schedule A—Classification Definitions) and the on-hire employers of those employees; and
- (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 Schedule A—Classification Definitions) and the group training employers of those trainees.

4.3 However, this award does not cover:

The word “community” has been included at 4.3(a) because if it were not a community pharmacy there would be no need for the exclusion as it would not be within the coverage set out in clauses 4.1 and 4.2.

- (a) employees working in a community pharmacy that does not sell medicines or drugs by retail and that is:
 - (i) owned by a hospital or other public institution; or

- (ii) operated by government; or
 - (b) employees excluded from award coverage by the Act; or
- NOTE: See [section 143\(7\)](#) of the Act.
- (c) employees covered by a modern enterprise award or an enterprise instrument; or
 - (d) employees covered by a State reference public sector modern award or a State reference public sector transitional award; or
 - (e) employers of employees mentioned in clauses 4.3(a) to (d).

4.4 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 that they do and the industry in which they work.

NOTE: An employee working in the community pharmacy industry who is not covered by this award may be covered by an award with occupational coverage.

5. Award flexibility

This clause will be dealt with in Part B of the process

6. Facilitative provisions

This clause will be dealt with in Part B of the process

Part 2—Types of employment and classifications

7. Types of employment

7.1 Employees covered by this award may be:

- (a) full-time employees; or
- (b) part-time employees; or
- (c) casual employees.

7.2 An employee who is engaged to work 38 ordinary hours per week (averaged over 2 consecutive weeks) is a full-time employee.

7.3 An employee who is engaged to work for fewer ordinary hours per week than mentioned in clause 7.2 and whose hours of work are reasonably predictable is a part-time employee.

7.4 An employee who is not covered by clause 7.2 or 7.3 may be engaged and paid as a casual employee.

7.5 On 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.

7.6 Part-time employment

- (a) Subject to this award, the pay and conditions on which a part-time employee is engaged must, proportionately, be the same as those on which a full-time employee who does the same kind of work is engaged.
- (b) On engaging a part-time employee, the employer must agree in writing with the employee:
 - (i) the number of ordinary hours to be worked each day; and
 - (ii) the days of the week on which the employee will work; and
 - (iii) the times at which the employee will start and finish work each day; and
 - (iv) when meal breaks may be taken and their duration.
- (c) An agreement under clause 7.6(b)) must also provide that:
 - (i) the minimum period for which the employee may be rostered to work on any shift is 3 consecutive hours;
 - (ii) for each ordinary hour worked, the employee must be paid in accordance with clause 12.1;
 - (iii) for each hour worked in excess of the agreed number of ordinary hours, the employee must be paid at the overtime rate in accordance with clause 16.2;
 - (iv) subject to this clause, the agreement can only be varied, permanently or temporarily, by the parties in writing.
- (d) The employer must keep the original of any agreement or variation and give a copy to the employee.
- (e) Subject to clause 7.6(f), the roster of a part-time employee, but not the agreed number of hours, may be changed:
 - (i) by the employer giving the employee 7 days, or in an emergency 48 hours, written notice of the change; or
 - (ii) at any time by the employer and employee by mutual agreement.
- (f) The roster of a part-time employee is not to be changed:
 - (i) from pay period to pay period; or
 - (ii) so as to avoid any award entitlement.
- (g) A part-time employee who has worked the agreed number of hours on any day or in any pay period may agree to work additional hours on the terms applicable to hours worked by a casual employee and up to any maximum applicable to those hours under this award.

7.7 Casual employment

- (a) A casual employee does not have an entitlement to reasonably predictable hours of work.
- (b) The minimum number of hours for which a casual employee may be rostered to work on any day is 3.
- (c) Unless casual employees agree to be paid weekly or fortnightly, they must be paid at the end of the rostered hours each day.

7.8 Moving between types of employment

- (a) A full-time or casual employee cannot become a part-time employee without 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:
 - (i) may request to be given part-time work; and
 - (ii) may return to full-time employment at a date agreed with the employer.
- (d) An agreement mentioned in clause 7.8(c)(ii) must be recorded in writing.

8. Classifications

- 8.1** An employer must classify an employee covered by this award in accordance with Schedule A—Classification Definitions.
- 8.2** The classification must be based on the skill level that the employer determines is required to be exercised in order for the employee to carry out the principal functions of the employment.
- 8.3** Employers must notify employees in writing of their classification and of any change to it.

Part 3—Hours of Work

9. Ordinary hours of work

- 9.1** Ordinary hours may be worked on any day between 7.00 am and midnight.
- 9.2** Ordinary hours of work are continuous, except for rest breaks and meal breaks.
- 9.3** The maximum number of ordinary hours that can be worked by an employee on any day is 12.
- 9.4** Nothing in this clause affects the shop trading hours of a community pharmacy under relevant State or Territory legislation.

10. Rostering arrangements

10.1 The following rostering arrangements apply to permanent employees:

- (a) employees must be rostered to work ordinary hours in such a way that they have:
 - (i) 2 consecutive days off each week; or
 - (ii) 3 consecutive days off in a 2 week period;
- (b) subject to clause 10.1(c), employees must not be rostered to work ordinary hours on more than 5 days in a week;
- (c) employees may be rostered to work ordinary hours on 6 days one week if they are rostered to work ordinary hours on no more than 4 days the following week;
- (d) employees must not be rostered to work (whether ordinary hours or overtime) on more than 6 consecutive days;
- (e) employees may be rostered to work (whether ordinary hours or overtime) on up to 3 Sundays in a 4 week cycle if they are rostered to have 3 consecutive days off every 4 weeks, including a Saturday and Sunday.

10.2 Clause 10.1(e) does not apply to a part-time employee who has agreed under clause 7.6 to work Saturday or Sunday (or both) each week and have at least 2 consecutive days off.

10.3 Clause 10.1 does not apply to the extent that the employer and employee agree different arrangements at the written request of the employee.

10.4 Different arrangements agreed under clause 10.3 must be recorded in the time and wages record.

10.5 The employee may end an agreement under clause 10.3 at any time by giving the employer 4 weeks written notice.

10.6 An agreement under clause 10.3 may provide for it to end automatically on a day, or at the end of a period, specified in it.

10.7 An employee cannot be required by a condition of employment to make a request under clause 10.3 .

10.8 Nothing in clause 10.5 applies to an agreement under clause 7.6(b).

11. Breaks

11.1 An employee who works on any day the number of ordinary hours specified in an item of column 1 of Table 1 is entitled to a break or breaks as specified in column 2 of that Table opposite that item.

Table 1—Entitlements to meal and rest break(s)

Column 1	Column 2
4 or more 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 One 30 to 60 minute unpaid meal break

11.2 A meal break cannot be taken in the first 2.5 hours, or after 5 hours, of work.

11.3 A rest break cannot be taken:

- (a) in the first hour of work; or
- (b) in the first hour of work after a meal break.

Part 4—Wages and Allowances

12. Wages

12.1 An employer must pay an employee in accordance with Table 2 for ordinary hours worked by the employee:

- (a) for an adult full-time employee with a classification specified in column 1, wages at the minimum weekly rate specified opposite that classification in column 2; and
- (b) for an adult part-time employee with a classification specified in column 1, wages at the minimum hourly rate specified opposite that classification in column 3; and
- (c) for an adult casual employee with a classification specified in column 1, wages at the minimum casual hourly rate specified opposite that classification in column 4; and
- (d) for an employee who is under 21 years of age and classified as a pharmacy assistant, at the following percentage of the minimum rate that would otherwise be applicable under Table 2:
 - (i) 45% for an under 16 year old;
 - (ii) 50% for a 16 year old;
 - (iii) 60% for a 17 year old;
 - (iv) 70% for an 18 year old;
 - (v) 80% for a 19 year old;
 - (vi) 90% for a 20 year old.

Table 2—Minimum wages for adult employees

Column 1 Employee classification	Column 2 Minimum weekly rate	Column 3 Minimum hourly rate	Column 4 Minimum casual hourly rate (inclusive of 25% casual loading)
pharmacy assistant			
Level 1	\$721.50	\$18.99	\$23.74
Level 2	\$738.70	\$19.44	\$24.30
Level 3	\$764.90	\$20.13	\$25.16
Level 4	\$796.30	\$20.96	\$26.20
pharmacy student			
1 st year of course	\$721.50	\$18.99	\$23.74
2 nd year of course	\$738.70	\$19.44	\$24.30
3 rd year of course	\$764.90	\$20.13	\$25.16
4 th year of course	\$796.30	\$20.96	\$26.20
pharmacy intern			
1 st half of training	\$806.80	\$21.23	\$26.54
2 nd half of training	\$834.40	\$21.96	\$27.45
pharmacist	\$943.90	\$24.84	\$31.05
experienced pharmacist	\$1,033.80	\$27.21	\$34.01
pharmacist in charge	\$1,058.00	\$27.84	\$34.80
pharmacist manager	\$1,179.10	\$31.03	\$38.79

NOTE: Schedule B—Summary of Hourly Rates of Pay contains a summary of hourly rates of pay, including overtime and penalty rates.

- 12.2** A pharmacy student is only treated as being in a particular year of a course from day 1 of term 1 of that year of the course.
- 12.3** Subject to clause 12.2, a pharmacy student beginning a Master of Pharmacy course is treated as being in the 3rd year of a course.
- 12.4** The employer may determine the pay period of an employee, which must be either weekly or fortnightly.
- 12.5** Wages must be paid for a pay period according to the number of hours worked by the employee in the period.
- 12.6** Wages must be paid on a regular pay day no later than 4 days after the end of the pay period.
- 12.7** Employers must notify employees in writing about which day is the regular pay day.

- 12.8** The regular pay day of an employee may only be changed by the employer giving the employee 4 weeks written notice.
- 12.9** For employees eligible for a supported wage, see Schedule D—Supported Wage System.
- 12.10** For employees undertaking a traineeship, see Schedule E—National Training Wage.

13. Annual salary for pharmacists

- (a) A pharmacist may agree in writing with their employer to be paid an annual salary that satisfies this award in relation to all or any of the following matters:
- (i) overtime rates;
 - (ii) penalty rates;
 - (iii) payments for public holidays;
 - (iv) payments for annual leave;
 - (v) annual leave loading;
 - (vi) meal allowances;
 - (vii) on premise meal allowances.
- (b) 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 13(a).
- (c) An annual salary must not result in a pharmacist being paid less for a period than would have been the case if an annual salary had not been agreed.
- (d) The employer must keep the original of any agreement under clause 13(a) and give a copy to the pharmacist.
- (e) The employer must keep a record of hours worked each day by a pharmacist who has entered into an agreement under clause 13(a) showing the times at which the pharmacist started and finished work that day.
- (f) A record mentioned in clause 13(e) must be:
- (i) countersigned weekly by the pharmacist; and
 - (ii) kept at the place of employment for at least 6 years.

14. Allowances

14.1 Meal allowances

- (a) This clause applies to an employee who:
- (i) has worked 6 or more ordinary hours on any day; and

- (ii) is required to work on that day overtime, or beyond the time at which the employee ordinarily finishes work for the day, for more than 1.5 hours; and
- (iii) was not advised of the requirement mentioned in clause 14.1(a)(ii) on or before the previous day; and
- (iv) cannot reasonably return home for a meal within the period of the meal break.

The expression “adequate meal” is subjective and uncertain.

- (b) The employer must:
 - (i) pay the employee a meal allowance of **\$17.46**; or
 - (ii) supply the employee with an adequate meal.
- (c) If the number of hours worked under a requirement mentioned in clause 14.1(a)(ii) exceeds 4, the employer must pay the employee a further meal allowance of **\$15.64**.
- (d) This clause does not apply if the hours worked under a requirement mentioned in clause 14.1(a)(ii) were agreed under clause 7.6.

14.2 On-premise meal allowance

- (a) This clause applies to a pharmacist who is required to take a meal break on the premises so as to be available to attend to urgent matters requiring the involvement of a pharmacist.
- (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 to which the pharmacist is entitled.
- (c) In clause 14.2(b), the **enhanced hourly rate** means **150%** of the minimum hourly rate applicable, according to the classification of the pharmacist, under column 3 of Table 2.

14.3 Clothing allowance

- (a) This clause applies to an employee who is required to wear special clothing, such as a uniform or protective clothing, that is not supplied or paid for by the employer.
- (b) The employer must reimburse the employee for the cost of purchasing the clothing, including purchasing replacement clothing due to normal wear and tear.
- (c) The employer must, if the clothing needs to be laundered:
 - (i) undertake the laundering at no cost to the employee; or
 - (ii) pay the employee an allowance of:
 - **\$6.25** each week for a full-time employee; or

- **\$1.25** each shift for a part-time or casual employee.

14.4 Moving expenses

The scope of paragraph (a) is unclear as the meaning of “township” is not certain. Nor is it clear what is meant by “family”.

- (a) This clause applies if an employer transfers an employee from one township to another.
- (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.

14.5 Motor vehicle allowance

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.

14.6 Taxi fare reimbursement

- (a) This clause applies if:
 - (i) an employee starts work before 7.00 am or finishes work after 10.00 pm; and
 - (ii) the employee’s regular means of transport is not available; and
 - (iii) the employee is unable to arrange their own alternative means of transport; and
 - (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.
- (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.

15. Superannuation

This clause will be dealt with in Part B of the process

Part 5—Overtime and Penalty Rates

16. Overtime

The clause relating to reasonable overtime can be omitted as it deals with a matter covered by the National Employment Standards.

- 16.1** An employer must pay a full-time employee at the overtime rate for any hours worked:
- (a) in excess of those mentioned in clauses 7.2 and 9.3; or
 - (b) between midnight and 7.00 am.
- 16.2** An employer must pay a part-time employee at the overtime rate for any hours worked in excess of the number of ordinary hours that the employee has agreed to work under clause 7.6(b).

Overtime for casual employees will be considered by a separate Full Bench in casual employment common issue proceedings in matter AM2014/197.

NOTE: Under the National Employment Standards ([section 62](#)) an employee (whether full-time, part-time or casual) may refuse to work additional hours if they are unreasonable. [Section 62](#) sets out factors to be taken into account in determining whether the additional hours are reasonable or unreasonable.

- 16.3** The overtime rate is the relevant percentage specified in column 2 of Table 3 (depending on when the overtime was worked as specified in column 1 of that Table) of the minimum hourly rate applicable, according to the classification of the employee, under column 3 of Table 2.

Table 3—Overtime rates

Column 1	Column 2
For overtime worked on	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%

NOTE: Casual loading is not paid on overtime worked by a casual employee. Accordingly, the overtime rate for a casual employee is based on the minimum hourly rate in column 3 of Table 2, not column 4 which includes the 25% casual loading.

- 16.4** With the consent of the employer, an employee may choose to take time off instead of being paid for overtime.
- 16.5** 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 3 (depending on when the hour was worked as specified in column 1 of that Table).

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 x 150 / 100).

- 16.6** Time off must be taken:
- (a) within the period of 4 weeks after the overtime is worked; and
 - (b) at a time within that period agreed by the employer and employee.

16.7 Despite clause 16.6, 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.

17. Penalty rates

17.1 An employer must pay an employee in accordance with Table 4 for ordinary hours worked by the employee during a period specified in column 1 of that Table:

- (a) for an employee other than a casual employee, at the percentage specified in column 2 of Table 4 of the minimum hourly rate applicable, according to the classification of the employee, under column 3 of Table 2; or
- (b) for a casual employee, at the percentage specified in column 3 of Table 4 of the minimum hourly rate applicable, according to the classification of the employee, under column 3 of Table 2.

Table 4—Penalty rates

Column 1 For hours work on	Column 2 Penalty rate	Column 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%
Between 8.00 am and 6.00 pm	125%	150%
Between 6.00 pm and 9.00 pm	150%	175%
Between 9.00 pm and midnight	175%	200%
Sunday—all day	200%	225%
Public holidays—all day	250%	275%

17.2 Penalty rates are not cumulative on overtime rates.

NOTE: See Schedule B—Summary of Hourly Rates of Pay for a summary of hourly rates of pay, including overtime and penalty rates.

Part 6—Leave, Public Holidays and Other NES Entitlements

These clauses will be dealt with in Part B of the process

- 18. Annual leave**
- 19. Personal/carer’s leave and compassionate leave**
- 20. Parental leave and related entitlements**
- 21. Public holidays**
- 22. Community service leave**
- 23. Termination of employment**
- 24. Redundancy**

Part 7—Consultation and Dispute Resolution

These clauses will be dealt with in Part B of the process

- 25. Consultation**
- 26. Dispute resolution**

Schedule A—Classification Definitions

- A.1 pharmacy assistant level 1** is an employee working as a pharmacy assistant in a community pharmacy who is not covered by any other classification in this Schedule.
- 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.
- 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.
- A pharmacy assistant level 3 may be required by the employer to:
- (a) to supervise pharmacy assistants levels 1 or 2; or
 - (b) to assist a pharmacist in the dispensing section of a community pharmacy; or
 - (c) to work in a compounding lab or compounding section of a community pharmacy assisting with extemporaneous preparations as the major part of their duties.
- 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.
- A pharmacy assistant level 4 may be required by the employer to supervise pharmacy assistants levels 1, 2 or 3.
- 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.
- 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.
- 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).
- 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.
- 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.
- 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.

Schedule B—Summary of Hourly Rates of Pay

Schedule C—Summary of Monetary Allowances

Schedule D—Supported Wage System

Schedule E—National Training Wage

Schedule F—2014 Part-day public holidays

Schedule G—Definitions

Act means the *Fair Work Act 2009 (Cth)*.

community pharmacy means a business conducted on premises:

- (a) that are established wholly or partly for compounding or dispensing prescriptions or selling medicines or drugs; and
- (b) from which other goods may be sold by retail; and
- (c) that, if required to be registered under legislation for the regulation of pharmacies in force in the place in which they are located, are so registered.

employee means a national system employee as defined by [section 13](#) of the Act.

employer means a national system employer as defined by [section 14](#) of the Act.

enterprise instrument has the meaning given by subitem 2(1) of Schedule 6 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth)*.

on-hire employee means an employee of an on-hire employer who is on-hired to an employer covered by this award.

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.

National Employment Standards, see [Part 2-2](#) of the Act.

State reference public sector modern award has the meaning given by subitem 3(2) of Schedule 6A to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth)*.

State reference public sector transitional award has the meaning given by subitem 2(1) of Schedule 6A to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Cth)*.

Table 1 means the Table in clause 11.1.

Table 2 means the Table in clause 12.1.

Table 3 means the Table in clause 16.3.

Table 4 means the Table in clause 17.1.

Plain language drafting tracking document

Overview

The aim of plain language legislative drafting is to make a legislative text as simple and as clear as possible without losing any of its precision. It is not just about using familiar words and short sentences. Organisation and document design also play a big role. The award has been redrafted having regard to the following general guidelines:

- Use short familiar words and leave out unnecessary words
- Avoid archaic language
- Use short sentences, keeping related words as close together as possible
- Avoid having more than 5 lines of unbroken text
- Confine each clause to one topic only
- Draft gender-neutrally.
- Use the active voice instead of the passive voice
- Use the present indicative wherever possible
- Keep cross-referencing to a minimum
- Do not use “shall” or “will” to impose an obligation, use “must”
- Use pronouns instead of repeating the noun wherever possible
- Do not use “such” as a substitute for “the”, “that” or “any”
- Write numbers as figures and not as words.
- Tables included in the document should be individually numbered.
- Use “on” instead of “upon”
- Use “they” as a singular pronoun where appropriate
- Use notes to help readers navigate and understand the document

Clauses dealing with multiple topics have been split into 2 or more clauses.

In several places the existing award uses expressions that have an unclear meaning. In order to avoid a possible change in legal meaning caused by substituting a new term, these expressions have been retained. There are several examples in the existing clause 11 (“adequate meal”, “township”). Other terms could benefit from being defined such as “family” and “permanent employees”.

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Re-drafted clause	Plain language drafter comments
<p>Part 1—Application and Operation</p> <p>1. Title</p> <p>1.1 This award is the <i>Pharmacy Industry Award 2010</i>.</p> <p>1.2 amended in accordance with para [11] [2014] FWCFB 9412 and para [8] of [2015] FWCFB 4658</p> <p>1.2 This modern award, as varied, commenced operation on 1 January 2010. A variation to this award does not affect any right, privilege, obligation or liability that a person acquired, accrued or incurred under the award as it existed prior to the variation.</p> <p>1.3 Schedule D—Definitions sets out definitions that apply in this award.</p> <p>1.4 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>1.5 inserted in accordance with para [16] of [2014] FWCFB 9412</p> <p>1.5 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>Part 1—Application and Operation</p> <p>1. Title</p> <p>1.1 This is the <i>Pharmacy Industry Award [2016]</i>.</p> <p>1.2 This award comes into operation on [insert date].</p> <p><i>Clauses 1.2, 1.4 and 1.5 of the Exposure Draft Pharmacy Industry Award 2014 (revised 25 September 2015) will be dealt with in Part B of the process</i></p> <p>2. Definitions</p> <p>Schedule G—Definitions defines expressions used in this award.</p>	<p>This clause covers multiple topics. It has been split into separate clauses dealing with title and commencement (clause 1), definitions (clause 2)</p> <p>Clause 1.1: The word “award” is unnecessary. It is clear from the heading that this is an award. It is sufficient to say “This is the <i>Pharmacy Industry Award 2010</i>”.</p> <p>Clause 1.2: Other clauses correctly just refer to the document as “this award”. It is unnecessary for this clause to refer to the award as a “modern award”.</p> <p>Using the present indicative, the commencement clause may simply provide “This award comes into operation on...”.</p> <p>Clause 1.3: It is more explanatory to say that the Schedule G “defines expressions used in this award”. See new draft clause 2.</p>
<p>2 The National Employment Standards and this award</p>	<p><i>This clause will be dealt with in Part B of the process</i></p>	

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Re-drafted clause	Plain language drafter comments
<p>3 Coverage</p> <p>3.1 This industry award covers employers throughout Australia in the community pharmacy industry and their employees in the classifications listed in Schedule A—Classification Definitions to the exclusion of any other modern award.</p> <p>3.2 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. Coverage</p> <p>4.1 This award covers, to the exclusion of any other modern award:</p> <p>(a) employers in the pharmacy industry throughout Australia; and</p> <p>(b) employees (with a classification defined in Schedule A—Classification Definitions) of employers mentioned in clause 4.1(a).</p> <p>4.2 This award also covers:</p> <p>(a) on-hire employees working in the community pharmacy industry (with a classification defined in Schedule A—Classification Definitions) 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 Schedule A—Classification Definitions) and the group training employers of those trainees.</p>	<p>Clause 3.1: The insertion of “industry” before “award” is unnecessary. The expression “throughout Australia” should cover “the community pharmacy industry” and not “employers”. The expression at the end “to the exclusion of any other modern award” relates to the word “covers” in the early part of the subclause and should be moved closer to it.</p> <p>Clause 3.2: This is a definition and properly belongs in Schedule G (where it also appears). In redrafting it the opportunity has been taken to clarify the linkages between the various paragraphs. Clause 3.2 may be read as though paragraphs (c) and (d) only apply to paragraph (b).</p> <p>The words “by the employer” are unnecessary and “selling” is a more familiar word than “vending”.</p>
<p>3.3 This award does not cover employment in:</p> <p>(a) a pharmacy owned by a hospital or other public institution; or</p> <p>(b) a pharmacy operated by government,</p> <p>where their goods or services are not sold by retail to the general public.</p> <p>3.4 This award covers any employer which supplies labour on an on-hire basis in the industry set out in clause 3.1 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>3.5 This award covers employers which provide group training services for trainees engaged in the industry and/or parts of industry set out at 3.1 and those trainees engaged by a group training service hosted by a company to perform work at a location where the activities described in clause 3.1 are being performed. This subclause operates subject to the exclusions from coverage in this award.</p> <p>3.6 This award does not cover:</p> <p>(a) employees excluded from award coverage by the <i>Fair Work Act 2009</i> (Cth) (the Act);</p> <p>(b) 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; or</p> <p>(c) employees who are covered by a State reference public sector modern</p>	<p>4.3 However, this award does not cover:</p> <div style="border: 1px solid black; background-color: #e0f0e0; padding: 5px; margin: 10px 0;"> <p>The word “community” has been included at 4.3(a) because if it were not a community pharmacy there would be no need for the exclusion as it would not be within the coverage set out in clauses 4.1 and 4.2.</p> </div> <p>(a) employees working in a community pharmacy that does not sell medicines or drugs by retail and that is:</p> <p>(i) owned by a hospital or other public institution; or</p> <p>(ii) operated by government; or</p> <p>(b) employees excluded from award coverage by the Act; or</p> <p>NOTE: See section 143(7) of the Act.</p> <p>(c) employees covered by a modern enterprise award or an enterprise instrument; or</p> <p>(d) employees covered by a State reference public sector modern award or a State reference public sector transitional award; or</p> <p>(e) employers of employees mentioned in clauses 4.3(a) to (d).</p>	<p>Clauses 3.3 and 3.6 deal with employment that the award does not cover and clauses 3.4 and 3.5 deal with employment that the award covers. It is preferable to structure the clause so that employment arrangements that the award covers are dealt with together and those that the award does not cover are also dealt with together.</p> <p>Clause 3.3 refers to covering “employment” whereas the other subclauses refer to covering employers and employees. There should be consistency in language.</p> <p>The subclause should describe the kind of pharmacy (which necessarily must be a community pharmacy or else there is no need for the exclusion) and then provide that the award does not cover employees working in that kind of pharmacy and their employer. Further the focus should be on the selling of medicines and drugs not generally on the retail selling of goods or services.</p> <p>Clause 3.4 can be simplified by including in Schedule G definitions of “on-hire employee” and “on-hire employer”. The cross-referencing to clause 3.1 causes the reader work that can easily be avoided by directly referring to the community pharmacy industry. The sentence at the end is unnecessary as the document must be read as a whole.</p> <p>Clause 3.5 is complex. The reference to trainees being hosted “by a company to perform work at a location where the activities described in clause 3.1 are being performed” is an unhelpful way to refer to hosting by an employer covered by the award to work in the community pharmacy industry. Further, the subclause, in referring to employers that provide group training services for trainees and to trainees engaged by a group training service, does not expressly make clear who it is that is the actual employer of the trainees. Again, the final sentence is unnecessary as the document must be read as a</p>

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Re-drafted clause	Plain language drafter comments
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.		whole. The expression “Act” is defined in Schedule G and that definition can be relied on in clause 3.6(a). Clause 3.6(b) can be simplified by including in Schedule G a definition of “enterprise instrument”. Clause 3.6(c) can be simplified by including in Schedule G definitions of “State reference public sector modern award” and “State reference public sector transitional award”. Further, in each case the employees not covered by the award can be described in separate paragraphs and then a paragraph at the end can refer to the employers of those employees with all paragraphs being governed by the opening words “this award does not cover”.
<p>Note deleted in accordance with para [29] [2014] FWCFB 9412</p> <p>3.7 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 that employee are covered by an award with occupational coverage.</p>	<p>4.4 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 that they do and the industry in which they work.</p> <p>NOTE: An employee working in the community pharmacy industry who is not covered by this award may be covered by an award with occupational coverage.</p>	<p>In clause 3.7 the reference to “the environment in which the employee normally performs the work” is obscure.</p> <p>The operation of the Note should be confined in its terms to employees working in the community pharmacy industry.</p>
<p>4. Award flexibility</p>	<p><i>This clause will be dealt with in Part B of the process</i></p>	
<p>5. Facilitative provisions</p>	<p><i>This clause will be dealt with in Part B of the process</i></p>	
<p>Part 2—Types of Employment and Classifications</p> <p>6. Employment categories</p> <p>6.1 Employees under this award will be employed in one of the following categories:</p> <p>(a) full-time;</p> <p>(b) part-time; or</p> <p>(c) casual.</p> <p>6.2 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>6.3 Full-time employment</p> <p>A full-time employee is engaged to work an average of 38 hours per week.</p>	<p>Part 2 Types of Employment and classifications</p> <p>7. Types of employment</p> <p>7.1 Employees covered by this award may be:</p> <p>(a) full-time employees; or</p> <p>(b) part-time employees; or</p> <p>(c) casual employees.</p> <p>7.2 An employee who is engaged to work 38 ordinary hours per week (averaged over 2 consecutive weeks) is a full-time employee.</p> <p>7.3 An employee who is engaged to work for fewer ordinary hours per week than mentioned in clause 7.2 and whose hours of work are reasonably predictable is a part-time employee.</p> <p>7.4 An employee who is not covered by clause 7.2 or 7.3 may be engaged and paid as a casual employee.</p>	<p>This clause covers several topics. It has been split into several clauses: types of employment (clauses 7.1 to 7.5); part-time employment (clause 7.6), casual employment (clause 7.7) and moving between types of employment (clause 7.8).</p> <p>Clause 6.1: The use of “will be” in an award that also covers existing employees is confusing. Further, when “the following” is used in the lead-in to paragraphs it is unnecessary to have a conjunction between the paragraphs.</p> <p>Clause 6.2: This clause is imposing an obligation and “must” is the preferable word to use for that purpose. As a general rule too it is preferable to avoid nominalisation and instead use a verb to describe the action. Thus use “On engaging an employee” rather than “At the time of engagement”.</p> <p>Clause 6.3: The underlying objective of this subclause is to say that if you are engaged to work 38 ordinary hours per week you are a full-time employee.</p>

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Re-drafted clause	Plain language drafter comments
	<p>7.5 On 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>The current draft reverses what needs to be said. Further it overlooks the 2 week averaging that is provided by clause 8.2(e).</p>
<p>6.4. Part-time employees</p> <p>(a) A part-time employee:</p> <p>(i) is engaged to work less than 38 hours per week; and</p> <p>(ii) has reasonably predictable hours of work;</p> <p>(iii) except as provided elsewhere in this award, receives on a pro-rata basis pay and conditions equivalent to those of full-time employees who do the same kind of work.</p> <p>(b) 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>(i) the hours worked each day;</p> <p>(ii) which days of the week the employee will work;</p> <p>(iii) the actual starting and finishing times of each day;</p> <p>(iv) that any variation will be in writing;</p> <p>(v) that the minimum daily engagement is three hours;</p> <p>(vi) all time worked in excess of agreed hours is paid at the overtime rate; and</p> <p>(vii) the times of taking and the duration of meal breaks.</p>	<p>7.6 Part-time employment</p> <p>(a) Subject to this award, the pay and conditions on which a part-time employee is engaged must, proportionately, be the same as those on which a full-time employee who does the same kind of work is engaged.</p> <p>(b) On engaging a part-time employee, the employer must agree in writing with the employee:</p> <p>(i) the number of ordinary hours to be worked each day; and</p> <p>(ii) the days of the week on which the employee will work; and</p> <p>(iii) the times at which the employee will start and finish work each day; and</p> <p>(iv) when meal breaks may be taken and their duration.</p> <p>(c) An agreement under clause 7.6(b)) must also provide that:</p> <p>(i) the minimum period for which the employee may be rostered to work on any shift is 3 consecutive hours;</p> <p>(ii) for each ordinary hour worked, the employee must be paid in accordance with clause 12.1;</p> <p>(iii) for each hour worked in excess of the agreed number of ordinary hours, the employee must be paid at the overtime rate in accordance with clause 16.2;</p> <p>(iv) subject to this clause, the agreement can only be varied, permanently or temporarily, by the parties in writing.</p>	<p>Clause 6.4: This subclause rolls together the definition of a part-time employee and their terms and conditions of employment. In describing a part-time employee it suffers from the same defect as clause 6.3 does in relation to full-time employees.</p> <p>Paragraph (b) contains elements that can vary from part-time employee to part-time employee, such as the number of hours and the days to be worked, and other elements that must apply to all part-time employees, such as the length of the minimum daily engagement and the requirements as to overtime. It is preferable to separate these out. See new draft clause 7.6(b) which deals with the variable terms of an agreement and new draft clause 7.6(c) which deals with the fixed terms of an agreement.</p>
<p>(c) Variation to regular pattern of work</p> <p>(i) Any agreement to vary the regular pattern of work will be made in writing before the variation occurs.</p> <p>(ii) Any agreement to vary the agreed hours may be either a permanent agreed variation to the pattern of work or a temporary agreed variation (e.g. a single shift or roster period). The varied hours will be the ‘agreed hours’ for the purposes of clause 6.4(d).</p> <p>(iii) The agreement and variation will be retained by the employer and a copy given to the employee.</p> <p>(d) For each ordinary hour worked, a part-time employee will be paid the minimum hourly rate of pay for the relevant classification in clause</p>	<p>(d) The employer must keep the original of any agreement or variation and give a copy to the employee.</p> <p>(e) Subject to clause 7.6(f), the roster of a part-time employee, but not the agreed number of hours, may be changed:</p> <p>(i) by the employer giving the employee 7 days, or in an emergency 48 hours, written notice of the change; or</p> <p>(ii) at any time by the employer and employee by mutual agreement.</p> <p>(f) The roster of a part-time employee is not to be changed:</p> <p>(i) from pay period to pay period; or</p> <p>(ii) so as to avoid any award entitlement.</p>	<p>Paragraph (c)(i) refers to an agreement to vary “the regular pattern of work”. Paragraph (b) seems to have the effect of providing that all the elements of the agreement form part of the regular pattern of work. It cannot have been intended, for example, that the minimum daily engagement could be varied. Further, paragraph (c) would seem to be covering the days on which the employee will work which is then also the subject of paragraph (f).</p> <p>Paragraph (d) relates to wages and should only be dealt with in the clause titled “Wages”. It is not good practice to say the same thing twice.</p>

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Re-drafted clause	Plain language drafter comments
<p>10.1.</p> <p>(e) An employer is required to roster a part-time employee for a minimum of three consecutive hours on any shift.</p> <p>(f) Rosters</p> <p>(i) A part-time employee’s roster, but not the agreed number of hours, may be altered:</p> <ul style="list-style-type: none"> • by the employer giving the employee seven days’ written notice; or • in the case of an emergency, by the employer giving the employee 48 hours’ written notice; or • at any time by mutual agreement between the employer and the employee. <p>(ii) Rosters will not be changed from week to week, or fortnight to fortnight.</p> <p>(iii) Rosters will not be changed to avoid any award entitlements.</p> <p>(g) 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 6.5—Casual employment.</p>	<p>(g) A part-time employee who has worked the agreed number of hours on any day or in any pay period may agree to work additional hours on the terms applicable to hours worked by a casual employee and up to any maximum applicable to those hours under this award.</p>	<p>Paragraph (e) overlaps with paragraph (b)(v). If the minimum shift is 3 hours then necessarily the minimum daily engagement must be 3 hours.</p> <p>Paragraph (f)(ii) refers to change from week to week or fortnight to fortnight. It seems that this is directed at pay periods and may be simplified by referring to them.</p> <p>Paragraph (g) refers to an employee “who does not meet the definition” of a part-time employee and “who is not a full-time employee”. There is no apparent reason for adopting a different approach in each case. Further, what needs to be covered in this clause is the definition of a casual employee. The payment arrangements should be left to clause 10.</p>
<p>(h) Conversion of existing employees</p>	<p><i>Moved to 7.8</i></p>	
<p>6.5 Casual employment</p> <p>(a) A casual employee is an employee who is engaged and paid as a casual employee.</p> <p>(b) A casual employee does not have an entitlement to reasonably predictable hours of work.</p> <p>(c) Casual loading</p> <p>For each ordinary hour worked, a casual employee must be paid:</p> <ul style="list-style-type: none"> • the minimum hourly rate; and • a loading of 25% of the minimum hourly rate <p>for the classification in which they are employed.</p> <p>(d) Casual employees will be paid at the termination of each engagement, but may agree to be paid weekly or fortnightly.</p> <p>(e) The minimum daily engagement for a casual employee is three hours.</p>	<p>7.7 Casual employment</p> <p>(a) A casual employee does not have an entitlement to reasonably predictable hours of work.</p> <p>(b) The minimum number of hours for which a casual employee may be rostered to work on any day is 3.</p> <p>(c) Unless casual employees agree to be paid weekly or fortnightly, they must be paid at the end of the rostered hours each day.</p>	<p>Paragraphs (a) and (b) should preferably be located with the earlier provisions defining the types of employment. See new draft clauses 7.4 and 7.7(a).</p> <p>Paragraph (c) deals with the wages to which a casual employee is entitled and should be located in clause 10.</p> <p>Paragraph (d) refers to “each engagement” and paragraph (e) refers to daily engagement. If they are both referring to the same concept the same term should be used. However, any reference to “engagement” in this context can be avoided completely. See new draft clause 7.7(b) and (c).</p>

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Re-drafted clause	Plain language drafter comments
<p>(h) Conversion of existing employees</p> <p>(i) No full-time or casual employee will be transferred by an employer to part-time employment without the written consent of the employee.</p> <p>(ii) Where such transfer occurs all leave entitlements accrued will be deemed to be continuous.</p> <p>(iii) 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. This agreement is to be recorded in writing.</p> <p>(i) 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 as a casual employee. These extra hours will be subject to the casual employee provisions of this award.</p>	<p>7.8 Moving between types of employment</p> <p>(a) A full-time or casual employee cannot become a part-time employee without the employee’s written consent.</p> <p>(b) Moving to part-time employment does not affect the continuity of any leave entitlements.</p> <p>(c) A full-time employee:</p> <p>(i) may request to be given part-time work; and</p> <p>(ii) may return to full-time employment at a date agreed with the employer.</p> <p>(d) An agreement mentioned in clause 7.8(c)(ii) must be recorded in writing.</p>	<p>Paragraph (h)(i) begins “No full-time or casual employee will be ...”. This can be much more simply expressed as “A full-time or casual employee cannot become a part-time employee...”. This is preferable to requiring the reader to interpret the opening negative. See new draft clause 7.8(a).</p> <p>Paragraph (b)(iii) embeds 2 concepts in the opening sentence – that a full-time employee may request and be given part-time work and that the employee may then agree with the employer to return to full-time employment. This is better dealt with in separate paragraphs. See new draft clause 7.8(c).</p> <p>Paragraph (i) is preferably located with the other provisions dealing with part-time employment. It refers to the part-time employee working the additional hours as a casual employee. Rather than changing the type of employment arrangement it seems preferable to refer to the additional hours being worked on the terms applicable to hours worked by a casual employee. See new draft clause 7.6(g).</p>
<p>7. Classifications</p> <p>7.1 All employees covered by this award must be classified according to the structure set out in Schedule A—Classification Definitions. Employers must advise their employees in writing of their classification and of any changes to their classification.</p> <p>7.2 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>8. Classifications</p> <p>8.1 An employer must classify an employee covered by this award in accordance with Schedule A—Classification Definitions.</p> <p>8.2 The classification must be based on the skill level that the employer determines is required to be exercised in order for the employee to carry out the principal functions of the employment.</p> <p>8.3 Employers must notify employees in writing of their classification and of any change to it.</p>	<p>The structure of clause 7 can be improved by dealing with the following concepts in separate subclauses with the requirement for written notification coming last:</p> <p>(1) the employer classifies employees in accordance with Schedule A</p> <p>(2) the factors that the classification must be based on</p> <p>(3) the requirement to notify the employee in writing about their classification.</p>
<p>Part 3—Hours of Work</p> <p>8. Ordinary hours of work and rostering</p> <p>8.1 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>8.2 Ordinary hours and roster cycles</p> <p>(a) Ordinary hours may be worked between 7.00 am and midnight, Monday to Sunday.</p> <p>(b) Hours of work on any day will be continuous, except for rest breaks and meal breaks.</p> <p>(c) Hours of work must not exceed 12 hours per day.</p> <p>(d) The ordinary hours of work for a full-time employee will be 38 hours per week.</p>	<p>Part 3—Hours of Work</p> <p>9. Ordinary hours of work</p> <p>9.1 Ordinary hours may be worked on any day between 7.00 am and midnight.</p> <p>9.2 Ordinary hours of work are continuous, except for rest breaks and meal breaks.</p> <p>9.3 The maximum number of ordinary hours that can be worked by an employee on any day is 12.</p> <p>9.4 Nothing in this clause affects the shop trading hours of a community pharmacy under relevant State or Territory legislation.</p>	<p>Clause 8.1 is in the nature of a saving provision and should not be the opening provision. The subclause is aimed at shop trading hours so it is preferable to refer to the shop trading hours of a community pharmacy rather than the trading hours of an employer. See new draft clause 9.4.</p> <p>Clause 8.2 refers to ordinary hours in some places and just “hours” in others. The heading to the subclause is “Ordinary hours” so it is assumed that this is what each paragraph refers to. In that case, it is preferable to consistently refer to ordinary hours throughout. See new draft clause 9.</p> <p>Paragraphs (d), (e) and (f) deal with matters dealt with, or that should be dealt</p>

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Re-drafted clause	Plain language drafter comments
<p>(e) A full-time employee’s ordinary weekly hours may be averaged over a period of two consecutive weeks.</p> <p>(f) The ordinary hours of work for a part-time or casual employee will be in accordance with clause 6—Types of employment.</p>		with, in clause 6. See new draft clause 7.2, 7.3, 7.4.
<p>8.3 Rostering—Permanent employees</p> <p>(a) The following roster requirements will apply to permanent employees:</p> <p>(i) Ordinary hours will be rostered to provide employees 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) Except as provided for in clause 8.3(a)(iv), ordinary hours may not be rostered over more than five days in a week.</p> <p>(iv) 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>(v) An employee may be rostered to work on a maximum of three Sundays in any four week cycle and must have three consecutive days off every four weeks, including a Saturday and Sunday.</p> <p>(b) Alternative rostering arrangements</p> <p>(i) The rostering requirements in clause 8.3(a) will not apply where an employee makes a written request and the employer agrees to other arrangements.</p> <p>(ii) The agreement must be recorded in the time and wages record.</p> <p>(iii) It cannot be a condition of employment that an employee make a request for alternative rostering arrangements.</p> <p>(iv) An employee may terminate the agreement by giving four weeks’ notice to the employer. The notice does not need to be given where the agreement terminates on an agreed date or at the end of an agreed period. This provision does not apply to part-time employees’ agreed pattern of work under clause 6.4(b).</p> <p>(v) The rostering provision of clause 8.3(a)(v) does not apply to a part-time employee whose agreed hours under clause 6.4(b)(ii) provide that the employee will:</p> <ul style="list-style-type: none"> • work on either or both Saturday and Sunday each week; and • have at least two consecutive days off work each week. 	<p>10. Rostering arrangements</p> <p>10.1 The following rostering arrangements apply to permanent 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 in a 2 week period;</p> <p>(b) subject to clause 10.1(c), employees must not be rostered to work ordinary hours on more than 5 days in a week;</p> <p>(c) 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 may be rostered to work (whether ordinary hours or overtime) on up to 3 Sundays in a 4 week cycle if they are rostered to have 3 consecutive days off every 4 weeks, including a Saturday and Sunday.</p> <p>10.2 Clause 10.1(e) does not apply to a part-time employee who has agreed under clause 7.6 to work Saturday or Sunday (or both) each week and have at least 2 consecutive days off.</p> <p>10.3 Clause 10.1 does not apply to the extent that the employer and employee agree different arrangements at the written request of the employee.</p> <p>10.4 Different arrangements agreed under clause 10.3 must be recorded in the time and wages record.</p> <p>10.5 The employee may end an agreement under clause 10.3 at any time by giving the employer 4 weeks written notice.</p> <p>10.6 An agreement under clause 10.3 may provide for it to end automatically on a day, or at the end of a period, specified in it.</p> <p>10.7 An employee cannot be required by a condition of employment to make a request under clause 10.3 .</p> <p>10.8 Nothing in clause 10.5 applies to an agreement under clause 7.6(b).</p>	<p>Clause 8.3 is a substantial provision dealing with rostering arrangements and is preferably dealt with in a separate clause. See new draft clause 10.</p> <p>Numbers are preferably written as figures and not as words and “must” is preferable to “will” when imposing an obligation.</p>

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Re-drafted clause	Plain language drafter comments																												
<p>9. Breaks</p> <p>9.1 An employee working four or more hours on any day will be entitled to a 10 minute paid rest break.</p> <p>9.2 An employee working more than five hours on any day will be entitled to an unpaid meal break of at least 30 minutes but no more than one hour, plus a 10 minute paid rest break.</p> <p>9.3 An employee working 7.6 or more hours on any day will be entitled to an unpaid meal break of at least 30 minutes but no longer than one hour, plus two 10 minute paid rest breaks, 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; and</p> <p>(b) the rest breaks are not to be taken in the first hour of work or in the first hour after the meal break.</p> <table border="1" data-bbox="281 814 1012 1224"> <thead> <tr> <th>Ordinary hours per day</th> <th>Break</th> </tr> </thead> <tbody> <tr> <td>4 hours and up to and including 5 hours</td> <td>One 10 minute paid rest break</td> </tr> <tr> <td>More than 5 and less than 7.6 hours</td> <td>One 10 minute paid rest break One 30 to 60 minute unpaid meal break</td> </tr> <tr> <td>7.6 hours or more</td> <td>Two 10-minute paid rest breaks One 30 to 60 minute unpaid meal break</td> </tr> </tbody> </table>	Ordinary hours per day	Break	4 hours and up to and including 5 hours	One 10 minute paid rest break	More than 5 and less than 7.6 hours	One 10 minute paid rest break One 30 to 60 minute unpaid meal break	7.6 hours or more	Two 10-minute paid rest breaks One 30 to 60 minute unpaid meal break	<p>11. Breaks</p> <p>11.1 An employee who works on any day the number of ordinary hours specified in an item of column 1 of Table 1 is entitled to a break or breaks as specified in column 2 of that Table opposite that item.</p> <p>Table 1—Entitlements to meal and rest break(s)</p> <table border="1" data-bbox="1181 506 1938 856"> <thead> <tr> <th>Column 1</th> <th>Column 2</th> </tr> </thead> <tbody> <tr> <td>4 or more but not more than 5</td> <td>One 10 minute paid rest break</td> </tr> <tr> <td>More than 5 but less than 7.6</td> <td>One 10 minute paid rest break One 30 to 60 minute unpaid meal break</td> </tr> <tr> <td>7.6 or more</td> <td>Two 10 minute paid rest breaks One 30 to 60 minute unpaid meal break</td> </tr> </tbody> </table> <p>11.2 A meal break cannot be taken in the first 2.5 hours, or after 5 hours, of work.</p> <p>11.3 A rest break cannot be taken:</p> <p>(a) in the first hour of work; or</p> <p>(b) in the first hour of work after a meal break.</p>	Column 1	Column 2	4 or more 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 One 30 to 60 minute unpaid meal break	<p>Clause 9 has a Table at the end of the clause which neatly sets out the arrangements relating to breaks. However, it is not referred to anywhere in the body of the clause. The use of a Table with an introductory provision explaining how it works is a good way to convey information. There is no need to use both a Table and detailed substantive provisions as this is an unnecessary duplication.</p> <p>See new draft clause 11.</p>												
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<p>Part 4—Wage and Allowances</p> <p>10. Minimum wages</p> <p>10.1 Adult employees</p> <p>(a) An employer must pay adult employees the following minimum wages for ordinary hours worked by the employee:</p> <table border="1" data-bbox="281 1486 1032 1950"> <thead> <tr> <th>Employee classification</th> <th>Minimum weekly rate \$</th> <th>Minimum hourly rate \$</th> <th>Casual hourly rate \$</th> </tr> </thead> <tbody> <tr> <td>Pharmacy Assistants</td> <td></td> <td></td> <td></td> </tr> <tr> <td>Level 1</td> <td>721.50</td> <td>18.99</td> <td>23.74</td> </tr> <tr> <td>Level 2</td> <td>738.70</td> <td>19.44</td> <td>24.30</td> </tr> <tr> <td>Level 3</td> <td>764.90</td> <td>20.13</td> <td>25.16</td> </tr> <tr> <td>Level 4</td> <td>796.30</td> <td>20.96</td> <td>26.20</td> </tr> <tr> <td>Pharmacy Students</td> <td></td> <td></td> <td></td> </tr> </tbody> </table>	Employee classification	Minimum weekly rate \$	Minimum hourly rate \$	Casual hourly rate \$	Pharmacy Assistants				Level 1	721.50	18.99	23.74	Level 2	738.70	19.44	24.30	Level 3	764.90	20.13	25.16	Level 4	796.30	20.96	26.20	Pharmacy Students				<p>Part 4—Wages and Allowances</p> <p>12. Wages</p> <p>12.1 An employer must pay an employee in accordance with Table 2 for ordinary hours worked by the employee:</p> <p>(a) for an adult full-time employee with a classification specified in column 1, wages at the minimum weekly rate specified opposite that classification in column 2; and</p> <p>(b) for an adult part-time employee with a classification specified in column 1, wages at the minimum hourly rate specified opposite that classification in column 3; and</p> <p>(c) for an adult casual employee with a classification specified in column 1, wages at the minimum casual hourly rate specified opposite that classification in column 4; and</p> <p>(d) for an employee who is under 21 years of age and classified as a pharmacy assistant, at the following percentage of the minimum rate that would otherwise be applicable under Table 2:</p>	<p>Clause 10.1(a) does not make the application of the rates in the columns of the Table clear. The first column of dollar amounts applies to adult full-time employees, the second to adult part-time employees and the third to adult casual employees. Readers are left to work that out for themselves, at least in relation to full-time and part-time adult employees. Preferably too the percentages applicable to junior pharmacy assistants would appear close to the Table</p> <p>In the Table it is preferable to insert the \$ sign before each amount in a column and not just in the header to the column.</p> <p>See new draft clause 12.1.</p>
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<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>	<p>12.2 A pharmacy student is only treated as being in a particular year of a course from day 1 of term 1 of that year of the course.</p> <p>12.3 Subject to clause 12.2, a pharmacy student beginning a Master of Pharmacy course is treated as being in the 3rd year of a course.</p>	<p>Paragraph (c) over complicates a simple proposition that a pharmacy student is only treated as being in a particular year of a course from day 1 of term 1 of that year of that course. See new draft clause 12.2.</p> <p>The final sentence should be in a separate subclause and it should be made clear that the same progression regime applies to Masters students. See new draft clause 12.3.</p>														
<p>10.3 Payment of wages</p> <p>(a) Wages will be paid either weekly or fortnightly, according to the actual hours worked for each week or fortnight.</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>10.3(b) re pay slips deleted in accordance with para [35] [2014] FWCFB 9412</p>	<p>12.4 The employer may determine the pay period of an employee, which must be either weekly or fortnightly.</p> <p>12.5 Wages must be paid for a pay period according to the number of hours worked by the employee in the period.</p> <p>12.6 Wages must be paid on a regular pay day no later than 4 days after the end of the pay period.</p> <p>12.7 Employers must notify employees in writing about which day is the regular pay day.</p> <p>12.8 The regular pay day of an employee may only be changed by the employer giving the employee 4 weeks written notice.</p> <p>12.9 For employees eligible for a supported wage, see Schedule D—Supported Wage System.</p> <p>12.10 For employees undertaking a traineeship, see Schedule E—National Training Wage.</p>	<p>In providing that wages will be paid either weekly or fortnightly, paragraph (a) is referring to the pay period. It would be more direct to provide that the employer may determine the pay period, which must be either weekly or fortnightly. See new draft clause 12.4.</p> <p>Paragraph (b) can be improved by breaking it up into separate subclauses. The expression “within 4 days of” is ambiguous as to whether it means 4 days before or 4 days after. The “shall” in the final sentence should be replaced by “must”. See new draft clause 12.6, 12.7 and 12.8.</p> <p>The words “who are” are not necessary in clause 10.5. It is to be noted that those words are omitted in paragraph 10.6. See new draft clause 12.9 and 12.10.</p>														
<p>10.2 Junior employee</p> <p>Junior employees will be paid the following percentage of the appropriate wage rate for pharmacy assistant classifications in clause 10—Minimum weekly wages:</p> <table border="1" data-bbox="201 1581 1026 1913"> <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>	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><i>Note: This clause has been moved to clause 12.1(d) and appears here for comparative purposes only.</i></p> <p>(d) for an employee who is under 21 years of age and classified as a pharmacy assistant, at the following percentage of the minimum rate that would otherwise be applicable under Table 2:</p> <p>(i) 45% for an under 16 year old;</p> <p>(ii) 50% for a 16 year old;</p> <p>(iii) 60% for a 17 year old;</p> <p>(iv) 70% for an 18 year old;</p> <p>(v) 80% for a 19 year old;</p> <p>(vi) 90% for a 20 year old.</p>	<p>The rates applicable to junior pharmacy assistants are preferably built directly into the provision that introduces the Table that sets out all the rates. See new draft clause 12(1)(d).</p>
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EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Re-drafted clause	Plain language drafter comments
<p>10.3 Payment of wages</p>	<p><i>Note: Clause 10.3 of the Exposure Draft (revised 25 September 2015) has been moved to clause 12.4.</i></p>	
<p>10.4 Annualised salary (Pharmacists only)</p> <p>(a) An annualised salary for pharmacist employees may be developed. The annual salary may be in satisfaction of any or all of the following provisions of the award:</p> <p>(i) overtime;</p> <p>(ii) penalty rates;</p> <p>(iii) payments for public holidays taken;</p> <p>(iv) annual leave taken;</p> <p>(v) annual leave loading;</p> <p>(vi) meal allowance; and</p> <p>(vii) meal break on call entitlements.</p> <p>(b) The annual salary paid over a year must be no less than the amount the employee would have received under this award for the work performed over the year (or if the employment ceases before the completion of a year over such lesser period as has been worked).</p> <p>(c) 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>(d) The employee may be represented in discussions relating to the making of an agreement under clause 10.4 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>13 Annual salary for pharmacists</p> <p>(a) A pharmacist may agree in writing with their employer to be paid an annual salary that satisfies this award in relation to all or any of the following matters:</p> <p>(i) overtime rates;</p> <p>(ii) penalty rates;</p> <p>(iii) payments for public holidays;</p> <p>(iv) payments for annual leave;</p> <p>(v) annual leave loading;</p> <p>(vi) meal allowances;</p> <p>(vii) on premise meal allowances.</p> <p>(b) 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 13(a).</p> <p>(c) An annual salary must not result in a pharmacist being paid less for a period than would have been the case if an annual salary had not been agreed.</p> <p>(d) The employer must keep the original of any agreement under clause 13(a) and give a copy to the pharmacist.</p> <p>(e) The employer must keep a record of hours worked each day by a pharmacist who has entered into an agreement under clause 13(a) showing the times at which the pharmacist started and finished work that day.</p> <p>(f) A record mentioned in clause 13(e) must be:</p> <p>(i) countersigned weekly by the pharmacist; and</p> <p>(ii) kept at the place of employment for at least 6 years.</p>	<p>Clause 10.4 should be the subject of a separate clause as it relates only to one class of employee. See new draft clause 13.</p> <p>Paragraph (a) refers to developing an annualised salary whereas what the provision is all about is the capacity of a pharmacist to agree to be paid an annual salary. The paragraph opens by referring to an “annualised salary” and then refers to it as the “annual salary”. Consistent terms should be used in drafting when referring to the same thing.</p> <p>Paragraph (b) can be simplified by providing that an annual salary must not result in a pharmacist being paid less for a period than would otherwise have been the case. The references to a year or a lesser period are unnecessary. See new draft clause 13(c)</p> <p>The obligations in paragraph (c) should be imposed by using “must” not “will”. See new draft clause 13(e) and (f).</p> <p>The latter part of paragraph (d) referring to the agreement being recorded in writing can be more effectively presented at the start of the clause in providing that a pharmacist may agree in writing with the employer to be paid an annual salary. See new draft clause 13(a), (b) and (d).</p>
<p>10.5 Supported wage system</p> <p>10.6 National training wage</p>	<p><i>These clauses will be dealt with in Part B of the process</i></p>	

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Re-drafted clause	Plain language drafter comments
<p>11. Allowances</p> <p>11.1 Employers must pay to an employee the allowances the employee is entitled to under this clause. See Schedule C for a summary of monetary allowances and method of adjustment.</p> <p>11.2 Expense related allowances</p> <p>(a) Meal allowance</p> <p>(i) An employee who has worked six hours or more during ordinary time and who is then consecutively required to work overtime, or beyond the employee’s ordinary time of ending work, for more than one and a half hours, will be:</p> <ul style="list-style-type: none"> • supplied with an adequate meal by the employer; or • paid a meal allowance of \$17.46. <p>(ii) Where overtime referred to in clause 11.2(a)(i) exceeds four hours a further meal allowance of \$15.64 will be paid.</p> <p>(iii) <i>Clauses 11.2(a)(i) and (ii) will not apply when the employer has advised the employee of the requirement to work overtime on the previous day.</i></p> <p>(iv) No meal allowance will be payable where any employee could reasonably return home for a meal within the period allowed.</p> <p>(v) No meal allowance will be payable where the additional hours are agreed hours as per clause 6.4(c).</p>	<p>14. Allowances</p> <p>14.1 Meal allowances</p> <p>(a) This clause applies to an employee who:</p> <p>(i) has worked 6 or more ordinary hours on any day; and</p> <p>(ii) is required to work on that day overtime, or beyond the time at which the employee ordinarily finishes work for the day, for more than 1.5 hours; and</p> <p>(iii) was not advised of the requirement mentioned in clause 14.1(a)(ii) on or before the previous day; and</p> <p>(iv) 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 \$17.46; 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 14(a)(ii) exceeds 4, the employer must pay the employee a further meal allowance of \$15.64.</p> <p>(d) This clause does not apply if the hours worked under a requirement mentioned in clause 14.1(a)(ii) were agreed under clause 7.6.</p>	<p>Clause 11 deals with 6 different kinds of allowances. They should be the subject of separate clauses. See new draft clauses 14.1(meal allowances), 14.2 (on-premise meal allowance), 14.3 (clothing allowance), 14.4 (moving expenses), 14.5 (motor vehicle allowance) and 14.6 (taxi fare reimbursement).</p> <p>Earlier provisions refer to “ordinary hours”. Paragraph (a)(i) refers to hours “during ordinary time”. Different language should not be used for the same concept. The expression “adequate meal” is subjective and uncertain.</p> <p>The provision should be drafted in the active voice, imposing the obligation to pay the meal allowance on the employer. See new draft clause 14.1.</p> <p>Subparagraphs (iii) and (iv) are further conditions of eligibility for a meal allowance and should be together with the other qualifying provisions up front. See new draft clause 14.1(a)(iii) and (iv).</p> <p>Further, subparagraph (iii) would seem unintentionally restrictive is requiring the advice to be given on the previous day and not earlier.</p>
<p>(b) On-premise meal allowance (Pharmacists only)</p> <p>A pharmacist 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 150% of the minimum hourly rate for the period of the meal break, regardless of other penalties that apply on that day.</p>	<p>14.2 On-premise meal allowance</p> <p>(a) This clause applies to a pharmacist who is required to take a meal break on the premises so as to be available 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 to which the pharmacist is entitled.</p> <p>(c) In clause 14.2(b), the enhanced hourly rate means 150% of the minimum hourly rate applicable, according to the classification of the pharmacist, under column 3 of Table 2.</p>	<p>Paragraph (b) does not clearly identify the minimum hourly rate that is to be enhanced. This can be remedied by a specific reference to the Table in clause 10. See new draft clause 14.2.</p>
<p>(c) Special clothing</p> <p>(i) Where the employer requires an employee to wear any protective or special clothing such as a uniform or other clothing the employer will reimburse the employee for the cost of purchasing the special 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>14.3 Clothing allowance</p> <p>(a) This clause applies to an employee who is required to wear special clothing, such as a uniform or protective clothing, that is not supplied or paid for by the employer.</p> <p>(b) The employer must reimburse the employee for the cost of purchasing the clothing, including purchasing replacement clothing due to normal wear and tear.</p>	<p>Subparagraph (i) begins by referring to “protective or special clothing” and then proceeds to refer only to “special clothing”. The first sentence is long and can be broken up into separate subclauses.</p> <p>The expression “and/or” should be avoided in drafting. The allowance is not payable if the clothing is supplied. Nor is it payable if the clothing is paid for by the employer. The concept of clothing that is supplied and paid for by the employer is unnecessary.</p>

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Re-drafted clause	Plain language drafter comments
<p>(ii) Where an employee is required to launder any special clothing, the employer who provided that clothing will arrange for its cleaning or will pay:</p> <ul style="list-style-type: none"> • \$6.25 per week to a full-time employee; or • \$1.25 per shift to a part-time or casual employee. 	<p>(c) The employer must, if the clothing needs to be laundered:</p> <p>(i) undertake the laundering at no cost to the employee; or</p> <p>(ii) pay the employee an allowance of:</p> <ul style="list-style-type: none"> • \$6.25 each week for a full-time employee; or • \$1.25 each shift for a part-time or casual employee. 	<p>Subparagraph (ii) should make it clear that if the employer arranges for the cleaning, it is at no cost to the employee.</p> <p>See new draft clause 14.3.</p>
<p>(d) Transfer of employee expenses</p> <p>Where an 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>(e) Transport allowance</p> <p>Where an employer requests an employee to use their own motor vehicle in the performance of their duties the employee will be paid an allowance of \$0.78 cents per kilometre.</p>	<p>14.4 Moving expenses</p> <p>(a) This clause 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>14.5 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>The scope of paragraph (d) is unclear as the meaning of “township” is not certain. Nor is it clear what is meant by “family”. These issues are unresolved in new draft clause 14.4.</p> <p>Paragraph (e) should be worded in the active voice. See new draft clause 14.5.</p>
<p>(f) Transport of employees reimbursement</p> <p>(i) An employee will be reimbursed the cost of a taxi fare between the place of employment and the employee’s usual place of residence where:</p> <ul style="list-style-type: none"> • the employee commences and/or finishes work before 7.00 am or after 10.00 pm; and • the employee’s regular means of transport is not available; and • the employee is unable to arrange their own alternative transport. <p>(ii) Clause 11.2(f)(i) 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>14.6 Taxi fare reimbursement</p> <p>(a) This clause applies if:</p> <p>(i) an employee starts work before 7.00 am or finishes work after 10.00 pm; and</p> <p>(ii) the employee’s regular means of transport is not available; and</p> <p>(iii) the employee is unable to arrange their own alternative means of transport; and</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>Paragraph (f) should be worded in the active voice.</p> <p>The use of “and/or” in subparagraph (i) should be avoided. If an early start and a late finish are separately covered, it is unnecessary to expressly cover a situation where an employee both starts early and finishes late.</p> <p>Subparagraph (ii) should not be separate as it is simply another qualifying condition for the payment of an allowance.</p> <p>See new draft clause 14.6.</p>
<p>12. Superannuation</p>	<p><i>This clause will be dealt with in Part B of the process</i></p>	
<p>Part 5—Penalties and Overtime</p> <p>13. Overtime</p> <p>13.1 Reasonable overtime</p>	<p>Part 5—Overtime and Penalty Rates</p>	<p>Clause 13.1 can be omitted as it deals with a matter covered by the National Employment Standards.</p>

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Re-drafted clause	Plain language drafter comments												
<p>(a) Subject to clause 13.1(b) an employee other than a casual employee may be required to work reasonable overtime at the applicable overtime rate.</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>13.2 Definition of overtime</p> <p>(a) For a full-time employee, overtime is paid for additional hours worked at the direction of the employer in excess of the ordinary number of hours prescribed in clauses 8.2(a) to 8.2(e).</p> <p>(b) For a part-time employee, overtime is payable in accordance with clause 6.4(b)(vi).</p>	<p>16. Overtime</p> <p>16.1 An employer must pay a full-time employee at the overtime rate for any hours worked:</p> <p>(a) in excess of those mentioned in clauses 7.2 and 9.3; or</p> <p>(b) between midnight and 7.00 am.</p> <p>16.2 An employer must pay a part-time employee at the overtime rate for any hours worked in excess of the number of ordinary hours that the employee has agreed to work under clause 7.6(b).</p> <div style="border: 1px solid black; background-color: #e0f0e0; padding: 5px; margin: 10px 0;"> <p>Overtime for casual employees will be considered by a separate Full Bench in casual employment common issue proceedings in matter AM2014/197.</p> </div> <p>NOTE: Under the National Employment Standards (section 62) an employee (whether full-time, part-time or casual) may refuse to work additional hours if they are unreasonable. Section 62 sets out factors to be taken into account in determining whether the additional hours are reasonable or unreasonable.</p>	<p>Clause 13.2 should be worded as an obligation on the employer to pay at the overtime rate.</p> <p>The reference to “direction” in paragraph (a) would seem to be unnecessary.</p> <p>See new draft clause 16.1 and 16.2.</p>												
<p>13.3 Payment for overtime</p> <p>(a) The employer will pay to an employee the following rates for overtime worked during the specified period:</p> <table border="1" data-bbox="278 1650 1029 1913"> <thead> <tr> <th>For overtime worked on</th> <th>Overtime rate % of minimum hourly 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> </tbody> </table>	For overtime worked on	Overtime rate % of minimum hourly rate	Monday to Saturday—first 2 hours	150	Monday to Saturday—after 2 hours	200	<p>16.3 The overtime rate is the relevant percentage specified in column 2 of Table 3 (depending on when the overtime was worked as specified in column 1 of that Table) of the minimum hourly rate applicable, according to the classification of the employee, under column 3 of Table 2.</p> <p>Table 3—Overtime rates</p> <table border="1" data-bbox="1178 1766 1941 1950"> <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> </tbody> </table>	Column 1 For overtime worked on	Column 2 Overtime rate	Monday to Saturday—first 2 hours	150%	Monday to Saturday—after 2 hours	200%	<p>In paragraph (a) the Table does not clearly identify the applicable minimum hourly rate to which it is referring and link it to the relevant classification of the employee.</p> <p>It is preferable that the % sign is included after each figure in the Table and not simply be included in the header.</p> <p>See new draft clause 16.3.</p>
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<p>13.4 Time off instead of payment</p> <p>(a) An employee may elect, with the consent of the employer, to take time off instead of receiving payment for overtime.</p> <p>(b) Time off instead of payment will be taken at a mutually convenient time and within four weeks’ of the overtime being worked.</p> <p>(c) Despite clause 13.4(b), where agreed between the employer and employee, time off instead of payment may be accumulated and taken as part of annual leave.</p> <p>(d) For each hour of overtime worked, an employee who elects to take time off instead of payment will be entitled to a period of time off equal to the time worked multiplied by the applicable overtime rate for the period in which the overtime was worked (e.g. where the overtime rate is 150%, one hour of overtime equals one and a half hours of time off, or where the rate is 200%, two hours).</p>	<p>16.4 With the consent of the employer, an employee may choose to take time off instead of being paid for overtime.</p> <p>16.5 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 3 (depending on when the hour was worked as specified in column 1 of that Table).</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 x 150 / 100).</p> <p>16.6 Time off must be taken:</p> <p>(a) within the period of 4 weeks after the overtime is worked; and</p> <p>(b) at a time within that period agreed by the employer and employee.</p> <p>16.7 Despite clause 16.6, 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>This subclause could be better organised by first providing how time off may be arranged, then setting out how the period of time off is calculated and finally dealing with when it may be taken. See new draft clause 16.4 to 16.7.</p>																														
<p>14. Penalties</p> <p>14.1 Penalty rates</p> <p>The employer will pay to an employee the following rates for all ordinary hours worked during the specified periods:</p> <table border="1" data-bbox="204 1430 1012 1948"> <thead> <tr> <th>Hours worked</th> <th>Penalty rate</th> <th>Casual penalty rate (inclusive of casual loading)</th> </tr> <tr> <th colspan="3">% of minimum hourly rate</th> </tr> </thead> <tbody> <tr> <td colspan="3">Monday to Friday</td> </tr> <tr> <td>Before 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>Before 8.00 am</td> <td>200</td> <td>225</td> </tr> </tbody> </table>	Hours worked	Penalty rate	Casual penalty rate (inclusive of casual loading)	% of minimum hourly rate			Monday to Friday			Before 8.00 am	150	175	Between 7.00 pm and 9.00 pm	125	150	Between 9.00 pm and midnight	150	175	Saturday			Before 8.00 am	200	225	<p>17. Penalty rates</p> <p>17.1 An employer must pay an employee in accordance with Table 4 for ordinary hours worked by the employee during a period specified in column 1 of that Table:</p> <p>(a) for an employee other than a casual employee, at the percentage specified in column 2 of Table 4 of the minimum hourly rate applicable, according to the classification of the employee, under column 3 of Table 2; or</p> <p>(b) for a casual employee, at the percentage specified in column 3 of Table 4 of the minimum hourly rate applicable, according to the classification of the employee, under column 3 of Table 2.</p> <p>Table 4—Penalty rates</p> <table border="1" data-bbox="1181 1751 1941 1919"> <thead> <tr> <th>Column 1 For hours work on</th> <th>Column 2 Penalty rate</th> <th>Column Casual penalty rate (inclusive of casual loading)</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	Column 1 For hours work on	Column 2 Penalty rate	Column Casual penalty rate (inclusive of casual loading)				<p>The obligation on the employer should be imposed by using “must”. The provision introducing the Table should clarify how the columns work and identify the hourly rate to which they refer. See new draft clause 17.1.</p>
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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%																																																
Between 8.00 am and 6.00 pm	125%	150%																																																
Between 7.00 pm and 9.00 pm	150%	175%																																																
Between 9.00 pm and midnight	175%	200%																																																
Sunday—all day	200%	225%																																																
Public holidays—all day	250%	275%																																																
Part 6—Leave, Public Holidays and Other NES Entitlements																																																		
15. Annual leave	<i>This clause will be dealt with in Part B of the process</i>																																																	
16. Personal/carer’s leave and compassionate leave	<i>This clause will be dealt with in Part B of the process</i>																																																	
17. Parental leave and related entitlements	<i>This clause will be dealt with in Part B of the process</i>																																																	
18. Public holidays	<i>This clause will be dealt with in Part B of the process</i>																																																	
19. Community service leave	<i>This clause will be dealt with in Part B of the process</i>																																																	

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Re-drafted clause	Plain language drafter comments
20. Termination of employment	<i>This clause will be dealt with in Part B of the process</i>	
21. Redundancy	<i>This clause will be dealt with in Part B of the process</i>	
Part7—Consultation and Dispute Resolution	<i>This clause will be dealt with in Part B of the process</i>	
23. Dispute resolution	<i>This clause will be dealt with in Part B of the process</i>	
<p>Schedule A—Classification Definitions</p> <p>A.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>A.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>A.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>A.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>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 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:</p> <p>(a) to supervise pharmacy assistants levels 1 or 2; or</p> <p>(b) to assist a pharmacist in the dispensing section of a community pharmacy; or</p> <p>(c) to 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>In Schedule A the words “thereto” and “pursuant to” should be omitted as archaic or legalese. Further, the use of capitals in classification titles is unnecessary.</p> <p>A pharmacy assistant level 1 would seem to be a pharmacy assistant not covered by any other classification. The expression “for the first time” does not seem relevant.</p> <p>The application of paragraphs (a), (b) and (c) is unclear. If they are intended to refer to capacities in which a pharmacy assistant level 3 may work that should be clearly stated.</p> <p>In paragraph (c) the word “Competency” should be omitted as it is not part of the title of the classification.</p> <p>The references to “Competency” should be omitted.</p>
A.5 Pharmacy Student means a person who is undertaking an approved	A.5 pharmacy student is an employee who is undertaking training as	If the reference is to the training component of an approved program of study

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Re-drafted clause	Plain language drafter comments
<p>A.6 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>A.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>A.5 Pharmacist is a person who is registered as a pharmacist pursuant to the relevant State or Territory law.</p> <p>A.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>A.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>A.8 Pharmacist Manager is a pharmacist who is responsible to the proprietor for all aspects of the business.</p>	<p>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>that should be made clear,</p> <p>If the reference is to the clinical training component of an accredited program of study that should be made clear.</p> <p>The description of “pharmacist” should follow the terms of the Health Practitioner Regulation National Law and refer to registration “to practise in the pharmacy profession (other than as a student)”.</p> <p>See new draft Schedule A.</p>
<p>Schedule B—Summary of Hourly Rates of Pay</p>	<p><i>This clause will be dealt with in Part B of the process</i></p>	
<p>Schedule C—Summary of Monetary Allowances</p>	<p><i>This clause will be dealt with in Part B of the process</i></p>	
<p>Schedule D—Supported Wage System</p>	<p><i>This clause will be dealt with in Part B of the process</i></p>	
<p>Schedule E—National Training Wage</p>	<p><i>This clause will be dealt with in Part B of the process</i></p>	
<p>Schedule F—2014 Part-day public holidays</p>	<p><i>This clause will be dealt with in Part B of the process</i></p>	

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Re-drafted clause	Plain language drafter comments
<p>Schedule G—Definitions</p> <p>In this award, unless the contrary intention appears:</p> <p>Act means the <i>Fair Work Act 2009</i> (Cth)</p> <p>community pharmacy means any business conducted by the employer in premises:</p> <ul style="list-style-type: none"> • that are registered under the relevant State or Territory legislation for the regulation of pharmacies; or • are located in a State or Territory where no legislation operates to provide for the registration of pharmacies; <p>and</p> <ul style="list-style-type: none"> • that are established either in whole or in part for the compounding or dispensing of prescriptions or vending any medicines or drugs; and • where other goods may be sold by retail. 	<p>Schedule G—Definitions</p> <p>Act means the <i>Fair Work Act 2009</i> (Cth)</p> <p>community pharmacy means a business conducted on premises:</p> <p>(a) that are established wholly or partly for compounding or dispensing prescriptions or selling medicines or drugs; and</p> <p>(b) from which other goods may be sold by retail; and</p> <p>(c) that, if required to be registered under legislation for the regulation of pharmacies in force in the place in which they are situated, are so registered.</p>	<p>The linkages between the various paragraphs of the definition of “community pharmacy” need to be clarified. The definition may be read as though the last 2 dot points only apply to the second dot point. See the definition in new draft Schedule G.</p>
<p>defined benefit member has the meaning given by the <i>Superannuation Guarantee (Administration) Act 1992</i> (Cth)</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>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>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>Definition of ‘small business employer’ deleted as a result of para [35] [2014] FWCFB 9412</p> <p>standard rate means the minimum weekly wage for a Pharmacy Assistant Level 3 in clause 10</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>on-hire employee means an employee of an on-hire employer who is on-hired to an employer covered by this award.</p> <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>National Employment Standards, see Part 2-2 of the Act.</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>The definitions of “employee” and “employer” could be made more helpful by cross-referring to the actual section of the Act that defines the relevant terms.</p> <p>It would be more helpful to define “on-hire employee” and “on-hire employer” See the definitions in new draft Schedule G.</p>

EXPOSURE DRAFT – Pharmacy Industry Award 2014 (revised 25 September 2015)	Re-drafted clause	Plain language drafter comments
	<p>Table 1 means the Table in clause 11.1.</p> <p>Table 2 means the Table in clause 12.1.</p> <p>Table 3 means the Table in clause 16.3.</p> <p>Table 4 means the Table in clause 17.1.</p>	

Information note—Plain language drafting

1 Introduction

This information note has been prepared by staff of the Fair Work Commission. It provides information in relation to specified clauses in the *Exposure Draft Pharmacy Industry Award 2010* (revised 25 September 2015) (*Exposure Draft Pharmacy Industry Award 2014*).

The intention of this information note is to provide research and background information to assist the plain language drafter. It is not intended to be legal advice or direction of any kind.

Table of contents

1	Introduction	1
2	Clause 3.2—Definition of Community Pharmacy	2
3	Clauses 8.3(a)(i) and (v)—Rostering Arrangements	2
4	Clause 10.3(b)—Payment of Wages	4
5	Clause 11.2(a)(iii)—Meal allowance	5
6	Clause 11.2(d)—Meaning of township	5
7	Clause 13.1(b): NES Provisions Included in the Award	6
8	Clauses 13 and 14—Casual, Penalty Rate and Overtime Loadings	6
	8.1 Penalty rates	7
	8.2 Overtime	7
9	Schedule A—Classification Definitions Issue: clarification of terms relating to ‘pharmacy assistant’, ‘dispensary assistant’ and ‘approved’ or ‘accredited’ course of study in Schedule A of the Exposure Draft Pharmacy Industry Award 2014.	7
	9.1 Classification definitions of Pharmacy Assistant	7
	9.2 Meaning of Dispensary Assistant	8
	9.3 Accredited programs of study and approved programs of study	8
	Attachment A— Comparison of the Provisions for Reasonably Refusing to Work Additional Hours	10

2 Clause 3.2—Definition of Community Pharmacy

Issue: interaction between sub-clauses 3.2(c) and (d), sub-clause 3.2(a) and sub-clause 3.2(b) of the Exposure Draft Pharmacy Industry Award 2014.

Sub-clause 3.2(b) was inserted into the *Pharmacy Industry Award 2010* following an application to vary the coverage of the award.¹ The applicants stated that the definition of community pharmacy should take account of the fact that not every State and Territory has legislation requiring the registration of a community pharmacy.²

The definition proposed by the applicants inserted sub-clause (ii)³ as follows:

“**community pharmacy** means any business conducted by the employer in premises:

(i) that are registered under the relevant State or Territory legislation for the regulation of pharmacies; or

(ii) are located in a State or Territory where no legislation operates to provide for the registration of pharmacies.

and

- that are established either in whole or in part for the compounding or dispensing of prescriptions or vending any medicines or drugs; and
- where other goods may be sold by retail.”⁴

Given the clause had originally consisted of an inclusive bullet point list which included sub-clause (i) and the two bullet points,⁵ it appears that the intention of the parties was to include the new subclause (ii) without disrupting the way that the bullet points applied to subclause (i). The Full Bench granted the application to vary in a Decision issued on 22 December 2009.⁶

3 Clauses 8.3(a)(i) and (v)—Rostering Arrangements

Issue: interaction between sub-clause 8.3(a)(i) and (v) of the Exposure Draft Pharmacy Industry Award 2014.

The rostering in clause 8.3 of the Exposure Draft Pharmacy Industry Award 2014 includes the following paragraphs:

“(a) The following roster requirements will apply to permanent employees:

¹ Pharmacy Guild of Australia, SDA and APESMA, Application to vary and submission (28 October 2009) <http://www.airc.gov.au/awardmod/fullbench/variatiions/AM200945.pdf>.

² Pharmacy Guild of Australia, SDA and APESMA, Application to vary and submission (28 October 2009), para 4.

³ Note: this clause now appears at clause 3.2(b) in the Exposure Draft Pharmacy Industry Award 2014 and clause 3.1(b) in the *Pharmacy Industry Award 2010*.

⁴ Decision, *The Pharmacy Guild of Australia, Shop, Distributive and Allied Employees Association and The Association of Professional Engineers, Scientists and Managers, Australia* [2009] AIRCFB 977 (22 December 2009) para 3.

⁵ *Pharmacy Industry Award 2010* (as published 19 December 2008) cl 3.1 <<http://www.airc.gov.au/awardmod/databases/retail/Modern/pharmacy.pdf>>

⁶ Decision, *The Pharmacy Guild of Australia, Shop, Distributive and Allied Employees Association and The Association of Professional Engineers, Scientists and Managers, Australia* [2009] AIRCFB 977, para 8.

(i) Ordinary hours will be rostered to provide employees with two consecutive days off each week or three consecutive days off in a two week period.

...

(v) An employee may be rostered to work on a maximum of three Sundays in any four week cycle and must have three consecutive days off every four weeks, including a Saturday and Sunday.”⁷

The following roster examples have been drafted by Commission staff to indicate how the clauses may work together. The roster examples are based on rostering of ordinary hours which, according to clause 8.1 of the Exposure Draft Pharmacy Industry Award 2014 (see also clause 25.2 of the *Pharmacy Industry Award 2010*), can be worked on any day of the week.⁸

Roster example 1—Two consecutive days off each week

	Week 1	Week 2	Week 3	Week 4
Monday	✓	✓	✓	✓
Tuesday	✓	✓	✓	✓
Wednesday	✓	Day off	✓	✓
Thursday	✓	Consecutive day off	✓	✓
Friday	✓	✓	✓	✓
Saturday	Day off	✓	Day off	Day off
Sunday	Consecutive day off	✓	Consecutive day off	Consecutive day off

Roster example 2—Three consecutive days in a two week period

	Week 1	Week 2	Week 3	Week 4
Monday	✓	✓	✓	✓
Tuesday	✓	✓	✓	✓
Wednesday	✓	✓	✓	✓
Thursday	✓	✓	✓	✓
Friday	✓	Day off	Day off	Day off
Saturday	✓	2nd consecutive day off	✓	2nd consecutive day off

⁷ Exposure Draft Pharmacy Industry Award 2014, cl 8.3.

⁸ Exposure Draft Pharmacy Industry Award 2014, cl 8.1.

Sunday	Day off	3rd consecutive day off	Day off	3rd consecutive day off
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Roster example 3—Maximum of three Sundays in any four week cycle and three consecutive days off including Saturday and Sunday.

	Week 1	Week 2	Week 3	Week 4
Monday	Day off	Day off	Day off	✓
Tuesday	Consecutive day off			✓
Wednesday	✓	✓	✓	✓
Thursday	✓	✓	✓	✓
Friday	✓	✓	✓	Day off
Saturday	✓	✓	✓	Consecutive day off including Saturday
Sunday	✓	✓	✓	Consecutive day off including Sunday

4 Clause 10.3(b)—Payment of Wages

Issue: clarification of clause 10.3(b) of the Exposure Draft Pharmacy Industry Award 2014 in relation to time for payment.

The *Fair Work Act 2009* (Cth) provides that payment of wages must be made at least monthly.⁹ Modern awards also usually include a “Payment of wages” clause which often sets the frequency of payment of wages,¹⁰ may require that a regular pay day be set,¹¹ and sometimes includes other requirements for payment of wages.¹²

Clause 10.3(b) was included in the Exposure Draft Pharmacy Industry Award 2014 following an application to vary on 25 November 2014¹³ and as part of the agreed matters submitted on 15 July 2015 as part of the four yearly review of modern awards.¹⁴

⁹ *Fair Work Act 2009* (Cth) s 323(1)(c).

¹⁰ See, for example: *Clerks—Private Sector Award 2010* (2010) MA000001 cl 23, *Fast Food Industry Award 2010* (2010) MA000003 cl 22, *General Retail Industry Award 2010* (2010) MA000004 cl 23; and *Hair and Beauty Industry Award 2010* (2010) MA000005 cl 25.

¹¹ See, for example: *General Retail Industry Award 2010* (2010) MA000004 cl 23; *Electrical, Electronic and Communications Contracting Award 2010* (2010) MA000025 cl 22.1.

¹² The *Manufacturing and Associated Industries and Occupations Award 2010* (2010) MA000010 sets out 6 clauses of requirements for payment of wages at clause 34. It is not common that an award requires payment of wages before the end of the pay period, exceptions include the *Educational Services (Schools) General Staff Award 2010* (2010) MA000076 cl 19 and the *Educational Services (Teachers) Award 2010* (2010) MA000077 cl 17, these provisions only apply where employees are paid monthly.

¹³ Shop Distributive and Allied Employees’ Association, [Outline of variation](#) (25 November 2014) para 14.

The application to vary stated that the changes were sought to ensure that wages are paid on a regular pay day and to avoid manipulation and abuse.¹⁵

The SDA's submission states:

"The SDA seeks to vary Clause 22 Payment of wages so that all wages shall be paid on a regular pay day within 4 days of the end of the pay period."¹⁶

5 Clause 11.2(a)(iii)—Meal allowance

Issue: clarification of clause 11.2(a)(iii) of the Exposure Draft Pharmacy Industry Award 2014 in relation to advice of overtime and meal allowance.

Clause 11.2(a)(iii) of the Exposure Draft Pharmacy Industry Award 2014 as it is currently drafted is the result of an application to vary which included a number of proposed variations to the *Pharmacy Industry Award 2010*, one of which included a variation relating to allowances.¹⁷

The submission stated this variation was required "to clarify when the overtime meal allowance becomes payable in order to prevent the allowance being payable after only limited hours."¹⁸

The changed clause suggests that a meal allowance is not payable where the employer gives notice of the requirement to work overtime on the previous day. However, there is no mention of what happens where notice is given on a day earlier than the previous day. The parties' submissions do not suggest that the intention of the variation was to require payment of a meal allowance where notice is given on a day earlier than the previous day.

A meal allowance has historically been a reimbursement available for overtime that was not rostered or the result of irregular overnight travel.¹⁹ Further, in a dispute regarding the interpretation of a similar meal allowance clause in an enterprise agreement, Commissioner Cambridge decided that meal allowances would not be paid where the employee was notified of the requirement to work overtime the day prior or earlier.²⁰

6 Clause 11.2(d)—Meaning of township

Issue: it is unclear whether 'township' for the purposes of a relocation allowance refers to transfers within a particular state or otherwise.

¹⁴ Shop Distributive and Allied Employees' Association, [Submissions on technical and drafting issues related to the Pharmacy Industry Award Exposure Draft and outline of submissions on substantive claims](#) (15 July 2014) p 24–25.

¹⁵ Shop Distributive and Allied Employees' Association, [Outline of variation](#) (25 November 2014) para 14 and 18.

¹⁶ Shop Distributive and Allied Employees' Association, [Outline of variation](#) (25 November 2014) para 14.

¹⁷ Pharmacy Guild of Australia, SDA and APESMA, Application to vary made and submission (28 October 2009) <http://www.airc.gov.au/awardmod/fullbench/modernawards/matters_documents.cfm?number=AM2009/44>

¹⁸ Pharmacy Guild of Australia, SDA and APESMA, Application to vary and submission (28 October 2009), para 16.

¹⁹ Decision, *Australian Road Transport Industrial Organisation and Others v Transport Workers' Union of Australia* [PR955321](#), para 50.

²⁰ Statement, *National Union of Workers, New South Wales Branch v DHL Supply Chain (Australia) Pty Limited* [\[2012\] FWA 6428](#), para 4.

For example, Victoria is divided into administrative districts known as counties, parishes and townships (perhaps now more commonly referred to as suburbs).²¹

Whether reimbursement was intended to be paid, even if employees relocated to townships within a short distance remains unclear as there is no indication of a transfer allowance payable dependent upon a number of kilometres travelled.²²

7 Clause 13.1(b): NES Provisions Included in the Award

Issue: overlap between clause 13.1(b) of the Exposure Draft Pharmacy Industry Award 2014 and the NES.

The general approach of the AIRC in making modern awards has been to refrain from replicating or paraphrasing the NES.²³ Further, as part of the 4 yearly review of modern awards, a Full Bench of the Fair Work Commission has stated a preference for not including notes and references to the NES.²⁴

Clause 13.1(b) is most likely a result of the 2002 Working Hours Case.²⁵ Following this decision, some pre-reform awards relevant to the *Pharmacy Industry Award 2010* were updated with a reasonable overtime clause with terms similar to those of clause 13.1(b) of the Exposure Draft Pharmacy Industry Award 2014.²⁶

A comparison of the provisions is provided at Attachment A. Attachment A shows that number of factors outlined in the NES are not included in the Exposure Draft.²⁷

8 Clauses 13 and 14—Casual, Penalty Rate and Overtime Loadings

Issue: Interaction of casual, penalty rate and overtime loadings in clauses 13 and 14 of the Exposure Draft Pharmacy Industry Award 2014.

Employees covered by the *Pharmacy Industry Award 2010* may be entitled to the following loadings:

- casual loading
- penalty rates and/or
- overtime.

Casual employees in the Pharmacy Industry Award 2010 are entitled to a loading of 25% of the minimum hourly rate.²⁸

Penalty rates and overtime rates are not cumulative.²⁹

²¹ <http://www.slv.vic.gov.au/search-discover/explore-collections-format/maps/victorian-county-parish-township-plans>

²² Decision, *The Association of Professional Engineers and Scientists, Australia v Melbourne Water (C No. 31833 of 1993)* [K9316](#), (4 December 2002).

²³ Statement, *Award Modernisation*, [\[2008\] AIRCFB 717](#) (12 September 2008) para 16.

²⁴ Decision, *4 yearly review of modern awards*, [\[2014\] FWCFB 9412](#) (23 December 2014) paras 34–36.

²⁵ Decision, *Construction, Forestry, Mining and Energy Union & Others* (23 July 2002) [114 IR 390](#).

²⁶ See for example - *Community Pharmacy Award 1998* (1998) [AP773671CRV](#) cl 24A, *Chemists (Australian Capital Territory) Award 2000* (2000) [AP772207CRA](#) cl 12.6.

²⁷ Note: the *Fair Work Act 2009* (Cth), section 55(1),(4) and (5) states that modern awards must not exclude the National Employment Standards (NES) but may contain ancillary and supplementary terms or terms that have the same effect as provisions of the National Employment Standards.

²⁸ *Pharmacy Industry Award 2010* at clause 13.2 and *Exposure Draft Pharmacy Industry Award 2010* at clause 6.5(c).

8.1 Penalty rates

Ordinary hours are set out in clause 26.2(a) of the *Pharmacy Industry Award 2010* and clause 8.2(a) of the Exposure Draft Pharmacy Industry Award 2014. Penalty rates are set out in clause 26.2(b)(c) and (d) of the *Pharmacy Industry Award 2010* and clause 14.1 of the Exposure Draft Pharmacy Industry Award 2014.

The award provides that casuals will be entitled to penalty rates and the penalty rates set out include the casual loading.³⁰ For example, where a full-time or part-time employee works on a morning or evening and such work is part of their ordinary hours of work they will be entitled to a loading of 50%, however a casual subject to the same conditions will be entitled to 75%.³¹

8.2 Overtime

Clause 13.2(a) of the Exposure Draft Pharmacy Industry Award 2014 states that:

“overtime is paid for additional hours worked at the direction of the employer in excess of the ordinary number of hours prescribed in clauses 8.2(c) and 8.2(d).”³²

Clause 26.1 of the *Pharmacy Industry Award 2010* states that “For casual employees the casual loading IS not payable on overtime.”³³ This clause is similarly set out in the Exposure Draft Pharmacy Industry Award 2010 at 13.3(c). Schedule B of the Exposure Draft Pharmacy Industry Award 2010 sets out rates of pay for employees including overtime rates for all employees, regardless of whether they are full-time, part-time or casual employees.

9 Schedule A—Classification Definitions

Issue: clarification of terms relating to ‘pharmacy assistant’, ‘dispensary assistant’ and ‘approved’ or ‘accredited’ course of study in Schedule A of the Exposure Draft Pharmacy Industry Award 2014.

9.1 Classification definitions of Pharmacy Assistant

The Pharmacy Assistant classifications appear to have been based on those in clause 17 of the *Shop, Distributive and Allied Employees Association - Victorian Pharmacy Assistants Award 2000*.³⁴ Clause 17.3 states that employees will be assessed as competent at the various levels if they possess:

²⁹ *Pharmacy Industry Award 2010* at clause 26.2(a)(ii) and *Exposure Draft Pharmacy Industry Award 2010* at clause 13.3(b).

³⁰ *Pharmacy Industry Award 2010* (2010) MA000012 cl 26.2(b), (c) and (d) and *Exposure Draft Pharmacy Industry Award 2010*, cl 14.1.

³¹ *Pharmacy Industry Award 2010* (2010) MA000012 cl 26.2(b) and *Exposure Draft Pharmacy Industry Award 2010*, cl 14.1.

³² *Pharmacy Industry Award 2010* (2010) MA000012 cl 26.2(a) and *Exposure Draft Pharmacy Industry Award 2010*, cl 13.2(a).

³³ *Pharmacy Industry Award 2010* (2010) MA000012 cl 26.2(b).

³⁴ Note: The Australian Industrial Relations Commission used the principal federal award as a starting point for drafting exposure drafts during the 2008–2009 award modernisation process. See Decision, *Award Modernisation*, [2008] AIRCFB 387 (29 April 2008) para 11.

“the relevant qualification issued following successful completion of training from the Community Pharmacy Training Package at a particular level, or following a Recognition of Prior Learning (RPL) assessment conducted by a qualified assessor.”³⁵

Thus the prior award, which was likely the basis for the classifications in question, allows for classification at various levels where the employee has been able to successfully complete a Recognition of Prior Learning assessment.

9.2 Meaning of Dispensary Assistant

As per the above, many of the classifications in the Exposure Draft Pharmacy Industry Award 2014 have been adopted from the *Shop, Distributive and Allied Employees Association - Victorian Pharmacy Assistants Award 2000*.

In the *Shop, Distributive and Allied Employees Association - Victorian Pharmacy Assistants Award 2000*, competencies from Community Pharmacy vocational education training certificates were replicated. A Pharmacy Assistant competency level 3, included four units relating to assisting with the dispensary.³⁶

The *Pharmacy Industry Award 2010* and the Exposure Draft Pharmacy Industry Award 2014 do not replicate the competencies necessary for the certificates.

According to the Pharmacy Guild of Australia, Dispensary Assistant courses aim to:

“provide the knowledge and understanding required to assist the pharmacist in the dispensary.”³⁷

The Pharmaceutical Society of Australia states that a suitably qualified non-pharmacist dispensary assistant/ technician is a person who:

“assists a pharmacist in the dispensing area of a pharmacy (or other area where the pharmacist is approved to practice), but who is not a pharmacist, a pre-registrant or a pharmacy student.”³⁸

9.3 Accredited programs of study and approved programs of study

An accredited program of study may not necessarily be ‘an approved program of study’ for the purposes of graduates applying for registration.

Under the Health Practitioner Regulation National Law Act (as in force in each state and territory):³⁹

³⁵ *Shop, Distributive and Allied Employees Association - Victorian Pharmacy Assistants Award 2000* (2000) AP796289CRV cl 17.3 <http://www.airc.gov.au/consolidated_awards/AP/AP796289/asframe.html>

³⁶ *Shop, Distributive and Allied Employees Association - Victorian Pharmacy Assistants Award 2000* (2000) AP796289CRV cl 16 <http://www.airc.gov.au/consolidated_awards/AP/AP796289/asframe.html>

³⁷ Pharmacy Guild of Australia, *Dispensary Assistant courses*, <http://www.guild.org.au/qld_branch/training/pharmacy-assistant-training/training-courses/dispensary-assistant-courses> at 17 November 2015.

³⁸ Pharmaceutical Society of Australia, *Role of non-pharmacist dispensary assistant and technicians* (November 2003) <<http://www.psa.org.au/policies/the-role-of-non-pharmacist-dispensary-assistants-and-technicians>> at 17 November 2015.

³⁹ *Health Practitioner Regulation National Law Act 2009* (QLD), *Health Practitioner Regulation National Law (NSW) No 86a* (NSW), *Health Practitioner Regulation National Law (Victoria) Act 2009* (Vic) *Health Practitioner Regulation National Law (ACT) Act 2010* (ACT) *Health Practitioner Regulation (National Uniform Legislation) Act 2010* (NT) *Health Practitioner Regulation National Law (Tasmania) Act 2010* (Tas) *Health Practitioner Regulation National Law (South Australia) Act 2010* (SA) *Health Practitioner Regulation National Law (WA) Act 2010* (WA), see also <http://www.ahpra.gov.au/About-AHPRA/What-we-do/Legislation.aspx>.

- An accredited program of study is ‘a program of study accredited under section 48 by an accreditation authority.’
- An approved program of study is ‘for a health profession or for endorsement of registration in a health profession, means an accredited program of study:
 - (a) Approved under section 49(1) by the National Board established for the health profession;
and
 - (b) Included in the list published by the National Agency under section 49(5).’

Attachment A— Comparison of the Provisions for Reasonably Refusing to Work Additional Hours

Table 1: Comparison of clause 13.1 of the Exposure Draft Pharmacy Industry Award 2014 and section 62 of the NES

Exposure Draft Pharmacy Industry Award 2014

13.1 Reasonable overtime

(a) Subject to clause 13.1(b) an employee other than a casual employee may be required to work reasonable overtime at the applicable overtime rate.

(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:

- (i)** any risk to employee health and safety;
- (ii)** the employee's personal circumstances including any family responsibilities;
- (iii)** the needs of the workplace or enterprise;

National Employment Standards

62 Maximum weekly hours

...

Employee may refuse to work unreasonable additional hours

(2) The employee may refuse to work additional hours (beyond those referred to in paragraph (1)(a) or (b)) if they are unreasonable.

Determining whether additional hours are reasonable

(3) In determining whether additional hours are reasonable or unreasonable for the purposes of subsections (1) and (2), the following must be taken into account:

- (a) any risk to employee health and safety from working the additional hours;
- (b) the employee's personal circumstances, including family responsibilities;
- (c) the needs of the workplace or enterprise in which the employee is employed;
- (d) whether the employee is entitled to receive overtime payments, penalty rates or other compensation for, or a level of remuneration

that reflects an expectation of, working additional hours;

(iv) the notice (if any) given by the employer of the overtime and by the employee of their intention to refuse it; and

(e) any notice given by the employer of any request or requirement to work the additional hours;

(f) any notice given by the employee of his or her intention to refuse to work the additional hours;

(g) the usual patterns of work in the industry, or the part of an industry, in which the employee works;

(h) the nature of the employee's role, and the employee's level of responsibility;

(i) whether the additional hours are in accordance with averaging terms included under section 63 in a modern award or enterprise agreement that applies to the employee, or with an averaging arrangement agreed to by the employer and employee under section 64;

(v) any other relevant matter.

(j) any other relevant matter.

Source: Clause 13.1 of the Exposure Draft Pharmacy Industry Award 2014 and section 62 of the National Employment Standards.