



IN THE FAIR WORK COMMISSION

Matter No: AM2014/209

Title: Award Review 2014

Pharmacy Industry Award 2010

SUBMISSIONS IN REPLY - TECHNICAL AND DRAFTING MATTERS AND SUBSTANTIVE CLAIMS

21 August 2015

Filed on behalf of:	Health Services Union		
Filed by:	Leigh Svendsen Senior National Industrial Officer	Mobile:	0418 538 989
Address:	54 Victoria St Carlton Vic 3053		
Phone:		Email:	leighs@hsu.net.au

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Introduction

1. The Health Services Union (HSU) makes these brief submissions in reply on the Pharmacy Industry Award in accordance with the Statement issued by Justice Ross on 30 March 2015¹ and amended directions issued on 6 May 2015².

Technical and drafting matters

2. The HSU notes that all submissions concerning technical drafting matters relate to the Exposure Draft released by the Commission 8 December 2014, prior to decisions which have determined some of the matters of concern to all parties, and which have application to the Pharmacy Award 2010. The HSU requests that further opportunity be provided to the parties to consider a redrafted Exposure Draft in relation to those new or amended clauses.
3. The HSU notes and supports the further comments made by the Shop Distributive and Allied Employees' Association (SDA) concerning the plain English draft proposed by the Pharmacy Guild. Otherwise the HSU makes no further submissions concerning technical and drafting matters and relies on submissions already filed.

Substantive claims

4. The Pharmacy Guild has indicated its intention to pursue the following claims
 - i A provision allowing for employees to be directed to take annual leave in the case of a close down.
 - ii Annualised salary for pharmacy assistants.
 - iii Minimum shift for part-time and casual school students to be set at 90 minutes per shift.
 - iv Penalty rates
5. The HSU opposes the variations sought by the Guild and seeks these matters be referred to the relevant Full Bench for consideration.

Annual close down

6. The HSU opposes the Guild's proposal to insert a close down provision in the award. It is clear the intention is to provide for single day 'close downs' on multiple occasions throughout the

¹ [\[2015\] FWC 2194](#)

² [\[2015\] FWC 3148](#)

year, forcing employees into taking annual leave in small or single day lots, significantly reducing the benefit intended by annual leave.

7. The Guild seeks the model clause pressed by employers during the annual leave common matter proceedings AM2014/47. In its decision of 11 June 2015³, the Full Bench specifically indicated their concerns about the Employer’s claim in particular the lack of restriction on the number of occasions a close down could occur through out a year [emphasis added]:

[371] First, while we accept that a close-down provision may be included in modern awards, it is clear from the terms of s.93(3) that an award provision requiring an employee to take paid annual leave in such circumstances is only permitted “if the requirement is reasonable”. We are not satisfied that the model term proposed is “reasonable” in the sense contemplated by s.93(3).

[372] The model term is very broadly expressed and is capable of being applied in a manner not contemplated in the type of annual close-down provisions traditionally provided in awards, in particular:

- (i) there is no restriction on the number of times a close-down can occur in a 12 month period;*
and
- (ii) there is no restriction on the duration of the close-down—it could be for a single day, a week or a number of weeks.*

[373] Further, given the breadth of the model term we are not persuaded that a four week notice period is reasonable.

8. The HSU agrees with the comments of the Commission, and submits the Guild proposal is unnecessary, would not be reasonable in the Pharmacy Industry Award and does not meet the modern award objectives. The HSU submits that this matter is a significant substantive matter and should be referred to a Full Bench for determination. The HSU will make further comprehensive submissions as directed.

Annualised salaries

9. The HSU opposes the Guild proposal to extend the annualised salary provisions to Pharmacy Assistants and seeks that this matter be referred to a Full Bench.
10. Annualised salaries have been previously reviewed, both during the Part 10A Award Modernisation process and the 2012 review. The HSU will make further comprehensive submissions as directed.

Minimum shift lengths, penalty rates and public holidays

11. The HSU opposes the Guild proposals in relation to reduced shift lengths, reduced penalty rates and public holidays. It notes that all matters have been referred to separate benches for determination as part of either common claims or specific substantive award matters.

³ [\[2015\] FWCFB 3406](#)



12. The HSU intends to make submissions or respond to these claims in accordance with the directions of the relevant Full Bench in proceedings AM2014/197, AM2014/198, AM2014 301 and AM2014/305.

A handwritten signature in black ink, appearing to read "Leigh Svendsen".

Leigh Svendsen
Senior National Industrial Officer