From: David Bliss
To: Chambers - Hatcher VP
Cc: AMOD; Katie Biddlestone; julia@sda.org.au; AMOD
Subject: Matters AM2014/196 and AM2014/197
Date: Friday, 13 May 2016 7:30:29 PM
Attachments: image003.png
Casual FB Submissions re referred misc variations.pdf

Your Honour,

I refer to the above matter and **attach** Submissions in support of the SDA's Draft Determinations filed on 17 July 2015 to vary the following awards

- Pharmacy Industry Award 2010
- General Retail Industry Award 2010
- Fast Food Industry Award 2010
- Hair and Beauty Industry Award 2010

with respect to overtime penalties for casual employees and related matters.

These Submissions relate solely to the ancillary claims made by the SDA which were referred to this Full Bench from various individual award reviews.

I note that the Submissions have been filed some time after the Directions required. Please accept my sincere apologies for the late filing. Submissions were originally drafted in late October and I had assumed were emailed using a laptop used in Perth during an interstate visit at the time. I have subsequently confirmed that the material was not successfully transmitted and filed at that time. The file could not be successfully retrieved and I have since redrafted the relevant material from scratch.

Therefore, I respectfully seek leave for an extension of time to file the attached submissions effective from the time of your receipt. Thank you for your consideration.

Please note that the SDA does not intend to call any witnesses in support of these variations. We intend to rely upon these Submissions (and anything in response to the employer party replies) and advise that the SDA will not require any of the time set aside on 15 and 16 August 2016 for the calling of SDA witnesses, although we acknowledge that employer parties may seek to do so in reply.

Please do not hesitate to contact me should you have any questions regarding this correspondence.

Kind regards,

David Bliss
Assistant Secretary

The information and/or files contained in this document are intended for the named recipients only, it may contain privileged and confidential information. If you are not the intended recipient, you must not copy, distribute or take any action in reliance on it. If you have received this email in error please notify the sender. Finally, the recipient should check this email and any attachments for the presence of viruses. Although this email has been scanned before transmission, "SDA" accepts no liability for any damage caused by any undetected

IN THE FAIR WORK COMMISSION **Matters AM2014/197 and AM2014/197**

Fair Work Act 2009

s. 156 – 4 yearly review of modern awards

Casual Employment and Part-time Employment

Pharmacy Industry Award 2010

General Retail Industry Award 2010

Hair and Beauty Industry Award 2010

Fast Food Industry Award 2010

SUBMISSIONS OF THE SHOP, DISTRIBUTIVE AND ALLIED EMPLOYEES' ASSOCIATION

CASUAL ENTITLEMENT TO OVERTIME PENALTIES AND RELATED MATTERS

INTRODUCTION

1. These submissions are filed by the Shop, Distributive and Allied Employees' Association (the "SDA") in support of Draft Determinations filed on 17 July 2015.

2. The Draft Determinations were filed in these proceedings arising from the Directions of the Full Bench on 29 June 2015 with respect to *"miscellaneous issues concerning award casual employment provisions raised by various parties"*.[1] For ease of reference the variations sought by the SDA are as follows:

Item	Award	Matter
1.4.8	Pharmacy Industry Award 2010	Sub-group 2B -AM2014/209
1.4.21	General Retail Industry Award 2010	Group 4F – AM2014/270
1.4.22	General Retail Industry Award 2010	Group 4F – AM2014/270
1.4.23	Hair and Beauty Industry Award 2010	Group 4F – AM2014/271
-	Fast Food Industry Award 2010	Sub-group 4F -AM2014/267

[1] Directions AM2014/196 and AM2014/197 Sydney, 29 June 2015 Paragraph [1](1)(1.6)

3. The SDA submits that these variations should be relatively uncontroversial, give effect to modern award objectives, maintain the intended purpose and function of the casual loading, support the integrity of the principle of the 38 hour working week for all employees and, specifically, achieves the modern award objective of:

> *"(da) the need to provide additional remuneration for:*
> *(i) employees working overtime; or*
> *(ii) employees working unsocial, irregular or unpredictable hours; or*
> *(iii) employees working on weekends and public holidays; or*
> *(iv) employees working shifts …"*

4. As such, the SDA does not file any witness statements in support of these submissions.

5. The SDA's claims and the relevant Draft Determinations are directed at the problem that the payment of a casual loading is not and should not be a substitute for a range of entitlements which apply to the permanent workforce. Paid leave entitlements guaranteed under the National Employment Standards, set minimum hours of work and the predictability of work are characteristics of permanent employment which are absent in the context of an irregular, short-term or non-ongoing casual employee. Therefore, a casual loading is payable to that casual worker as compensation for the absence of these particular employment entitlements and benefits. However, the SDA submits that the casual loading does not and should not be considered adequate compensation or a substitute for overtime penalty rates of pay for working long, non-standard and/or unsociable hours.

6. Existing modern award provisions which do not provide additional remuneration to casual employees who work more than 38 hours in a week or work outside 'ordinary hours' or which discount or absorb the payment of penalty rates for work performed at unsociable times are, in our view, a form of double jeopardy. The award minimum 25% casual loading does not absorb these incidents of employment and the value of the casual employee's work is not relatively less valuable compared to the permanent employee performing the same task at the same time. The function of the casual loading, in our view, is quite separate.

7. The SDA also observes that the payment of a casual loading (e.g. 25%) in lieu of overtime rates of pay (e.g. 50% / 100%) for work performed in excess of 38 hours in a week also, quite perversely, promotes increased casualisation, not for any legitimate, operational purpose but for purely cost-based reasons.

8. In summary the Draft Determinations seek three categories of variations:

    a. Payment of overtime penalties for casual employees for work performed in excess of a 38 hour week.
    b. Payment of overtime penalties for casual employees for work performed which goes beyond the times and patterns considered 'ordinary' as per the relevant award.
    c. The payment of a casual loading of 25% in addition to the penalties paid to permanent employees for work performed at unsociable time (i.e. it is not adsorbed).

9. The Draft Determinations are sought as part of the award review process required under Section 156 of the *Fair Work Act* 2009.

GENERAL AND PRELIMINARY MATTERS

10. The nature and scope of 4-yearly modern awards review process was detailed by a Full Bench in the 4 Yearly Review of Modern Awards: Preliminary Jurisdictional Issues decision[2] ('Preliminary Jurisdiction Issues Decision') as follows:

    [60] On the basis of the foregoing we would make the following general observations about the Review:

    1. Section 156 sets out the requirement to conduct 4 yearly reviews of modern awards and what may be done in such reviews. The discretion in s.156(2) to make determinations varying modern awards and to make or revoke modern awards in a Review, is expressed in general terms. The scope of the discretion in s.156(2) is limited by other provisions of the FW Act.

[2] [2014] FWCFB 1788

In exercising its powers in a Review the Commission is exercising 'modern award powers' (s.134(2)(a)) and this has important implications for the matters which the Commission must take into account and for any determination arising from a Review. In particular, the modern awards objective in s.134 applies to the Review.

2. *The Commission must be constituted by a Full Bench to conduct a Review and to make determinations and modern awards in a Review. Section 582 provides that the President may give directions about the conduct of a Review. The general provisions relating to the performance of the Commission's functions apply to the Review. Sections 577 and 578 are particularly relevant in this regard. In conducting the Review the Commission is able to exercise its usual procedural powers, contained in Division 3 of Part 5-1 of the FW Act. Importantly, the Commission may inform itself in relation to the Review in such manner as it considers appropriate (s.590).*

3. *The Review is broader in scope than the Transitional Review of modern awards completed in 2013. The Commission is obliged to ensure that modern awards, together with the NES, provide a fair and relevant minimum safety net taking into account, among other things, the need to ensure a 'stable' modern award system (s.134(1)(g)). The need for a 'stable' modern award system suggests that a party seeking to vary a modern award in the context of the Review must advance a merit argument in support of the proposed variation. The extent of such an argument will depend on the circumstances. Some proposed changes may be self evident and can be determined with little formality. However, where a significant change is proposed it must be supported by a submission which addresses the relevant legislative provisions and be accompanied by probative evidence properly directed to demonstrating the facts supporting the proposed variation. In conducting the Review the Commission will also have regard to the historical context applicable to each modern award and will take into account previous decisions relevant to any contested issue. The particular context in which those decisions were made will also need to be considered. Previous Full Bench decisions should generally be followed, in the absence of cogent reasons for not doing so. The Commission will proceed on the basis that prima facie the modern award being reviewed achieved the modern awards objective at the time that it was made.*

4. *The modern awards objective applies to the Review. The objective is very broadly expressed and is directed at ensuring that modern awards, together with the NES, provide a 'fair and relevant minimum safety net of terms and conditions'.*

5. *In the Review the proponent of a variation to a modern award must demonstrate that if the modern award is varied in the manner proposed then it would only include terms to the extent necessary to achieve the modern awards objective (see s.138). What is 'necessary' in a particular case is a value judgment based on an assessment of the considerations in s.134(1)(a) to (h), having regard to the submissions and evidence directed to those considerations.*

6. *There may be no one set of provisions in a particular modern award which can be said to provide a fair and relevant minimum safety net of terms and conditions.*

There may be a number of permutations of a particular modern award, each of which may be said to achieve the modern awards objective.

7. *The characteristics of the employees and employers covered by modern awards varies between modern awards. To some extent the determination of a fair and relevant minimum safety net will be influenced by these contextual considerations. It follows that the application of the modern awards objective may result in different outcomes between different modern awards.*

8. *Any variation to a modern award arising from the Review must comply with s.136 of the FW Act and the related provisions which deal with the content of modern awards. Depending on the terms of a variation arising from the Review, certain other provisions of the FW Act may be relevant. For example, Division 3 of Part 2-1 of the FW Act deals with, among other things, the interaction between the National Employment Standards (NES) and modern awards. These provisions will be relevant to any Review application which seeks to alter the relationship between a modern award and the NES. The Review will also consider whether any existing term of a modern award is detrimental to an employee in any respect, when compared to the NES (see s.55(4)).*

9. *Division 5 of Part 2-3 (ss.157-161) of the FW Act deals with the exercise of powers outside 4 yearly reviews and annual wage reviews. These provisions are not relevant to the conduct of the Review but the Review process is not of itself a barrier to an application or determination being made under Division 5, provided the Commission is satisfied that the requirements of Division 5 have been met. In the event that the Review identifies an ambiguity or uncertainty or an error, or there is a need to update or omit the name of an entity mentioned in a modern award the Commission may exercise its powers under ss.159 or 160, on its own initiative. Interested parties will be provided with an opportunity to comment on any such proposed variation.*

10. *Division 6 of Part 2-3 contains specific provisions relevant to the exercise of modern award powers. These provisions apply to the Review. If the Commission were to make a modern award or change the coverage of an existing modern award in the Review, then the requirements set out in s.163 must be satisfied.*

    Determinations varying modern awards arising from the Review will generally operate prospectively and in relation to a particular employee the determination will take effect from the employee's first full pay period on or after the 'specified day'. Section 165(2) provides an exception to the general position that variations operate prospectively. A variation can only operate retrospectively if the variation is made under s.160 (which deals with variations to remove ambiguities or uncertainties, or to correct errors) and there are exceptional circumstances that justify retrospectivity.

    Section 166 deals with the operative date of variation and determinations which vary modern award minimum wages and it also applies to the Review.

11. The SDA, therefore, submits that the relevant awards no longer provide a "fair and relevant minimum safety net of terms and conditions" taking into account the criteria of s.134 of the Act.

12. The variations sought are, in our respectful view, "self evident and can be determined with little formality".

THE MODERN AWARD OBJECTIVE

13. On 21 March 2013 the *Fair Work Amendment Bill* 2013 was introduced into the Parliament.[3] Amongst other matters, the Bill inserted a new modern award objective into the *Fair Work Act* 2009. Specifically, Section 134(1)(da) which provides:

    (1) "The FWC must ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions, taking into account:

    (da) the need to provide additional remuneration for:
    (i) employees working overtime; or
    (ii) employees working unsocial, irregular or unpredictable hours; or
    (iii) employees working on weekends and public holidays; or
    (iv) employees working shifts …"

14. The Amendment Bill was passed by Parliament, received assent on 28 June 2013 and the relevant schedule of the Bill commenced operation on 1 January 2014.

15. This is the first Review to occur in the context of this new statutory consideration.

16. The SDA submits that award provisions which do not provide for overtime rates of pay for casual employees for work in excess of 38 hours in any week or outside ordinary hours or which absorb part of a penalty rate because the employee is casual ipso facto do not satisfy this modern award objective.

[3] http://parlinfo.aph.gov.au/parlInfo/download/legislation/billsdgs/2478239/upload_binary/2478239.pdf;fileType=application/pdf

17. Casual employees in some awards do not enjoy any additional remuneration and, we note, that many are worse off compared to the first 38 hours which they work because they no longer accrue the compulsory 9.5% superannuation contribution from their employer, because overtime earnings are not considered to be ordinary time earnings for the purpose of superannuation contributions.[4]

18. Subject to interpretation, there is arguably no additional remuneration paid to casual employees in the relevant awards for work in excess of 38 hours and in other cases the payment of a casual loading (payable for the loss of other incidents of employment) is used to reduce the amount of penalty payment which would otherwise be paid (e.g. to a permanent employee) – see *Schedule "A"* for a detailed comparison of existing award provisions and the proposed Draft Determinations.[5]

19. We refer to the Explanatory Memorandum[6], which details the Human Rights implications of this aspect of the Bill as follows:

Right to just and favourable working conditions

Article 7 of the ICESCR requires that State Parties recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular, remuneration that provides all workers with fair wages, a decent living and rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Modern awards objective

Under the FW Act, the FWC must ensure that modern awards, together with the National Employment Standards, provide a fair and relevant safety net of terms and conditions. In making or varying modern awards, the FWC must take into account the modern awards objective (see subsection 134(1) of the FW Act).

---

[4] https://www.ato.gov.au/printfriendly.aspx?url=/Business/Super-for-employers/In-detail/Calculating-and-paying/Using-ordinary-time-earnings-to-calculate-the-super-guarantee/

[5] The Pharmacy Industry Award 2010 comparison is complicated by the continuing plain language draft process – the SDA has endeavoured to adopt the current draft framework but reserves the right at the appropriate time to file an amended Draft Determination to reflect the outcome of that process in the context of our claim.

[6] http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr5028_ems_3772bfc1-8666-4a57-9caa-5a65607b5f83%22;rec=0

Item 1 of Schedule 2 to the Bill amends the modern awards objective to include a new requirement for the FWC to consider, in addition to the existing factors set out in subsection 134(1) of the FW Act, the need to provide additional remuneration for:

- *employees working overtime;*
- *employees working unsocial, irregular or unpredictable hours;*
- *employees working on weekends or public holidays; or*
- *employees working shifts.*

This amendment promotes the right to fair wages and in particular recognises the need to fairly compensate employees who work long, irregular, unsocial hours, or hours that could reasonably be expected to impact their work/life balance and enjoyment of life outside of work.

20. The SDA submits that this important change to the relevant legislative context for this review is proper justification for the Full Bench to reconsider whether the less favourable treatment of casual employees with respect to overtime and penalty rates means it can no longer be said that these awards provide a fair and relevant minimum safety net of terms and conditions. In our view, it is self evident that they do not.

THE CASUAL LOADING – THE CASE AGAINST ABSORPTION

21. The term "casual" is not defined in Section 12 The Dictionary of the Act, nor is it defined in Part 2-2 of the Act. Casual employees are, however, a class of employees who are excluded from the security of most of the National Employment Standards ("NES") set out in Part 2-2 of the Act. The Act specifically excludes casual employees from:

    (a) Parental leave and related entitlements[7] unless the casual employee "is, or will be, a long term casual employee of the employer … and … would have a reasonable expectation of continuing employment by the employer on a regular and systematic basis";

    (b) Annual leave[8];

    (c) Paid personal/carer's leave[9];

    (d) Paid compassionate leave[10];

    (e) Paid jury service[11]; and

---

7 Section 67 of the Act

8 Section 86 of the Act

9 Section 95 of the Act

10 Section 106 of the Act

(f) Notice of termination of redundancy pay[12].

22. We submit that it may therefore be safely assumed that the payment of a casual loading to an irregular casual employee is primarily in lieu of these entitlements.

23. We also respectfully submit that it may be assumed that the payment of a casual loading is in lieu of those indicia which differentiate between a casual and a permanent employee, including fixed and guaranteed hours or work and predictability.

24. The SDA submits that these entitlements and characteristics are conceptually separate and distinct to how many hours per week are in fact worked (e.g. working more than 38 hours) and when those hours are worked (e.g. late nights, weekends and public holidays).

25. If both a permanent and an irregular casual employee both work more than 38 hours in a single week, the SDA submits that both employees should be entitled to the payment of overtime rates of pay on those additional hours of work. The payment of the casual loading to the irregular casual employee alone (without any additional remuneration) does not give any recognition to the principle that work in excess of the maximum weekly hours is not desirable unless additional remuneration is paid.

26. The *Fair Work Amendment Bill* 2013 specifically addressed this issue and we note that the relevant amendment draws no distinction whatsoever between casual and permanent employees. In the absence of any additional remuneration for casual employees, the SDA submits that those modern awards which do not provide for the payment of overtime penalty rates for casual employees will remain are inconsistent with the modern award objectives.

27. The SDA submits that the casual loading is not a 'magic pudding' which can be used to justify the absorption of penalties and loadings applicable for other incidents of employment, such as working long, inconvenient and/or unsociable hours.

28. The non-payment of overtime rates of pay and the reduced penalty rates paid to some casuals (seemingly on the basis that they are already receiving a causal loading) is not only

---

11 Section 111 of the Act

12 Section 123 of the Act

to be resisted from the perspective of equitable outcomes for work performed of equal value but it must be contested as it creates a perverse incentive for some employers to increase casual employment to the detriment of permanent positions because work at these times and for longer hours becomes relatively cheaper.

38 HOUR WEEK

29. At their heart, award provisions which provide no additional remuneration for overtime hours of work undermine the integrity of the 38 hour week.

30. In the June 1986 the Australian Conciliation and Arbitration Commission varied and determined Wage Fixation Principle 5 as follows[13]:

5. Standard Hours

(a) In dealing with claims for a reduction in standard hours to 38 per week, the cost impact of the shorter week should be minimized. Accordingly, the Commission should satisfy itself that as much as possible of the required cost offset is achieved by changes in work practices.
(b) Claims for reduction in standard weekly hours below 38, even with full cost offsets, should not be allowed.
(c) The Commission should not approve or award improvements in pay or other conditions on the basis of productivity bargaining. These improvements should only be allowed on the basis of the appropriate Principles.

31. Prior to June 1986, offsets were required to establish a 38 hour in various awards. This decision was different in that it established that the reduction in standard hours from 40 hours to 38 hours did not require any offsets.

32. Over the years, based upon this wage fixation principle, awards were varied to reflect this principle.

33. Today the 38 hour week is a statutory entitlement.[14]

---

[13] National Wage Case June 1986 Print G3600 Appendix D – The Principles

[14] Section 62 of the *Fair Work Act* 2009

34. The SDA submits that to simultaneously permit one class of employees (i.e. permanent employees) to enjoy the benefit of overtime rates of pay and relatively higher penalty rates, once the casual loading component has been severed, and deny another class of employees (i.e. irregular casual employees) the same or an equivalent entitlement for working the same hours and/or times undermines the principle determined by the Commission over the last 30 years that recognised the 38 hour week.

35. Either we respect the 38 hour week and remunerate all workers accordingly for work in excess of 38 hours or we dispel the notion once and for all that our Australian industrial framework maintains the 38 hour week as a core principle.

36. In the absence of the payment of overtime rates of pay for work in excess of 38 hours or for work performed outside 'ordinary hours', this work performed by casual employees covered by the relevant awards at these times is no different to their first hour of work or any other hour of work, rendering the 38 hour week essentially meaningless.

REASONABLE OVERTIME

37. The relevant award overtime provisions operate in conjunction with Sections 62(2) and (3) of the Fair Work Act 2009, which provide:

    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;
    (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;
(j) any other relevant matter.

38. The SDA notes that reading the relevant award provisions in conjunction with the statutory framework do not, unfortunately, confer an unqualified right to a casual employee to refuse to work overtime on the basis there is no additional remuneration. Whilst Section 62(3)(d) of the Act requires that the payment of overtime rates etc. be a criteria to determine if the additional hours are reasonable, it is are not the sole criteria.

39. Therefore relatively lowly paid, powerless casual employees are abandoned.

40. Not only does the statutory framework provide little or no protection against working these additional hours, as the rights conferred to workers are highly contingent, but once the employer (arguably) requires a casual employee to work these hours they are paid even less than they are paid during ordinary hours of work.[15]

41. The SDA notes that this statutory provision was adopted, in essence, as a reflection of the Reasonable Hours test Case handed down by the Commission on 23 July 2002.[16] The test case standard acknowledged the "well established right" of employers to require reasonable overtime, but gave employees a countervailing right to refuse to work overtime where it would result in unreasonable hours.

42. The combination of a statutory framework which leaves open the prospect, and indeed likelihood, for vulnerable casual employees to be required to work overtime with the non-payment of additional remuneration for the working of that overtime is not, in our respectful view, a "fair and relevant minimum safety net of terms and conditions" taking into account the criteria of s.134 of the Act.

[15] See Paragraph 17 of the Submissions.

[16] PR072002

CONCLUSION

43. At its heart, the variations rest on the premise that many casual employees are unnecessarily and unfairly disadvantaged compared to their permanent counterparts with respect to certain hours of work, specifically work in excess of 38 hours per week, work in excess of 'ordinary hours' and work performed during unsociable times.

44. We submit that this disadvantage is not remedied by the payment of a 25% casual loading because the payment of that loading is for an entirely different and separate purpose.

45. Irregular casual employees are already more vulnerable compared to permanent employees by virtue of their employment status, the lack of guaranteed hours and the unpredictability of the work. That vulnerability is simply exacerbated when an employer may lawfully under current award and statutory regimes (so-called) "reasonably" require a casual employee to work additional hours without any additional remuneration and, indeed, without any superannuation contributions for work in excess of 38 hours per week. Casual employees are simply left worse off.

46. The current inferior award provisions for casual employees:

- Are inconsistent with the amended modern award objectives under s134 of the Act;
- Undermine the integrity of the principle of the 38 hour week;
- Entrench and encourage unnecessarily high levels of casual employment by creating a perverse economic incentive to employ more casuals; and
- Are not remedied by the payment of the causal loading.

47. The problems identified are not merely an academic exercise. The problem has, in our view, contributed to the stubbornly widespread ongoing use of casual employment under the Award, when the true nature of the employment relationship for many of these employees is permanent.[17]

[17] We refer to the submissions and evidence of the ACTU common claims in this regard

48. The SDA submits that relevant award provisions no longer provide a "fair and relevant minimum safety net of terms and conditions" taking into account the criteria of s.134 of the Act and the variations sought are, in our respectful view, "self evident and can be determined with little formality".

49. The SDA submits that the Commission may, on the basis of these submissions safely determine that the existing provisions are not achieving the modern awards objective.

50. The SDA commends the Draft Determinations and urges the Commission to vary the relevant Awards in the terms sought.

David Bliss

Assistant Secretary and Industrial Officer

SDA Newcastle and Northern Branch

13 May 2016

Schedule "A"

Award and Clause	Current Provision (and Revised Plain Language Draft with respect to Pharmacy)[18]	Proposed Draft Determination[19]
Pharmacy Industry Award 2010 Clause 20	20. Overtime 20.1 Application of overtime for full -time employees (a) An employer must pay a full -time employee at the overtime rate for any hours worked at the direction of the employer: (i) in excess of the number of hours mentioned in clause 9.1 (full-time hours) or 13.5 (maximum daily hours); or (ii) between midnight and 7.00 am. 20.2 Application of overtime for part -time employees (a) An employer must pay a part-time employee at the overtime rate for any hours worked in excess of the number of hours that the employee has agreed to work under clause 10—Part-time employment.	***Insert additional subclause 20.3***[20] 20.3 Application of overtime for casual employees (a) An employer must pay a casual employee at the overtime rate for any hours worked in excess of or outside the ordinary hours of work under clause 13. (b) An employer must pay a casual employee at the overtime rate for any hours worked in excess of 38 hours per week.
General Retail Industry Award 2010 Clause 29.2	29.2 Overtime (a) Hours worked in excess of the ordinary hours of work, outside the	29.2 Overtime (a) Overtime shall be payable to all full-time, part-time and casual

[18] AM2014/209 Revised Plain Language Draft 21 April 2016 - https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/AM2014209-report-plainlanguage-FWC-210416.pdf

[19] The SDA shall file an amended Draft Determination reflecting the relevant clauses and language which the Commission adopts for this Award based upon the outcome of the Plain language drafting exercise at the appropriate time, in the context that the clause references and the language used is fluid.

[20] This is based on the current plain language draft available as at 13 May 2016 but the SDA reserves the right to vary this proposed Draft Determination (as per above) depending on the outcome of the Plain language drafting exercise but consistent with the principles expressed in this submission.

	span of hours (excluding shiftwork), or roster conditions prescribed in clauses 27 and 28 are to be paid at time and a half for the first three hours and double time thereafter. (b) Hours worked by part-time employees in excess of the agreed hours in clause 12.2 or as varied under clause 12.3 will be paid at time and a half for the first three hours and double time thereafter. (c) The rate of overtime on a Sunday is double time, and on a public holiday is double time and a half. (d) Overtime is calculated on a daily basis.	employees for hours worked in excess of the ordinary hours or work, outside the span of hours (excluding shiftwork), or roster conditions prescribed in clauses 27 and 28. (b) Overtime shall be paid at time and a half for the first two hours and double time thereafter. (c) Overtime shall be paid to casual employees for hours worked in excess of 38 hours per week. (d) Hours worked by part-time employees in excess of the agreed hours in clause 12.2 or as varied under clause 12.3 will be paid at time and a half for the first two hours and double time thereafter. (e) The rate of overtime on a Sunday is double time, and on a public holiday is double time and a half. (f) Overtime is calculated on a daily basis.
General Retail Industry Award 2010 Clause 29.4	29.4 Penalty payments (a) Evening work Monday to Friday A penalty payment of an additional 25% will apply for ordinary hours worked after 6.00 pm. This does not apply to casuals. (b) Saturday work A penalty payment of an additional 25% will apply for ordinary hours worked on a Saturday for full-time and part-time employees. A casual employee must be paid an additional 10% for work performed on a Saturday between 7.00 am and 6.00 pm. (c) Sunday work	29.4 Penalty payments (a) Evening work Monday to Friday A penalty payment of an additional 25% will apply for ordinary hours worked after 6.00 pm for full-time, part-time and casual employees. (b) Saturday work A penalty payment of an additional 25% will apply for ordinary hours worked on a Saturday for full-time, part-time and casual employees. (c) Sunday work

<table>
<tr><td></td><td>A penalty payment of an additional 100% loading will apply for all hours worked on a Sunday. This penalty payment also applies to casual employees instead of the casual loading in clause 13.2.

(d) Public holidays

(i) Work on a public holiday must be compensated by payment at the rate of an additional 150%.

(ii) Provided that by mutual agreement of the employee and the employer, the employee (other than a casual) may be compensated for a particular public holiday by either:

(A) An equivalent day or equivalent time off instead without loss of pay. The time off must be taken within four weeks of the public holiday occurring, or it shall be paid out; or

(B) An additional day or equivalent time as annual leave.

(iii) The employee and employer are entitled to a fresh choice of payment or time off by agreement on each occasion work is performed on a public holiday.

(iv) If no agreement can be reached on the method of compensation, the default arrangement shall be as per clause 29.4(d)(i).</td><td>A penalty payment of an additional 100% loading will apply for all hours worked on a Sunday for full-time, part-time and casual employees.

(d) Public holidays

(i) Work on a public holiday must be compensated by payment at the rate of an additional 150%.

(ii) Provided that by mutual agreement of the employee and the employer, the employee (other than a casual) may be compensated for a particular public holiday by either:

(A) An equivalent day or equivalent time off instead without loss of pay. The time off must be taken within four weeks of the public holiday occurring, or it shall be paid out; or

(B) An additional day or equivalent time as annual leave.

(iii) The employee and employer are entitled to a fresh choice of payment or time off by agreement on each occasion work is performed on a public holiday.

(iv) If no agreement can be reached on the method of compensation, the default arrangement shall be as per clause 29.4(d)(i).</td></tr>
<tr><td>Fast Food Industry Award 2010 Clause 26.1</td><td>26.1 An employee shall be paid overtime for all work as follows:

(a) In excess of:

(i) 38 hours per week or an average of 38 hours per week averaged over a four week period; or</td><td>26.1 Full-time, part-time and casual employees shall be paid overtime for all work as follows:

(a) In excess of:

(i) 38 hours per week or an average of 38 hours per week averaged over a four week period for full-time and</td></tr>
</table>

	   (ii) five days per week (or six days in one week if in the following week ordinary hours are worked on not more than four days); or (iii) eleven hours on any one day; or (b) Before an employee's rostered commencing time on any one day; or (c) After an employee's rostered ceasing time on any one day; or (d) Outside the ordinary hours of work; or (e) Hours worked by part-time employees in excess of the agreed hours in clause 12.2 or as varied under clause 12.3. 26.2 Where an employee works overtime on a Sunday and that work is not immediately preceding or immediately following ordinary hours, then that employee must be paid double time with a minimum payment of four hours at such rate.	part-time employees; or (ii) 38 hours per week for casual employees; or (iii) five days per week (or six days in one week if in the following week ordinary hours are worked on not more than four days) for full-time and part-time employees; or (iv) five days per week for casual employees; or (v) eleven hours on any one day for full-time, part-time and casual employees; or (b) Before an employee's rostered commencing time on any one day; or (c) After an employee's rostered ceasing time on any one day; or (d) Outside the ordinary hours of work; or (e) Hours worked by part-time employees in excess of the agreed hours in clause 12.2 or as varied under clause 12.3. 26.2 Where a full-time, part-time or casual employee works overtime on a Sunday and that work is not immediately preceding or immediately following ordinary hours, then that employee must be paid double time with a minimum payment of four hours at such rate.
Hair and Beauty Industry Award 2010 Clause 31.2	31.2 Overtime and penalty rates (a) Overtime hours worked in excess of the ordinary number of hours of work prescribed in clause 28.2 are to be paid at time and a half for the first three hours and double time thereafter.	31.2 Overtime and penalty rates (a) Overtime hours worked by a full-time, part-time or casual employee in excess of the ordinary number of hours of work prescribed in clause 28.2 are to be paid at time and a half for the first two hours and double

		time thereafter.
	(b) Saturday work A loading of 33% will apply for ordinary hours of work for full-time, part-time and casual employees within the span of hours on a Saturday.	(b) Saturday work A loading of 33% will apply for ordinary hours of work for full-time and part-time employees within the span of hours on a Saturday. A loading of 58% will apply for ordinary hours of work for casual employees within the span of hours on a Saturday.
	(c) Sunday work A 100% loading will apply for all hours of work for full-time, part-time and casual employees on a Sunday.	(c) Sunday work A 100% loading will apply for all hours of work for full-time and part-time employees on a Sunday. A 125% loading will apply for all hours of work for casual employees on a Sunday.
	(d) Employment on rostered day off Where it is mutually agreed upon between the employer and the employee (such agreement to be evidenced in writing), an employee may be employed on their rostered day off at the rate of double time for all time worked with a minimum payment as for four hours' work.	(d) Employment on rostered day off Where it is mutually agreed upon between the employer and the employee (such agreement to be evidenced in writing), an employee may be employed on their rostered day off at the rate of double time for all time worked with a minimum payment as for four hours' work.