



**The Pharmacy  
Guild of Australia**

## **Submission to the Senate Committee Inquiry into the Fair Work (Registered Organisations) Amendment Bill 2013**

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The PGA was established in 1928, bringing together several small retail pharmacy organisations then operating in various States. The PGA is registered under the Fair Work (Registered Organisations) Act 2009 as an employers' organisation. Its members are owners of some 4,100 pharmacies throughout Australia.

The PGA is a national employers' organisation which functions as a single entity rather than a federation, with fully operational branches in every state and territory. The development of policy is the responsibility of the PGA's supreme governing body, the National Council, on which all State/Territory Branches are represented. Branches are responsible for the maintenance of state pharmacy and related acts, along with the day-to-day servicing of members in such fields as industrial relations, marketing, staff training, and product and economic information, as well as involvement in the management and implementation of new pharmacy services such as Home Medicine Reviews and the Quality Care Pharmacy Program.

The PGA's mission is to service the needs of proprietors of independent community pharmacies. The PGA aims to maintain community pharmacies as the most appropriate primary providers of health care to the community through optimum therapeutic use of medicines, medicine management and related services. The PGA is committed to supporting and maintaining the community pharmacy model as the most appropriate and efficient system of delivering medicines, medication management and related services to the Australian public.

The 5300 community pharmacies across Australia dispense around 250 million prescriptions annually. The vast majority of the prescriptions dispensed under the Federal Government's subsidised Pharmaceutical Benefits Scheme (PBS) are available at the same price for all Australians wherever they live. This is a triumph of equity and access, which the Guild works hard to maintain. The five year Community Pharmacy Agreements between the Australian Government and the Pharmacy Guild of Australia recognise the key role played by community pharmacy in primary health care through the delivery of Pharmaceutical Benefits Scheme (PBS) medicines and related services.

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The Agreements provide remuneration for around 5300 community pharmacies for dispensing of PBS medicines, the provision of pharmacy programs and services, and the Community Service Obligation arrangements with pharmaceutical wholesalers. Under the Agreements, the PGA administers and manages Federal Government monies as part of the Community Pharmacy Agreements on behalf of and in collaboration with the Federal Government. This necessitates sound and robust financial management processes and systems within the PGA.

The PGA accepts and understands the emphasis within the amendments that turn to greater accountability and transparency of registered organisations. However there are some details contained with the proposed Fair Work (Registered Organisations) Amendment Bill 2013 (the Bill) that create either confusion or require further clarification.

The PGA seeks to draw to the attention of the Senate Committee some of the concerns and uncertainties that arise in a reading of the Bill. These include but are not limited to:

**1. Disclosure of remuneration paid to officers – potential duplication of disclosure**

It appears that in instances where an officer is both an officer of an organisation and a branch, there is a potential duplication of reporting of remuneration to both the organisation and the branch by the officer, and the disclosure of such remuneration by the organisation and branch. Clarity is therefore required in order to ensure that such duplication does not eventuate.

**2. Disclosure of certain remuneration and benefits by organisations and branches – non-cash benefits**

The disclosure of remuneration paid to the top five officers by an organisation and branch of an organisation includes the disclosure of the value and form of the officer's relevant non-cash benefits. It is unclear as to how an organisation or branch should value these non-cash benefits.

**3. Disclosure of payments to related parties and/ or declared persons/bodies**

a. Alternative disclosure arrangements

Organisations and branches are required to disclose "each payment" during a financial year that meets the requirements of the relevant section of the Bill. It is noted that the Bill provides for alternative disclosure arrangements that can only be applied if certain criteria are met. It is the Guild's view that alternative disclosure arrangements (such as disclosing the aggregate of payments of a similar nature, rather than "each payment") be available under the legislation as a matter of course and that a requirement to seek an order, which creates unnecessary bureaucratic administrative burden on registered organisations, be removed from the bill.





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b. Disclosure of remuneration of officer relatives

The Bill contains requirements to disclose payments to related parties which would appear to include remuneration and reimbursement of expenses paid to relatives of officers. We note that an exemption is provided for these types of payments to officers, but not for payments to relatives of officers. We therefore query as to whether this exemption should be extended to relatives of officers.

c. Disclosure of payments made by an organisation to a related party of a branch

The requirement for an organisation to disclose payments to a related party of a branch appears inconsistent with the rest of the relevant section. We therefore query as to whether this requirement is meant to be included.

To assist the Senate Committee, more detailed examples of the potential for ambiguity and confusion with aspects of the Bill are attached at APPENDIX A.

Yours sincerely

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## APPENDIX A – EXAMPLES OF WHERE GREATER CLARITY IS REQUIRED

### 1. S. 293B Disclosure of remuneration paid to officers – potential duplication of disclosure

It is noted that s. 293B(1)(ii) requires an officer of an **organisation** to disclose to the **organisation** remuneration paid to the officer because the officer is a member of a Board and the officer was nominated for the position of Board member by the **organisation** or a **branch** of the organisation.

It is also noted that s. 293B(2)(ii) requires an officer of a **branch** of an organisation to disclose to the **branch** remuneration paid to the officer because the officer is a member of a Board and the officer was nominated for the position of Board member by the **organisation** or a **branch** of the organisation.

In instances where an officer is both an officer of an **organisation** and a **branch** of an organisation, this would appear to result in the officer being required to make duplicate disclosures to the organisation and the branch should the officer have been nominated to a respective board by either the organisation or the branch.

Furthermore, this would appear to potentially result in the officer's respective remuneration being duplicated in both the disclosures required by the organisation (per s. 293BC(1)) and the branch of the organisation (per s. 293BC(2)).

Clarity is therefore required in order to ensure that officer remuneration is not duplicated in both disclosures to an organisation and a branch by the officer, and disclosures by an organisation and branch.

### 2. S. 293BC Disclosure of certain remuneration and benefits by organisations and branches – non-cash benefits

Sections 293BC(1)(b)(ii) and 2(b)(ii) require that an organisation or branch, as the case may be, disclose for the five (5) highest remunerated officers (ranked by relevant remuneration) of the organisation or branch, the **value** and form of the officer's relevant **non-cash benefits** for the financial year.

Will guidance be provided to organisations and branches of the methodology required to value relevant non-cash benefits so as to provide clarity and ensure consistency amongst organisations and branches?

It is noted that these non-cash benefits would likely be subject to the Fringe Benefits Tax (FBT) regime (*Fringe Benefits Tax Assessment Act 1986*), which refers to a number of "values" for "fringe benefits" (or non-cash benefits). These values include the "taxable value", "grossed-up value", etc. It is noted that the FBT legislative regime was enacted to resolve the many difficulties faced by entities in determining the value of fringe benefits.

As such, will similar guidance be provided to assist organisations and branches to value these non-cash benefits?





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### 3. S. 293G Disclosure of payments made by an organisation or branch

#### a. S 293G(1) and (2) – Alternative disclosure arrangements

Sections 293G(1) and (2) require an organisation or branch, as the case may be, to disclose details of **each payment** made during the financial year to related parties and declared persons / bodies.

As an organisation or branch may make a number of payments to a related party and/or declared person/body during a financial year that are of a similar nature, could consideration be given to requiring the disclosure of the aggregate of each type of relevant payment of a similar nature that is made during a financial year to each related party and/or declared persons/bodies?

This would not only have the advantage of reducing potential onerous disclosure requirements for organisations / branches but would also provide recipients of the report with an informative summary of the types of payments of a similar nature that are made to related parties and declared persons/bodies. The Guild is of the opinion that summarised information would provide more value to recipients of the report than disclosing a potential substantial amount of transactional data.

It is noted that section 293H provides a mechanism for organisations to apply to the Commissioner for an alternative disclosure arrangement should the organisation consider the requirements of section 293G too onerous. However, it is considered that the alternative disclosure method suggested above would potentially be more beneficial for the recipients of the disclosures.

It is also noted that the *Fair Work (Registered Organisations) Amendment Act 2012* provides an option for organisations and branches to disclose either or both (i) each payment made, or (ii) the total of the payments made to a related party and/or declared person/body during a financial year (noting that this section of the 2012 Amendment Act is proposed to be repealed by this bill). We query why this option is proposed to be removed by the Bill.

#### b. S 293G(4) – Disclosure of remuneration of officer relatives

Section 293G(4) exempts the requirement to disclose payments to a related party where the amount is paid to an **officer** of the organisation or branch and the payment (i) consists of **remuneration**, or (ii) is the **reimbursement for expenses reasonably incurred** by the officer in performing the officer's duties as an officer.

It is noted that the exemption appears to only relate to an 'officer'. Per the *Fair Work (Registered Organisations) Amendment Act 2012* the meaning of a 'related party' also includes a spouse of an officer, a relative (parent, step-parent, child, stepchild, grandparent, grandchild, brother or sister) of an officer, and the spouse of a relative of an officer.





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This would appear to indicate that if a spouse or relative (including a spouse of the relative) of an officer is an employee of an organisation or branch, the organisation or branch would potentially be required to disclose payments made to such a person which are in the form of remuneration and/or any reimbursement of expenses reasonably incurred by such person in performing their employment duties.

Is this the intention of the Bill? If not, it is suggested that section 293G(4) be amended to exempt from disclosure the payments referred to in the section (that is remuneration and reimbursed expenses) that are made to spouses or relatives (including spouses of relatives) of an officer where such person is an employee of the organisation or branch.

### **c. S 293G(1) – Disclosure of payments made by an organisation to a related party of a branch**

Section 293G(1) requires an **organisation** to disclose payments made by the organisation to:

- (a) a related party of the **organisation** or a related party of a **branch** of the organisation, or
- (b) a declared person or body of the **organisation**

Section 293G(2) requires a **branch** of an organisation to disclose payments made by the branch to:

- (a) a related party of the **branch**, or
- (b) a declared person or body of the **branch**

The requirement for an **organisation** to disclose payments to a related party of a **branch** appears inconsistent with the rest of s. 293G(1) and (2). Is this meant to be included?