

FAIR WORK COMMISSION

SECTION 157 PROCEEDING

Matter NO: C2019/5255

SUBMISSION

**Association of Professional Engineers, Scientists and Managers,
Australia (“APESMA”)**



DATE: 19th September 2019

Lodged by: APESMA

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INTRODUCTION

1. This Submission is filed by the Association of Professional Engineers, Scientists and Managers, Australia ("**APESMA**") in accordance with the Directions contained in the Statement issued by His Honour Justice Ross on 27th August 2019¹. ("**the Statement**")
2. APESMA is the main registered organization of employees covering technology- based professionals and has a significant interest in the Section 157 proceeding.
3. Of the list of modern awards that include classifications applying to employees who are required to hold undergraduate qualifications that are outlined in Attachment A to the Statement APESMA is the primary union which has an interest in professional employees covered by the following modern awards.

MA000064 Hydrocarbons Field Geologists Award 2010
MA000065 Professional Employees Award 2010
MA000066 Surveying Award.
MA000079 Architects Award 2010
MA0000118 Animal Care and Veterinary Services Award 2010

4. APESMA also has an interest in the following modern awards along with other employee registered organisations.

MA00001 Black Coal Industry Award 2010
MA000015 Rail Industry Award 2010
MA000027 Health Professionals and Support Services Award 2010
MA000049 Airport Employees Award 2010
MA000088 Electrical Power Industry Award 2010
MA000098 Ambulance and Patient Transport Industry Award 2010
MA000112 Local Government Industry Award 2010
MA000113 Water Industry Award 2010
MA000121 State Government Agencies Award 2010

¹ [2019] FWC 5934

5. For the reasons which will be outlined hereunder APESMA makes the following submission.
- (i) That the *Pharmacy Industry Award 2010* in Matter AM2014/2019 be continued to be dealt with by the current Full Bench as part of the 4 Year Review of Modern Awards. This would be for the purpose of the consideration of the alignment of the Graduate rate of pay for a 4-year Graduate with that of the *Professional Employees Award* and other awards containing 4 year degree entry rates.
 - (ii) That the *Professional Employees Award 2010* be considered for inclusion in the priority group of modern awards for the s.157 proceeding.

BACKGROUND

6. This proceeding has its origins in the June 2019 Full Bench Decision² in respect of the *Pharmacy Industry Award*. This Decision contained three main conclusions and the conclusion relevant to this proceeding is as follows;

(3) There was a lack of alignment in pay rates and relativities as between pharmacists (who require a four – year undergraduate degree) under the Pharmacy Award and those for classifications requiring equivalent qualifications under the manufacturing and Associated Industries and Occupations Award 2010 (Manufacturing Award), as well as a lack of a consistent relationship with the Australian Qualifications Framework (AQF). We considered that this might potentially constitute a work value consideration relevant to the 4 yearly review of the Pharmacy Award. We invited further submissions as to this matter, and foreshadowed the possibility that this aspect of the review might need to be referred back to the president of the Commission for consideration as to the procedural course to be taken back to the president of the Commission for consideration as to the procedural course to be taken pursuant to s.582 of the Fair Work Act 2009 (FW Act) since it might have implications for other awards of the Commission (third conclusion)”.

7. The Full Bench invited further submissions from the parties in respect of the third conclusion and submissions were subsequently filed by the APESMA, Pharmaceutical

² [2019] FWCFB 3949.

Society of Australia, and the Australian Business Industrial and the NSW Business Chamber (“ABI”)³.

ABI SUBMISSION

8. The ABI submission in respect of the third conclusion focused in part on the Metal Industry Award and the implementation of the Structural Efficiency Principle in accordance with the National Wage Case 1989 [1989]⁴. Reference was made in Paragraph 3.23 of the ABI submission to an agreement being reached between the Metal Trades industry Association and the Metal Trades Federation of Unions regarding the “C10 arrangement”.
9. At paragraph 3.24 the ABI submission states that;

“This background is raised to identify that C10 did not come about through a substantial work value case. Indeed, C10 was a construct advanced with the agreement of the union movement accepted by the Commission for a purpose, and its purpose that it was accepted for wasn’t that it reflected work value, its purpose was accepted because it would then create a framework that would create stability”.
10. It is of significance in this regard to note that Parts 111 and Part IV of the Metal Industry Award had application to Professional Engineers and Professional Scientists, respectively and were part of the Metal Industry consent arrangement having relativities set in relationship to the C10 classification.

AWARDS: TECHNOLOGY – BASED PROFESSIONALS

11. Following the Metal Industry Award decision APESMA, then known as the Association of Professional Engineers and Scientists Australia, made an application in the furtherance of the Structural Efficiency Principle in accordance with the August 1989 National Wage Case. The application was for a flow on of the agreement for the Metal Industry to the *Professional Engineers (General Industries) Award 1982 and the Professional Scientists Award 1981* which had application to the majority of technology – based employees working in the non-government sector.

³ AM2016/28 – Work Value Claim: Pharmacy Industry Award 2010 – Submission of NSW Business Chamber and Australian Business Industrial, 4th March 2019.

⁴ 30 IR 81.

12. The matter was heard by Commissioner G Harrison and on Page 12 of his Decision he states as follows⁵

“the variations sought are essentially a flow-on from the Metal Industry Award which would establish skill related career paths, allow for the creation of appropriate relativities between the different categories of workers within the award to ensure that working patterns and arrangements will enhance flexibility and efficiency and also remove impediments to multi skilling.”

13. The Association sought an additional two classifications Level 3 and Level 4 to align with Parts III and IV of the Metal Industry Award. In his Decision Commissioner Harrison stated on Page 13 as follows;

“I consider that the appropriate relativities for the new classifications should be determined with regard to those fixed for comparable classifications in other awards. In these applications what is sought is a flow-on of the Metal Industry Award Parts 3 and 4.

14. The Applications were opposed by the employer organisations who argued against the adoption by arbitration of what had been a consent position. Nevertheless, the Association’s applications were granted.

15. The matter was dealt with further on appeal to a Full Bench in C No’s 30801 and 30802 of 1992. In upholding the original decision, the Full Bench Decision⁶ at Page 6 stated;

“The Commissioner was required to undertake a proper assessment of skills and responsibilities in order to establish consistent internal and external relativities for the classifications in the awards in question. In approaching this task, as we have already observed, there was evidence before him as to the existence of a defacto classification structure in the agreements similar to the one being proposed by the APESA. Given the requirements of the August 1989 National Wage Case decision it was appropriate for the Commissioner to consider the proposed classification in light of the Metal Industry Award.”

16. The Full Bench Decision in so far as awards covering were concerned provided the basis for a flow on to other awards in which APESMA had an interest covering such employees as Architects, Information Technology Professionals and Veterinary Surgeons. In addition, the table contained in Paragraph 24 of the submission illustrates

⁵ Dec 164/92 S Print K1997.

⁶ DEC 1718/95 S PRINT M3882.

the similarities in rates between what is now the Professional Employees Award 2010 and other awards covering professional employees other than technology – based professionals.

PROFESSIONAL EMPLOYEES AWARD 2010

17. As part of the Award Modernisation process awards covering Professional Engineers, Professional Scientists, Information Technology, Telecommunications Professionals and Quality Auditors were rationalised which resulted in the creation of the Professional Employees Award 2010.

PHARMACY INDUSTRY AWARD 2010

18. In the in the December 2018 Full Bench Decision⁷ in respect of the *Pharmacy Industry Award (“Pharmacy Award”)* the Full Bench found that there were work value reasons why the rates of pay for pharmacists covered by the *Pharmacy Award* should be increased and that a new allowance should be inserted into the Award for certain work undertaken by pharmacists. They also considered the APESMA assertion that there was a lack of alignment between the 4 year degree rate for pharmacists covered by the *Pharmacy Award* and with other 4 year degree rates in other awards as well as with the C10 rate in the *Manufacturing and Associated Industries and Occupations Award 2010 (“Manufacturing Award”)*.
19. In the December Full Bench Decision⁸ the Full Bench gave consideration to the APESMA comments regarding the lack of alignment between the graduate pharmacist rate and the C10 rate in the *Manufacturing Award* and they commented at paragraph 198 that:

‘This matter may potentially constitute a work value consideration relevant to the 4 yearly review of the Pharmacy Award. In the conduct of the review, the Commission is required to discharge its functions under s 156(2) and is not confined to matters raised by interested parties. We will as a first step invite further submissions from interested parties concerning this matter. We will then consider what course, if any, should be taken. One possibility is that this aspect of the review may need to be referred back to the President of the Commission for consideration as to the procedural course to be taken pursuant to s 582, since the matter raised may have implications for other awards of the Commission, including but not limited to the Professional Employees Award 2010.
20. Unfortunately, they made no observations regarding APESMA’s comments that there was a lack of alignment between pharmacist 4 year degree rates and the 4 year degree rates in all other awards containing 4 year degree rates.

⁷ [2018] FWCFB 7621.

⁸ [2018] FWCFB 7621 at paras 194 – 198.

21. APESMA, the Pharmacy Guild of Australia (**PGA**), the Pharmaceutical Society of Australia (**PSA**) and ABI filed submissions. The Full Bench in their Decision of 13 June 2109⁹ outlined the work value pay increases they were going to grant, the new allowance provision and that they were referring the consideration of the alignment between the 4 year degree pharmacist rate and the C10 rate in the *Manufacturing Award* to the President for consideration as to the procedural course to be taken pursuant to s 582 of the *Fair Work Act 2009 (FW Act)* since it might have implications for other awards of the Commission.
22. Once again the APESMA concerns regarding the lack of alignment between the 4 year degree pharmacist rate and 4 year degree rates in all other awards was not considered by the Full Bench.

INTERIM STEP

23. As mentioned in Paragraph 5 (i) above APESMA seeks an interim realignment of the pharmacist 4 year degree rate, and consequential increases in all other pharmacist classifications in the *Pharmacy Award* so as to maintain relativities, to bring these rates into alignment with all other 4 year degree rates. Consideration of the alignment of the 4 year degree rate with the C10 rate in the *Manufacturing Award* should not hold back a realignment of the pharmacist 4 year degree rates with all other 4 year degree rates as the consideration of the realignment of the C10 rate with the 4 year degree rates would not resolve the issue of the alignment between the pharmacist rates and the rates for all other awards containing 4 year degree rates.
24. The following table illustrates the current lack of alignment between the pharmacist 4 year degree rate and that for all other 4 year degree rates

Various modern award 4 year degree entry rates as at 20 September 2019

Award	Pharmacy Industry Award 2010 [MA000012]	Professional Employees Award 2010 [MA000065]	Childrens Services Award [MA000120]	Social, Community, Home Care and Disability Services Industry Award 2010 [MA000100]	Educational Services (Teachers) Award 2010 [MA000077]	Health Professionals and Support Services Award 2010 [MA000027]	Nurses Award 2010 [MA000034]
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⁹ [2019] FWCFB 3949.

4 year degree entry rate	909.90 (Pharmacy intern first half of training)	1012.40* (Level 1 pay point 1.1) \$	1225.10 (Level 6A.1)	1009.00 (Social and community services employee level 3.4)	1035.29* (Level 3) #	981.20 (Health Professional employee Level 1 pay point 3) #	981.20 (Clause 14.3 (a) four year degree entry level) #
Percentage difference to Pharmacy Award		111.26%	134.63%	110.89%	113.78%	107.83%	107.83%

* Formula used to convert annual salaries to weekly wages is division of 52.17 of annual rate to obtain weekly rate
These rates differ from the degree rates appearing in the Table appearing in [2019] FWC 5934. We have used the 4 year degree entry rates appearing in subclauses within the various Minimum Wages clauses within these awards.

25. APESMA has been unable to identify another modern award that contains a 4 year degree entry rate that is the same or lower than the *Pharmacy Award* rate. It should also be noted that the current *Manufacturing Award C10* rate is 862.50 a week. Which means that the current *Pharmacy Award* graduate entry rate is 105.5% of the C10 *Manufacturing Award* rate.
26. We now seek an immediate realignment of the *Pharmacy Award* 4 year degree rates to align with the 4 year degree rates of the other comparable awards such as the *Health Professional and Support Services Award 2010* and the *Nurses Award 2010*. We believe this realignment is necessary to satisfy the work value reasons outlined by the Full Bench in their Decision of December 2018¹⁰ and to satisfy the modern award objective principles outlined in s. 134 of the FW Act, specifically the requirement to ensure that the award maintains a fair and relevant minimum safety net. The realignment of these rates would not give rise to any implications for other awards of the Commission.

STATEMENT – QUESTIONS

27. Turning specifically to the invitation to comment on the questions in Paragraph 17.

APESMA supports the establishment of a Full Bench in accordance with s.157 of the Act for a review of professional rates of pay but proposes the following variations ;

¹⁰2018 FWCFB7621

- (i) That for the reasons outlined above that the *Pharmacy Industry Award* be remitted back to the Full Bench to consider the alignment of rates with the *Professional Employees Award* as part of the 4 Year Review of Modern Awards.
- (ii) That the *Professional Employees Award* be added to the Priority List of Awards for consideration due to its historical significance in the setting of pay rates for professional employees.

MICHAEL BUTLER
DIRECTOR INDUSTRIAL RELATIONS

JACKI BAULCH
PRINCIPAL INDUSTRIAL OFFICER

19th September 2019