

## **BEFORE THE FAIR WORK COMMISSION**

*Fair Work Act 2009 (Cth)*

**Title of matter:** Review of undergraduate qualifications C2019/5255

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## Background

1. These submissions are made pursuant to the Statement issued by the President, Fair Work Commission, on 27 August 2019 ('the Statement') in the matter of the constitution of a new Full Bench in reviewing classifications applying to employees who are required to hold undergraduate qualifications – proper relativity with C10 classification rate found in the *Manufacturing and Associated Industries and Occupations Award 2010*.<sup>1</sup>
2. The Australian Federation of Employers and Industries (AFEI) has an interest in these proceedings.
3. These submissions by the AFEI are made in response to the Statement issued by the Full Bench in C2019/5255 and in response to submissions of interested parties.
4. The issue subject of these proceedings arose from an observation made by the Bench in *re Pharmacy Industry Award 2019* [2018] FWCFB 7621 'the 2018 Pharmacy Decision') in relation to the way relativities were set for Professional Scientists in the Metal, Engineering and Associated Industries (Professional Engineers and Scientists) Award 1998.
5. In [174] of the 2018 Pharmacy Decision, the Full Bench makes the following observation in relation to the way relativities were set for Professional Scientists:

*...professional scientists below Level 3, who require an undergraduate degree, were not aligned with the Part 1 structure on the basis of their qualifications and were not assigned the C1 classification with starting relativity of 180%.*
6. Whilst AFEI was not a party to the Pharmacy Award proceedings, and did not file submissions in those proceedings, AFEI did file submissions on 1 April 2019 in relation to the relevance of the 2018 Pharmacy Decision in matter C2013/633 –Application to vary the Educational Services (Teachers) Award, and the relevance of wage-fixing principles and relativities. We also rely on those submissions in this matter.

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<sup>1</sup> [2019] FWC 5934

## Whether a full bench should be constituted

1. AFEI does not support the Commission's provisional view set out in paragraph [13] of the Statement that awards with classifications requiring undergraduate qualifications should be referred to a separate Full Bench for review.
2. The basis for the Commission's proposed review appears to be expressed in the 'third conclusion' outlined in its June 2019 Decision in Re Pharmacy Award 2010:

*'...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 consistent relationship with the Australian Qualifications Framework (AQF).'*<sup>2</sup>

It is however AFEI's submission that there are no classifications 'requiring equivalent qualifications' under the Manufacturing Award.

3. AFEI agrees with the submission of the AMWU, that *'the classification structure in the Manufacturing Award and its predecessor as a comparator has been a cornerstone of the determination of properly fixed minimum rates of pay under the industrial relations system for a significant period,'* and notes it does not appear that any comprehensive consideration of the history of the *Manufacturing and Associated Industries and Occupations Award 2010* and its classifications has been taken into account in determining whether there is a basis for constituting a Full Bench for this proposed review of 29 other Awards.
4. AFEI also concurs with AI Group's submissions of 20 September 2019 at paragraph 18 – 24, in relation to the Commission's powers to institute such proceedings. In particular, that while s157(1)(a) and s157(3)(a) empower the Commission to make a determination varying a modern award of its own initiative, this provision does not expressly provide a power to commence a process of review of modern awards.

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<sup>2</sup> This was the 'third conclusion' in re Pharmacy Award 2010, [2019] FWCFB 3949

## Timing of a review and list of priority awards

1. If the Commission does proceed with such a review, AFEI makes the following submissions in relation to timing of the review and the priority Awards.
2. In relation to timing of the proposed review, AFEI concurs with the submissions of the AMWU and AI Group, that it should not occur at this time, and that it should not occur as part of the four yearly review.
3. AFEI agrees with the submission of APESMA that the Professional Employees Award 2010 may be appropriate for inclusion in the priority list. Not only due to the history outlined in paragraphs 11-16 of APESMA's submissions, but also in the circumstances that the four priority Awards identified by the Commission are limited to industries which are typically government funded, and therefore may not be a representative sample of industries covered by Awards.

## Awards 'requiring undergraduate qualifications'

7. AFEI does not agree that the list of 29 Awards identified by the Commission in the Statement all have classifications which 'require' undergraduate qualifications. In particular:
  - a. the Banking, Finance and Insurance Award 2010 does not make any specific mention of undergraduate qualifications;
  - b. Of the 29 Awards, whilst some include references to qualifications, only the following appear to require undergraduate qualifications:
    - i. Black Coal Mining Industry Award 2010
    - ii. Higher Education Industry – Academic Staff Award 2010
    - iii. Health Professionals and Support Services Award 2010
    - iv. Medical Practitioners Award 2010
    - v. Nurses Award 2010
    - vi. Airport Employees Award 2010;
    - vii. Hydrocarbons Field Geologists Award 2010;
    - viii. Professional Employees Award 2010;
    - ix. Educational Services (Teachers) Award 2010;
    - x. Architects Award 2010;

- xi. Ambulance and Patient Transport Industry Award 2010;
- xii. Legal Services Award;
- xiii. Animal Care and Veterinary Award 2010