

Fair Work Act 2009

Section 156 - 4 Yearly Review of Modern Awards

Pharmacy Industry Award 2010

APESMA'S FURTHER SUBMISSIONS

Introduction

1. In its decision dated 14 December 2018, the Commission was satisfied that a variation of the modern award minimum wages under the *Pharmacy Industry Award* is justified by work value reasons and has invited interested parties to make further submissions on the following matters:¹
 - (a) the four matters demonstrating an increase in the work value of pharmacists since 1998 as set out at paragraph [189] of the decision;
 - (b) the additional work value consideration of the inconsistency in outcomes for wages for pharmacists given their level of qualification identified at paragraph [198] of the decision;
 - (c) the form of an allowance for Accredited Pharmacists performing Home Medicine Reviews and Residential Medication Management Reviews as referred to at paragraph [187] of the decision.
2. APESMA addresses these issues below.

Work value reasons

3. In a four yearly review of modern awards, the Commission may make a determination varying modern award minimum wages if the Commission is satisfied that the variation is justified by work value reasons (section 156(3) of the *Fair Work Act 2009*).
4. Work value reasons are reasons justifying the amount that employees should be paid for doing a particular kind of work, being reasons related to any of the following (section 156(4) of the FW Act):
 - (a) the nature of the work;
 - (b) the level of skill or responsibility involved in doing the work;

¹ 4 Yearly Review of Modern Awards – Pharmacy Industry Award 2010 (AM2016/28) 2018 FWCFB 7621.

(c) the conditions under which the work is done.

5. Under this statutory scheme, it is not necessary for there to be a datum point to compare work value reasons justifying the amount that employees should be paid. Even if there is no change, there may be work value reasons justifying an increase in the amount that employees should be paid for doing a particular kind of work.

Increase in pharmacists' minimum award rates for work value reasons

6. In its decision, the Commission has:

- (a) noted an inconsistency in outcomes in award classification minimum wage rates when comparing the wage rates for pharmacists, who are required to have a four year degree prior to being an intern, under the *Pharmacy Industry Award 2010 (Pharmacy Award)* and the classifications requiring a Certificate III to Advanced Diploma or equivalent under the *Manufacturing and Associated Industries and Occupations Award 2010 (Manufacturing Award)*;
- (b) identified that this matter may constitute a work value consideration relevant to the four yearly review of the *Pharmacy Award* (see paragraphs [194]-[198]).

7. APESMA's primary argument is that the starting rate for a pharmacy intern under the *Pharmacy Award* should be no less than the C2(b) classification under the *Manufacturing Award* which requires an advanced diploma or equivalent plus additional training. This rate is currently \$1132.40 a week.
8. In the alternative, APESMA submits that the starting rate for a pharmacy intern should be at least \$952.60, which is the minimum starting wage for a professional with a four year degree in the awards as set out below.
9. In setting the modern award rate, the Commission must ensure that it provides a fair and relevant minimum standard in accordance with the modern awards objective found at section 134(1) of the FW Act.
10. The amount sought must be justified by a reason related to the reasons identified in section 156(4) of the FW Act. The key reason, in this context, is the skill or responsibility involved in doing the work.
11. It is unfair to pay a pharmacist who has to undertake a four year degree reaching an AQF Level 7 less than employees who have to achieve an Advanced or Associate Diploma AQF Level 6
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(which ordinarily takes between one and half to two years) or a Diploma AQF Level 5 (which ordinarily takes between one to two years) or a Certificate IV AQF Level 4 (which ordinarily takes between one half to two years).

12. The starting wage for a pharmacy intern is \$883.40 per week under the *Pharmacy Award*. A fair and relevant rate for pharmacists is one that is no less than that which is paid to employees exercising the skill and responsibility of an employee with an advanced or associate diploma.²
13. There is a range of modern award rates set for employees with an advanced or associate diploma, for example:
- (a) construction workers - \$979.60 per week;
 - (b) miners - \$1,038.60 per week;
 - (c) gas workers - \$1,048.70 per week;
 - (d) manufacturing workers - \$1,132.40 per week;
 - (e) electrical workers - \$1,401.80 per week.
- (a table marked A setting out the source of these rates is annexed)
14. In the alternative, a fair rate and relevant for pharmacists is one that is at least an equivalent rate to that which is paid to employees exercising the skill and responsibility of an employee with a Bachelor's degree requiring four years of university education.
15. There is a range of modern award rates set for such employees, for example:
- (a) health professionals - \$952.60 per week;
 - (b) registered nurses - \$952.60 per week;
 - (c) a graduate professional - \$986.13 per week;
 - (d) teachers - \$1,008.42 per week.
- (a table marked B setting out the source of these rates is annexed)

² This is consistent with the reasoning of the Full Bench in the *ACT Childcare Decision PR954938* regarding comparison of qualification level in awards as forming a proper basis for minimum wage fixing principles and work value assessment: see, for example, paragraphs 172, 182 and 183. This supports that the Commission should take this into account when exercising its discretion in the current matter.

16. Once the entry rate for a pharmacist intern is appropriately set, then the internal relativities within the *Pharmacy Award* should be maintained.
17. The increases sought are also justified by the additional matters which the Commission found demonstrated an increase in the work value of pharmacists since 1998, as set out at paragraph [188] of the decision. These are inoculations, emergency contraception, downscaling of medicines and a general increase in the level of responsibility and accountability of pharmacists. It is not possible to quantify precisely the value of each of these changes. These matters can be addressed holistically in the setting of a fair and relevant rate.
18. Furthermore, an increase across all classifications is reflective of these work value increases, rather than an allowance, as, for example, the downscaling of medicines and the general increase in the level of responsibility and accountability of pharmacists permeate all pharmacist classifications.

Allowance for Home Medicine Reviews (HMRs) and Residential Medication Management Reviews (RMMRs)

19. The Commission was satisfied that APESMA had demonstrated that there has been an increase in work value associated with the introduction of HMRs and RMMRs justifying a discreet adjustment to award remuneration in the form of an allowance, whereby the increased remuneration should operate as an equal increment to whatever may be the Accredited Pharmacist's classification rate (paragraphs [185]-[186] of the decision).
 20. In circumstances where pharmacies have the benefit of the Accredited Pharmacists, with their additional assessed competency, for the whole of the time those pharmacists are employed, the allowance should be a flat rate, rather than a payment for each time an HMR or RMMR is performed.
 21. This would also be convenient for the employer, rather than having to put in place the record keeping and payment processes required for an allowance payable each time an HMR or RMMR is performed.
 22. The allowance should be calculated as a percentage of the Experienced Pharmacist weekly rate in the *Pharmacy Award*. This is because accreditation is linked to skills and experience (by virtue of the assessment being based on a communication module, clinical multiple choice questions and hypothetical case studies) and the classification of Experienced Pharmacist is a Pharmacist with at least four years' full-time experience or the part-time equivalent as a Community Pharmacist. By contrast, the classifications of Pharmacist in Charge and Pharmacist Manager involve more supervisory or managerial functions.
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23. APESMA submits that 10% of the rate of the Experienced Pharmacist in the Award (however so varied) is the appropriate rate for the allowance.
24. APESMA submits that an allowance should be introduced into the *Pharmacy Award* in the following terms:³

An allowance of 10% of the Experienced Pharmacist's minimum weekly wage at clause 17 of the Award will be paid to Accredited Pharmacists who are required by the employer to perform cognitive pharmacy services.

Cognitive pharmacy services are defined as Home Medicine Reviews (HMR) and Residential Medication Management Review (RMMR).

Accredited Pharmacist means a registered pharmacist who has current accreditation from an approved accreditation body to conduct HMR or RMMR and is employed by a person who has been approved by Medicare to conduct HMR or RMMR services.

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28 February 2019

³ The definition of cognitive pharmacy services and the allowance have been modelled on the special rate for pharmacists who perform HMRs and RMMRs as provided for in clause 12 of the *National Pharmacies and Professionals Australia Pharmacists Agreement 2016* (with modifications reflecting the FWC's findings in the work value decision). The definition of Accredited Pharmacist is derived from the "Guidelines for pharmacists providing Home Medicines Review (HMR) services": GM6 to Exhibit 2, see p6 under 1.4 Terminology first two dot point. See also Medicare Benefits Schedule - Note AN.0.52.

ANNEXURE I

Table A

	Building & Construction General On-site Award 2010	Mining Industry Award 2010	Gas Industry Award 2010	Manufacturing Award 2010	Electrical Power Industry Award 2010
Associate or Advanced Diploma	\$979.60 (An advanced certificate or 15 appropriate models of an Associate Diploma or equivalent skills gained through work experience)	\$1,038.60 (Level 7)	\$1,048.70 (Level 8)	\$1,132.40 (C2(b))	\$1,401.80 (Grade 10)

Table B

	Pharmacy Industry Award 2010	Health Professionals and Support Services Award 2010	Nurses Award 2010	Professional Employees Award 2010	Educational Services (Teachers) Award 2010
Four Year Degree	\$883.40 (Pharmacy intern first half of training)	\$952.60 (Level 1 pay point 3)	\$952.60 (four year degree entry level)	\$986.13* (Level 1 pay point 1.1)	\$1,008.42* (Level 3)

* Formula used for conversation of annual rates to weekly rates – annual rates divided by 52.