

## IN THE FAIR WORK COMMISSION

**Title:** s 156 of the *Fair Work Act* 2009 - 4 yearly review of modern awards

**Award:** Pharmacy Industry Award 2010

**Matter No.:** AM2014/209

**Subject:** **Work value claim for pharmacists**

### OUTLINE OF SUBMISSIONS FOR THE PHARMACY GUILD OF AUSTRALIA

#### Introduction

1. As part of the 4 yearly review of modern awards under s 156(1) of the *Fair Work Act* 2009 (Cth) (**FW Act**), the Australian Professionals, Engineers, Scientists and Managers Associations (**APESMA**) has made a claim to the Fair Work Commission (the **Commission**) to increase the minimum rates of pay for Pharmacists covered by the Pharmacy Industry Award 2010 (the **Pharmacy Award**) based on significant changes to the Pharmacist's work value.
2. The Pharmacy Guild of Australia (the **Guild**) submits that APESMA will not be able to establish that there has been "significant net addition" to the work value in the Pharmacists' employment classifications to warrant an increase in the minimum wages for work value reasons.
3. The Guild is the peak body representing pharmacy proprietors in the Australian community pharmacy industry and is a registered organisation under the *Fair Work (Registered Organisations) Act* 2009 (Cth).

#### The modern award 4 yearly review

6. The Full Bench of the Commission has set out the relevant considerations for the conduct of the 4 yearly review of modern awards in *4 Yearly Review of Modern*

*Awards: Preliminary Jurisdictional Issues* [2014] FWCFB 1788 at [60]. The Guild notes that the Full Bench’s observations set out at [60] of the decision, in particular, that any proposed changes must be supported by a submission which addresses the relevant legislative provisions and be accompanied by probative evidence directed to proving the facts to support the proposed variation.

7. Having regard to the Full Bench’s observations on the requirements for justifying a proposed variation to a modern award, the Guild submits that APESMA must show that there is sufficient probative evidence demonstrating the facts supporting the merits of the proposed variation.
8. In exercising its powers in conducting the 4 yearly review in relation to minimum rates, the Commission must under s 134(2)(b) relevantly take into account the modern award objective in s 134(1) of the FW Act. In addition, under s 135(1) of the FW Act, modern award minimum wages cannot be varied other than if the Commission is satisfied that the variation is justified by “work value reasons” under s 156(3) and 157(2) of the FW Act.
9. Under s 156(4) of the FW Act, the meaning of “work value reasons” refers to the reasons justifying the amount that employees should be paid for doing a particular kind of work being reasons related to:
  - (a) the nature of work;
  - (b) the level of skill or responsibility involved in doing the work; and
  - (c) the conditions under which the work is done.

These factors are consistent with the historical considerations which have informed work value assessments by current and previous industrial tribunals that call for the exercise of broad judgement as cited in the *Equal Remuneration Decision 2015* [2015] FWCFB 8200 at [280].

10. The Commission also considered an application to increase to minimum wages for work value reasons during the 4 yearly review process and applied an orthodox approach based on the same historical considerations set out in Federal and State wage

fixing principles: *4 yearly review of modern awards—Pastoral Award 2010* [2015] FWCFB 8810 at [39] - [72]. In particular, Principle 6 of the Australian Industrial Relations Commission’s Wage Fixing Principles codified the general principles in relation to work value which have emerged over time: *Australian Liquor, Hospitality and Miscellaneous Workers Union re Child Care Industry (Australian Capital Territory) Award 1998 and Children's Services (Victoria) Award 1998* PR954938 at [186] - [192].

11. In Principle 6, the test for justifying an increase in wage rates on the basis of a change in work value is expressed in the following terms:

*The strict test for an alteration in wages rates is that the change in the nature of the work should constitute such a significant net addition to work requirements as to warrant the creation of a new classification or upgrading to a higher classification.*

12. In particular, principle 6(a) expressly states that changes in work, by themselves, may not lead to an increase in wages: *State Electricity Commission of Victoria v The Federated Ironworkers’ Association of Australia* Print G7498.

### **Award regulation of the Australian pharmacy industry**

21. In order to determine whether it is appropriate to change minimum wages, it must be determined when the last assessment of minimum wages based on work value reasons occurred by an industrial tribunal.
22. The first award applicable to pharmacists made by a Federal industrial tribunal was the *Community Pharmacy (Victoria) Interim Award 1995* (the **Federal Victorian Award**). Its making arose out of the shift of Victorian industrial relations regulation to the Federal jurisdiction.
23. On 6 March 1996, Commissioner O’Shea arbitrated a number of “leave reserved” issues including classification structure, pay and pay relativities and penalty rates: see *Community Pharmacy (Victoria) Interim Award 1995* (Commissioner O’Shea, Print M9831).

24. There were two principal features of the Federal Victorian Award:
- (a) community pharmacists were broadly aligned with professional scientists under Part IV of the *Metal Industry Award 1976* for the purposes of determining relativities and establishing the minimum rate of pay;
  - (b) the Commission accepted the parties' agreement that the issue of salaries, classification structure and penalty rates should be considered and determined together "*in an integrated way*".
25. On 24 December 1996, Commissioner O'Shea made, by consent, the first national award covering the community pharmacy industry known as the *Community Pharmacy Award 1998* (the **Federal Pre-Reform Award**) applicable only to the employment of pharmacists working in a community pharmacy.
26. Based upon the Federal Victorian Award, the relativities are:
- (a) 1st year Pharmacist is a relativity of 140% of the tradesperson's rate of the Metal Industry Award (C10);
  - (b) Pharmacist (2nd year and thereafter) classification is some 7% above the 1st year base level;
  - (c) Rates for the supervisory levels are broadly aligned to Professional Scientist Level 3 and Professional Scientist Level 4;
  - (d) Pharmacist-in-charge (as defined) can be aligned with the Professional Scientist Level 3 which is a relativity of 180% of the tradesperson's rate; and
  - (e) Pharmacist Manager (as defined) can be aligned with the Professional Scientist Level 4 which is a relativity of 210% of the tradesperson's rate.
27. The Federal Pre-Reform Award contained two additional levels at the Pharmacist-in-charge classification with a relativity of 160% and 170% respectively and two additional levels at the Pharmacist Manager classification with a relativity of 190% and 200% respectively. These additional classification levels are not contained in the Pharmacy Award.

28. The relativity percentage for Pharmacist (2nd year and thereafter) classification was increased to 150%.
29. The classifications contained in the Pharmacy Award have been inherited from the Federal Victorian Award.
30. The minimum wages rates in the Pharmacy Award do not reflect the relativities as outlined at [26] because a number of the wage increases since 1990 have been expressed in flat dollar amounts rather than percentages and as a result have compressed the relativities.
31. Accordingly, the Guild submits that the Federal Pre-Reform Award is the relevant datum point because it represents the last occasion upon which a Federal industrial tribunal has determined the work value of pharmacists.

**APESMA's claim**

32. APESMA submits that the significant changes in the work done by the Pharmacist's employment classifications falls into five main categories:
  - (a) an increase in various educational and registration requirements which are indicative of the increase in the skills, knowledge and responsibility required to perform the role of a pharmacist;
  - (b) the introduction of additional training so a pharmacist can become and retain registration under the legislative requirements for registration of a pharmacist;
  - (c) the introduction of new work that requires additional skills, knowledge and training;
  - (d) the introduction of new work that has resulted in an increase in responsibility and accountability; and
  - (e) an increase in workload and an increase in pressure and on skills and the speed with which vital decisions need to be made.

## **Guild's Findings**

33. The Guild considers that there insufficient probative evidence to support APESMA's claim that there has been a "significant net addition" to support an increase in minimum wages for work value reasons.
34. The Guild acknowledges that the work of a pharmacist has inherently involved change, as health services, treatments methods, medical information, community expectations, technology and procedures are changed or refined to deliver better health care services to the community.
35. In particular, the Guild notes that:
  - (a) elements of the competency standards and Bachelor of Pharmacy course content has changed since 1998 to assist in better health care services being provided;
  - (b) Government funded health services provided by a pharmacist have been introduced for individuals and families to improve the community's health outcomes; and
  - (c) community pharmacies have become more patient centered focused on the delivery of primary health care services to the community.
36. Nevertheless, the Guild submits that the introduction of updated or new primary health care services and educational requirements have reflected changes which are '*evolutionary*' in nature but has not resulted in a "significant net addition" in Pharmacist's work value requirements.
37. Addressing each of APESMA's main category claims, the Guild submits the following findings should be made:
  - (a) Education and Registration Requirements
    - (i) The Guild submits that the Commission should find the changes to a Bachelor of Pharmacy course content, chiefly in relation to health and anatomy subjects which were approved to occur prior to 1998 benchmark,

have been minor in nature and do not contribute to a ‘significant net addition’ in the pharmacist’s work value;

- (ii) The Guild submits that there has been some changes to the competency standards that have increased or altered the work value of certain, but not all, pharmacist employment classification levels however the changes do not result in a ‘significant net addition’ to the pharmacist’s work value;

(b) Introduction of additional training

- (i) The Guild submits that the Commission should find that Pharmacists have always been engaged in continuing professional development (CPD) and the mandatory requirements for CPD has not involved a “significant net addition” in their work value.

- (ii) The Guild submits that the Commission should find that since 1994, Pharmacists have been required to achieve their respective State/Territory registration boards’ requirements by demonstrating competence against a list of competency standards and does not involve a ‘significant net addition” in a Pharmacists’ work value.

- (iii) The Guild notes the change that requires a Pharmacist to demonstrate each year their CPD obligation has been achieved to maintain their registration.

- (c) New work - The Guild acknowledges that health care services required to achieve the community’s health care objectives has evolved since 1998 due to improved technology, research/medical information and treatment methods but nonetheless submits that the Commission should find that the changes have been ‘*evolutionary*’ in nature and have not resulted in a “significant net addition” to the Pharmacists’ work value;

- (d) Workloads - The Guild submits that the Commission should find there has not been a “significant net addition” in workloads since 1998 due to a slight increase of 13% in the number of pharmacies whilst the number of registered Pharmacists has increased by approximately 43%. The Guild notes that the number of

dispensing scripts processed by community pharmacies has increased due to the changing Australian demographics (eg an aging population that is combined with a growing population).

38. The Guild submits that there is no substantive evidence identified by APESMA to support the establishment of an employment classification called ‘Accredited Pharmacist’ in the Pharmacy Award. The Guild submits that it would be inappropriate for the inclusion of the ‘Accredited Pharmacist’ classification into the Pharmacy Award as the role of ‘Accredited Pharmacist’ is directly linked and related to several Government funded programs which may not continue in the current arrangements into the future. Instead, the inclusion of a higher duties allowance should be considered for recognition of work performed against specific Government funded programs.
39. The Guild submits APESMA’s submissions have not identified any demonstrable or substantive probative evidence to support their claim that all Pharmacist’s employment classifications have had a ‘significant net addition’ in their work value under the criteria of the work value test.
40. APESMA’s submission does not refer to evidence or details on “what the actual increases to work value for each employment classification are” to justify the proposed increases to the minimum wage rates.

### **Modern Award Objective**

41. The Guild submits that APESMA’s proposal to vary the scope and level of minimum rates for the Pharmacist’s employment classifications in the Pharmacy Award has not demonstrated how the modern award objective (s134(1)) are achieved.

### **Conclusion**

42. The Guild submits APESMA’s application does not demonstrate or provide probative evidence that there has been work value increases to support an increase in the Pharmacists’ minimum wages since 1998.



43. The Guild acknowledges the Pharmacist employment classifications have been subjected to an ‘*evolutionary*’ change in nature due to improved health care services, medical treatments processes, increased community expectations and improved technology; however have not resulted in a ‘significant net addition’ to the Pharmacist’s work value.

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