



18th December 2019

The Hon Justice Ross AO
President
Fair Work Commission
11 Exhibition Street
Melbourne VIC 3000

Dear Justice Ross

Re. 4 Yearly Review of Modern Awards – AM2019/5 – *Professional Employees Award 2010*

We refer to the proceedings in respect of the proposed substantive variations to the abovementioned award which took place on Friday 13th December 2019.

One matter raised by the Full Bench was in respect of the definitions of Experienced information technology employee, Experienced engineer and Experienced scientist contained in Clause 3 – Definitions and interpretation of the Award. The issue identified was the potential disconnect between these definitions and other provisions in the Award, in particular Schedule B – Classification Structure and Definitions.

Background

The first Award for technology-based professionals employed in the non-government sector was the *Professional Engineers Award 1961*.

The Order (No. A7856 – 2749/62) to give effect to the decision to create the Award provided in Clause 6 – Definitions, the definitions for “*Qualified Engineer*” and “*Experienced Engineer*”. The rates of pay were set out in Clause 7.

This framework was replicated in Awards covering Professional Scientists (A9630 – 8672/64) and Information Technology Professionals (AW812692, PR912647).

In accordance with the Structural Efficiency Principle which arose out of the *August 1989 National Wage Case* (Print H9100), the classification structure in the *Professional Scientists Award 1981* and *Professional Engineers (General Industries) Award 1982* was increased to four levels including the addition of classification descriptors. The relevant Decision is: Dec 1718/95, S Print M3882.

During the Award Modernisation process the number of awards covering technology-based professionals were rationalized to create the current *Professional Employees Award 2010*. However, whilst Schedule B – Classification Structure and Definitions includes “*Level 1 – Graduate professional engineer, Professional scientist and information technology employee*”, Level 2 is simply referred to as “*Level 2 – Experienced Professional*”.

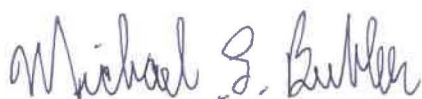
Proposed Variation

To remedy this situation, it is proposed in the attached Draft Determination at points 7 and 8 on Page 5 that clause B.1.7 be amended to include the words “*Experienced engineer, Experienced information technology employee and Experienced scientist*”. This will add clarity to the interpretation of the Award and clarify the relationship between Clause 3 and Schedule B.

In addition, it is proposed for the sake of consistency to tidy up clause B.1.7 to replace the words “*Professional scientist*” with “*Qualified scientist*”.

A copy of the Draft Determination as requested by the Full Bench is attached.

Yours sincerely



Michael Butler
Director Industrial Relations,
APESMA



Stephen Smith
Head of National Workplace Relations Policy,
Ai Group



DRAFT DETERMINATION

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards – Professional Employees Award 2010 (AM2019/5)

PRESIDENT ROSS
VICE PRESIDENT HATCHER
COMMISSIONER JOHNS

SYDNEY, ___ DECEMBER 2019

4 yearly review of modern awards – Professional Employees Award 2010 – substantive claims

A. Further to the decision [] issued by the Full Bench of the Fair Work Commission on _____ 2019, the above award is varied as follows:

1. In the definition of “**Experienced information technology employee**” in clause 3.3, delete paragraph (b) and replace with the following paragraph (b):
 - (b) that they, not having so graduated, have sufficient qualifications and experience to be a Certified Professional of the Australian Computer Society plus a further four years’ experience on professional information technology duties.
2. In the definition of “**Graduate information technology employee**” in clause 3.3, delete paragraph (b) and replace with the following paragraph (b):
 - (b) has sufficient qualifications and experience to be a Certified Professional of the Australian Computer Society.
3. In the definition of “**Professional information technology duties**” in clause 3.3, delete paragraph (b) and replace with the following paragraph (b):
 - (b) has sufficient qualifications and experience to be a Certified Professional of the Australian Computer Society.
4. In clause 3.4, delete the definition of “**Experienced scientist**” and replace with the following definition:

Experienced scientist means a Professional scientist possessing the following qualifications and engaged in any particular employment, the adequate discharge of any portion of the duties of which, requires the possession of such qualifications.

The qualifications are:

(a) A degree or diploma and the following further experience in professional scientific duties obtained after their degree or diploma:

- (i) when a graduate (four or five year course) – four years' experience;
- (ii) when a graduate (three year course) – five years' experience, or

(b) that they possess qualifications acceptable to:

- (i) the Royal Australian Chemical Institute for admission to the grade of Chartered Member; or
- (ii) the Australian Institute of Physics for admission to the grade of Member (MAIP); or
- (iii) the Australasian Institute of Mining and Metallurgy for admission to the grade of Member; or
- (iv) the Australian Institute of Food Science and Technology for admission to the grade of Professional Member.

5. In clause 3.4, delete the Academic Schedule and replace with the following Academic Schedule:

Academic schedule

- (a) A degree in science from an Australian, New Zealand or United Kingdom university or from an Australian tertiary educational institution.
- (b) Academic qualifications acceptable to the Royal Australian Chemical Institute for admission to the grade of Graduate Chemist (MRACI), Early Career Chemist (MRACI)(CChem) or Member (MRACI).
- (c) Academic qualifications acceptable to The Australian Institute of Physics for admission to the grade of Member (MAIP).
- (d) Academic qualifications in metallurgy, metallurgical engineering or technology acceptable to either the Australasian Institute of Mining and Metallurgy for admission to the grade of Graduate Member, or the Institution of Materials, Minerals Mining (London) for admission to the grades of Professional Graduate Member or Associate Member.
- (e) Academic qualifications acceptable to the Australian Institute of Agricultural Science and Technology for admission to the category of 1st Year Graduate Member, 2nd Year Graduate Member or Full Member.
- (f) Academic qualifications acceptable to the Australian Institute of Food Science and Technology for admission to the grade of Graduate Member.

- (g) Academic qualifications acceptable to a pharmacy board or council within the Commonwealth of Australia provided that the award will not apply to pharmacists employed in a retail pharmacy shop.
6. Delete clause 18 – Ordinary hours of work and rostering, and replace with the following clause 18:

18. Ordinary hours of work and rostering

18.1 For the purpose of the NES, ordinary hours of work under this award are 38 per week.

18.2 An employee who by agreement with their employer is working a regular cycle (including shorter or longer hours) must not have ordinary hours of duty which exceed an average of 38 hours per week over a six-month cycle.

18.3 Employees classified at Level 1 and Level 2

(a) For employees classified at Level 1 and Level 2 in Schedule B and Schedule C, employers must compensate for:

- (i) time required by the employer to be worked in excess of ordinary hours of duty;
- (ii) time required by the employer to be worked on call-backs;
- (iii) time required by the employer to be spent standing by in readiness for a call-back;
- (iv) time required by the employer to be spent carrying out professional engineering duties or professional scientific/information technology duties outside of the ordinary hours of duty over the telephone or via remote access arrangements; or
- (v) time required by the employer to be worked on afternoon, night or weekend shifts or on public holidays.

(b) Compensation may include:

- (i) granting time off on the basis of one hour of time off for each additional hour worked beyond the ordinary hours of work; Time off shall be taken at a time agreed upon between the employer and employee within 12 months, or paid out by the employer at the minimum award rate specified in clause 15.
- (ii) granting special additional remuneration;
- (iii) taking relevant factors in clause 18.3(a) into account in the fixation of an annual salary; or
- (iv) granting a special allowance or loading.

(c) An employee shall be advised in writing by the employer of the method of compensation being used in respect of any of the matters

specified in clause 18.3(a). If the employer is compensating the employee by a method identified in clause 18.3(b)(ii) or clause 18.3(b)(iv), the employer shall identify the amount of the special additional remuneration, special allowance or loading that is being paid.

- (d) In circumstances where an employee is paid compensation in accordance with clause 18.3(a)(v) for work on afternoon, night or weekend shifts or on public holidays in an office or other establishment where the majority of employees are carrying out similar work in the same work environment and are entitled to loadings or penalties for such similar work in the same working environment under a different award, the employee's compensation shall not be less than the compensation paid to the majority of employees.
- (e) The compensation in clause 18.3(b) must be reviewed annually to ensure that it is set at an appropriate level having regard to the factors listed in this clause.
- (f) If an employee is paid an annual salary in accordance with clause 18.3(b)(iii), the employer must each 12 months, or at the end of a cycle of averaging of the 38 hour week, or upon termination of employment, calculate the number of ordinary hours worked by the employee and any additional hours that the employee was required by the employer to work. If the salary that has been paid is less than the amount that the employee would have received if the employee was paid at the relevant minimum award rate in clause 15 for each ordinary hour and each additional hour that the employee was required by the employer to work, the employer shall pay the employee the amount of the shortfall within one month.
- (g) The employer must keep a record of the ordinary hours of work and any additional hours that the employee is required by the employer to work. In addition, the employer must keep a record of the arrangements implemented in accordance with clause 18.3(b). The employer must make a copy of these records available for inspection and copying on request by the employee to whom the record relates.

18.4 Employees classified at Level 3, Level 4 and Level 5

- (a) For employees classified at Level 3 and Level 4 in Schedule B, and at Level 3, Level 4 and Level 5 in Schedule C, employers must compensate for:
 - (i) time required by the employer to be worked regularly in excess of ordinary hours of duty;
 - (ii) time required by the employer to be worked on call-backs;

- (iii) time required by the employer to be spent standing by in readiness for a call-back;
 - (iv) time required by the employer to be spent carrying out professional engineering duties or professional scientific/information technology duties outside of the ordinary hours of duty over the telephone or via remote access arrangements; or
 - (v) time required by the employer to be worked on afternoon, night or weekend shifts.
- (b) Compensation may include:
- (i) granting special additional leave;
 - (ii) granting special additional remuneration;
 - (iii) taking relevant factors in clause 18.4(a) into account in the fixation of an annual salary;
 - (iv) granting a special allowance or loading.

18.5 Transfers

- (a) Where an employee is transferred permanently from day work to shiftwork or from shiftwork to day work, such employee should receive at least one month's notice, unless the employer and the employee may agree on a lesser period of notice.
 - (b) Clause 18.5(a) is subject to the requirements of clause 9A - Consultation about changes to rosters or hours of work.
7. In clause B.1.1, delete the words "Graduate professional engineer, Professional scientist and information technology employee" and replace with the words "Graduate engineer, Graduate information technology employee and Qualified scientist".
8. In clause B.1.7, delete the words "Experienced Professional" and replace with the words "Experienced engineer, Experienced information technology employee and Experienced scientist".

B. This determination come into effect on _____.

PRESIDENT

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