



DECISION

Fair Work Act 2009

s.156—4 yearly review of modern awards

4 yearly review of modern awards – *Pharmacy Industry Award 2020* (AM2016/28)

ACTING PRESIDENT HATCHER

DEPUTY PRESIDENT O’NEILL

COMMISSIONER SPENCER

SYDNEY, 20 DECEMBER 2022

4 yearly review of modern awards – termination of 4 yearly review of the Pharmacy Industry Award 2020.

[1] On 9 September 2022 the President, Justice Ross issued a statement¹ (2022 statement) which finalised the 4 yearly review of the *Pharmacy Industry Award 2020* (Pharmacy Award) save for one outstanding issue concerning relativity between pharmacist rates of pay and rates of pay in the 2010 version of the *Manufacturing and Associated Industries and Occupations Award 2020*.²

[2] This issue was first identified in a Full Bench decision³ which concerned an application by the Association of Professional Engineers, Scientists and Managers Australia (APESMA) for increases to the minimum rates of pay for pharmacists in the *Pharmacy Industry Award 2010*. The Full Bench noted that the relativities in the two awards did not align for equivalent qualifications and did not consistently relate to the Australian Qualifications Framework.⁴ The Full Bench stated that this issue:

“[198]... 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...”

¹ [\[2022\] FWC 2405](#)

² Ibid at [21]

³ [2018] FWCFB 7621

⁴ Ibid at [195]

[3] Interested parties had an opportunity to file further written submissions, and the Full Bench considered these in a further decision⁵. In relation to the relativity issue, the Full Bench stated that it had been persuaded that the issue should be referred to the President for consideration as to the procedural course to be taken pursuant to s 582 of the *Fair Work Act 2009* (Cth) (FW Act).⁶ In the 2022 statement, the President indicated that the issue would be referred to this Full Bench for determination.⁷

[4] The presiding member held a directions hearing in this matter on 27 September 2022. The APESMA and the Pharmacy Guild of Australia (the Pharmacy Guild) were directed to jointly file a document setting out the issues that were agreed, the issues in dispute and any relevant agreed facts. A joint statement of agreed facts and a document setting out agreed issues and those in dispute were subsequently filed on 2 and 3 November 2022 respectively. The documents filed indicated that there remained substantial matters in dispute between the parties.

[5] The presiding member conducted a further directions hearing on 8 November 2022. During that directions hearing the APESMA and the Pharmacy Guild indicated there may be benefit in the Commission conducting a further conference because they had been unable to reach an agreed position in relation to any variation to the Pharmacy Award.⁸ However, the presiding member advised the parties that, as the current proceeding was part of the 4 yearly review which was due to terminate at or around the end of 2022, the APESMA and/or the Pharmacy Guild should file a new application pursuant to s 158 of the FW Act to vary the Pharmacy Award if they wished to pursue the relativity issue. If this was done, a new matter number would be allocated, and a conference between the parties in relation to the proposed variations could be arranged at that point.⁹ It was further indicated that, once any variation application had been filed, the current proceeding would be terminated.¹⁰

[6] As at the date of this decision, no variation application has been filed by the APESMA or the Pharmacy Guild. In the circumstances, and consistent with the statement of the finalisation of the 4 yearly review Full Bench issued on 17 October 2022,¹¹ this 4 yearly review matter will now be terminated. It remains open to the parties to file a variation application to deal with the identified relativity issue, or any related matter, should they wish to do so.



ACTING PRESIDENT

⁵ [2019] FWCFB 3949

⁶ Ibid at [15]

⁷ [2022] FWC 2405 at [21]

⁸ Transcript 8 November 2022, PNs 42-52

⁹ Ibid PN 53

¹⁰ Ibid PN 66

¹¹ [2022] FWCFB 189

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