

FAIR WORK COMMISSION

**4 Yearly Review of Modern Awards**

**Matter No.: AM2014/204**

**Health Professionals And Support Services Award 2010**

**Outline of Submissions**

**on**

**APESMA Application to Vary the Award to include Translators and Interpreters in the List of Common Health Professionals (Schedule B)**



**Association of Professional Engineers, Scientists and Managers,  
Australia (APESMA)**

**DATE: 17 March 2017**

Lodged by: APESMA  
Address: PO Box 1272, MELBOURNE VIC 3001  
Tel: 03 9695 8809  
Fax: 03 9695 8846  
Email: [manthony@professionalsaustralia.org.au](mailto:manthony@professionalsaustralia.org.au)

## Table of Contents

<b>Introduction and Outline of Variations Sought .....</b>	<b>3</b>
<b>Legislative Framework.....</b>	<b>4</b>
<b>Translators and Interpreters and the Award – Recent Historical Context .....</b>	<b>9</b>
<b>Translators and Interpreters – Definitions .....</b>	<b>12</b>
<b>Accreditation .....</b>	<b>12</b>
<b>Code of Ethics .....</b>	<b>14</b>
<b>Government Policy on Use of Interpreters.....</b>	<b>15</b>
<b>How the variation sought meets the modern awards objective .....</b>	<b>17</b>
<b>Evidence .....</b>	<b>24</b>

### Introduction and Variations Sought

1. These submissions are filed by the Association of Professional Engineers, Scientists and Managers, Australia (*APESMA*) in accordance with the Directions issued by Vice President Catanzariti on 23 November 2016.
2. APESMA's application seeks a variation to the Health Professionals and Support Services Award 2010 (the Award) such that Translators and Interpreters are covered by the Award as Health Professionals and the Award becomes the occupational award for all translators and interpreters not covered by any other award.
3. APESMA seeks variations to the specific clauses of the Exposure Draft of the Health Professionals and Support Services Award 2014 as set out below:

Clause No.	Page	Clause Title	Change
A.1.5 (b)	31	Support Services employee- level 5  (b) Indicative roles performed at this level are:	Delete "Interpreter (unqualified)"
A.1.7	32	Support Services employee – level 7  (b) Indicative roles performed at this level are:	Delete "Interpreter (qualified)"
Schedule B	37	List of Common Health Professionals	On page 37 insert "Interpreter" after "Homeopathist" and before "Masseur, Remedial";

			On page 38 insert “Translator” after “Speech Pathologist” and before Welfare Worker”.
Schedule I	65	Definitions	Insert “NAATI means National Accreditation Authority For Translators and Interpreters Ltd” after the definition of “My Super product” and before the definition of “NES”.

### Legislative Framework

4. The proposed variations are sought as part of the 4 Yearly Review (*4 Yearly Review*) of modern awards arising from s. 156 of the Fair Work Act 2009 (Cth) (*the FW Act*). APESMA is seeking the variations pursuant to ss. 156 (2), (3) and (4) of the FW Act and the discretion available to the Commission under those and various other provisions of the FW Act to make variations to modern awards.
5. Section 156 (1) of the FW Act provides that the Commission must conduct a four yearly review of modern awards.
6. In conducting the 4 yearly review of modern awards, the task of the Commission is to conduct this review in accordance with the provisions of s.156 (2) of the FW Act which sets out the requirement to conduct the review.
7. Section 156(2) deals with what must be done and what the Commission may do when conducting the review:
  - (2) In a four yearly review of modern awards, the FWC:
    - (a) must review all modern awards; and
    - (b) may make:

- (i) one or more determinations varying modern awards;  
and
- (ii) one or more modern awards; and
- (iii) one or more determinations revoking modern awards.

(c) must not review, or make a determination to vary, a default fund term of a modern award.

8. In *Re Four Yearly Review of Modern Awards – Preliminary Jurisdictional Issues*<sup>1</sup> (*Preliminary Jurisdictional Issues Decision*), the Full Bench indicated that in conducting a 4 yearly review the Commission will also have regard to the historical context applicable to each modern award,<sup>2</sup> and previous decisions relevant to any contested issue. They also indicated that previous Full Bench decisions should generally be followed, in the absence of cogent reasons for not doing so.<sup>3</sup>
9. In the *Preliminary Jurisdictional Issues Decision*, the Full Bench identified that, in addition to s 156, a range of other provisions in the FW Act are relevant to the review. Those provisions included the objects of the Act (s 3), the interaction with the NES (s 55) and those provisions providing for the performance of functions and exercise of powers by the Commission (ss 577 and 578).
10. In the *Preliminary Jurisdictional Issues Decision*, the Full Bench confirmed that they are required to ensure that modern awards, together with the NES, provide a fair and relevant minimum safety net of terms and conditions, taking into account the modern awards objective<sup>4</sup>.
11. The modern awards objective is detailed at s.134 (1) of the Act:

- (1) The FWC must ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions, taking into account:

---

<sup>1</sup> [2014] FWCFB 1788

<sup>2</sup> *Ibid* [24]

<sup>3</sup> *Ibid* [27]

<sup>4</sup> *Ibid* [23]

- (a) relative living standards and the needs of the low paid; and
- (b) the need to encourage collective bargaining; and
- (c) the need to promote social inclusion through increased workforce participation; and
- (d) the need to promote flexible modern work practices and the efficient and productive performance of work; and
- (da) the need to provide additional remuneration for:
  - (i) employees working overtime; or
  - (ii) employees working unsocial, irregular or unpredictable hours; or
  - (iii) employees working on weekends or public holidays; or
  - (iv) employees working shifts; and
- (e) the principle of equal remuneration for work of equal or comparable value; and
- (f) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and
- (g) the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards; and

- (h) the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.

This is the *modern awards objective*.

12. When considering the relevance of s. 134 the Full Bench in the Preliminary Jurisdictional Issues Decision stated that:

‘No particular primacy is attached to any of the s.134 considerations and not all of the matters identified will necessarily be relevant in the context of a particular proposal to vary a modern award’<sup>5</sup>.

13. Further they went on to indicate that:

‘the Commission’s task is to balance the various considerations and ensure that modern awards, together with the NES, provide a fair and relevant minimum safety net of terms and conditions.’<sup>6</sup>

14. In performing functions or exercising powers, the Commission must take into account the objects of the FW Act including, “*ensuring a guaranteed safety net of fair, relevant and enforceable minimum terms and conditions*” including through modern awards<sup>7</sup>

15. Section 134 of the FW Act provides for modern awards, together with the National Employment Standards, to provide a fair and relevant minimum safety net of terms and conditions but this is tempered by Section 138 which indicates that modern awards may only include terms that are required to achieve the modern awards objective. It is expressed as follows:

A modern award may include terms that it is permitted to include, and must include terms that it is required to include, only to the extent necessary to

<sup>5</sup> [2014] FWCFB 1788 [32]

<sup>6</sup> Ibid [33]

<sup>7</sup> Explanatory Memorandum, Fair Work Bill 2008, r 105

achieve the modern awards objective and (to the extent applicable) the minimum wages objective.

16. Tracey J<sup>8</sup> in *Shop Distributive and Allied Employees Association v National Retail Association No.2*) when considering s 138 of the FW Act observed that:

“.. a distinction must be drawn between what is necessary and that which is desirable. That which is necessary must be done. That which is desirable does not carry the same imperative for action.”

17. Various Decisions of the Commission have subsequently applied and agreed with this observation of Tracey J. For example, in their Decision on the scope of the 2012 modern awards review the Full Bench<sup>9</sup> said:

[33] We are satisfied that s.138 is relevant to the Review. The section deals with the content of modern awards and for the reasons given at paragraph [25] of our decision it is a factor to be considered in any variation to a modern award arising from the Review. We also accept that the observations of Tracey J in *SDAEA v NRA (No.2)*, as to the distinction between that which is “necessary” and that which is merely desirable, albeit in a different context, are apposite to any consideration of s.138.

18. In the Preliminary Jurisdictional Issues Decision, the Full Bench confirm the relevance of s 138 in the four yearly review of modern awards and they indicate that any variations made to modern awards during this process must be necessary to achieve the modern awards objective. In this Decision they say:<sup>10</sup>

[39] We are satisfied that s.138 is relevant to the Review. We also accept that the observations of Tracey J in *SDA v NRA (No.2)*, as to the distinction between that which is “necessary” and that which is merely desirable, albeit in a different context, are apposite to any consideration of s.138.

19. The Full Bench, in the Preliminary Jurisdictional Issues Decision make it clear that if a party seeks a significant change to a provision in a modern award that it must be

<sup>8</sup> [\[2012\] FCA 480](#)

<sup>9</sup> [\[2012\] FWAFB 5600](#)

<sup>10</sup> [\[2014\] FWCFB 1788](#)



supported by a submission which addresses the relevant legislative provisions and be accompanied by probative evidence properly directed to demonstrating the facts supporting the proposed variation<sup>11</sup>

### **Translators and Interpreters and the Award – the Recent Historical Context**

20. A search of the pre-reform awards and Notional Agreements preserving State Awards which covered Health Industry employers and employees prior to the making of this modern award, reveals that the terms:

Interpreter (Qualified) and

Interpreter (Unqualified)

only appeared in **Appendix A – Skill Level and Classification Definitions** to the following two Victorian awards

**AP783872CRV – Health and Allied Services – Private Sector – Victoria Consolidated Award 1998; and**

**AP783945- Health and Allied Services – Public Sector- Victoria Consolidated Award 1998**

21. A comparison between Schedule B (Classification Definitions) to the modern Award and the Appendices A to the two pre-reform Awards referred to in paragraph 17, indicate that the list of indicative roles contained in Appendix A to the two pre-reform Awards principally formed the list of indicative roles that were included in Schedule B (Classification Definitions) to the Award during the award modernisation process in 2008 and 2009.

22. A further search of the pre-reform awards and Notional Agreements preserving State Awards which covered Health Industry employers and employees prior to the making of this modern award, reveals that the List of Common Health Professionals found in

---

<sup>11</sup> Ibid [23]

schedule C to the modern Award largely mirrors the list of occupations found in clause 6.2 of the following two Victorian awards:

**AP827096 – Health Professionals Services – Public Sector – Victoria Award 2003; and**

**AP835426CRV – Health Services Union of Australia (Health Professional Services – Private Sector Victoria) Award 2004**

23. Clause 6.2 to the two pre-reform awards referred to in Clause 19 above in fact principally formed the basis of the List of Common Health Professionals found in schedule C to the modern Award, with a number of occupations added at the time of the award modernisation process in 2008 and 2009.
24. APESMA is a registered organization under the Fair Work (Registered Organisations) Act 2009 (Commonwealth). APESMA represents professionals from a wide variety of disciplines, including Engineers, Scientists, IT Professionals, Architects, Pharmacists and Managers. APESMA's rules provide that in addition to the professions that are specifically nominated, any person usually employed in a professional position which requires the exercise of professional skill, knowledge or expertise "as defined in the Australian Standard Classification of Occupations First Edition Major Groups 2" shall be eligible for membership.
25. APESMA commenced as the primary industrial organization providing representation for Translators and Interpreters in 2011 when an informal group of translators and interpreters approached APESMA seeking industrial representation for members of their profession. It was established that qualified translators and interpreters were eligible for APESMA membership in accordance with the rules of the association. Since that time APESMA has sought to address the relatively substandard working conditions experienced by Translators and Interpreters as the result of the absence of representation over past years.
26. The Award was first published by the Australian Industrial Relations Commission (AIRC) as announced in Decision [2009] AIRCFB 345 dated 3 April 2009 (the

Decision). In their Decision Justice Giudice, Vice President Watson, Senior Deputy Presidents Watson, Harrison, Acton and Commissioner Smith (the Full Bench) provided limited discussion of the issues and considerations taken into account in making awards in the area of Health and welfare services in paragraphs [145] to [157]. There is no discussion provided in this Decision that indicates what submissions or issues were placed before the members of the AIRC to take into consideration in confirming the coverage of the Award. In its Decision the Full Bench makes reference to two industrial organizations that made submissions to it in relation to the making of modern awards in the health and welfare services sector, the Health Services Union (HSU) and the Australian Nursing Federation (ANF). Neither the HSU nor the ANF were representing Translators and Interpreters during the 2009 / 2010 award modernization process.

27. In paragraph [1] of their Decision, the Full Bench confirmed that in its statement of 23 January 2009 it “drew attention to a number of issues of general importance to award modernization and published exposure drafts of a number of awards for Stage 2. Since that time the Commission has had the benefit of a large number of written and oral submissions on the issues of general importance and on the Stage 2 exposure drafts.”
28. It is APESMA’s submission that between 23 January 2009 when the Commission published its exposure draft and 3 April 2009 when the Award was first published, there was no organization representing the interests of Translators and Interpreters and making submissions to the Commission on their behalf and as a result the professions of Translator and Interpreter were not included in the List of Common Health Professionals found in Schedule C of the Award. It is APESMA’s submission that in the decades since the pre-reform Victorian awards first categorised “Qualified Interpreters” and “Unqualified Interpreters” as support services employees, there has been significant change in the language services industry in Australia and in recognition of the critical role interpreters and translators play in the health industry and in all areas of Australian society. In APESMA’s submission translators and interpreters are Health Professionals and this application seeks that they be categorised in this modern Occupational Award as Health Professionals.

### Translators and Interpreters – Definitions

29. An **Interpreter** transfers a spoken or signed language into another spoken or signed language, usually within a limited time frame in the presence of the participants requiring the translation.<sup>12</sup>
30. A **Translator** transfers a source text from one language into another, usually within an extended time frame to allow for corrections and modifications and without the presence of the participants requiring the translation.<sup>13</sup>

### Accreditation

31. The National Accreditation Authority for Translators and Interpreters Ltd (NAATI) is the body responsible for setting and monitoring the standards for the translating and interpreting profession in Australia. It does this through its system of accreditation.
32. NAATI accreditation is the only credential officially accepted by employers for the profession of translation and interpreting in Australia.
33. NAATI is incorporated in Australia under the *Corporations Act 2001*. The company is owned jointly by the Commonwealth, State and Territory governments and is governed by a board of directors, who are appointed by the owners.
34. Currently, NAATI Credentials include the following:
- a) Conference Interpreter (Senior) (formerly known as Level 5):
  - b) Advanced Translator (Senior) (formerly known as Level 5):
  - c) Conference Interpreter (formerly known as Level 4):
  - d) Advanced Translator (formerly known as Level 4):
  - e) Professional Interpreter (formerly known as Level 3):

<sup>12</sup> The occupational classification of Interpreter (Occupation code: 2724-12) is listed under Unit Group 2724 Social Professionals in the Australian and New Zealand Standard Classification of Occupations (ANZSCO) First Edition, 2006, ABS Catalogue number 1220.0, available at [http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/69651C2DD21FE15BCA2575DF001CB1CC/\\$File/12200\\_2006.pdf](http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/69651C2DD21FE15BCA2575DF001CB1CC/$File/12200_2006.pdf)

<sup>13</sup> The occupational classification of Translator (Occupation code: 2724-13) is listed under Unit Group 2724 Social Professionals in the Australian and New Zealand Standard Classification of Occupations (ANZSCO) First Edition, 2006, ABS Catalogue number 1220.0, available at [http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/69651C2DD21FE15BCA2575DF001CB1CC/\\$File/12200\\_2006.pdf](http://www.ausstats.abs.gov.au/Ausstats/subscriber.nsf/0/69651C2DD21FE15BCA2575DF001CB1CC/$File/12200_2006.pdf)

- f) Professional Translator (formerly known as Level 3):
- g) Paraprofessional Interpreter (formerly known as Level 2):
- h) Paraprofessional Translator (formerly known as Level 2):
- i) Interpreter Recognition:
- j) Translator Recognition:
- k) Language Aide:

From time to time NAATI reviews its credentialing framework and is currently consulting with stakeholders regarding proposed revisions to the Descriptors for its Interpreter Certifications.

35. NAATI Accreditation may be obtained in five ways:

- a) Passing a NAATI accreditation test
- b) successful completion of a course of studies in translation and/or interpreting at an Australian institution as approved by NAATI
- c) providing evidence of a specialised tertiary qualification in translation and/or interpreting obtained from an educational institution overseas
- d) providing evidence of a membership of a recognised international translating and/or interpreting professional association
- e) providing evidence of advanced standing in translating or interpreting.

36. Generally Federal and State Government policies require agencies to procure the services of interpreters and translators at NAATI accredited **Professional** level for clients who require language assistance when accessing government services. In the case of emerging or less common languages, most government policies allow for the use of '**Recognised Interpreters**'. This NAATI credential acknowledges that the interpreter has had recent and regular work experience in interpreting, but no level of proficiency is specified. In order to

be granted NAATI recognition, the interpreter must provide proof of English proficiency and complete an introductory NAATI workshop or related activity. There is no NAATI testing for this credential. Recognised interpreters are encouraged to higher accreditation wherever possible.

37. NAATI provides approval of a number of courses run by institutions in translation and interpreting as part of NAATI's national quality assurance system. Where a course at an educational institution holds NAATI approval, students who complete the qualification at the standard required by NAATI may apply for accreditation from NAATI without further testing.

38. NAATI also provides accreditation in interpreting between Auslan (Australian Sign Language) and English and accreditation is currently available at the following levels

- Paraprofessional Interpreter
- Professional Interpreter
- Conference Interpreter

39. It is APESMA's submission that the NAATI Accreditation system confirms the status of the Translator and Interpreter professions as being more appropriately situated within the health professional employee classifications listed in clause 11 and Schedule B of the Award than the Support services employees classifications set out in Schedule A.

### **Code of Ethics**

40. The Australian Institute of Interpreters and Translators (AUSIT) was founded in 1987, when (NAATI) called practitioners, educators and government language service provider representatives from around Australia to a meeting in Canberra to establish a national professional association. The AUSIT Code of Ethics and Code of Conduct<sup>14</sup> is intended to regulate the professional conduct of members of AUSIT. It is an

<sup>14</sup>[http://ausit.org/AUSIT/About/Ethics\\_\\_Conduct/Code\\_of\\_Ethics/AUSIT/About/Code\\_of\\_Ethics.aspx](http://ausit.org/AUSIT/About/Ethics__Conduct/Code_of_Ethics/AUSIT/About/Code_of_Ethics.aspx)

obligation of holding NAATI accreditation that practitioners must adhere to the AUSIT Code of Ethics and Code of Conduct. For Auslan / English interpreters, this code is the ASLIA Code of Ethics.<sup>15</sup>

### **Government Policy on Use of Interpreters**

41. In March 2009 the Commonwealth Ombudsman issued his report titled “Use of Interpreters” which set out Best Practice principles for Australian Government agencies that provide services to the public.<sup>16</sup> The report referenced and acknowledged the role of NAATI as “a national standards body owned by the federal, state and territory governments of Australia” as well as being “an advisory body for the translation and interpreting industry in Australia, providing advice on standards and accreditation as well as the role, skills and conduct of translators and interpreters in various settings.” The report made recommendations including the following:

- Agencies should have a clear and comprehensive overarching policy on the use of interpreters that covers all programs and services delivered by the agency, including contracted services;
- Agencies should endeavour to provide an interpreter to facilitate communication whenever necessary;
- The use of friends, family members and children as interpreters should be avoided. Bilingual and multilingual staff members *who hold the required accreditation or equivalent qualification* can be used as interpreters where appropriate (italics added).

42. The Commonwealth and state governments have developed Policies, Guidelines and Procedures for the use by government agencies of interpreters and Language Services. A number of those policy documents are listed below:

<sup>15</sup><https://aslia.com.au/code-of-ethics/>

<sup>16</sup>[http://www.ombudsman.gov.au/\\_\\_data/assets/pdf\\_file/0013/26221/investigation\\_2009\\_03.pdf](http://www.ombudsman.gov.au/__data/assets/pdf_file/0013/26221/investigation_2009_03.pdf)

43.

<b>Federal / State</b>	<b>Name of Policy</b>	<b>Date</b>
Federal	Multicultural Language Services Guidelines For Australian Government Agencies <sup>17</sup>	14 March 2013
VIC	Using Interpreter Services – Victorian Government Guidelines on Policy and Procedures <sup>18</sup>	Undated
NSW	Interpreters – Standard Procedures for working with Health Care Interpreters <sup>19</sup>	11 Jul 2006
WA	Western Australian Language Services Policy 2014 and Guidelines <sup>20</sup>	2014
TAS	Multicultural Language Services Guidelines – for Tasmanian Government Agencies <sup>21</sup>	July 2016

44. Government policies, many of which have been drafted and implemented over the past 5 to 10 years, in general:

- Acknowledge the role of NAATI as the national credentialing body for translators and interpreters in Australia;
- Require government agencies to engage credentialed NAATI interpreters at Professional (or equivalent) level with provision for exemptions where NAATI interpreters may not be available, (for example for a rare language or because of a remote location).

45. The following is an excerpt from “Using Interpreting Services- Victorian Government Guidelines on Policy and Procedures.”

<sup>17</sup>[https://www.dss.gov.au/sites/default/files/files/foi\\_disclosure\\_log/12-12-13/multicultural-lang-services-guidelines.pdf](https://www.dss.gov.au/sites/default/files/files/foi_disclosure_log/12-12-13/multicultural-lang-services-guidelines.pdf)

<sup>18</sup><http://www.multicultural.vic.gov.au/images/stories/documents/2014/omac%20using%20interpreting%20services%20guidelines%20on%20policy%20and%20procedures%20online.pdf>

<sup>19</sup>[http://www1.health.nsw.gov.au/pds/ActivePDSDocuments/PD2006\\_053.pdf](http://www1.health.nsw.gov.au/pds/ActivePDSDocuments/PD2006_053.pdf)

<sup>20</sup>[http://www.omi.wa.gov.au/resources/publications/Languages/Language\\_Services\\_Policy\\_2014.pdf](http://www.omi.wa.gov.au/resources/publications/Languages/Language_Services_Policy_2014.pdf)

<sup>21</sup>[http://www.dpac.tas.gov.au/divisions/csr/policy/Policy\\_Work/language\\_services\\_guidelines](http://www.dpac.tas.gov.au/divisions/csr/policy/Policy_Work/language_services_guidelines)



*Clients who cannot communicate through spoken or written English should have access to professional interpreting and translation services:*

- when required to make significant decisions concerning their lives*
- when being informed of their rights*
- where essential information needs to be communicated to inform decision making, including obtaining informed consent.*

*Interpreters and translators should be accredited by the National Accreditation Authority for Translators and Interpreters (NAATI) at the professional level where possible.*

**How the variation sought meets the ‘modern awards objective ‘**

46. Section 134(1) of the FW Act sets out the considerations the Fair Work Commission must take into account when ensuring that the Award, together with the National Employment Standards, provides a “fair and relevant minimum safety net of terms and conditions”. APESMA’s submissions in relation to each consideration is referred to under separate heading below:

***(a) relative living standards and the needs of the low paid; and***

47. It is APESMA’s submission that translators and interpreters are one of the lowest paid classes of employees in the Australian workforce and as such varying the Award to provide a consistently applied safety net of minimum terms and conditions for all members of the occupation will achieve the modern award objective as expressed in section 134(1)(a) of the Act.

48. The 2011 Census data<sup>22</sup> reports the median annualised income for translators and interpreters in Australia as being:

---

<sup>22</sup> [http://www.professionalsaustralia.org.au/translators-interpreters/download/ti\\_submissions/2016-Victorian-Government-Review-Making-the-Case.pdf](http://www.professionalsaustralia.org.au/translators-interpreters/download/ti_submissions/2016-Victorian-Government-Review-Making-the-Case.pdf)

- a) translators: \$31,931, and
- b) interpreters: \$25,544.

49. In 2015 APESMA surveyed more than 900 translators and interpreters across Australia and the survey showed more than half (60 per cent) of the interpreting workforce surveyed earned less than \$20,000.00 annually and only seven per cent earned above \$60,000.00. To earn this income, the practitioners surveyed worked on average, 24 hours a week, despite the majority of the workforce wishing to work more.<sup>23</sup> APESMA's members report that many find it impossible to earn more than this level of annual income as they are typically engaged on a casual basis to perform interpreting jobs often of 90 minutes duration. By the time interpreters factor in travelling and parking time (for which they are generally not reimbursed), interpreters are usually limited to performing a maximum of approximately 3 to 4 interpreting jobs per day.

50. The following is an extract from Law Institute of Victoria (2010) Interpreting Fund Scoping Project Final Report<sup>24</sup>

The lack of remuneration for interpreters is a long-standing issue. Concerns were expressed about this in the *Access to Interpreters in the Australian Legal System Report* nearly twenty years ago.<sup>325</sup> This has had a detrimental impact on the interpreter profession. In its *Language Services Report*, Peat Marwick Management Consultants reported that:

*The remuneration structure available to [interpreters]....is a major inhibitor to the maintenance of levels of expertise and in attracting additional personnel to the profession. The lack of financial inducement is effectively 'deprofessionalising' the profession. There appears to be a destructive cycle in operation where the inability of professional personnel to earn a reasonable living in language services is making the profession less attractive to potential linguists, thus reducing enrolment in tertiary education courses with a type of language skills courses provided. The net effect of this is while demand seems to be increasing for professionally trained and skilled interpreters....the supply of professional trained personnel is reducing.*

---

<sup>23</sup> [http://www.professionalsaustralia.org.au/translators-interpreters/download/ti\\_submissions/2016-Victorian-Government-Review-Making-the-Case.pdf](http://www.professionalsaustralia.org.au/translators-interpreters/download/ti_submissions/2016-Victorian-Government-Review-Making-the-Case.pdf)

<sup>24</sup> <http://www.liv.asn.au/getattachment/80358a3c-d0d5-460c-bbae-af9dccc3f8/Final-Report--Interpreting-Fund-Scoping-Project.aspx> (p.76),

*This in turn is resulting in more unaccredited staff having to be used.*<sup>326</sup>

Since that time, there has been little improvement in terms of interpreter remuneration. The LIV understands that the current rate for a professionally accredited interpreter is around \$63 for 90 minutes.<sup>327</sup> This amount includes interpreter agency fees. The LIV notes that interpreter fees may vary between interpreter agencies, levels of accreditation and the type of work undertaken. Nevertheless, as the Australian Institute of Interpreters and Translators has noted, it can be generally said that while the fees available for commercial interpreter work are reasonably good, the pay for work in the government or community domain – which includes law and the courts – is “deplorably poor”.<sup>328</sup> Based on the 2006 Census, a typical interpreting practitioner is said to work 25 hours per week for a gross annual income of \$25,000.<sup>329</sup>

In Victoria, these issues have a particular impact on the supply and demand of interpreters for new and emerging languages. Research shows that the current interpreter pay levels and employment modes mean that often trained interpreters move on to better paid, more reliable employment as soon as they can. There are also ongoing difficulties in attracting, training and then retaining appropriately competent interpreters. This is a particular problem for emerging African languages because of the disrupted education of many in the relevant communities and the lack of a critical mass of people with English and literacy capabilities.<sup>330</sup>

51. The current model by which translators and interpreters are engaged means that often practitioners are engaged on a casual and / or part time basis and are required to hold concurrent employment with a few employers and / or agencies at the same time if they wish to work full time or the maximum number of hours they can each week. Currently, an interpreter that is employed in an interpreting job in the health care industry in the morning will be covered by the Award in the morning, but should his or her afternoon engagement be (for example) in a court setting, the interpreter will not be entitled to the protections and minimum safety net provided by the Award while performing the same occupation in the afternoon. In APESMA’s submission, if Translators and Interpreters are included as Health Professionals in the list of Common Health Professionals to the Award then a significant step will have been taken to ensure a safety net of minimum terms and conditions has been provided to a particularly low paid and vulnerable class of employees.

***(b) the need to encourage collective bargaining; and***

52. If Translators and Interpreters are recognised in the Award as Health Professionals, this change alone will not impact upon the abilities of all relevant parties to engage in collective bargaining within the health industry. Employers and employees in the other industries that may engage interpreters and translators will be provided with the certainty of a consistent set of minimum terms and conditions that can provide a platform for the commencement of collective bargaining.

***(c) the need to promote social inclusion through increased workforce participation; and***

53. Typically, Translators and Interpreters are engaged on a casual or part time basis and as a result many practitioners hold concurrent employment with more than one employer and / or are engaged by an agency as a contractor while being employed at the same time as a casual employee by another agency. Practitioners are paid by the job and often are not paid for their travelling time or expenses. This has led to the overall poor levels of remuneration and conditions referred to in paragraphs 46 – 50. As a result the Translating and Interpreting workforce has a high rate of turnover. APESMA's 2015 survey indicated that of the surveyed population, the average practitioner was a woman in her late forties earning less than the full time minimum wage. Further the responses of the surveyed population indicated that the workforce is ageing and those practitioners leaving are not being replaced by a new generation. While the variation sought will have no change on the Award rates of pay, the variation will provide consistency of award coverage for members of the profession to avoid the situation whereby practitioners "fall through the cracks" of award coverage if they take interpreting jobs that are outside the health industry to supplement their income.

***(d) the need to promote flexible modern work practices and the efficient and productive performance of work; and***

54. Over the last 25-30 years there has been a dramatic change in the way translating and interpreting services are delivered. The primary clients or end users of translators and

interpreters, Federal and State Government departments and agencies (including most significantly health industry agencies), previously typically employed Translators and Interpreters as full or part time employees. Those departments and agencies now typically engage Translators and Interpreters as casual employees or via organisations known as ‘agencies’ performing a brokering role, with the agencies entering into principal contracts with the government department or agency for the provision of the translation and interpreting services, often in response to tendering processes. The agencies in turn enter into agreements with individual translators and interpreters, with the translator or interpreter either becoming the casual employee of the agency or entering into an individual contractor agreement for the provision of services. In APESMA’s submission, ‘flexible modern work practices’ have undoubtedly already been put in place as the result of the changes referred to above. A consistent set of minimum award conditions that provides protection for Translator and Interpreters as Health Professionals to ensure the ongoing viability and sustainability of those ‘flexible modern work practices’ has now become critical.

***(da) the need to provide additional remuneration for:***

- (i) employees working overtime; or***
- (ii) employees working unsocial, irregular or unpredictable hours; or***
- (iii) employees working on weekends or public holidays; or***
- (iv) employees working shifts; and***

55. This is a neutral consideration in this matter.

***(e) the principle of equal remuneration for work of equal or comparable value; and***

56. It is APESMA’s submission that Translators and Interpreters are Health Professionals and should be recognised as such in the Award as they are required to:

- a) achieve NAATI accreditation and / or credentials to be engaged by Health Departments around Australia;
- b) comply with a Code of Ethics that has consistent application around Australia;
- c) Revalidate regularly and confirm attendance at a required number of Compulsory Professional Development activities.

57. As Professionals, it is APESMA's submission that Translators and Interpreters should have coverage by the Award as an occupational award so that individual practitioners will work under a common set of consistently applied minimum conditions, regardless of whether the practitioner works in an environment outside the health industry from time to time. APESMA's submission is consistent with the consideration set out in s134(1)(e) of the FW Act.

*(f) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and*

58. Generally speaking the government policies referred to in paragraph 36 above place a requirement on Government agencies to factor the provision of language services into the cost of service delivery for the agency and take responsibility for budgeting for the payment of interpreters and translators. The following is an excerpt from "Multicultural Language Services Guidelines – For Australian Government Agencies".

*“The costs of language services is an important consideration that must be factored into the cost of service delivery for Australian Government agencies and their contractors from the start. For example, it is important that Australian Government agencies consider the costs for the delivery of interpreting and translating services when developing New Policy Proposals, other budget bids, or when developing programs and services....It is particularly important for Australian Government agencies to build these considerations into their procurement processes. This will ensure that those organisations seeking to deliver services on behalf of the Australian Government fully understand the diversity of the community, and can incorporate realistic costs (including those for language services) into their tender proposal or grants application.”*

59. APESMA does not anticipate that the variation sought will have any impact on employment costs or productivity other than to provide a greater level of certainty and consistency for both business and government agencies around award coverage of interpreters. An improved level of certainty for business and government agencies around minimum award conditions for interpreters and translators can then be factored into the budget processes of government agencies as referred to in paragraph 51 above.

***(g) the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards; and***

60. In APESMA’s submission, the variation sought achieves the objective set out in s134(1)(e) of the FW Act as the Award will become the occupational award for all Translators and Interpreters and the Award will provide the same coverage as it is currently does for all other Health Professionals. Translators and interpreters will be covered by one modern award without overlap of any other modern awards.

*(h) the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.*

61. To the extent that the proposed variations are consistent with sections 134(1) (a), (b), (c), (d), (f) and (g), it is APESMA's submission that they will have a positive impact on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.

**Evidence**

62. APESMA will be calling approximately 4 translators and / or interpreters to give evidence about (among other things), their qualifications and credentials, their current working conditions, experiences in working in the industry and their wish to be covered by the Award as Health Professionals.

63. APESMA will call a witness from NAATI to give evidence about NAATI's accreditation model and the language services industry;

**Michelle Anthony**

**National Legal Officer**

**Association of Professional Engineers Scientists Managers Australia (APESMA)**

**17 March 2017**