

19 July 2021

Ms Alyce Lia
Associate to Vice President Catanzariti
Fair Work Commission
Sydney Registry

By email: chambers.catanzariti.vp@fwc.gov.au

Dear Ms Lia

S. 158 Application to vary or revoke a modern award – Health Professionals and Support Services Award - (AM2020/89)

We refer to the amended Directions of Vice President Catanzariti of 29 June 2021 and now enclose the Applicant's Outline of Submissions in support of the above application.

We acknowledge that Vice President Catanzariti's Direction provided for the Applicant's Submissions to be filed by 4pm on 16 July 2021, and advise that we did experience some delays in document preparation due to working from home. We apologise for any inconvenience caused by the delay.

Please do not hesitate to contact our Michelle Anthony on 0401 935 064 if you wish to discuss this matter.

Yours sincerely,



Michelle Anthony

Acting Director Industrial Relations

Ph: (03) 9695 8809

Email: manthony@professionalsaustralia.org.au

Mail: 152 Miller Street, West Melbourne, VIC 3003

CC: AMOD Team

amod@fwa.gov.au

Fair Work Act 2009

s.158 – Application to vary or revoke a modern award

(AM2020/89)

HEALTH PROFESSIONALS AND SUPPORT SERVICES AWARD 2020

APPLICANT'S OUTLINE OF SUBMISSIONS

**ASSOCIATION OF PROFESSIONAL ENGINEERS SCIENTISTS AND MANAGERS
AUSTRALIA (APESMA)**

DATE: 19 July 2021

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

Contents

Introduction and Outline of Variations Sought.....	3
Legislative Framework	14
Translators and Interpreters and the Award – Recent Historical Context	18
Schedule K - Classification Definitions and NAATI Certification	22
Why the Health Professionals and Support Services Award is the most appropriate Modern award.....	26
How the Variation sought meets the Modern Award Objectives	28
Evidence.....	41

Introduction and Outline of Variations Sought

1. These submissions are filed by the Association of Professional Engineers, Scientists and Managers, Australia (APESMA) in accordance with the Amended Directions issued by Vice President Catanzariti on 29 June 2021.
2. On 18 August 2020, APESMA made an application to vary a modern award, specifically the Health Professionals and Support Services Award 2020 (the Award). APESMA’s application seeks a variation to the Award such that Translators and Interpreters are covered by the Award, and the Award becomes the occupational award for all translators and interpreters not covered by any other award. It is also proposed to insert a new Schedule K – Translators and Interpreters, which will contain Classification Definitions for Translators and Interpreters. Lastly, APESMA seeks to remove the references to “unqualified interpreter” and “qualified interpreter” in Schedule A – Classification Definitions, as these references are obsolete.
3. APESMA seeks variation to the specific clauses of the Award as set out below:
 - a. Amend Clause 4 – by inserting a new subclause (c) at the end of Clause 4.1(b); and insert a new Clause 4.8 as set out below:
 4. Coverage
 - 4.1 This industry and occupational award covers:
 - (a) employers throughout Australia in the health industry and their employees in the classifications listed in clauses 14—Minimum weekly wages for Support Services employees and 15—Minimum weekly wages for Health Professional employees to the exclusion of any other modern award;

(b) employers engaging a health professional employee falling within the classification listed in clause 15.

(c) employers throughout Australia engaging employees performing translating and interpreting duties who are covered by the classifications set out in Schedule K.

b. Amend Clause 4- by inserting a new Clause 4.8 as set out below:

4.8 Without limiting the generality of the foregoing this award does not cover employers covered by the following industry awards with respect to employees covered by the awards:

- Aged Care Award 2010;
- Amusement, Events and Recreation Award 2020;
- Broadcasting, Recorded Entertainment and Cinemas Award 2020.

c. Schedule A—Classification Definitions; A.1.5 (b) Support Services employee—level 5 by deleting “Interpreter (unqualified)”;

d. Schedule A—Classification Definitions; A.1.7 (b) Support Services employee—level 7 – by deleting “Interpreter (qualified)”;

e. Clause 2. Definitions and interpretation – Insert at the appropriate place, maintaining the alphabetical order of the terms to be defined, the following terms and definitions:

Certified Advanced Translator means an individual certified by NAATI as a Certified Advanced Translator.

Certified Conference Interpreter means an individual certified by NAATI as a Certified Conference Interpreter.

Certified Interpreter means an individual certified by NAATI as a Certified Interpreter,

Certified Provisional Interpreter means an individual certified by NAATI as a Certified Provisional Interpreter;

Certified Specialist Interpreter (Health and Legal) means an individual certified by NAATI as a Certified Specialist Interpreter (Health and Legal)

Certified Translator means an individual certified by NAATI as a Certified Translator.

NAATI means National Accreditation Authority for Translators and Interpreters Ltd.

Recognized Practising Interpreter means an individual certified by NAATI as a Recognized Practising Interpreter

Recognized Practising Translator means an individual certified by NAATI as a Recognized Practising Translator

- f. Insert a new **Schedule K – Translators and Interpreters**

Schedule K – Translators and Interpreters

For employment involving the performance of NAATI certified Translator and Interpreter duties, the following classification definitions apply. Levels indicate the corresponding minimum rates of pay in the table in clause 16.2:

K.1 Professional responsibility levels – Translators

A translator transfers a written message from one language (the source language) into a written message in another language (the target language) for the purpose of communication between a writer and reader who do not share the same language.

K.1.1 Level 5 – Recognised Practising Translator

- (a) A Recognised Practising Translator credential is granted in languages where NAATI does not offer certification. This may occur in the languages of emerging or low demand communities. A practitioner who holds a Recognised Practising credential must demonstrate the required basic experience and ability required to practise at this level through other means including but not limited to English language proficiency, work experience and minimum level translator training. This credential does not define a level of transfer competency.
- (b) Individuals seeking Recognised Practising credentials must have work experience as a translator, including having dealt

with the written word and translated written messages from one language into another.

- (c) Comprehends and produces non-complex texts in English across a variety of text types, appropriately using non-specialised language and commonly used expressions. Language Other Than English proficiency is indirectly confirmed.
- (d) Understands how culture and language interact, identifies significant culturally specific information in texts, and is able to apply this to the translation task.
- (e) Has full and detailed knowledge and understanding of the relevant code of Ethics and is able to apply this to situations in translation practice, client interactions and other professional activities.
- (f) Operates in the translation industry and manages interactions with clients to provide services.
- (g) In the absence of translator certification for a language, Recognised Practising Translators may be asked to translate the same document types as certified translators.

K.1.2. Level 7 – Certified Translator

- (a) Transfers complex, non-specialised texts from a source language into a target language text that accurately reflects the meaning.
- (b) Comprehends and produces complex texts in two languages across a variety of text types, appropriately using non-specialised and complex language and commonly and uncommonly used expressions.
- (c) Understands how culture and language interact, identifies significant and nuanced culturally specific information in texts, and is able to apply this to the translation task.
- (d) Knows about and understands a broad range of common and some specialised complex contexts, topics and current events, including where experts in a domain write for non-expert readers.
- (e) Has full and detailed knowledge and understanding of the relevant code of Ethics and is able to apply this to situations in translation practice, client interactions and other professional activities.

- (f) Can use a variety of research tools and methods to search for information, including specialist resources, and is able to extract and manage complex information from research and apply it to the translation task.
- (g) Operates in the translation industry and manages interactions with clients to provide services.
- (h) Knows and is able to use technology required for text production and management, including moderately complex visual material (e.g. graphics), and CAT tools, where available.
- (i) Personal documents (e.g. passports, licences, education certificates), government (e.g. brochures, website content), legal (e.g. contracts, wills, court documentation), health (e.g. brochures), technology (e.g. manuals, product information), business (e.g. letters, marketing material), community (e.g. brochures), education (e.g. letters, school policies), tourism (e.g. leaflets, museum publication), finance (e.g. reports, financial statements), consumer affairs (e.g. brochures, product information), insurance (e.g. policies, reports), culture (e.g. magazine articles), science (e.g. reports), commerce and economics (e.g. policy documents).

K.1.3. Level 8 – Certified Advanced Translator

- (a) Transfers highly complex, specialised texts from a source language into a target language text that accurately reflects the meaning.
- (b) Comprehends and produces complex texts in two languages across a variety of text types in specialised domains, appropriately using specialised and complex language including technical expressions and jargon.
- (c) Understands in detail how culture and language interact in specialised contexts, identifies all significant and nuanced culturally-specific information in texts, is able to apply this to the translation task and account for its use.
- (d) Knows about and understands a broad range of complex and specialised contexts, topics and current events. Has a higher-level of knowledge in a specialised domain at the level of experts writing for experts.
- (e) Has full and detailed knowledge and understanding of the relevant code of Ethics, and is able to apply this to situations in translation practice, client interactions and other professional activities.

- (f) Can use a variety of research tools and methods to search for information, including highly specialist resources in a variety of domains, and is able to extract and manage specialised and complex information from research and apply it to the translation task
- (g) Operates in the translation industry and manages interactions with clients and other translators to provide services.
- (h) Knows and is able to use technology required for text production and management, including complex visual material (e.g. graphics), and CAT tools, where available.
- (i) All domains and document types a Certified Translator deals with, plus politics (e.g. government submissions), diplomacy (e.g. international agreements), legal (e.g. high court documentation), health (e.g. conference papers), technology and science (e.g. textbooks, scientific works), business (e.g. international business agreements), finance (e.g. academic articles), commerce and economics (e.g. international trade documentation).

K.2 Professional responsibility levels – Interpreters

An interpreter transfers a spoken or signed message from one language (a source language) into a spoken or signed message in another language (a target language) for the purpose of communication between people who do not share the same language.

K.2.1. Level 5– Recognised Practising Interpreter

- (a) A Recognised Practising Interpreter credential is granted in languages where NAATI does not offer certification. This may occur in the languages of emerging or low demand communities. A practitioner who holds a Recognised Practising credential has to prove the required basic experience and ability required to practise at this level through other means including but not limited to English language proficiency, work experience and minimum level interpreter training. This credential does not define a level of transfer competency.
- (b) Individuals seeking a Recognised Practising credential as an interpreter must have work experience and must have dealt with the spoken word or signed language and interpreted what someone said from one language into another.
- (c) Comprehends and produces spoken English or Auslan (for deaf interpreters) in a variety of non-complex situations/ contexts,

appropriately using noncomplex and nonspecialised language and commonly used expressions. Language Other Than English proficiency is indirectly confirmed.

- (d) Understands how culture and language interact, identifies significant culturally specific information in spoken or signed language, and is able to apply this to the interpreting task.
- (e) Has full and detailed knowledge and understanding of the relevant code of Ethics and is able to apply this to situations in interpreting practice, client interactions and other professional activities.
- (f) Operates in the interpreting industry and manages interactions with clients to provide services.
- (g) In the absence of interpreter certification for a language, Recognised Practising Interpreters may be asked to interpret in the same types of situations as certified interpreters.

K.2.2 Level 6– Certified Provisional Interpreter

- (a) Transfers non-complex, non-specialised messages from a source language into a target language using spoken or signed language that accurately reflects the meaning.
- (b) Comprehends and produces two languages (spoken or signed) in a variety of noncomplex situations/contexts, appropriately using noncomplex and nonspecialised language and commonly used expressions.
- (c) Understands how culture and language interact, identifies significant culturally specific information in spoken or signed language, and is able to apply this to the interpreting task.
- (d) Knows about and understands a broad range of non-complex, non-specialised contexts, topics and current events, including where specialists in a domain speak or sign with a non-specialist audience.
- (e) Has full and detailed knowledge and understanding of the relevant code of Ethics and is able to apply this to situations in interpreting practice, client interactions and other professional activities.
- (f) Can use some tools and methods to search for information and is able to extract and manage non-complex, nonspecialised information from research and apply it to the interpreting process.

- (g) Operates in the interpreting industry and manages interactions with clients to provide services.
- (h) Knows and is able to use basic technology required for interpreting processes, i.e. telephone interpreting.
- (i) Dialogues in community interpreting settings including health (e.g. a general medical consultation), legal (e.g. a witness describing an accident to a police officer), community (e.g. registering a car at a government service desk), immigration/settlement (e.g. enquiry about government services for new immigrants), education (e.g. a teacher-parent interview at a school), social services (e.g. enquiry about parental payments at a government office), financial (e.g. opening a bank account), housing (e.g. a request for repair work), business (e.g. customer purchasing a car), employment (e.g. enquiry about jobs at an employment agency), insurance (e.g. enquiry about car insurance with an insurance provider), consumer affairs (e.g. complaint about a product).
- (j) Typical interpreting modes for spoken languages include - Consecutive (dialogue) and for signed languages modes include - Simultaneous (dialogue) - Simultaneous (monologue)

K.2.3 Level 7 – Certified Interpreter

- (a) Transfers complex, non-specialised messages from a source language into a target language using spoken or signed language that accurately reflects the meaning.
- (b) Comprehends and produces two languages (spoken or signed and written) in a variety of complex situations/contexts, appropriately using complex, but nonspecialised language and commonly and uncommonly used expressions.
- (c) Understands how culture and language interact, identifies significant and nuanced culturally specific information in spoken or signed language, and is able to apply this to the interpreting task.
- (d) Knows about and understands a broad range of complex but non-specialised contexts, topics and current events, including where specialists in a domain speak or sign with a non-specialist audience.
- (e) Has full and detailed knowledge and understanding of the relevant Code of Ethics and is able to apply this to situations in interpreting practice, client interactions and other professional activities.

- (f) Can use a variety of tools and methods to search for information, including some specialist resources, and is able to extract and manage complex information from research and apply it to the interpreting process.
- (g) Operates in the interpreting industry and manages interactions with clients to provide services.
- (h) Knows and is able to use technology required for interpreting processes, including telephone interpreting, video and on-screen interpreting.
- (i) All situations in which a Certified Provisional Interpreter interprets, and dialogues, speeches and presentations in community interpreting settings including health (e.g. a clinician-patient consultation at a medical centre), legal (e.g. a client seeking a solicitor's advice), community (e.g. a speech at a community council meeting), immigration/ settlement (e.g. visa issues at an airport), education (e.g. during school lessons), social services (e.g. discussion about alleged welfare fraud), financial (e.g. a client applying for a loan), housing (e.g. dispute at a tenancy tribunal), business (e.g. at a business meeting), employment (e.g. dispute about breach of employment contract), insurance (e.g. making an insurance claim), consumer affairs (e.g. enquiry about consumer rights).
- (j) Typical interpreting modes for spoken languages include - Consecutive (dialogue) - Sight translation - Simultaneous (monologue) - Consecutive (monologue) and modes for signed languages include - Consecutive (dialogue) - Simultaneous (dialogue) - Sight translation - Simultaneous (monologue)

K.2.4 Level 8 – Certified Specialist Interpreter (Health & Legal)

- (a) Transfers complex, specialised messages in the health or legal domain from a source language into a target language using spoken or signed language that accurately reflects the meaning.
- (b) Comprehends and produces two languages (spoken or signed), appropriately using specialised and complex language, including technical expressions and jargon from across the health or legal domain.
- (c) Understands in detail how culture and language interact in the health or legal domain, identifies significant and nuanced culturally-specific information in spoken or signed language, and is able to apply this to the interpreting task and account for its use.

- (d) Knows about and understands complex, specialised health or legal contexts, topics and relevant current events in the field at an advanced level, and is able to interpret for a specialist audience.
- (e) Has full and detailed knowledge and understanding of the relevant codes of Ethics, and clinical guidelines/professional standards and is able to apply this to situations in interpreting practice, client interactions and other professional activities.
- (f) Knows and is able to use technology required for interpreting processes in the health or legal domain, including telephone interpreting, video and onscreen interpreting.
- (g) Typical interpreting modes for spoken languages include -
 - (i) Simultaneous (chuchotage)
 - (ii) Consecutive (monologue)

Classification definitions specific to Certified Specialist Interpreter (Health)

- (h) Can use a variety of tools and methods to search for information, including highly specialised resources in the health domain, and is able to extract and manage specialised and complex information from research and apply it to the interpreting process.
- (i) Operates as an integral member of the healthcare team and manages interactions with clients to provide services in order to ensure access to services and facilitate positive health outcomes.
- (j) Dialogues and presentations between and aimed at experts in the health field (e.g. medical handover between LOTE and English speaking specialists; chuchotage of a conversation between two specialists in a hospital context; presentation of specialist medical equipment by an international company) or speech samples requiring specialist interpreting (e.g. speech pathology consultations; mental health consultations).
- (k) Sub-domains can include geriatrics, obstetrics, anaesthesiology, surgery, gynaecology, ophthalmology, paediatrics, anaesthesiology, mental health, oncology, paediatrics, psychiatry, radiology, orthopaedics, urology, occupational therapy.

Classification definitions specific to Certified Specialist Interpreter (Legal)

- (l) Can use a variety of tools and methods to search for information, including highly specialised resources in the legal domain, and is able to extract and manage specialised and complex information from research and apply it to the interpreting process.
- (m) Operates as an integral member of the court and manages interactions with clients to provide services in order to ensure access to services and facilitate positive justice outcomes.
- (n) Dialogues and presentations between and aimed at experts in the legal field, in different legal jurisdictions (e.g. NSW, VIC, Federal) and different levels of the legal system (local, state and federal; courts and tribunals) (e.g. expert witness testimony; judges' judgement; colloquy between judge and lawyer during court proceedings; discussions between legal experts).
- (o) Sub-domains can include criminal and civil court cases, including contract, commercial, consumer, family, refugee and immigration, personal injury, worker's compensation, insurance, real estate law etc.

K.2.5 Level 8 – Certified Conference Interpreter

- (a) Transfers highly complex, specialised messages from a source language into a target language using spoken or signed language that accurately reflects the meaning.
- (b) Comprehends and produces two languages (spoken or signed, and written) in specialised domains, appropriately using specialised and complex language including technical expressions and jargon.
- (c) Understands in detail how culture and language interact in specialised contexts, identifies all significant and nuanced culturally- specific information in spoken or signed language, is able to apply this to the interpreting task and account for its use.
- (d) Knows about and understands a broad range of complex and specialised contexts, topics and current events at an advanced level, i.e. at the level of experts speaking or signing to an expert audience.
- (e) Has full and detailed knowledge and understanding of the relevant code of Ethics, and is able to apply this to situations in interpreting practice, client interactions and other professional activities.

- (f) Can use a variety of tools and methods to search for information, including highly specialist resources in a variety of domains, and is able to extract and manage specialised and complex information from research and apply it to the interpreting process.
- (g) Operates in the interpreting industry and manages interactions with clients and other interpreters to provide services.
- (h) Knows and is able to use technology required for conference interpreting, including interpreting from a booth.
- (i) Speeches and presentations at high- level international exchanges, such as international conferences, summits, meetings and negotiations (e.g. UN summits, NAATI meetings, bilateral treaty negotiations). For signed languages this may include national conferences, summits, meetings and negotiations (e.g. Commonwealth government conferences).
- (j) Typical domains include legal, technology, science, health, commerce, economy, diplomacy, politics.
- (k) Typical interpreting modes include:
 - (i) Spoken Language
 - Simultaneous (booth)
 - Consecutive (monologue)
 - (ii) Signed Languages
 - Simultaneous (monologue)
 - Consecutive (monologue)

Legislative Framework

4. APESMA’s application is made under sections 157 and 158 of the *Fair Work Act 2009* (Cth) (the Act). Section 157 relevantly enables the FWC to “make a determination varying a modern award” if the FWC is satisfied that making the determination outside the system of 4 yearly reviews of modern awards is “necessary to achieve the modern awards objective”. Section 157(3) provides that the FWC may make a determination under section 157 on its own initiative, or on application under s.158.
5. Section 158 contains a table setting out who may apply for the making of a determination varying a modern award. Relevantly, “an organisation that is entitled to represent the industrial interests of one or more ... employees that would become

covered by the modern award” is entitled to make an application to vary or include coverage terms (other than outworker terms or coverage terms) in a modern award to increase the range of employers, employees or organisations that are covered by the award: see Item 3 of s. 158(1)

6. APESMA is an organisation to whom s 158(1) applies in this matter. APESMA has a right under its registered eligibility rules to represent the industrial interests of Translators and Interpreters.
7. The FWC may exercise its power to vary a modern award, other than to vary modern award minimum wages or to vary a default fund term of the award, under section 157(1) if it is satisfied that making the determination is necessary to achieve the modern awards objective.
8. 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:
 - (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*.

9. When considering the relevance of s. 134, the Full Bench in its 4 Yearly Review of Modern Awards: 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’¹.

10. 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.’²

11. 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,*

¹ [2014] FWCFB 1788 [32]

² Ibid [33]

relevant and enforceable minimum terms and conditions” including through modern awards.³

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

13. Tracey J⁴ 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.”

14. 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 said:⁵

[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.

³ Explanatory Memorandum, Fair Work Bill 2008, r 105

⁴ [\[2012\] FCA 480](#)

⁵ [\[2012\] FWAFB 5600](#)

15. For the reasons detailed in this outline of submissions, APESMA asserts that the variations sought to the Award are “necessary” to meet the “modern awards objective”.

Translators and Interpreters and the Award – Recent Historical Context

16. 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

17. A comparison between Schedule A (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 A (Classification Definitions) to the Award during the award modernisation process in 2008 and 2009.
18. 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 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

19. 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 B to the modern Award, with a number of occupations added at the time of the award modernisation process in 2008 and 2009.

20. 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.

21. 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.

22. 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.

23. 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.”
24. 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 B of the Award.
25. On 15 July 2015, and as part of the then 4 yearly review process, APESMA filed an Outline of Submissions seeking a variation to the Award, such that the occupations 'Translator' and 'Interpreter' would be included in the 'List of Common Health Professionals' which then comprised Schedule C to the Award. It was APESMA's contention that the occupations Translator and Interpreter were professions as demonstrated by the requirement that their members were regulated by a national credentialing body, the National Accreditation Authority for Translators and Interpreters (NAATI), were required to complete Compulsory Professional Development activities to retain credentials and comply with a Code of Ethics, among other factors. APESMA argued in its initial submissions that in the decades since the pre-reform Victorian awards first categorised “Qualified Interpreters” and “Unqualified Interpreters” as support services employees, there had been significant

change in the language services industry in Australia and translators and interpreters should be categorised as Health Professionals with the resulting occupational coverage that was appropriate to professional employees.

26. The Award was listed for hearing before the Full Bench on 11 December 2017 as part of the 4 yearly review of modern awards process. On that date and following the Applicant's opening statement, Vice President Catanzariti and Deputy President Booth requested that relevant parties consider resolution of APESMA's application on the basis the occupations of Translator and Interpreter continue to sit in the support services stream but continue to have award coverage if individuals performing those occupations move around to other industries. (Please see PN669 to PN717 of the Transcript for Monday 11 December 2017).

27. In light of Vice President Catanzariti and Deputy President Booth's request, APESMA amended its application seeking instead to extend the coverage clause of the Award to include coverage of Translators and Interpreters on an occupational basis rather than including the occupations in the List of Common Health Professionals in (then) Schedule C.

28. Subsequently, in its decision of 3 December 2018 the FWC considered APESMA's amended application and decided that:

[149] We consider that it is desirable for there to be unambiguous award coverage for the occupations of 'translator' and 'interpreter'. However, we consider that this would best be determined by a separate and careful consideration of the appropriate award or awards to cover these occupations and the appropriate rate of pay to be payable, which may require a consideration of work value or at least classification. We propose to refer this to the President for his consideration.⁶

29. Subsequently, on 18 August 2020, APESMA filed this Application, so that the FWC may determine the appropriate award to provide unambiguous award coverage for the occupations of Translator and Interpreter.

⁶ [2018] FWCFB 7350

Schedule K - Classification Definitions and NAATI Certification

30. Variation to the Award is sought to:

- a. Delete obsolete references to “unqualified interpreter” and “qualified interpreter” under Schedule A – Classification Definitions, specifically clauses A.1.5(b) Support Services employee—level 5 and A.1.7(b) Support Services employee—level 7.
- b. Insert at the appropriate place, maintaining the alphabetical order of the terms to be defined, the following terms and definitions under clause 2 of the Award:
 - i. Certified Advanced Translator means an individual certified by NAATI as a Certified Advanced Translator.
 - ii. Certified Conference Interpreter means an individual certified by NAATI as a Certified Conference Interpreter.
 - iii. Certified Interpreter means an individual certified by NAATI as a Certified Interpreter.
 - iv. Certified Provisional Interpreter means an individual certified by NAATI as a Certified Provisional Interpreter.
 - v. Certified Specialist Interpreter (Health and Legal)
 - vi. Certified Translator means an individual certified by NAATI as a Certified Translator.
 - vii. NAATI means National Accreditation Authority for Translators and Interpreters Ltd.
 - viii. Recognized Practising Interpreter means an individual certified by NAATI as a Recognized Practising Interpreter
 - ix. Recognized Practising Translator means an individual certified by NAATI as a Recognized Practising Translator
- c. Insert a new Schedule K –Translators and Interpreters, which will contain Classification Definitions for Translators and Interpreters as per the definitions proposed at paragraph 30(b) of this submission.

31. The Award covers Interpreters but only as an industry award as Interpreters appear as indicative roles in the classifications in Schedule A to the current award (which Schedule provides classification definitions for Support Services employees).
32. 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 greater recognition of the critical role that Interpreters and Translators play in the health industry and in all areas of Australian society. In a health setting, failures to engage qualified experienced interpreters can lead to reduced quality of care; reduced client safety and compromised patient care; reduced/compromised access to health care; stress and trauma for patients and families; lack of patient comprehension of medical procedures and failure to obtain informed consent; and unnecessary health expenditure. There are also serious consequences when breaches of professional ethics occur and/or where health professionals are unaware of the requirements and parameters of the Translator/Interpreter's role. In the legal and courts context, failures to engage qualified experienced and adequately trained interpreters can have wide-ranging implications including aborted trials, criminal convictions being overturned and serious charges unable to be pursued; lack of access to impartial and informed advice; the inappropriate use of family and community members and other non-disinterested parties for translating and interpreters in inappropriate contexts such as domestic violence and sexual assault; waste in the form of unnecessary expenditure on appeals and re-running aborted trials; inappropriate or incorrect charges being laid, mitigating circumstances not being taken account of, lack of comprehension of bail conditions, sentencing, charges and court proceedings generally; conflicts of interest and breaches of confidentiality.⁷

⁷ The Case For Change: Consequences and costs of failures in the translating and interpreting industry" APESMA 2013 <http://www.professionalsaustralia.org.au/wp-content/uploads/2018/08/The-Case-for-Change-TIA.pdf?fbclid=IwAR2WZo0LqdujinTkC9sIQcs9VlhXV8dKtpCtja-aB3MOUdlawlrqUlh19js>

33. “Unqualified interpreter” and “Qualified interpreter” are terms which are no longer used widely in the language services industry, and those terms do not recognise the level of regulation of the industry by NAATI.
34. NAATI is the national standards and certifying authority for translators and interpreters in Australia. It is the only organisation to issue certification to practitioners who wish to work in this profession in Australia and monitors the standards for the translating and interpreting profession.
35. NAATI is incorporated in Australia under the *Corporations Act 2001* (Cth). 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.
36. NAATI certification is the only credential officially accepted by employers for the profession of translation and interpreting in Australia.
37. The classification definitions in the proposed Schedule K are more accurate and appropriate descriptors which will be widely understood within the Language Services industry, and which mirror the certification system introduced by NAATI effective from 1 January 2018.
38. On 1 January 2018, NAATI reviewed their credential scheme and replaced it with a certification model which provides greater consistency in assessments and improved validity in the relationship between NAATI standards and the professional roles to which they relate. The system is designed to evaluate whether an individual is competent to practice as a translator or interpreter. It does this by setting minimum standards of performance across a number of areas of competency. Certification is an acknowledgement that an individual has demonstrated the ability to meet the professional standards required by the translation and interpreting industry in Australia.
39. NAATI certifies interpreters at a number of levels, according to their proficiency and skill.

40. According to its 2019-2020 Report, NAATI now certifies practitioners in 179 languages including 40 Indigenous languages.⁸
41. Where NAATI does not offer certification for a particular language, such as in the case of languages of emerging or low-demand communities, it can grant a “Recognised Practising Translator” or “Recognised Practising Interpreter” credential under its certification system.
42. It is APESMA’s submission that the certification system will facilitate an increasing supply of appropriately certified translators and interpreters, which will in turn, maximise the of ability of people from Culturally and Linguistically Diverse backgrounds to participate in Australian society.
43. NAATI certified Translators and Interpreters are required to obtain re-certification every three years by demonstrating their currency of practice and completing ongoing professional development.
44. Generally, Federal and State Government policies require agencies to procure the services of interpreters and translators at NAATI Certified Professional level for clients who require language assistance when accessing government services: NAATI Government Owners preferred approach is that language service providers and other consumers requiring translation and interpreting services engage practitioners who hold a NAATI credential conferred according to the certification system.⁹
45. APESMA submits that the recognition of NAATI certification under the Award will:
- a. provide quality assurance to the consumers of translating and interpreting services
 - b. provide credibility to agencies that engage certified translators and interpreters
 - c. provide greater recognition of highly specialised translators and interpreters

⁸ National Accreditation Authority for Translators and Interpreters Annual Report 2019-2020, page 12, available at <https://www.naati.com.au/wp-content/uploads/2020/10/Annual-Report-2019-2020.pdf>

⁹ Statement of Endorsement of NAATI’s certification system page 3 (see MP-1, Attachment to APESMA Exhibit -10, Witness Statement of Mark Painting, CEO of NAATI)

Why the Health Professionals and Support Services Award is the most appropriate Modern award

46. There are eleven Modern awards that contain references to translators and / or interpreters. Of the eleven, seven make provision for employees who are covered by those awards in a different occupational capacity to receive an allowance where the employee is bilingual and uses his / her language skills in the course of providing client or staff services.
- a. Four of the eleven Modern awards include interpreter or “subtitler” as classifications or indicative roles covered by the Award.
 - b. Of the four, the Award is the modern award under which the vast majority (an estimated 70 to 80%) of the work of Translators and Interpreters is performed.
 - c. Interpreters who are employed under one of the other three awards which have ‘interpreter’ as a classification, will continue to be covered by those awards even if this application to vary the Award is successful.
47. If APESMA’s application is successful, the Award will become the occupational award for Translators and Interpreters with the exception of any Interpreters or Translators that fall within the Coverage and Classifications clauses of the three Awards referred to in paragraph 46 a above (**‘the three other Awards’**). Those three other Awards are:
- (a) Aged Care Award 2010 [MA000018];
 - (b) Amusement, Events and Recreation Award 2020 [MA000080]; and
 - (c) Broadcasting, Recorded Entertainment and Cinemas Award 2010 [MA000091]
48. APESMA’s proposed variation of clause 4 of the Award includes the insertion of a proposed Clause 4.8 as follows (which will avoid any overlap in the award coverage of employees who may be currently employed as interpreters or translators in the industries covered by the three other Awards):

4.8 Without limiting the generality of the foregoing this award does not cover employers covered by the following industry awards with respect to employees covered by the awards:

- Aged Care Award 2010;
- Amusement, Events and Recreation Award 2020;
- Broadcasting, Recorded Entertainment and Cinemas Award 2010.

49. The primary purchasers of interpreting services in Australia are government departments including but not limited to those involved in health and medical services, court/legal services, social security/welfare and immigration. A recent report into Multicultural Affairs by the Victorian Government illustrates that of the annual overall budget of \$55,130,643 spent on Translators and Interpreters by Victorian Government departments, in the financial year 2019-2020, 77.2 % of that budget was spent by the Department of Health and Human Services, 8% by Court Services Victoria and 5.76% by Department of Justice and Community Safety, with the remaining expenditure shared in minimal amounts by the various other Victorian Government departments.¹⁰ This Victorian Government report provides support for the contention that 70 to 80% of interpreting and translating work is performed in the health industry and so it is appropriate that the Award becomes the primary award providing occupational coverage of Interpreters and Translators. The evidence of all of APESMA's witnesses strongly supports this assertion also.

50. The coverage clauses of 'the three other awards' make it clear that where an employer is covered by more than one award, a particular employee will be covered by the award classification which is most appropriate to the work performed by the employee and to the environment in which the employee normally performs the work. This means that where an interpreter is employed by an employer in the Aged Care industry, if the classification of interpreter found in Schedule B to the Aged Care Award 2010 is the most appropriate classification to cover the employee taking into

¹⁰ Victorian Government Report on Multicultural Affairs 2019-20 page 26 <https://www.vic.gov.au/victorian-government-report-multicultural-affairs>

account their work and the environment in which they normally perform the work, then that employee will be covered by the Aged Care Award 2010. As a result, we do not see “unnecessary overlap of modern awards” occurring should the variation sought be granted.

51. It should also be noted that the Award is already a modern award which provides occupational coverage for the many professions listed in Schedule B to the Award, acknowledging that occupational coverage is the appropriate form of award coverage for professional employees.
52. Further, it is clear that Interpreters are already covered by the Health Professionals and Support Services Award 2020 and pursuant to section 163(2), the Fair Work Commission must not make an award covering certain employees unless it has considered whether it should, instead, make a determination varying an existing modern award to cover them.

How the Variation sought meets the Modern Award Objectives

53. Section 134(1) of the 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

54. 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.
55. The FWC considered the definition of low paid in the *Annual Wage Review 2009-10*. It considered that:

[237] There is no consensus among the parties and other commentators with respect to a definition of the low paid. Because there is a continuous distribution of wages, there is no wage threshold just below which people are clearly low paid and just above which people are clearly not low paid. Rather, the lower the wage, the more “low paid” is the employee. People earning above or near median earnings are clearly not low paid in an absolute sense. In considering relative living standards and the needs of the low paid, we have focussed mainly on those receiving less than two-thirds of median adult ordinary-time earnings (currently about \$700 per week) and its equivalent hourly rate (about \$18.50). We have also had regard in particular to those paid at the C10 rate, in recognition of past practice, on the C14 rate, which is equivalent to the minimum wage, and on those whose full-time equivalent wages put them in the bottom quintile of the wage distribution. Employees on award wages that are above these rates can be considered to be low paid in a different sense. The comparison here is between the award rate and the bargained rate for similar work.¹¹

56. The Australian Bureau of Statistics (ABS) estimates the average weekly ordinary time earnings for full-time adults is \$1,711.60 as of November 2020.¹² Two-thirds of the median adult ordinary-time earnings equates to \$1,141.07.

57. The current weekly minimum rate of pay for a full-time employee at Level C10 employee is \$1,080.60.¹³ For a full time employee at Level C14, the minimum weekly rate of pay is \$772.60.¹⁴

58. The 2016 Census data estimates the median income for translators and interpreters in Australia as being:

- a. Translators: annual income of \$40,095.58, equating to a weekly income of \$771.07.

¹¹ [2010] FWAFB 4000.

¹² <https://www.abs.gov.au/statistics/labour/earnings-and-work-hours/average-weekly-earnings-australia/latest-release> date accessed 9 July 2021

¹³ Manufacturing and Associated Industries and Occupations Award 2020 clause 20.1

¹⁴ Manufacturing and Associated Industries and Occupations Award 2020 clause 20.1

- b. Interpreters: annual income of \$34,440.83, equating to a weekly income of \$662.32.

59. The estimated median weekly income of translators and interpreters is below two-thirds of the of the median adult ordinary-time earnings. On this basis, APESMA submits that translators and interpreters are low paid workers, within the meaning of s. 134(1)(a).
60. 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.¹⁵ 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.
61. APESMA submits that the witness statements tendered into evidence in support of this Application confirm that translators and interpreters are low paid. The average weekly earnings of some of these witnesses in the financial year 2019/20 are as follows:
- a. Exhibit APESMA – 6 - \$898.67¹⁶
 - b. Exhibit APESMA – 7 - \$997.83¹⁷
 - c. Exhibit APESMA – 8 - \$639.06¹⁸

¹⁵ Professionals Australia, 'Making the case for quality language services for Victoria', available at http://www.professionalsaustralia.org.au/translators-interpreters/download/ti_submissions/2016-Victorian-Government-Review-Making-the-Case.pdf

¹⁶ Exhibit APESMA -6- Witness Statement

¹⁷ Exhibit APESMA -7 – Witness Statement

¹⁸ Exhibit APESMA – 8 Witness Statement

62. The following is an extract from Law Institute of Victoria (2010) Interpreting Fund Scoping Project Final Report:¹⁹

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. 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. This in turn is resulting in more unaccredited staff having to be used.*³²⁶

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.³²⁷ 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”.³²⁸ Based on the 2006 Census, a typical interpreting practitioner is said to work 25 hours per week for a gross annual income of \$25,000.³²⁹

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.

¹⁹ <http://www.liv.asn.au/getattachment/80358a3c-d0d5-460c-bbae-af9dccc3f8/Final-Report---Interpreting-Fund-Scoping-Project.aspx> (p.76),

63. 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 the Award is varied such that Translators and Interpreters are covered by the Award on an occupational basis, 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

64. APESMA submits that the need to encourage collective bargaining is a favourable consideration. The FWC has recognised that award coverage for Translators and Interpreters is ambiguous.²⁰ This ambiguity is a barrier to collective bargaining. Before approving an enterprise agreement, the FWC must be satisfied that each award covered employee, and prospective award covered employee will be better off overall under the proposed enterprise agreement than if the relevant modern award applied (the BOOT test).²¹ Given the current uncertainty regarding award coverage for translators and interpreters, it is very difficult for parties to the bargaining process to ensure a proposed enterprise agreement will satisfy the BOOT test. This discourages collective bargaining because there is a risk that parties could go through the bargaining process, only for the proposed enterprise agreement to be rejected by the FWC.

²⁰ [2018] FWCFB 7350 [149]

²¹ *Fair Work Act 2009* (Cth) s 193

65. If there was clarity regarding the award coverage for Translators and Interpreters, parties would be more likely to engage in collective bargaining because the risk of wasting resources going through the bargaining process would be reduced.

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

66. In the *Annual Wage Review 2012-13*, the FWC examined the meaning of social inclusion. It decided that:

“consideration of “social inclusion” in the context of s.284(1)(b) is limited to increased workforce participation. On that basis it is obtaining employment which is the focus of s.284(1)(b). This involves a consideration of the increased incentives that higher minimum wages can provide to those not in employment to seek paid work, balanced against potential impacts on the demand for low-paid workers and hence the supply of low-paid jobs, from large increases in minimum wages.

[102] However, we also accept that modern award rates of pay impact upon an employee’s capacity to engage in community life and the extent of their social participation. These are matters that can be appropriately taken into account in our consideration of the legislative requirement to “maintain a safety net of fair minimum wages” and to take into account “the needs of the low paid” (s.284(1)(c)). Further, the broader notion of promoting social inclusion is also relevant to the fixation of minimum wages, quite apart from the more limited construct reflected in s.284(1)(b). One of the objects of the Act is to promote “social inclusion for all Australians by” (among other things) “ensuring a guaranteed safety net of fair, relevant and enforceable minimum terms and conditions through...modern awards and national minimum wage orders” (s.3(b)).”²²

²² [2013]FWCFB 4000 [101]-[102]

67. The interpretation of s. 248(1)(b) in the *Annual Wage Review 2011-12* has been affirmed by subsequent annual wage review cases.²³ However, there has been limited consideration of the meaning of social inclusion through increased workplace participation in the context of applications to vary a modern Award.
68. APESMA submits that the interpretation of s. 248(1)(b) in the context of this Application should encompass not only obtaining employment, but also increasing the number of hours worked by those already employed.
69. The low rates of pay for Translators and Interpreters discourage people to seek employment and to increase the number of hours they work. This is evidenced by the witness statements tendered in evidence that state:

“I don’t take on demand telephone jobs because the rate of pay is very low, and the work is more difficult.”²⁴

“I was not paid for travel time within the metropolitan area between onsite jobs. For this reason, I was only accepting on-site jobs within a 10-15km radius of my home; otherwise the travel time made the work unviable.”²⁵

“Towards the end of 2020 I took the decision to step out of interpreting and translation as a primary source of work. It had become clear to me since 2018 that it could not even provide a modest living wage for my circumstances as the main provider for my family.”²⁶

70. Furthermore, APESMA submits that the real minimum wage for translators and interpreters has been eroded over time.
71. This submission is evidenced by the rates of pay for interpreters over time. The following table compares the rates of pay (excluding superannuation) for a certified interpreter (or equivalent) for 90 minutes on site interpreting over the past seven years.

²³ *Annual Wage Review 2017-18* [2018] FWCFB 3500 [28]

²⁴ Exhibit APESMA 7 witness statement

²⁵ Exhibit APESMA 8 witness statement

²⁶ Exhibit APESMA 8 witness statement

	2014	2017	2018	2021
On Call	\$68.00		\$87.12	\$87.12
VITS/ Language Loop		\$68.50		\$72.60
SWITC		\$103.5		\$103.5
Centrelink		\$78.00		\$88.17
TIS		\$76.50		\$83.39

72. According to the Reserve Bank of Australia, the average annual inflation rate is 1.5% per year. Below is a table calculating the 2017 or 2018 rate of pay adjusted for inflation to 2021, and comparing the 2021 rate of pay to show if there has been a real wage increase.

	2017/ 2018 rates of pay	2017/2018 rates of pay adjusted for inflation rate of 6%/4.5 %	2021 rate of pay	Real wage increas e (Yes/No)
On Call	\$87.1 2	\$91.04	\$87.1 2	No
VITS/ Language Loop	\$68.5 0	\$72.60	\$72.6 0	No
SWITC	\$103. 5	\$109.71	\$103. 5	No

Centrelin k	\$78.0 0	\$82.68	\$88.1 7	Yes
TIS	\$76.5 0	\$81.09	\$83.3 9	Yes

73. This submission is also supported by the witness statement of Exhibit APESMA-8, who states:

“Rates of pay over the 25 years since I started working as a Translator and 15 years as an Interpreter have typically stayed the same, slightly increased, or in some cases have actually decreased. They have not kept pace in any way with increase of cost of living over that time”²⁷

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

74. 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

²⁷ Exhibit APESMA-8 Witness Statement

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***

75. In APESMA's submission, the variation sought to achieve occupational coverage for Translators and Interpreters will meet the objectives set out in s 134(1)(da) of the Act, by providing Translators and Interpreters who work outside the health industry, additional remuneration currently afforded to Support Services employees under the Award.

76. APESMA submits that there is a need to provide Translators and Interpreters with a consistently applied safety net of minimum terms and conditions for all members of the occupation, as Translators and Interpreters working outside of the health industry experience common concerns in relation to unpredictability of work, lowly paid work and unsocial hours to those in the health industry. The work performed by Translators and Interpreters outside the health industry involves the same or substantially same duties and responsibilities in terms of complexity of work, albeit a different subject matter.

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

77. The language services industry has evolved over time, with 'end users' such as government agencies placing an increased importance on the regulation of practitioners when engaging in translators and interpreters to perform their services in critical settings, such as in a hospital or court.

78. The principle of equal remuneration for work of equal or comparable value will also be achieved through the introduction of a specific classification structure for translators and interpreters (the proposed Schedule K) which recognises their NAATI credentials. Highly qualified and specialised interpreters, who are sought after by the end users noted above, will be appropriately remunerated as Level 8 support services employees.
79. APESMA submits that by achieving occupational coverage for Translators and Interpreters, Translators and Interpreters performing work outside the health industry will be afforded equal remuneration for equal or comparable value to Translators and Interpreters working in the health industry, and entitled to overtime rates, shift penalties and allowances as Support Services employees under the Award. As noted in paragraph 63 above, the current model by which translators and interpreters are engaged means that often practitioners hold concurrent employment with a few employers and / or agencies at the same time and accept assignments regardless of whether they are in the health industry or not, in order to work the maximum number of hours they can each week.

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

80. Generally speaking, the government policies referred to in paragraph 44 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 “Australian Government Language Services Guidelines” Multicultural Language Services Guidelines – For Australian Government Agencies”.²⁸

²⁸ Australian Government Language Services Guidelines: Supporting access and equity for people with limited English. : © Commonwealth of Australia (Department of Home Affairs) 2019
<https://immi.homeaffairs.gov.au/settlement-services-subsite/files/language-services-guidelines.pdf>

In line with the Australian Government's responsiveness commitment in the Multicultural Access and Equity Policy (see Section 2.3 above), Australian Government agencies should incorporate the cost of language services into their procurement and grant processes. This should be done when: • developing New Policy Proposals • making other budget bids • developing and implementing programs and services. Organisations seeking to deliver services on behalf of the Australian Government should also be required to incorporate realistic language services costs into their tender proposal or grant application. Funding arrangements that do not adequately cover contracted service providers to deliver language services to clients with limited English language proficiency create challenges to equitable service delivery. Issues and additional costs may arise at a later date if services have not been appropriately delivered initially. According to AUSIT, there is no standard industry rate for translating or interpreting, and language professionals set their own fees and conditions.⁸ Language service providers that assign work to practitioners will specify payments in their agreements with interpreters and translators on their panel. Some state and territory governments - Victoria's, for example - have set minimum pay and conditions, which may provide a general guide when estimating language service costs. A language services costing tool has been provided at Appendix 2 to help agencies estimate the costs of providing language services in their funding and service arrangements.

81. 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 Translators and 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 80 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

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

83. The FWC has recognised that award coverage for Translators and Interpreters is ambiguous, and that clarifying this matter would be advantageous.²⁹ This position is repeated by the witnesses called by APESMA, who state that the current Modern Award coverage for translators and interpreters is complex and confusing.

84. The variation sought simplifies, and makes it easier to understand for employers and employees in the Language Services industry that Translators and interpreters are covered by the Award.

(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.

85. 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.

²⁹ [2018] FWCFB 7350 [149]

Evidence

86. APESMA will be calling the witnesses set out in the table below to give evidence in support of its application:

Witness Number	Role / organisation
APESMA Exhibit -1 – Subject to Confidentiality Order	Full time employee of an agency
APESMA Exhibit -2 - Subject to Confidentiality Order	Casual employee of an agency
APESMA Exhibit -3 Subject to Confidentiality Order	Full time employee of an employer in the health industry
APESMA Exhibit -4 Subject to Confidentiality Order	Casual employee of an agency
APESMA Exhibit -5 Subject to Confidentiality Order	Casual employee and independent contractor with multiple agencies
APESMA Exhibit -6 Subject to Confidentiality Order	Casual employee and independent contractor with multiple agencies
APESMA Exhibit -7 Subject to Confidentiality Order	Casual employee and independent contractor with multiple agencies
APESMA Exhibit -8 Subject to Confidentiality Order	Casual employee and independent contractor with multiple agencies
APESMA Exhibit -9 Niki Baras	Casual employee of an employer in the health industry; Casual employee and independent contractor with multiple agencies and Organiser with the Applicant

APESMA Exhibit-10 Mark Painting	Chief Executive Officer of The National Accreditation Authority for Translators and Interpreters (NAATI)
APESMA Exhibit – 11 Michael Morgan	Managing Director of Amigos: Interpreters & Translators, an agency that employs Translators and Interpreters

87. APESMA Witnesses 1 through to 9 will give evidence about (among other things), their qualifications and credentials, their current working conditions, experiences in working in the industry and their desire to be covered by the Award on an occupation basis.
88. APESMA Witness 10, Mr Mark Painting, CEO of NAATI, will give evidence (among other things) about professional developments in the translating and interpreting professions in recent years and the NAATI certification system and its benefits.
89. APESMA Witness 11, Mr Michael Morgan, Managing Director of Amigos: Interpreters & Translators, a business owned by the Company BGM AMIGO'S PTY LTD (606 098 891) will give evidence about the language services industry from an employer's perspective, and why he is supportive of APESMA's application to achieve occupational award coverage for Translators and Interpreters.