



STATEMENT

Fair Work (Transitional Provisions and Consequential Amendments) Act 2009
Sch. 6A, Item 5—Application to terminate a State reference public sector transitional award

Health Grouping (AM2013/33 and others)

Health and welfare services

DEPUTY PRESIDENT GOSTENCNIK
DEPUTY PRESIDENT COLMAN
COMMISSIONER LEE

MELBOURNE, 3 DECEMBER 2021

Health Professionals, Medical Scientists and Support Services (Victoria) State Reference Public Sector Modern Award 2018.

[1] In our decision of 4 September 2018, we determined to terminate four State reference public sector transitional awards and to replace these awards by making a State reference public sector modern award titled the *Health Professionals, Medical Scientists and Support Services (Victoria) State Reference Public Sector Modern Award 2018* (Health Award).¹ The provisions of that Health Award reflected an agreement as to content between the parties who participated in the proceeding.

[2] The Commission has since identified several errors in the Health Award which we outline below. We propose to exercise our power under s 160 of the *Fair Work Act 2009* to correct these errors and we also set out our provisional view as to the manner in which each error should be corrected.

[3] *First*, the standard rate for the higher qualification allowance for an Audiologist in clause C.1.8 is determined by reference to the “Medical Scientist Grade 1, Year 3” (see cl.12.4(e), \$997.50). It appears that the correct reference should be to “Audiologist Grade 1, Year 3” (see cl.12.4(b), \$997.50).

[4] It is *our provisional view* that the provision should be amended as follows:

“(c) The standard rates of pay for the purpose of this clause shall be “~~Medical Scientist~~
Audiologist Grade I, Year 3”.”

¹ [2018] FWCFB 5557

[5] *Secondly*, the classification of ‘Genetic Counsellor’ does not have a corresponding rate for the higher qualifications allowance (the clause ends with a comma – see extract below) and the Health Award does not contain any pay rates for a Genetic Counsellor:

Extract from clause C.4.7:

“(a) Where a genetic counsellor has a higher qualification they shall be paid, in addition to the rates of pay prescribed in the appropriate clause, the following:

(i) Master of Health Science (Genetic Counselling), Master of Science (Genetics), Master of Social Work, Master of Psychology, Member of Human Genetics Society of Australia;

(ii) Doctor of Philosophy (Genetic Counselling, Genetics, Psychology, Social Work),”

[6] A classification for a Genetic Counsellor was not contained in any of the four state-reference public sector awards terminated pursuant to our earlier decision. A provision corresponding to the extracted provision above appears in *Victorian Public Health Sector (Medical Scientists, Pharmacists and Psychologists) Single Interest Enterprise Agreement 2017-2021* as follows:

“Where a genetic counsellor has a higher qualification s/he shall be paid, in addition to the rates of pay prescribed in the appropriate clause, the following:

(a) Masters in Genetic Counselling (excluding Griffith University) or equivalent, Master of Health Science (Genetic Counselling), Master of Science (Genetics), **Master of Social Work, Master of Psychology the sum of 7.5% of the base rate;**

(b) Doctor of Philosophy (Genetic Counselling, Genetics, Psychology, Social Work) **the sum of 10% of the base rate.**

(c) **For the purposes of (a) and (b) the base rate for Genetic Counsellors higher qualifications is Grade 1 year 2.”**

[7] There are two possible methods of correction. The first is to delete all reference to the Genetic Counsellor classification from the Health Award. The second is to adopt the provisions extracted immediately above as terms of the Health Award by varying clause C.4.7 to include the text in bold. *Our provisional view* is that the second course is preferable.

[8] If our provisional view is accepted, rates of pay will need to be included in the Health Award for the Genetic Counsellor classification and we seek the parties’ assistance in fixing the appropriate minimum rates of pay.

[9] *Thirdly*, the standard rate for the classification of “Medical Physicist” is defined in clause C.5.11(b) as a Medical Physicist Grade 1 Year 1 and clause 12 of the Health Award does not contain any rates of pay for the classification:

“(b) Such allowance shall not be cumulative in the case of multiple higher qualifications. The standard rate of pay for the purposes of this clause shall be **Medical Physicists Grade 1 Year 1.**”

[10] As with the Genetic Counsellors classification discussed above, a classification for a Medical Physicist did not appear in any of the four state-reference public sector awards terminated pursuant to our earlier decision. A classification for a Medical Physicist and corresponding rates of pay appear in *Victorian Public Health Sector (Medical Scientists, Pharmacists and Psychologists) Single Interest Enterprise Agreement 2017-2021*. Rates of pay for Medical Physicists appear in Schedule 2 to the Agreement while higher qualifications allowance appears at clause 5.12 in Schedule 3 in terms identical to the Health Award provision:

“5.12 Higher Qualifications Allowance

(a) Where a medical physicist has a higher qualification they shall be paid, in addition to the rates of pay prescribed in the appropriate clause, the following:

(i) for a recognised Graduate Certificate in Physics, or recognised equivalent, the sum of 4% of the base rate as defined in SCHEDULE 2;

(ii) for Graduate Diploma in Physics, or Graduate Diploma in Health Administration or other recognised equivalent qualification, the sum of 6.5% of the base rate;

(iii) for Master of Science, Master of Physics, Master of Medical and Health Physic, Membership of the Australian Institute of Physics. provided however that the qualification is awarded on the basis of assessment in a health related discipline or the employee has been employed as a Physicist for a minimum of three years, or other recognised equivalent degree or qualification from a tertiary institution the sum of 7.5% of the base rate;

(iv) for Doctor of Science, Doctor of Physics, Fellowship of the Australian Institute of Physics provided however that the qualification is awarded on the basis of assessment in a health-related discipline or the employee has been employed as a Physicist for a minimum of three years, Doctor of Philosophy or other recognised equivalent qualification, the sum of 10% of the base rate.

(b) Such allowance shall not be cumulative in the case of multiple higher qualifications. The base rate of pay for the purposes of this clause shall be Medical Physicists Grade 1 Year 1.”

[11] To correct the error identified we could delete all reference to the Medical Physicist classification from the Health Award. Alternatively, we could fix appropriate rates of pay. *Our*

provisional view is that the latter course is preferable and if interested parties agree, we seek their assistance in fixing the appropriate minimum rates of pay.

[12] *Fourthly*, the standard rate for the higher qualifications allowance for the classification of “Psychologist” is missing from the Health Award. Clause C.8.6(b) provides:

“(b) Such allowance shall not be cumulative in the case of multiple higher qualifications. The standard rate of pay for the purpose of this clause shall be Psychologist Grade 1, Year”

[13] This allowance appears in the superseded instrument, the *Medical Scientists, Pharmacists and Psychologists (Public Sector - Victoria) Award 2003* [Transitional] [AT830467]. In that instrument, the standard rate (which is called the base rate) is the Grade 1 Year 1 Psychologist rate (see clause 19.10.2). It is not clear whether this would be the appropriate rate because there are a number of other reference rates for calculating higher qualifications allowances for other professions that did not transpose the rates contained in the superseded awards to the Health Award. For example, the higher duties allowance for a Clinical Perfusionist under the corresponding superseded award is referable to Grade 1 Year 1 (see Clause 19.2.4(b)). The corresponding allowance in the Health Award is referable to Clinical Perfusionist Grade 1 Year 3. Further, for a Dietitian the allowance in clause 19.3.6(b) of the relevant superseded award is referable to the Dietitian Grade 1 Year 2, while the corresponding allowance in the Health award is referable to Dietitian Grade 1 Year 3.

[14] Nevertheless, it is *our provisional view* that an amendment to the definition of the standard rate should be made as follows:

“(b) Such allowance shall not be cumulative in the case of multiple higher qualifications. The standard rate of pay for the purpose of this clause shall be Psychologist Grade 1, Year 1”.

[15] Additionally, we may need to give consideration to whether the definitions for the other standard rates which do not align with the corresponding standard rates in the superseded awards should be so aligned. This matter was not the subject of any submission from or explanation by any parties appearing in the earlier proceeding.

[16] *Finally*, there appears to be a cross-referencing error at clause C.5—Medical Physicists. Clause C.5 incorrectly refers to clause 11 (termination of employment) and should link to a classification table in clause 12. *Our provisional view* is that the cross-referencing error should be corrected.

[17] We will give interested parties 14 days from the date of this statement to file and serve any submissions on the course of action we propose taking, including the provisional views expressed at [4], [7], [11], [14] and [16] and the additional matters raised at [8], [11] and [15].



DEPUTY PRESIDENT

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