November 20, 2014

Professionals Australia
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Melbourne
Victoria 3001

Associate to the Honourable Justice Ross AO
President
Fair Work Commission
11 Exhibition Street
Melbourne VIC 3000
By email: amod@fwc.gov.au

Dear Associate

RE: 4 Yearly Review of Modern Awards – AM 2014/1

Further to the Statement issued by the Commission on 31st October 2014.

1 The FWO has identified various matters which are said to be either inconsistent with, or ambiguous, regarding NES entitlements. The following submission addresses those matters with respect to awards in which APESMA has an interest.

2. The relevant awards were identified in the correspondence to the Fair Work Commission from the Fair Work Ombudsman (FWO) of 4 April 2014.

3. The FWO has identified 27 modern awards which they suggest may offend the NES's accrual of annual leave provisions at s.87 (2) as they relate to shift workers.

The FWO states:

> *"AMBIGUITY/CONSISTENCY*
> *Under the NES, annual leave accrues progressively throughout the year on the basis of ordinary hours of work performed by the employee. Further, it is unclear whether the clause requires 12 months continuous service prior to an employee accessing the shift worker annual leave entitlement"*

3. Of relevance to this matter APESMA has an interest in the following modern awards:

- Ambulance and Patient Transport Industry Award [MA000098]
- Local Government Industry Award [MA000112]
- Manufacturing and Associated Industries and Occupations Award 2010[MA000010]
- Professional Employees Award 2010 [MA000065]
- Water Industry Award [MA000113]

4. In the Statement of 31st October 2014 the Commission at PN7 has provided the opportunity for any party who had not already made a submission in respect of this matter to do so by 21st November 2014.

5. The Association agrees with the FWO that the clause is inconsistent with the accrual provisions of s.87 (2) of the Fair Work Act and may result in a detriment to employees. Submissions from a number of interested parties have been made in respect of this issue. Having had the opportunity to consider the various submissions the Association proposes that the current submissions/s be varied in order to provide for greater clarity.

6. Using the Professional Employees Award as an illustration the proposed amended provision is set out below.;

"19.3 Definition of shiftworker

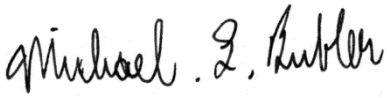
(a) For the purpose of the additional week of annual leave provided for in the NES, a **shift worker** is a seven day shiftworker who is regularly rostered to work on Sundays and public holidays.

(b) Where an employee ~~with 12 months' continuous service~~ is engaged for part of the 12 monthly period as a seven day shiftworker, the employee must have their annual leave increased by half a day for each completed month the employee is continuously engaged as a seven day shiftworker.

(c) An employee engaged for only part of a month as a shiftworker will accrue leave for the part month proportionate to the leave prescribed in (b) above.

7. The effect of the proposed variation to Clause 19.3 as outlined above would be to remove the ambiguity which currently exists in Clause 19.3(b) and to clarify the operation of the provision as outlined in new Clause 19.3(c).In this regard the proposed variation is compliant with s.55(4) of the Act in .

Yours sincerely



MICHAEL BUTLER
Director Industrial Relations