

*Fair Work Act 2009*

s.156—4 yearly review of modern awards

(AM2014/204)

**HEALTH PROFESSIONALS AND  
SUPPORT SERVICES AWARD 2010**

**Four yearly review of modern awards**

**Section 156 – 4 yearly review of modern awards**

**OUTLINE OF SUBMISSIONS**

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

**Introduction**

1. On 6 May 2015 the President, Justice Ross, issued Amended Directions [2015] FWC 2194 in relation to the 4 yearly review of modern awards for Group 2 awards. The Amended Directions were further to the Statement issued by Justice Ross on 6 May 2015.
2. In his Amended Directions the President required each interested party to file a written outline of submissions in relation to any substantive claims or variations being pursued.
3. This outline of submissions is filed in support of APESMA's application seeking a variation to the Health Professionals and Support Services Award 2010 (the Award) such that the Award becomes the occupational award for all translators and interpreters not covered by any other award.

### The Clauses to be Varied

4. 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
11.2	13	Health Professional employee – level 1	<p>a. Insert “and NAATI accredited Paraprofessional Translator and NAATI accredited Paraprofessional Interpreter” after “UG 2 qualification”;</p> <p>b. Insert “and NAATI accredited Professional Interpreter and NAATI accredited Professional Translator “ after “three year degree entry” ;</p>
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	Delete “Interpreter (qualified)”

		are:	
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”.

### Historical Context

5. 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.
6. 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.

7. 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.
  
8. 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.” 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.

**The Fair Work Act 2009 (the Act)**

9. APESMA's application to vary the Award is made pursuant to section 156 (2) (b)(i) of the Act which states:

**156(1)** The FWC must conduct a 4 yearly review of modern awards starting as soon as practicable after each 4th anniversary of the commencement of this Part.

**156(2)** In a 4 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;

10. In exercising its discretion to vary the Award, the FWC must consider whether the proposed variation is necessary to achieve the modern awards objective which is set out in section 134 of the Act:

**134** (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.

11. 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 fair and minimum safety net of terms and conditions will achieve the modern award objective as expressed in section 134(1)(a) of the Act.

12. Further, if the Award becomes the occupational award for all interpreters and translators not covered by any other award, it is APESMA's submission that subclauses (b) to (g) both inclusive of the modern award objective will be achieved.

## **Qualifications and Accreditation**

13. 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.
14. NAATI accreditation is the only credential officially accepted by employers for the profession of translation and interpreting in Australia.
15. 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.
16. NAATI Credentials include the following:
  - Conference Interpreter (Senior) (formerly known as Level 5):
  - Advanced Translator (Senior) (formerly known as Level 5):
  - Conference Interpreter (formerly known as Level 4):
  - Advanced Translator (formerly known as Level 4):
  - Professional Interpreter (formerly known as Level 3):
  - Professional Translator (formerly known as Level 3):
  - Paraprofessional Interpreter (formerly known as Level 2):
  - Paraprofessional Translator (formerly known as Level 2):
  - Interpreter Recognition:
  - Translator Recognition:
  - Language Aide:

17. 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.

18. 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.

19. 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.

**Scope of evidentiary material to be filed**

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

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

22. APESMA will also submit a number of academic reports, journal articles, government data (including Australian Bureau of Statistics Census Data) and other materials in support of our application.

**Procedure for hearing this application**

23. It is APESMA's submission that this application for variation should be referred to a separately constituted Full Bench.

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

**15 July 2015**