

FAIR WORK COMMISSION

4 Yearly Review of Modern Awards

Matter Number: AM2014/281

Professional Employees Award 2010

("the Award")

OUTLINE OF SUBMISSIONS IN RELATION TO SUBSTANTIVE CLAIMS

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

INTRODUCTION

1. This submission by the Association of Professional Engineers, Scientists and Managers, Australia (APESMA) is made in response to the Statement and Directions issued by Justice Ross on 26 August 2016¹ in respect of Group 4 Awards. Interested parties are to file by 4pm on Friday 30 September 2016 a short submission confirming the substantive claims in accordance with Paragraphs 5 and 6.

SUBSTANTIVE CLAIMS

2. In its submission of 25th February 2015 APESMA outlined several claims and the totality of claims now pressed are as outlined hereunder:

Professional Development

¹ [2016] FWC 3649

3. Professional Registration is an emerging issue for Professional Engineers. This is a result of the establishment of registration schemes including the statutory registration scheme provided for under *The Professional Engineers Act 2002 (QLD)*. Under the Queensland framework a Professional Engineer performing Professional Engineering Duties must be registered or supervised by someone who is. It is highly likely that in addition to the Queensland scheme other statutory schemes will be established.
4. In support of Professional Registration APESMA seeks to vary Clause 11 – Professional Development to provide for reimbursement of the costs of obtaining and maintaining Professional Registration in those circumstances where such registration is a specific requirement of the Professional Engineering role.

The proposed variation is as follows;

Clause 11 – Professional Development

“(c) Where it is accepted by the employer as being directly relevant to the employee’s role and responsibilities and/or required by legislation, the employer shall meet the costs involved in obtaining and maintaining professional registration either through direct payment to the registration provider or by reimbursement upon proof of expenditure, at the employer’s discretion.

In order to qualify for the payment or reimbursement of costs involved in obtaining and maintaining professional registration such registration must be obtained through an assessment entity which maintains a national registration scheme endorsed by a statutory framework.”

5. In support of this variation the Association will run a merit and evidence based case. Evidence will be led from 2 witnesses. This evidence will place Professional Engineers Registration in its legislative context and the need for the standard of professionalism amongst engineers to be high to ensure that there is competent practice, ethical conduct, maximum economic benefit and the safety of the community. In addition, the Association will submit that the proposed variation furthers the Modern Awards Objective (s.134) and is an allowable matter in accordance with s.139 of the Act.

Engineering Technologists

6. The role of Engineering Technologists is to analyse and modify new and existing engineering technologies and to apply them in the testing and implementation of engineering projects. The work of an Engineering Technologist is closely allied to that of Professional Engineering but within the broad scope of Engineering it is a separate professional discipline with an entry qualification of a 3 - year degree accredited by Engineers Australia.

APESMA seeks to vary Clause 3.2 of Clause 3 of the Award to provide coverage under the award for Engineering Technologists as follows;

"3.2 Engineering stream

Experienced Engineering Technologist means an Engineering Technologist with the undermentioned qualifications engaged in any particular employment where the adequate discharge of any portion of the duties requires qualifications of the employee as (or at least equal to those of) a member of Engineers Australia. The qualifications are as follows:

(a) membership of Engineers Australia; or

(b) having graduated in a degree course at a university recognised by Engineers Australia, five years' experience on professional engineering technology duties since becoming a Qualified engineering technologist; or

(c) not having so graduated, five years of such experience.

Graduate engineering technologist means a person who is the holder of a university degree in Engineering Technology recognised by Engineers Australia.

Engineering technologist means a person qualified to carry out professional engineering technology duties as defined. The term Engineering technologist will embrace and include Graduate engineering technologist and Experienced engineering technologist as defined in this clause.

Professional engineering technology duties means duties carried out by a person in any particular employment, the adequate discharge of any portion of which duties requires qualifications of the employee as a graduate member of Engineers Australia.

Schedule B – Classification Structure and Definitions

Consequential variations to Schedule B will be required to insert Engineering Technology references where applicable.

7. In support of the proposed variations it will be necessary to lead witness evidence regarding the professional nature of the work of Engineering Technologists; its evolution as a professional discipline; and, work value considerations and relativities to other professional classifications covered by the award and other relevant considerations when there is an application to extend the coverage of an award. It is anticipated that at least 2 witnesses would be required.

8. Compensation for Overtime and other matters

Sub-clause 18.2 of the Award requires employers to provide compensation when an employee works outside ordinary hours and/or are working "unsociable" hours. Sub-clause 18.3 stipulates the different types of compensation that may be utilised and Sub-clause 18.4 provides for an annual review of the compensation/remuneration to ensure that it is set at an appropriate level. It is the submission of APESMA that the term "appropriate level" is ambiguous and in addition the process set out in sub-clause 18.4 is difficult to implement due to its imprecise nature and a lack of a requirement on the part of an employer to provide highly relevant information. It is the submission of the Association is that the

provision of relevant information is essential to enable an employee to meaningfully participate in the process.

9. APESMA seeks to vary Clause 18.2 – Ordinary Hours of Work and Rostering in the following terms;

“18.4 (i) The compensation and/or remuneration will be reviewed annually to ensure that at a minimum that such compensation and/or remuneration will be set at a level that is no less favourable than the penalty rate or equivalent and the conditions which are applicable from time to time to the majority of employees employed in a particular establishment in which the employee is employed.

(ii) To facilitate the annual review process an employee shall have the right to request in writing to the employer that the employee shall be advised in writing of the method of compensation being used in respect of any of the matters specified in 18.2. These methods of compensation are set out in 18.3(a), 18.3(b), 18.3(c) and 18.3(d). If the employer is compensating the employee by a method identified in 18.3(b), 18.3(c) or 18.3(d), the employer shall identify the special additional remuneration, payment, allowance or loading which is being paid.”

9. The proposed variation amends existing sub-clause (i) to set a minimum standard and provides for a facilitative process as outlined in the new (ii) which would allow for genuine facilitation. The Association's submissions will identify the existing problems with the clause as it is and the manner by which the proposed variation will enable the more effective operation of this clause and the furtherance of the Modern Awards Objective.

10. **Experienced professionals and Schedule B – Classification Structure and Definitions**

The classification of Level 2 – Experienced Professional of Schedule B has historically equated to the provisions in Clause 3 – Definitions and interpretation which refer to *"Experienced engineer"*, *"Experienced scientist"* and *"Experienced information technology employee"*. However, in the current award this connection is implicit rather than explicit. To rectify this anomaly the Association seeks a variation to B.1.7 of Schedule B in the following terms;

"B.1.7 Level 2 – Experienced professional

Following development, the Experienced professional plans and conducts professional work without detailed supervision but with guidance on unusual features and is usually engaged on more responsible assignments requiring substantial professional experience. An Experienced professional shall include "Experienced engineer", "Experienced scientist" and "Experienced information technology employee" as defined in Clause 3 – Definitions and interpretation"

10. **Transitional Absorption Clause**

The claim in respect of Clause 2.2 of the Award is no longer pursued during the Award Stage as this matter is being dealt with in accordance the Full Bench Decision of 30 September 2015.²

11. Exposure Draft - Definitions

Clause 3.4 – Scientist Stream in Sub-clause 3.4(b) and the Academic schedule contains references to grades of membership of professional bodies. In most cases these provisions date back to the 1970's and in some instances the grades of membership have been superseded. The Association will make a submission on this matter as part of its response to the exposure draft for this award.

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29 September 2016