



*The Association of Professional  
Engineers, Scientists &  
Managers, Australia*

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## **FAIR WORK COMMISSION**

### **4 YEARLY REVIEW OF MODERN AWARDS**

#### **SUBMISSION ON PAYMENT OF WAGES -TERMINATION OF EMPLOYMENT**

#### **INTRODUCTION**

1. This submission on behalf of the Association of Professional Engineers, Scientists and Managers, Australia (“APESMA”) responds to the Statement issued on 24 August 2018 by the President of the Fair Work Commission His Honour Justice Ross O.A.M.

#### **AWARD SPECIFIC ISSUES**

2. At paragraph [9] of the Statement the Commission advises that several awards appear to have award specific issues that require further consideration before draft determinations are issued.
3. The awards include;
  - *Animal Care and Veterinary Services Award 2010.*
  - *Architects Award 2010.*
  - *Professional Employees Award 2010*
4. At paragraph [11] the Commission expresses the view that 11.3 of the *Animal Care and Veterinary Services Award 2010* and 12.2 of the *Professional Employees Award 2010* “*may be inconsistent with the NES*”. APESMA understands that this relates to the period of notice in the event of the termination of employment which is to be given to the employee. Specifically, the period of notice upon the termination of employment which is stipulated in the

abovementioned awards is one month. Whilst not mentioned in paragraph [11] it is understood that there may be a similar concern in respect of the Architects Award 2010.

5. The *Professional Employees Award* at Clause 12.2 states as follows;

*“12.2 Instead of s.117(3)(a) of the Act, in order to terminate the employment of an employee the employer must give the employee one month’s notice.”*

Similar provisions are contained in the *Animal Care and Veterinary Services Award 2010* at Clause 11.3 and the *Architects Award 2010* at Clause 12.2.

## **HISTORICAL BACKGROUND**

6. A Notice of Termination of Employment of one month’s notice is a common feature of awards covering technology - based professionals employed in the private sector in which APESMA has an interest. The main predecessors to the Professional Employees Award included awards covering Professional Engineers and Scientists. The *Professional Scientists Award 1981 (P26 V-M Print E8377)* included a provision at Clause 11 which provided for one month’s notice of termination by both the employer and employee. Similarly, the *Professional Engineers (General Industries) Award 1982 (P067 A S Print F1735)* (included a provision at Clause 13 – Termination of Employment. These awards had application to several thousand employers covering a diverse range of industries. Awards covering Professional Engineers and Scientists were followed by awards covering the Information Technology Industry, Telecommunications, and Quality Auditing Industries. These awards were rationalised during the Award Modernisation process which resulted in the creation of the Professional Employees Award.
7. The first federal award regulating the terms and conditions of Architects employed in the private sector was the *Architects (Interim) Award – Victoria – 1994 (A1144 A V Print L6816)*. Clause 16 – Contract of Employment provided for one month’s notice of termination by either party.
8. APESMA’s interest in the *Animal Care and Veterinary Services Award 2010* is in respect of Veterinary Surgeons. The first federal award for Veterinary Surgeons was the *Veterinary Surgeons Interim Award 1998 (Print Q1259)* which at Clause 9.1.1 provided for “not less than 4 weeks’ notice” when an employer terminates the employment of an employee and Clause 9.2.1 provides for the reciprocal period when the employee gives notice of their termination of employment to the employer.
9. APESMA contends that it is the long-established practice that a month’s notice of termination of employment is the minimum standard for professional employees and that it is not uncommon for contracts of employment to stipulate a greater period.

## **LEGISLATIVE FRAMEWORK**

10. APESMA submits that the relevant provision of the Fair Work Act 2009 (“the Act”) is s.55 (4) which states as follows;

*“(4) A modern award or enterprise agreement may also include the following kinds of terms:*

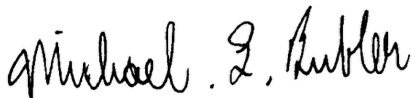
- (a) Terms which are ancillary or incidental to the operation of an entitlement of an employee under the National Employment Standards;*
- (b) Terms that supplement the National Employment Standards;*

*But only to the extent that the effect of those terms is not detrimental to an employee in any respect to an employee in any respect, when compared to the National Employment Standards.”*

## **CONCLUSION**

- 11. APESMA submits that as the intention of s.55(4) is to allow ancillary or incidental terms only to the extent that such terms are not detrimental to the employee then the existing provisions should not be varied. This is on the basis that they are additional to the notice period provided in s. 117(3)(a) of the Act. In this regard it is noteworthy that Note 2 of s. 55 (4) which deals with Supplementary terms refers to an example of an increase to the amount of paid annual leave as an acceptable provision.
- 12. APESMA proposes that Clause 1(a) (ii) of the Standard Draft Determinations be amended to read as follows;

“all other amounts that are due to the employee under this award in accordance with Clause ## - Termination of Employment. “



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**21<sup>st</sup> September 2018**