

**IN THE FAIR WORK COMMISSION  
AT SYDNEY**

**MATTER:** AM2018/9

**INDEPENDENT EDUCATION UNION OF AUSTRALIA  
APPLICANT**

**s.158 APPLICATION RE EDUCATIONAL SERVICES (TEACHERS) AWARD 2010**

**IEU FURTHER SUBMISSIONS**  
**RE PHARMACY INDUSTRY AWARD 2010 [2018] FWCFB 7621**

**Introduction**

1. The IEU was directed to file a supplementary submission arising from the decision in *Re Pharmacy Industry Award 2019* [2018] FWCFB 7621 (**the Pharmacists' Decision**), which was handed down after the IEU had filed its submissions in respect of its s158 application.<sup>1</sup>
2. In summary, the Pharmacists' Decision:
  - a. applies principles to establish work value in a manner that confirms the approach for which the IEU submissions contend;
  - b. identifies that past limitations that prevented full work value assessments to address long-standing undervaluation no longer exist;
  - c. confirms that, in the past, minimum rates for degree qualified professionals were set by reference to a relatively relationship to

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<sup>1</sup> IEU Submissions in respect of its s158 application dated 26 November 2018.

the C10 classification, and in particular the C1 (professional) rate, set with a relativity of 180% to the C10 (trades) rate;

- d. identifies that starting rates set for professionally qualified workers in the award in question had been set by reference to an award rate for Professional Scientists at a relativities of 130% (C5) and 125% (C6) to C10, being levels at or below that applicable to a worker starting work with an Advanced Diploma. In the submission of the IEU, those rates would not be used as a reference point for teachers, at least without significant upward adjustment. Rather the appropriate reference point is the C1 rate; and
- e. recognises that as a result of flat-dollar increases a compression of relativities has occurred in the minimum fixed rates for skilled workers, in particular professionals. The IEU contends that the obligation to set rates that provide a *fair and relevant* minimum safety net requires rates that properly reflect appropriate relativities, both internally and externally.

### **Relevant Principles**

- 3. The Pharmacists' Decision at [131] and following identifies matters that have traditionally been considered when determining work value, and at [163]-[169] the decision considers those matters in light of the current statutory provisions. The conclusions there set out accord with the approach taken by IEU submissions: see in particular IEU Submissions at [9]-[15].
- 4. At [160]-[161] of the Pharmacists' Decision the Commission cites principles relevant to determining work value as determined by the Full Bench of the AIRC in *Child Care Industry (Australian Capital Territory) Award 1998* PR954938. They included:
  - a. from [191] of the *Child Care Industry* case the proposition that assessing how an increase in work value ought to be assessed in monetary terms it is "*open to the arbitrator to make comparisons with other wages and work requirements within the award, and in*

*other awards, provided such comparisons are fair, proper and reasonable in all the circumstances”;*

- b. from [161] the appropriateness of minimum pay alignments between the awards under consideration and the *Metal Industry Award* between classifications with equivalent training and qualification levels.

### **Datum point**

5. At [166] of the Pharmacists’ Case the Bench noted that the *Equal Remuneration Case 2015* identified that s156(4) does not contain any requirement that the work value reasons consist of identified changes in work value measured from a fixed datum point. It follows that the Commission is able to review awards and adjust rates to remove historic work value undervaluation where it exists, including those applying to female-dominated industries, without first having to identify specific work value change from a particular date.

### **External relativities**

6. At [174] of the Pharmacists’ Decision the Bench identifies that professional scientists and pharmacists, who require degree qualifications, were not assigned the C1 classification with a starting relativity of 180%. For example, the base level degree qualified pharmacist was assigned a 140% relativity to the C10 classification, lining them up at below the C3 classification, which was the starting point for an employee with an Advanced Diploma.
7. At [196] of the Pharmacists’ Decision the Bench identified that the actual rate of pay for a Pharmacy Intern, which requires a bachelor degree and is thus at Level 7 of the AQF, is lower than that of classification C8 in the Manufacturing Award, who is at Level 3 in the AQF. Similarly, the base grade Pharmacist, who is at Level 7 in the AQF, is paid less than the C3, who is at Level 6 of the AQF. These are matters which the Bench identified at [197] as appearing inconsistent with the principles concerning the proper fixation of award minimum rates derived from the *Child Care Industry* case.

8. Teachers require a bachelor degree, placing them at Level 7 in the AQF for a base grade, or starting, position. Any quantification of the appropriate pay for teachers would accordingly be assessed on the basis that they should have a starting rate at a level *higher* than the C3 rate. In the submission of the IEU there would need to be a good reason why they would not be assessed at the C1 professional rate.
9. Returning to the Pharmacists' Decision, the Bench at [173] identifies that the starting rates for professional scientists, being Level 1, 4-5 year degree, and Level 1, 3 year degree, had been set by consent at the C5 and C6 levels respectively. That is to be understood against the following background.
10. The C10 classification structure was inserted into Part 1 of the *Metal Industry Award* on 12 April 1990, following the 1989 national wage case decision.<sup>2</sup> It ranged from C14 (entry level) to C1, with each classification defined by a training or qualification requirement and a wage rate set on the basis of its relativity to the C10 trade level.
11. Subsequent related amendments were made to the *Metal Industry Award 1971 Part III – Professional Engineers*<sup>3</sup> and the *Metal Industry Award 1976 Part IV – Professional Scientists*<sup>4</sup> which provided for classifications with assigned relativities and wage rates.
12. The Professional Engineers structure involved:
  - a. Level 1 – Graduate Engineer level, at 130% relativity to C10 (C5);
  - b. Level 2 - Experienced engineer, at 160% relativity to C10 (C2b);
  - c. Level 3 Professional Engineer – at 175% relativity to C10 (described as C1(a)); and
  - d. Level 4 Professional Engineer – at 195% relativity to C10 (described as C1(b)).

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<sup>2</sup> Print J2043

<sup>3</sup> Print J3505

<sup>4</sup> Print J3512

13. The Professional Scientists structure was effectively the same, except it had two level 1 points – a graduate of a 3 year course started at C6 (125% relativity) and a graduate of a 4 or 5 year course at C5 (130%).
14. These two awards and the classification structure were ultimately consolidated into the *Metal, Engineering and Associated Industries (Professional Engineers and Scientists Award) 1998*<sup>5</sup> (**the 1998 Professionals Award**), as summarized in the table at [173] of the Pharmacists Decision. The similarly consolidated *Metal, Engineering and Associated Industries Award 1998*<sup>6</sup> (**the 1998 Metals Award**) contained a wage rate for the C1(a) and (b) classifications, and expressly linked each qualification to an AQF qualification.
15. Progression from Graduate Engineer or Scientist to the Experienced Level was by work experience, with the Experienced level requiring four years of post-graduation work experience or admission to membership of the relevant professional association. While a Graduate, according to the classification description an engineer or scientist would work under supervision, perform initial professional tasks of limited scope or complexity in accordance with defined procedures, and assist more senior staff. Their work was reviewed by higher level staff and they were expressly expected to undergo training to develop, with supervision tapering off over this period and work becoming more complex.<sup>7</sup>
16. The 1998 Metals Award classification structure is, in substance, replicated in the *Manufacturing and Associated Industries Award 2010* (**the Manufacturing Award**). Similarly, the 1998 Professionals Award classification structure is now found in the *Professional Employees Award 2010* (**the Professional Employees Award**). It has altered somewhat, relevantly in that 4 soft barrier pay points are introduced for the graduate program, which are moved through on a competency basis and in periods

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<sup>5</sup> Print Q2531

<sup>6</sup> Print Q044

<sup>7</sup> Print J3505, JE505, ap787948 at Schedule A.

of no longer than a year. Transition to the Experienced level still requires four years' experience or admission to the relevant professional association.

17. That history goes some way to explaining why graduate engineers and scientists, despite needing a degree qualification, were not assigned a pay rate corresponding to the C1 relativity. To the extent that consent decisions permit the thinking to be understood, it appears to arise as a result of the more limited nature of the work performed by 'fresh grads', and the training and supervision they are expected to receive, resulting in their not undertaking the full role initially.
18. This contrasts with the position of teachers. As the IEU's evidence demonstrates, teachers are performing the full work of a professional educator, with limited to no supervision, from the first moment they begin work. Unlike professional engineers and scientists, there is no graduate program or period of on-the-job training during which they are not yet fulfilling the full professional role.
19. As such, a degree-qualified educator should be paid at least the same on entry into the profession as classifications in other awards which require an equivalent qualification. As the Full Bench said in *Re Child Care Industry (Australian Capital Territory) Award 1998* (PR954938) at [372]:

*Prima facie, employees classified at the same AQF levels should receive the same minimum amounts of pay unless the conditions under which the work is performed warrant a different outcome. Contrary to the employer's submissions the conditions under which the work of child care workers is performed do not warrant a lower rate of pay than that received by employees at the same AQF level in other awards. Indeed if anything the opposite is the case. Child care work is demanding, stressful and intrinsically important to the public interest.*

20. The Manufacturing Award defines C1(b) as having a 180% relativity to the C10 rate. It does not set a rate for that classification. As discussed in the Pharmacists Decision, the actual wage rates within the Manufacturing

Award do not reflect the relativities set out at schedule B2, as a result of historical flat rate increases compressing higher-end relativities over time.

21. Applying these matters, the appropriate reference point for the starting rate for a teacher is the C1 rate: that is, 180% of the C10 rate. If assessed without reference to the compression of relativities, at 180% of the current C10 rate that would equate to \$78,562 per annum, which is 49.8% over the current starting rate for teachers.
22. Certainly, noting the comments of the Bench in the Pharmacists Decision as to the AQF training requirements, a teacher should be receiving more than the C3 rate from the outset of their employment.
23. At [191] of the Pharmacists Decision, the Bench noted that the failure to sustain a relativity relationship to the C10 classification would constitute a work value reason as defined in s156(4). The Bench however went on to say that this would not *justify* a variation to minimum rates in the award in question, since the “*compression of relativities was the intended effect of the award of flat dollar increases to awards*”. At [192] the Bench went on to say that there is not a proper basis to unwind that now, in one award only in response to a claim by a single union, given the past adjustment was taken for deliberate policy reasons with the support of the union movement as a whole. It is respectfully submitted that the Bench erred in taking that approach, given:
  - a. the statutory requirement is that *fair and relevant* minimum rates be set, being rates that are appropriate today, regardless of past history;
  - b. the position put by unions in past wage cases resulting in flat rate increases was in fact regularly for flat increases for some, and percentage increases at the higher classifications, or adjusted flat rate claims to preserve relativities;<sup>8</sup> and

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<sup>8</sup> See, e.g., Safety Net Review – Wages 1997 at ch.2; Safety Net Review 1999 (Pr1999) at [92]; Safety Net Review 2000 (Print S5000) at [2]; Safety Net Review 2001 (PR002001) at [139]).

- c. wage fixing benches, when awarding flat dollar increases, identified on a number of occasions that this was being done to aid a range of policy considerations and that relativity compression, rather than a goal, was an undesirable consequence which would inevitably need to be addressed in the future.<sup>9</sup>
24. Alternatively, an approach that would seek to use instead the historically compressed professional rates would give rise to the current L3 rate in the Professional Employees Award being used as a reference point when setting rates for teachers, a rate that is at 175% relativity to C10 (described as C1(b)), being the rate set for a professional fulfilling the full professional role. That rate (following the flat rate increases that have compressed relativities) is currently \$64,462 per annum, which is 22.9% over the current starting rate for teachers.
25. It needs to be borne in mind, however, that the rates in the Professional Employees Award were created in 2010 and thereafter have received only standard increases. They do not take into account any changes in work value since 2010. If the Bench is satisfied that there have been substantial increases in work value for teachers since 2010, then their rates need to be set at a level above the corresponding rates in the Professional Employees Award.
26. Further, to the extent those external professional rates are used to determine an appropriate rate for teachers, adjustment will need to be made to reflect appropriate internal relativities for teachers, which the IEU maintains need to be adjusted for the reasons set out in its primary submissions.
27. In conclusion, the Pharmacists Decision points to the appropriateness, when considering rates, to a comparison to other professional rates. Such a comparison demonstrates that the current Award rates for teachers

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<sup>9</sup> See, e.g. Safety Net Review 2000 (Print S5000) at [118]; Safety Net Review 2001; Safety Net Review 2001 (PR002001) at [129]-[130] (citing previous expressions of concern); Safety Net Review 2003, PR002003 at [249].



sharply undervalue their skills and qualifications, let alone the actual value of their work.

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