



STATEMENT

Fair Work Act 2009

s.156—4 yearly review of modern awards

4 yearly review of modern awards—*Pharmacy Industry Award 2020* (AM2016/28)

Pharmacy operations

JUSTICE ROSS, PRESIDENT

MELBOURNE, 9 SEPTEMBER 2022

Outstanding issue in Pharmacy Industry Award 2020 – Classifications applying to employees who are required to hold undergraduate qualifications – proper relativity with the C10 classification rate found in the Manufacturing and Associated Industries and Occupations Award 2020.

Background

[1] As part of the 4 yearly review of the *Pharmacy Industry Award 2010* (Pharmacy Award), the Association of Professional Engineers, Scientists and Managers, Australia (APESMA)¹ made a claim for increases to the minimum rates of pay for pharmacists in the Pharmacy Award pursuant to s.156(3) of the *Fair Work Act* (the FW Act). Section 156(3) permitted the variation by the Commission of the minimum wages prescribed in a modern award where if, among other things, the Commission was satisfied that this was justified for work value reasons.²

[2] On 14 December 2018 a Full Bench issued a decision (*December 2018 decision*)³ in that matter and set out 3 main conclusions. These conclusions were summarised in the Full Bench's subsequent decision on 13 June 2019 (*June 2019 decision*)⁴ as follows:

‘(1) The APESMA had demonstrated that there was an increase in work value associated with the introduction of Home Medicine Reviews (HMR) and Residential Medication Management Reviews (RMMR) that justified a discrete adjustment to award remuneration by means of the introduction of a new allowance. We invited further submissions about the form of this allowance (including whether it should be an annual or weekly allowance or an allowance payable each time a HMR or RMMR is performed) and its quantum (**first conclusion**).

¹ APESMA is also known by its trading name of Professionals Australia.

² Section 156 was repealed by the *Fair Work Amendment (Repeal of 4 Yearly Reviews and Other Measures) Act 2018* (the 4 Yearly Review Amending Act) with effect from 1 January 2018. Under the application and transitional provisions of the 4 Yearly Review Amending Act, a review of an award that commenced but was not completed before 1 January 2018 can continue under the terms of the repealed provisions.

³ [2018] FWCFB 7621.

⁴ [2019] FWCFB 3949.

(2) We were satisfied that there had been an increase in the work value of pharmacists since 1998 in respect of the introduction of inoculations, the provisions of emergency contraception, the downscaling of medicines to pharmacy-only status, and a general increase in the level of responsibility and accountability. We invited parties to make further submissions as to how these findings should be reflected in an adjustment to remuneration, noting that not all pharmacists administer inoculations or dispense emergency contraception (**second conclusion**).

(3) There was a lack of alignment in pay rates and relativities as between pharmacists (who require a four-year undergraduate degree) under the Pharmacy Award and those for classifications requiring equivalent qualifications under the *Manufacturing and Associated Industries and Occupations Award 2010* (Manufacturing Award), as well as a lack of a consistent relationship with the Australian Qualifications Framework (AQF). We considered that this might potentially constitute a work value consideration relevant to the 4 yearly review of the Pharmacy Award. We invited further submissions as to this matter, and foreshadowed the possibility that this aspect of the review might need to be referred back to the President of the Commission for consideration as to the procedural course to be taken pursuant to s 582 of the Fair Work Act 2009 (FW Act) since it might have implications for other awards of the Commission (**third conclusion**). [Footnotes omitted]

[3] In the *June 2019 decision* the Full Bench considered the submissions in relation to the first and second conclusions above and determined the quantum of allowance and wage increase to be granted. The Pharmacy Award was subsequently varied.

[4] In relation to the third conclusion, the Full Bench stated as follows:

[15] We are persuaded by ABI's submission that the issue identified in the third conclusion should be referred to the President of the Commission for consideration as to the procedural course to be taken pursuant to s 582 of the FW Act. As we identified in the December decision, the issue has ramifications for other awards which contain classifications applying to employees who are required to hold undergraduate qualifications including, but not limited to, the Professional Employees Award 2010. As such, a broader review of the issue across a number of awards may be called for. We also note that a similar issue has been raised in connection with proceedings currently on foot concerning the Educational Services (Teachers) Award 2010.'

C2019/5255

[5] On 27 August 2019, I issued a statement (*August 2019 Statement*) which set out the above background and expressed the following *provisional* view:

[13] My *provisional* view is that the 29 awards with classifications requiring undergraduate degrees should be referred to a separate Full Bench for review and that the Full Bench commence its review with the four awards listed at [10] for efficiency purposes (priority group). However it will be necessary for this Full Bench to take into account the outcome of the IEU's work value application in respect of the Teachers Award. Accordingly the review of modern awards listed in Attachment A will commence after the determination of the IEU's application to vary the Teacher's Award. The review of these awards will be conducted on the Commissioner's own motion pursuant to s. 157 of the Act.'

[6] Paragraph [10] of the *August 2019 Statement* provided as follows:

[10] There are currently 29 other modern awards that include classifications applying to employees who are required to hold undergraduate qualifications. These modern awards are set

out at Attachment A ranked in order by the highest proportion of award-reliant employees. The top four modern awards with the highest levels of award reliance are:

- *Children's Services Award 2010*;
- *Social, Community, Home Care and Disability Services Industry Award 2010*;
- *Health Professionals and Support Services Award 2010*; and
- *Nurses Award 2010*'

[7] Interested parties were invited to comment on:

- the *provisional view* set out at [13] of the *August 2019 Statement*;
- the accuracy of the list of awards at Attachment A to the Statement (including whether they have an interest in other awards that should be part of this list)
- whether the Full Bench should consider additional awards as part of the priority group.

[8] Initial submissions were received in September 2019 from the following parties:

- [The Pharmacy Guild of Australia](#) (Pharmacy Guild)
- [APESMA](#)
- [ABI and the NSW Business Chamber](#)
- [Australian Nursing and Midwifery Federation](#)
- [Australian Council of Trade Unions](#) (ACTU)
- [National Tertiary Education Industry Union](#) (NTEU)
- [Collieries' Staff and Officials Association](#)
- [IEU](#)
- [United Voice](#)
- [Australian Industry Group](#)
- [Australian Manufacturing Workers' Union](#) (AMWU)

[9] Submissions in reply were received in October 2019 from the following parties:

- [Australian Industry Group](#)
- [IEU](#)
- [ABI and NSW Business Chamber](#)
- [Australian Federation of Employers and Industry](#)
- [Australian Council of Trade Unions](#)

[10] In addition to the issues that the parties were invited to comment upon, APESMA also made a submission requesting that the Pharmacy Award continue to be dealt with by the 4 yearly review Full Bench for the purposes of considering 'the alignment of the Graduate rate of pay for a 4-year Graduate with that of the Professional Employees Award and other awards containing 4 year degree entry rates'.⁵ They submit:

'23. As mentioned in Paragraph 5 (i) above APESMA seeks an interim realignment of the pharmacist 4 year degree rate, and consequential increases in all other pharmacist classifications in the Pharmacy Award so as to maintain relativities, to bring these rates into alignment with all other 4 year degree rates. Consideration of the alignment of the 4 year degree rate with the C10 rate in the Manufacturing Award should not hold back a realignment of the pharmacist 4 year

⁵ APESMA submission, [19 September 2019](#), [5].

degree rates with all other 4 year degree rates as the consideration of the realignment of the C10 rate with the 4 year degree rates would not resolve the issue of the alignment between the pharmacist rates and the rates for all other awards containing 4 year degree rates.

24. The following table illustrates the current lack of alignment between the pharmacist 4 year degree rate and that for all other 4 year degree rates ... [Table not reproduced]

25. APESMA has been unable to identify another modern award that contains a 4 year degree entry rate that is the same or lower than the Pharmacy Award rate. It should also be noted that the current Manufacturing Award C10 rate is 862.50 a week. Which means that the current Pharmacy Award graduate entry rate is 105.5% of the C10 Manufacturing Award rate.

26. We now seek an immediate realignment of the Pharmacy Award 4 year degree rates to align with the 4 year degree rates of the other comparable awards such as the Health Professional and Support Services Award 2010 and the Nurses Award 2010. We believe this realignment is necessary to satisfy the work value reasons outlined by the Full Bench in their Decision of December 2018 and to satisfy the modern award objective principles outlined in s. 134 of the FW Act, specifically the requirement to ensure that the award maintains a fair and relevant minimum safety net. The realignment of these rates would not give rise to any implications for other awards of the Commission.⁶ [Footnotes omitted]

[11] APESMA submitted that it supports the establishment of a Full Bench in accordance with s.157 of the FW Act for a review of professional rates of pay but proposes that, for the reasons outlined above, the Pharmacy Award be remitted back to the Full Bench to consider the alignment of rates with the Professional Employees Award as part of the 4 yearly review of modern awards.

[12] A number of parties supported the above APESMA submission.

[13] The ACTU submitted that they consider it appropriate that the Full Bench determining the claim by APESMA in respect of the Pharmacy Award be permitted to finalise that matter.⁷ They submit:

‘... The first Directions in respect of that claim were issued 3 years ago and considerable effort has gone towards advancing it before the Full Bench since that time. The Statement provides no clear pathway to the prompt conclusion of the matter concerning the Pharmacy Award.

The contemplated proceedings concerning the modern awards listed at Attachment A of the Statement (or some variant of that list) would be valuably informed by the outcome in the proceedings concerning the Pharmacy Award. The real utility of the present Reference by the Full Bench in the Pharmacy matter to the President lay in establishing a mechanism to ensure that the issue of significance concerning alignment or relativity was fully explored in all modern awards where it arose. It is not necessary or desirable to delay an outcome in respect of the Pharmacy Award to enable that to occur.’⁸

[14] The NTEU submitted that it is appropriate that the Full Bench determine the claim by APESMA in respect of the Pharmacy Award.⁹

⁶ Rates contained in the above quotation are not current Pharmacy Award rates.

⁷ ACTU submission, [20 September 2019](#).

⁸ ACTU submission, [20 September 2019](#), [5]-[6].

⁹ NTEU submission, [20 September 2019](#) at [5].

[15] The AMWU also supported the APESMA submission as follows:¹⁰

‘The AMWU is also aware that considerable resources have been expended by all parties in relation to the work value claim made by APESMA. The AMWU also considers that the parties in this matter will be assisted by the findings of the Bench in the determination of that matter.

In those circumstances, the AMWU submits that the Commission give consideration to delaying the review of the four priority awards until after APESMA’s application has been determined.’

[16] The Pharmacy Guild did not object to the *provisional* view at [13] of the *August 2019 Statement* but noted that the Pharmacy Award was not included in the list of 29 awards. The Pharmacy Guild submitted that the Pharmacy Award should be included in the list of awards.¹¹

Other relevant proceedings

[17] A number of parties also submitted that the proposed referral of awards to a separate Full Bench should not proceed until after the determination of the IEU’s application to vary the Teachers Award and the completion of the Australia Qualifications Framework (AQF) Review by the Australian Government.

[18] The AQF Review has now been completed, with a [Final Report](#) released in October 2019. On 9 December 2019, the Government accepted all the recommendations of the review in relation to higher education and accepted the aims of the recommendations of the review in relation to vocational education, contingent on further discussions with state and territory governments.¹² The AQF has not been updated in response to the Final Report.

[19] On 19 April 2021, the Full Bench hearing the application by the IEU to increase rates of pay for all classifications of teachers under the *Educational Services (Teachers) Award 2020* (EST Award) on work value grounds issued their decision.¹³ The Full Bench were satisfied that an adjustment to the minimum rates of teachers covered by the EST Award was justified by work value reasons. The Full Bench issued a determination varying the terms of the EST Award operative 1 January 2022.

[20] On 18 June 2020, the Pharmacy Award was substantially varied and renamed the *Pharmacy Industry Award 2020* (Pharmacy Award 2020). This concluded the technical and drafting matters for this award under the 4 yearly review.

Next Steps

[21] As set out above, the application by the IEU to vary the EST Award and the technical and drafting review of the Pharmacy Award as part of the 4 yearly review have been finalised. Accordingly, the outstanding issue at out at [15] of the *June 2019 decision*, will now be referred to a reconstituted 4 yearly review Full Bench for determination.

¹⁰ AMWU submission, [20 September 2019](#) at [12]-[13].

¹¹ Pharmacy Guild submission, 18 September 2019, [2]-[5].

¹² See Australian Qualifications Framework Review <<https://www.education.gov.au/higher-education-reviews-and-consultations/australian-qualifications-framework-review>> accessed on 9 September 2022.

¹³ [2021] FWC FB 2051.

[22] The Presiding Member will issue directions shortly.

[23] A further statement about the remaining 29 awards set out in the *August 2019 Statement* will be issued in due course.

PRESIDENT

Printed by authority of the Commonwealth Government Printer

<PR745679>