

FAIR WORK COMMISSION

4 Yearly Review of modern Awards

SUBMISSION ON OUTSTANDING TECHNICAL AND DRAFTING ISSUES

Group 4 Exposure Drafts

INTRODUCTION

1. This submission responds to the Fair Work Commission's decision of 21 March 2018 [2018] FWCFB 1548 relating to awards allocated to Group 4 during the 4 - yearly review of modern awards.
2. The Association of Professional Engineers, Scientists and Managers, Australia addresses several issues relating to the Exposure Drafts in respect of the following Awards:
 - Architects Award 2010
 - Professional Employees Award 2010
 - Surveying Award 2010
 - Hydrocarbons Field Geologists Award 2010

In addition, the Association will confirm which of the previously identified substantive issues it continues to pursue.

ARCHITECTS AWARD 2010

3. There are several outstanding matters as follows;

- (a) At paragraph 203 of the Decision Payment for Overtime was identified as potentially a substantive issue. The issue to be determined is whether time in off in lieu of overtime is to be granted on an “hour for hour” basis or at overtime rates. In its submission of 19th April 2018 Platinum Employee Relations acting on behalf of the Association of Consulting Architects Australia advised that it wishes to pursue this matter. Accordingly, APESMA agrees that this should be referred to a Full Bench and in addition notes the other substantive matters which the Architects Association wishes to pursue.
- (b) Regarding substantive matters which the Association has advised that it wishes to pursue these are identified in the revised Summary of Proposed Substantive Variations dated 14th November 2017. This was based on the Association’s submission which was filed on 29th September 2016.
- (i) Graduate of Architecture - Specifically, the Association is seeking to create an additional level in the Graduate of Architecture classification to reflect changes in qualifications requirements and to resolve the current ambiguity in the Award as to the appropriate minimum rate for an employee who possesses a Bachelor of Architecture degree. Accordingly, APESMA proposes a Graduate of Architecture Part 1 classification.

The proposed new Graduate of Architecture (Part1) *“means an employee who holds a Bachelor Degree which would entitle them to enroll in an Approved Qualification under the eligibility requirements for admission to the Architectural Practice Examination (APE) for registration as an Architect under Australian legislation.”*

The proposed minimum rate of pay for a Graduate of Architecture (Part 1) to be included in Clause 14.1 – Minimum Wages would be aligned to the Graduate Professional Level 1.1 rate as contained in Clause 15 of the Professional Employees Award. This rate is currently \$48,307 per annum.

- (ii) Progression from Graduate of Architecture to Registered Architect – Clause 14.3 of the Award currently provides for progression to be linked to obtaining experience based on prescribed competencies which in some instances no longer exist. The Association proposes the deletion of sub-clause 14.3(d) on the basis that this sub-clause is now redundant, and its deletion would not diminish the operation of the remainder of the clause which makes it clear that progression is competency based.

PROFESSIONAL EMPLOYEES AWARD (“PEA”

4. Issues arising out of the exposure draft for the Professional Employees Award

2010 are covered in paragraphs 603 to 642 and will be discussed in order of mention.

- (a) Items 17 & 18 – Facilitative Provisions – The Full Bench’s decision at paragraph 756 is noted.
- (b) Item 22 - Ordinary Hours of work – The Full Bench at paragraphs 618 to 620 outlined its concerns regarding the relationship between the averaging of hours of work over a 12- month period with the compensation provisions contained in the Hours of Work clause (Exposure Draft Clause 13).

APESMA submits that issue of Ordinary Hours of Work and compensation for work outside of ordinary hours etc. has from time to time been a problematical one throughout the history of this award and its predecessors. The approach which has been adopted by the Association has been to attempt to balance the flexible nature of professional employment whilst providing for clear minimum standards which are easily enforceable. In this regard for example it is submitted that the degree of flexibility for an entry level Graduate would be of a different nature that for senior professional employees. Whilst the Award does not contain an Overtime clause in the traditional sense APESMA would submit that the requirements for additional remuneration for *“time worked regularly in excess of ordinary hours, call-backs, stand by; shift work etc.”* as set out in Clause 13.3 of the Exposure Draft is in fact an Overtime provision in practice.

However, there have been on-going concerns regarding the enforceability of this provision in terms of ensuring that employees are appropriately compensated and that the method of compensation can be clearly identified and accordingly enforced. In this regard the Association has proposed a substantive variation to the Award which in its view would remove the ambiguity which currently exists and would result in a more enforceable minimum standard. The proposed variation as outlined in the Association’s submission of 29th September 2016 provides for an amended Clause 13.6 as set out hereunder

“13.6 (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 13.3. These methods of compensation are set out in 13.4(a), 13.4(b), 13.4(c) and 13.4(d). If the employer is compensating the employee by a method identified in 18.3(b), 18.3(c) or 18(d), the employer shall identify the special additional remuneration, payment, allowance or loading which is being paid.”

Accordingly, in the light of the concerns expressed by the Full Bench and the Association's proposed substantive variation the Association supports the establishment of a Full Bench to further consider these matters.

(c) Item 26 – Schedule of casual rates of pay – The Full Bench's provisional view is supported.

(d) Items 29 and 30 – The provisional view expressed by the Full Bench at paragraph 634 is supported and the referring in paragraph 640 of the Annual close-down issue to the plain language re-drafting process is noted.

OTHER SUBSTANTIVE MATTERS

5. As outlined in the Association's submission of 29th September 2016 there are 2 additional matters not otherwise dealt with elsewhere continue to be pursued.

These include;

(a) Professional Development - Variation to Clause 11 – Professional Development to provide for a new sub-clause (c) (exposure draft Clause 12.4) to provide for reimbursement of the costs of obtaining Professional Registration for Professional Engineers.

(b) Engineering Technologists - Variation to Clauses 2, 4, 14 and Schedule A to provide occupational coverage for Engineering Technologists.

SURVEYING AWARD 2010

HYDROCARBONS FIELD GEOLOGISTS AWARD 2010

6. The Association has no additional submissions in respect of the abovementioned Awards.

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