



*FAIR WORK COMMISSION*

## **4 Yearly Review of Modern Awards**

**Matter No: AM2014/281**

**Professional Employees Award**

### **Submission by the Association of Professional Engineers, Scientists and Managers, Australia in response to the Exposure Draft**

#### **INTRODUCTION**

1. This submission by the Association of Professional Engineers, Scientists and Managers, Australia (APESMA) is made in response to the exposure draft released by the Fair Work Commission for the Professional Employees Award 2010 (“the Award”), and in accordance with the Statement issued by Justice Ross on 8 December 2014<sup>1</sup>.
2. We note that in this Statement Justice Ross indicates that these exposure drafts are not intended to incorporate any substantive changes or to amend any entitlements under the current modern awards nor that they represent the concluded view of the Commission.

#### **COMMENTS ON SPECIFIC PROVISIONS IN EXPOSURE DRAFT**

##### **Clause 14 – Ordinary hours of work – Number of weeks in a cycle**

3. The current provision as set out in Clause 13.1 specifies an average of 38 hours in a cycle but does not specify a maximum number of weeks. The lack of any limits to the duration

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<sup>1</sup> [2014] FWC 8837

4. of the cycle may in some instances impact on the practical application of the Award. Therefore, the Association submits that this matter requires some clarification and accordingly it should be considered as a substantive issue.

#### **Clause 14 – Minimum Wages – Calculation of Hourly Rates**

5. Clause 14.1 – Based on the formula set out in Clause 14.2 the calculations are agreed with the exception of the rate for Level 3 Professional/senior (lead quality auditor. There appears to be a “rounding up” issue whereby the minimum hourly rate should be \$30.42 and not \$30.41.

#### **Clause 14 – Minimum Wages – Methodology**

6. Notwithstanding that the method of calculation in Clause 14.2 is “Hourly Rate = (Annual wage  $\times 6/313$ ) /38” there is an argument that past custom and practice used 365/7 (52.14). Accordingly, it is proposed that this issue be further considered.

#### **Clause 17 – Annual Leave – ABS Average weekly earnings**

7. The entitlement in Clause 17.2 which must not exceed the ABS average weekly earnings for all males (Australia) for the September quarter of the year preceding in which the date of the accrual of the annual leave provides a limit on the quantum of annual leave loading. It is submitted that the key variable is not whether annual leave is progressively accrued or accrues on completion of 12 months’ continuous service. Instead the practical application of this clause would need to relate to the time that annual leave is taken and the annual leave loading cap which would apply at that time.

#### **Schedule A – Classification Structure and Definitions – Entry Rate (4 or 5-year degree)**

6. Historically the entry rate for a Professional Engineer (4-year degree) or Professional Scientist (4 or 5-year degree) was higher than that of the Professional Scientist (3-year degree). To correct this omission the Association submits that the entry rate for the holder of a 4 or 5-year degree should be Pay Point 1.2.

## **Test Cases**

7. In addition to the abovementioned matters the Association notes the Decisions of the Fair Work Commission in respect of Part-time employment and Casual employment and their applicability to this Award.

## **ADDITIONAL MATTERS**

### **Clause 4 – Definitions – Clause 2.4 Scientists Stream**

8. Within the Scientists Stream outlined in Clause 2.4 there are references to several professional scientific bodies specifying grades of membership which are relevant to determining coverage under the Award. Specifically, the relevant provisions are the Academic Schedule and the definition of Experienced scientist. Several of these professional bodies have either altered the title of their grades of membership and accordingly the Award should be updated to reflect these changes. Attachment A consists of proposed amendments to Clause 2.4.

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Date: 22<sup>nd</sup> December 2016

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### 3.4 Scientist Stream

Experienced scientist means a Professional scientist possessing the following qualifications and engaged in any particular employment, the adequate discharge of any portion of the duties of which, requires the possession of such qualifications.

The qualifications are:

(a) that they will have had further experience on professional scientific duties, after obtaining their degree or diploma, as follows:

(i) when a graduate (four or five year course) – four years' experience;

(ii) when a graduate (three year course) – five years' experience, or

(b) that they possess qualifications acceptable to:

(i) the Royal Australian Chemical Institute for admission to the grade of [Graduate Member or Member/Associate member](#); or

(ii) the Australian Institute of Physics for admission to the grade of [Associate Member or Member](#); or

(iii) the Australasian Institute of Mining and Metallurgy for admission to the grade of [Graduate/Associate member or Member](#); or

(iv) the Australian Institute of Food Science and Technology for admission to the grade of [Graduate/Associate or Professional membership](#).

**Professional scientist** means a person qualified to carry out professional scientific duties as defined. The term Professional scientist will embrace and include Qualified scientist and Experienced scientist as defined.

**professional scientific duties** means duties carried out by a person in any particular employment, the adequate discharge of any portion of which duties requires academic qualifications of the employee as specified in the academic schedule below:

#### Academic schedule

(a) A degree in science from an Australian, New Zealand or United Kingdom university or from an Australian tertiary educational institution.

(b) Academic qualifications acceptable to the Royal Australian Chemical Institute for admission to the grade of [Graduate Member or Member/corporate membership](#).

(c) Academic qualifications acceptable to The Australian Institute of Physics for admission to the grades of [Associate Member or Member/graduate membership or corporate membership](#).

(d) Academic qualifications in metallurgy, metallurgical engineering or technology acceptable to either the Australasian Institute of Mining and Metallurgy for admission to the grade of [Graduate junior member](#) or [Member/corporate membership](#), or the Institution of Metallurgists (London) for admission to the grades of graduate or associate membership.

## Attachment A

(e) Academic qualifications acceptable to the Australian Institute of Agricultural Science [and Technology](#) for admission to [the category of a Full Member](#) ~~the grade of corporate membership~~.

(f) Academic qualifications acceptable to the Australian Institute of Food Science and Technology for admission to the grades of [Ggraduate](#) or [Professionalecorporate](#) membership.

(g) Academic qualifications acceptable to a pharmacy board or council within the Commonwealth of Australia provided that the award will not apply to pharmacists employed in a retail pharmacy shop.

**3.5 Qualified scientist** means a Professional scientist other than an Experienced scientist as defined, that is, a person possessing academic qualifications as specified in the academic schedule.