

A Guide to the Professional Employees Modern Award for Professional Scientists



**Professional
Scientists
Australia**

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Introduction

The Professional Employees Modern Award is the national Award for Professional Scientists employed in the private sector.

Along with the National Employment Standards (NES) the Professional Employees Modern Award constitutes the safety net of minimum employment entitlements which is applicable to employees and which employers must observe.

The content of the Award is basically divided between salaries and any monetary allowances on the one hand and conditions of employment on the other.

This Guide explains some of the main provisions of the Award.

Coverage

Who is covered?

The Award binds employers of Professional Scientists in the private sector. Amongst the sectors of employment which are excluded include the public sector (Commonwealth, state and local government) and higher education sectors. In addition, an employee needs to be covered by a classification set out in Clause 14 of the Award.

Who is a Professional Scientist?

This may seem like an obvious question but Clause 3 – Definitions and interpretation of the Award defines this.

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. The Award defines **professional scientific duties** as 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 corporate membership.*
- (c) Academic qualifications acceptable to The Australian Institute of Physics for admission to the grades of 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 junior or corporate membership, or the Institution of Metallurgists (London) for admission to the grades of graduate or associate membership.*
- (e) Academic qualifications acceptable to the Australian Institute of Agricultural Science for admission to the grade of corporate membership.*
- (f) Academic qualifications acceptable to the Australian Institute of Food Science and Technology for admission to the grades of graduate or corporate 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.*

The Award also defines a Qualified Scientist as a Professional Scientist other than an Experienced Scientist as defined, that is, a person possessing academic qualifications as specified in the academic schedule.

Minimum conditions of employment

Professional Scientists like other professional employees who work in the private sector may be employed under a collective agreement or some form of a common law contract of employment.

However it is important to note that these agreements and common law contracts are underpinned by the legislated minimum standards known as the NES (National Employment Standards) and the conditions of employment as outlined in the Professional Employees Modern Award 2010.

These conditions of employment are legally binding minimum standards. This point is particularly important to understand as sometimes employees are offered common law contracts of employment which may conflict with either the NES or the Award. When this situation occurs the NES or Award provision must take precedence.

Award classifications and salaries

Whilst Professional Scientists can be paid more than the Award and enjoy better conditions of employment, they cannot receive less. In fact there is a strong expectation that they will receive a greater salary and superior conditions of employment to what is prescribed in the Award.

The classification structure and rates for each of the classifications are as follows:

Classification	Annual wages \$*
Level 1 Graduate professional	
Pay point 1.1 (3 year degree)	44,554
Pay point 1.1 (4 or 5 year degree)	45,696
Pay point 1.2	46,463
Pay point 1.3	48,396
Pay point 1.4	50,848
Level 2 Experienced professional	52,561
Level 3 Professional	57,443
Level 4 Professional	64,787

* Rates effective on and from 1 July 2014. Check with Professionals Australia to ensure the rates are up-to-date.

How am I classified?

The Award is largely self-explanatory. A Graduate possesses a level of professional skill and knowledge based on the completion of an accredited 3 or 4 year degree.

How do I progress through the classification structure?

Progression through the classification structure from Pay Points 1 through 4 is based on one year in the former classification plus professional experience, provision of training by the employer and development of core competencies. Whilst progression to the next increment is not automatic the Award provides that if the employee has reasonably met the objectives arising out of the annual review this must be confirmed by the employer and the employee then progresses to the next pay point within the salary range. Progression from Pay Points 1.4 through to Levels 2 to 4 is according to the duties performed as set out in the Award.

Annual review

In the case of progression from Graduate to Level 4 Professional, the Award makes provision for an annual review process. The annual review is the vehicle for a review of the previous 12 months and the setting of objectives, including any required training, for the next 12 months.

Professional development

Clause 11.8 of the Award provides for a professional development activity to be undertaken at the employer's expense where the employer and employee agree.

Allowances

Other salary related provisions in the Award include provision for Travelling expenses and travelling time (16.1), a Vehicle Allowance when an employee is using their vehicle for work (16.2); Fares, travelling expenses and travelling time allowance (16.2); and Equipment and special clothing allowance (16.3).

Types of employment

The most basic condition of employment is your employment status - that is whether the employment is full-time, part time or casual. These definitions are set out in Part 2 of the Award in Clause 11. Essentially full-time and part-time employees have regular hours. A full-time employee works ordinary hours of 38 per week while the part-time employee is anyone who works less than 38 hours per week. A casual employee is one engaged and paid as such. Casuals receive a 25% loading on the ordinary hourly rate. This additional amount is in lieu of such entitlements as annual leave, sick leave etc. Typically casual employees work fluctuating hours of work and can work intermittently or be engaged on an on-going basis. An employee not specifically engaged as a casual is deemed to be employed by the week. This means that they are full-time or part-time and receive the various award entitlements.

Termination of employment

This is set out in the NES and Clause 12 of the Award.

Both the employer and employee must give one month's notice. Unless an employee is instantly dismissed for gross misconduct for example there is an obligation on the employer to pay out the notice period if an employee is asked to leave their employment prior to the expiry of one month's notice. Likewise if the employee leaves without working out the notice period the employer may withhold an amount of salary equivalent to the period not worked from the employee's pay.

Redundancy

Provisions governing Redundancy can be found in both the NES and the Award (Clause 13).

Redundancy is defined when the employer no longer requires the job to be done by anyone or in the case of insolvency or bankruptcy of the employer.

The minimum entitlement to redundancy pay is based on a scale as set out below:

Period of Continuous Service	Redundancy pay period
At least 1 year but less than 2 years	4 weeks
At least 2 years but less than 3 years	6 weeks
At least 3 years but less than 4 years	7 weeks
At least 4 years but less than 5 years	8 weeks
At least 5 years but less than 6 years	10 weeks
At least 6 years but less than 7 years	11 weeks
At least 7 years but less than 8 years	13 weeks
At least 8 years but less than 9 years	14 weeks
At least 9 years but less than 10 years	16 weeks
At least 10 years but less than 10 years	12 weeks *

* NB there is a reduction in redundancy pay for employees with at least 10 years continuous service due to the off-setting of long service entitlements.

Sometimes it is possible to reach agreement with an employer to pay more than the minimum entitlements contained in the NES the Association will endeavour to assist members in this way.

To be eligible for redundancy pay there is a qualifying period of a minimum of 12 months' service. However it is important to note that small businesses (less than 15 employees) are exempted from the obligation to pay redundancy payments.

Entitlements contained in the Award which are relevant to redundancy cover a range of issues.

For instance an employee after having been given notice by the employer can leave during the notice period and still receive the rate of pay that they would have received if they had stayed in employment until the expiry of the notice period. In addition there is a Job search entitlement of up to one day per week without loss of pay to look for a new position. If more than one day is taken proof of attendance at an interview may be required by the employer.

Hours of work and overtime

The ordinary hours of work as set out in the NES cannot exceed 38 per week and must be worked between 8am and 6pm Monday to Friday inclusive. The spread of hours may be altered by mutual agreement between the employer and the majority of employees in the establishment, section or sections concerned.

When overtime is worked it must be compensated for and in this regard there are a number of options. These include special additional leave or special additional remuneration Employers may offer what is known as an annualised salary which will cover both ordinary hours and overtime. It is worth noting that the Award provides that compensation will consider the overtime/penalty rates which apply to the majority of employees at an establishment. This ensures that professionals who may be compensated in ways other than payment of overtime are not disadvantaged in comparison with those who receive formal overtime. Periodic review of this type of arrangement is very important and in fact is a requirement under Clause 18.4..

Leave

Annual leave

Annual leave entitlements are set out in the NES. Employees other than casuals are entitled to four weeks of paid annual leave for each year of service with the employer. Under the NES the employer and employee should agree on when and for how long paid annual leave can be taken but the employer must not unreasonably refuse an employee's request to take paid annual leave.

Annual leave loading

Annual leave loading must be paid at the rate of 17.5% of their base rate of pay. The amount is capped at the ABS average weekly earnings for all males (Australia) for the preceding September quarter. The only exception to the payment of annual leave loading is when other remuneration is paid which is established as being of greater or equivalent value than the loading.

Personal/carer's leave

Personal/carer's leave is provided for in the NES and comprises sick leave and carer's leave. The minimum entitlement to paid personal/carer's leave for an employee other than a casual is 10 days per year and terms in awards, agreements and employment contracts cannot exclude or provide for an entitlement less than that set out in the NES.

Compassionate leave

An employee (including a casual employee) is entitled to two days of compassionate leave to spend time with a member of their immediate family or household who has sustained a life-threatening illness or injury. Compassionate leave may also be taken after the death of a member of the employee's immediate family or household.

An employee may take compassionate leave for each occasion as:

- a single continuous two day period or
- two separate periods of one day each or
- any separate periods to which the employee and his or her employer agree.

Public holidays

Public holidays are also provided for in the NES and terms in awards, agreements and employment contracts cannot exclude or provide for an entitlement less than the NES,

The following days are public holidays under the NES:

- 1 January (New Year's Day)
- 26 January (Australia Day)
- Good Friday
- Easter Monday
- 25 April (Anzac Day)
- Queen's birthday holiday (the day on which it is celebrated in a State or Territory or a region of a State or Territory)
- 25 December (Christmas Day)
- 26 December (Boxing Day)
- any other day or part-day declared or prescribed by or under a law of a State or Territory to be observed generally within the State or Territory (or a region of the State or Territory) as a public holiday.

The Award provides for substitution of public holidays by majority agreement or by individual agreement – that is, an employer and its employees may agree to substitute another day for any of the prescribed days in this clause if the majority of the affected employees consent, or in the case of individual employees, an employer and individual employee may agree to the employee taking another day as the public holiday instead of the day which is being observed as the public holiday in the enterprise or relevant section.

Consultation regarding major workplace change

A process for consulting about major workplace change is set out in Clause 9 of the Award – clause 9.1 sets out the circumstances under which an employer has an obligation to notify employees, and clause 9.2 sets out obligation on the employer to discuss change.

Employer to notify

Where an employer has made a decision to introduce major change which will have significant effects on employees, the Award requires them to notify employees. Significant effects are defined as termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required, the elimination or diminution of job opportunities, promotion opportunities or job tenure, the alteration of hours of work, the need for retraining or transfer of employees to other work or locations, and the restructuring of jobs.

Employer to discuss change

The Award sets out the requirement to discuss with the employees affected and their representatives significant changes as well as the effects the changes are likely to have, measures to avert or mitigate the adverse effects of such changes on employees. The employer is required to provide in writing all relevant information about the changes. The discussions are required to take place as early as practicable after the decision has been made by the employer.

Dispute resolution

The Award sets out a process for dispute resolution at Clause 10. This process requires the parties to firstly discuss and attempt to resolve the matter at the workplace level between the supervisor and employees, and if not successful, then the manager and employees. If this does not resolve the dispute, the matter the dispute may be referred to the Fair Work Commission (FWC) and the parties may agree on the process to be utilised by the FWC including mediation, conciliation and/or consent arbitration. If the matter is not then resolved, the dispute resolution procedure allows for the FWC to exercise any method of dispute resolution permitted by the Act. Either the employer or employee can appoint a person, organisation or association to accompany or represent them in the dispute resolution process. The dispute resolution process requires work to continue as the dispute resolution process is being pursued (subject to applicable occupational health and safety legislation).

Further information and advice

The information which has been provided in this article is general in nature. Therefore if a member is uncertain as to their rights or would like information which is specific to their situation then they should contact the Association's Workplace Advice & Support Centre on 1300 273 762.

Disclaimer

This material is intended to provide general information, current at the time of publication. Its contents do not constitute legal advice and should not be relied upon as such. You should seek advice on particular matters from Professionals Australia as set out in the Further information and advice section.

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