



The Association of Professional
Engineers, Scientists &
Managers, Australia

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20 February 2014

Ms Marie Dalins
Director, Adjudication Branch
Australian Competition & Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

email: adjudication@accc.gov.au

Dear Ms Dalins

Application for authorisation A91402

We refer to your letter dated 12 February 2014 and now provide the following in response to the questions set out on page 2 of that letter:

- 1. Please identify the process (es) by which APESMA will communicate with its members the terms of engagement and rates of pay resulting from collective negotiations with agencies, including:**
 - a. How will this be communicated?**

The question is a hypothetical one and this response is therefore a hypothetical prediction of how APESMA will communicate with its members based on how we typically communicate with members when representing those members during collective bargaining negotiations. Our communication process would involve meeting with those members (either face to face or via teleconference) from time to time to confirm the members' instructions and to report back to the membership group on progress in negotiations. Email communications would also occur between APESMA and the membership group between meetings to provide updates on negotiations and to obtain membership feedback and instructions.

APESMA has communicated with members of its Translators and Interpreters' Division to date by conducting group meetings or seminars outside of normal business hours in locations such as event centres or community venues, email and via a members' portal on the organisation's website.

- b. Will this information be publically available, or restricted to APESMA members?**

In the event APESMA achieves agreement with a principal contractor in relation to our members' terms of engagement and rates of pay as the

result of collective negotiations, the resulting terms would be communicated to the affected members who would be the parties to any such agreement. The actions of the parties to any agreement (including whether those parties made public the terms of the agreement) will be governed by the commercial interests of the parties, the laws of contract and any legislation affecting commercial contracts.

- c. Will 'fair rates of pay' be communicated in terms of:**
- i. Hourly rates of pay in specific circumstances?**
 - ii. A range of pay applicable in specific circumstances?**
 - iii. Nominated factors to assist members in formulating their own rates of pay?**

Again, the question is a hypothetical one and this response is therefore a hypothetical prediction of how APESMA will assist its members to understand what constitutes a fair rate of pay within the labour market in which those members operate, based on how we currently assist our members to do this.

APESMA's rules restrict our membership to individuals who hold tertiary qualifications and are employed in roles that fit within defined "professions" (for example engineer, scientist, architect or manager). While many of our members are employed in large workplaces where their roles are covered by awards and enterprise agreements, it is reasonably common, even in such large workplaces, for senior employees to choose to accept individual contracts offered by their employer in circumstances where acceptance of the contract means the employee voluntarily moves away from coverage by the enterprise agreement. Also, we have many members who are employed in workplaces which are not covered by enterprise agreements and whose employment is governed by the terms of an individual common law contract. These employment arrangements (individual common law contracts) are considered typical in many professions.

APESMA respects the fact that many of our members are senior, highly qualified employees (and independent contractors) who are well placed to negotiate their own terms and conditions of employment (or engagement as the case may be).

Currently APESMA provides support for our members to achieve an understanding of what constitutes a 'fair rate of pay' by providing both representation and support with enterprise bargaining as well as conducting salary surveys which we make available to our membership. Our salary surveys provide details of the ranges of remuneration plus other terms and conditions that professionals are earning broken down by seniority level, geographical area and type of employer. The salary surveys are made available to our members in the expectation that many of our members will rely on the information to arrive at what they consider a fair rate of pay in their individual circumstances and negotiate with their employer or principal contractor accordingly.

APESMA's rules also allow for a person who is an independent contractor to join the organisation if the contractor performs work of a kind that would allow the person to join if he / she was engaged as an employee. Currently APESMA



provides advice and assistance to its independent contractor members regarding contract negotiation and the matters that they must take into account when formulating their hourly rate under the proposed contract (for example taxation, professional indemnity insurance and non-payment of employment benefits such as leave).

Therefore based on the way we have advised our members in the past, it is possible that communications to members could be in terms of all three of i to iii (refer to question 1. c). It should be noted however that the members of our Translators and Interpreters Division have a diverse range of experience and qualifications and it is more likely that our advice regarding 'fair rates of pay' would be best described by items ii and iii of question 1. C. Further, based on our observations of how our independent contractor members have sought advice in the past, it is highly likely that the majority of our members will continue to formulate their own rates of pay and seek to negotiate on their own behalf provided they are afforded a genuine opportunity to do so by their principal contractor.

d. Will members be obligated to implement these contractual terms and rates of pay, or will this information be provided to members on an advisory basis?

The answer to this question depends upon to what extent APESMA is able to achieve agreement with a principal contractor in relation to our members' terms of engagement and rates of pay as the result of collective negotiations. For a legally enforceable contract to be achieved, all parties to the agreement will have to voluntarily and expressly agree to be bound by its terms, including rates of pay. If such a contract is entered into, then for our members to be obligated to implement the terms and rates of pay that are agreed between APESMA and the principal contractor, those members will have had to have given their express agreement to both be a party to the agreement and to be bound by its terms prior to the agreement being executed.

In our view, a more likely outcome of collective bargaining will be that individual contractors will continue to contract with the principal contractor as individuals and will rely upon our advice if they choose to do so as to the terms covering their relationship with the principal contractor.

2. Is there potential for such terms of engagement to become industry standard, including standardised fee structures across the industry?

Again, the 'terms of engagement' referred to in the question presupposes a successful collective bargaining process which eventuates in a legally binding contract which binds a number of our members as well as a principal contractor. If such a contract came into existence it would only be binding upon the members of APESMA who had entered into the contract and the principal contractor. The terms of the contract would only cover the translating and interpreting jobs those members performed for that particular principal contractor. APESMA members represent only a certain fraction of the entire Australian interpreter and translator

labour force. The principal contractor would be free to negotiate whatever rates of pay or terms it was able to with translators and interpreters that are not APESMA members. In our view even if terms of engagement result from APESMA's collective negotiations with agencies, the collective bargaining process in itself will not set the industry standard.

Currently the mechanism by which the industry standard is set within the translator and interpreter industry is the determination by the major agencies or principal contractors of standard fee structures which they notify to their independent contractors on a 'take it or leave it' basis. For example, within the Victorian market place we estimate that VITS Language Link provides 80% of language services to Victorian Government departments. VITS' website states that it has an established database of almost 1700 contract interpreters and translators across Australia (over 80% based in Victoria), covering over 140 languages.

VITS offers its contractors a standard contract which the contractor enters into upon initially signing up with the agency. The standard contract contains terms that govern the ongoing relationship between the contractor and VITS, while each engagement constitutes a separate contract which terminates upon satisfactory completion and payment by VITS. The ongoing contract contains a provision that VITS may vary the scale of fees at its sole and absolute discretion.

On 27 November 2013 VITS sent a notification to its contractors which was headed "Major VITS Expansion: Three Victorian Departments Contract VITS!" The notification advised that VITS had been successful in winning three important Victorian Government Departmental contracts. The notification also advised a new schedule of fees would follow soon.

On 28 November 2013 VITS distributed a new Schedule of fees to its contractors which were to take effect from 1 December 2013. The notification advised "Acceptance of a VITS assignment is automatic acceptance of the VITS Schedule of fees and conditions...". The new Schedule of fees represented a significant diminution of a number of the terms covering the performance of assignments by VITS' contractors. One of the most significant changes was that prior to 1 December 2014 VITS contractors were paid \$20.00 per hour for their travel time and were paid 70 cents per kilometre petrol allowance. The new schedule made no provision for payment for time spent travelling and provided for the payment of 85 cents per kilometre petrol allowance only after the contractor travels an initial 80km "mileage free radius".

The above example is included as the VITS tender / contract process is a recent one and illustrates how terms and conditions governing translators and interpreters within the industry currently become 'industry standard'. In fact the changes to the VITS schedule has meant that the terms and conditions relating to travel expenses that VITS offers are now comparable to the terms many other agencies were already offering in the industry.

One of APESMA's objectives in making this application is to attempt to introduce the concept of negotiation and bargaining into a market place where currently



'industry standards' are unilaterally imposed by principal contractors.

3. How will the collective bargaining process enforce stricter compliance with the AUSIT Code of Ethics and Code of Conduct?

The collective bargaining process will provide an opportunity for our members to negotiate to include compliance with the AUSIT Code of Ethics and Code of Conduct as a term of their contract with their principal contractor.

By way of example, we refer to the description in our response to Question 2. above of the recent distribution to its contractors of a new Schedule of costs by VITS Language Link. The Schedule included an item in the Translations section which provided a fee for onsite translation "plus onsite interpreting rate for the time attended". This item has caused concern for our members as it appears to envisage a practice whereby a translator may be required to assist in verbally translating a form (for example a medical consent form) which may then be signed by a client during a consultation. Such a practice would be in breach of the AUSIT Code of Ethics and Code of Conduct as any such form should be provided to a patient already translated.

The current contract negotiation process employed by the principal contractors in the translator and interpreter industry affords no real opportunity for our members to negotiate or discuss terms of the proposed agreement including any that may cause them to compromise their commitment to codes of ethics and conduct.

4. Has APESMA recently changes its legal name? If so, please advise the ACCC of the new legal entity for which authorisation is now sought.

The "legal" name of this organisation remains The Association of Professional Engineers Scientists and Managers Australia (APESMA). APESMA is a registered organisation in accordance with the Fair Work (Registered Organisations) Act 2009 and our name is set out in Rule 1 of the Rules of the organisation.

In November 2013 APESMA commenced using the name Professionals Australia (a registered business name) for all purposes other than where our legal name is required. We are therefore known to our members and other industry participants by the name Professionals Australia but when issuing a court application we will use our 'legal name' The Association of Professional Engineers Scientists and Managers Australia.

Should you require further information or documentation in order to grant the authorisation sought please do not hesitate to contact our Michelle Anthony on (03) 9695 8809 or on 0401 935 064 or by return email.

Yours faithfully,



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