

## IN THE FAIR WORK COMMISSION

Matter No: AM2020/58

*s.157 – Variation of a modern award to achieve the modern awards objective*

### Variation of the Electrical Power Industry Award 2020

#### THE COMMUNICATIONS, ELECTRICAL, ELECTRONIC, ENERGY, INFORMATION, POSTAL, PLUMBING AND ALLIED SERVICES UNION OF AUSTRALIA

#### SUBMISSIONS

1. These submissions are made by the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia – Electrical, Energy and Services Division (**‘the CEPU’**) in respect of the application by the Association of Professional Engineers, Scientists and Managers Australia (**‘the Applicant’**) to vary the Electrical Power Industry Award 2020 [MA000088] (**‘the Power Award’**). In essence, the application concerns the insertion of “Schedule X” into the Power Award.
2. For the reasons outlined below the CEPU, opposes this application.

#### Background

3. On 1 April 2020 the Full Bench of the Commission issued a Statement [2020] FWCFB 1760 (**‘the Statement’**) which set out the Commission’s provisional view to vary 103 modern awards, including the Power Award, pursuant to section 157(3) of the *Fair Work Act 2009 (Cth)* (**‘the FW Act’**), by inserting Schedule X.
4. The CEPU filed submissions opposing the insertion of Schedule X into the Power Award and the CEPU continues to rely on those submissions.<sup>1</sup> Furthermore, the ACTU outlined its opposition to the insert of Schedule X into the Power Award for similar reasons in respect of the Statement.<sup>2</sup>

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<sup>1</sup> CEPU (joint with ASU and CFMMEU) submissions, dated 6 April 2020  
<<https://www.fwc.gov.au/documents/documents/awardmod/variations/2020/am202012-sub-cepu-ors-060420.pdf>>.

<sup>2</sup> para [14(c)], ACTU submissions, dated 6 April 2020  
<<https://www.fwc.gov.au/documents/documents/awardmod/variations/2020/am202012-sub-actu-060420.pdf>>.

5. In its decision of 8 April 2020, (**‘the April Decision’**)<sup>3</sup>, the Commission accepted the submissions of the CEPU and ACTU, and determined to not vary the Power Award.<sup>4</sup>

### **Current Proceedings**

6. On 1 June 2020 the Commission issued a Decision [2020] FWCFB 3444 (**‘the Decision’**):<sup>5</sup>
  - a. noting, *inter alia*, the application by the Applicant;<sup>6</sup> and
  - b. outlining a provisional view to insert Schedule X into the Power Award.<sup>7</sup>
7. The Commission requested for submissions opposing this application and provisional view to be filed by 2pm on 2 July 2020.<sup>8</sup>
8. The CEPU opposes the application to vary the Power Award by inserting Schedule X. In opposing the application, the CEPU repeats and relies on both its and the ACTU’s previous submissions on this matter, and on the further grounds laid out below.

### **Grounds**

9. The CEPU opposes the variation of the Power Award for the following reasons:
  - a. the industry is an essential service;
  - b. there has been no downturn in demand or employment;
  - c. the industries covered by the Power Award are not award-dependent; and
  - d. there is no evidence in support of the application.

#### Ground 1 – essential service

10. The electrical power industry plays a crucial role in the Australian economy and society at large, in supporting essential services directly and provide ancillary support for essential services in the community at large. These essential services include (but are not limited to):
  - a. power generation for both domestic and industrial purposes;
  - b. public transport;

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<sup>3</sup> [2020] FWCFB 1837 Matter Number AM2020/12 Variation of Award on the Initiative of the Commission <<https://www.fwc.gov.au/documents/decisionssigned/html/2020fwcfb1837.htm>>.

<sup>4</sup> Par [43]

<sup>5</sup> [2020] FWCFB 3444 <<https://www.fwc.gov.au/documents/documents/awardmod/variations/2020/2020fwcfb3444.pdf>>.

<sup>6</sup> Para [9] and [10]

<sup>7</sup> Paragraph 10

<sup>8</sup> Para [12], [2020] FWCFB 3444.

- c. medical and health facilities;
  - d. emergency service facilities;
  - e. factories;
  - f. construction sites; and
  - g. mining sites.
11. The industry's greatest challenge is to maintain the existing skilled workforce required in order to keep power stations and associated infrastructure operating at a sufficient level to meet the higher demand. There is for the foreseeable future, very little prospect of the power industry employers seeking to stand-down or demobilise employees falling within the scope of the Power Award in response to the COVID-19 pandemic.

Ground 2 – no fall in demand or employment

12. Unlike many other sectors, the available evidence concerning the impact of COVID-19 on the industries covered by the Power Award does not suggest a dramatic decline in economic activity. In fact, in particular sectors covered by the Power Award there is evidence of an increased demand for services and labour, partly in response to the adverse impact of the pandemic on other parts of the economy.
13. The electrical power industry has not experienced a significant downturn in demand, in particular as restrictions are being lifted state by state and that the winter season will most likely increase demand on the industry.<sup>9</sup> In fact, there is evidence of an increased demand for skilled labour in the Electricity, gas, water and waste services by 24%.<sup>10</sup>
14. The electrical power industry is covered by the 'electricity, gas, water and waste services' industry<sup>11</sup>. Based on recent ABS business impacts of COVID-19 statistics, the electrical power industry continues to be one of the least adversely impacted industry as a result of COVID-19.<sup>12</sup>

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<sup>9</sup> "Latest COVID19 demand impact summary" *Australian Energy Market Regulator* 5 May 2020: <<https://aemo.com.au/news/latest-covid19-demand-impact-summary>>, accessed 2 July 2020.

<sup>10</sup> ABS 6291.0.55.003 - Labour Force, Australia, Detailed, Quarterly, May 2020 <[https://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/6291.0.55.003Main%20Features10May%202020?opendocument&tabname=Summary&prodno=6291.0.55.003&issue=May%202020&num=&view="](https://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/6291.0.55.003Main%20Features10May%202020?opendocument&tabname=Summary&prodno=6291.0.55.003&issue=May%202020&num=&view=)> accessed 2 July 2020.

<sup>11</sup> In award terms, the brown coal mining operations in Victoria are not regarded as part of the coal mining industry. It has always been regarded and regulated as part of the electrical power industry.

<sup>12</sup> ABS 5676.0.55.003 - Business Indicators, Business Impacts of COVID-19, June 2020 <[https://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/5676.0.55.003Main%20Features4June%202020?opendocument&tabname=Summary&prodno=5676.0.55.003&issue=June%202020&num=&view="](https://www.abs.gov.au/AUSSTATS/abs@.nsf/Latestproducts/5676.0.55.003Main%20Features4June%202020?opendocument&tabname=Summary&prodno=5676.0.55.003&issue=June%202020&num=&view=)> accessed 2 July 2020.

Ground 3 – not award reliance

15. The electrical power industry is not an award reliant industry which the Commission is familiar with.<sup>13</sup> In fact, the electrical power industry has blanket enterprise agreement coverage, with all major power stations subject to enterprise agreements to which the CEPU<sup>14</sup> is a party.

Ground 4 – no evidence

16. The Applicant has not provided or referred to an evidentiary basis to warrant the insertion of Schedule X into the Power Award. Rather, the application relies purely on bald assertions.
17. The CEPU notes that the Applicant submissions in proceedings matter AM2020/12 states the Applicant supported the submissions of the ACTU, with those submissions themselves opposing the insertion of Schedule X into the Power Award. Yet, in the same submission the Applicant supports the insertion of Schedule X.
18. The Applicant has provided no explanation for it's inconsistent position of supporting and opposing the variation.

**Conclusion**

19. Based on the above, the CEPU objects to the application to vary the Power Award and the Commission's provisional view to insert Schedule X into the Power Award.

**END**

**2 July 2020**

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<sup>13</sup> Information note—Modern awards and industries, dated 30 March 2020  
<<https://www.fwc.gov.au/documents/documents/awardmod/variations/2020/am202012-information-note-awards-industries-010420.pdf>>.

<sup>14</sup> And other Unions such as the ASU and CFMMEU.