



28 July 2017

President Justice Ross
Senior Deputy President Hamberger
Deputy President Clancy
Commissioner Roe
Commissioner Johns

Fair Work Commission
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FAIR WORK COMMISSION

4 YEARLY REVIEW OF MODERN AWARDS- AWARD STAGE- GROUP 3

(AM2014/217 and Others)

Submission by the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia – Electrical, Energy and Services Division

On 6 July 2017, the Full Bench issued decision [2017] FWCFB INSERT. Relevantly, this decision sought submissions from the interested parties to various exposures drafts. This submission is made by the Electrical Trades Union¹ in response to this Decision.

The ETU limits its submission to address issues raised in the following modern awards:

- i) *Electrical Power Industry Award 2010* [MA000088];
- ii) *Business Equipment Award 2010* [MA000021]; and
- iii) *Coal Export Terminals Award 2010* [MA000045].

Electrical Power Industry Award 2010

1. The ETU does not make further comment on the model casual conversion clause² to be adopted in the exposure draft of the Electrical Power Industry Award 2010 ("the Power Exposure Draft").
2. Clauses 9.4 and 9.6 of the Power Exposure Draft applies to shift workers and day workers. Clause 9.4 deals with paid meal breaks ('crib break') where employees have worked certain number of hours. Clause 9.6 deals with employees' entitlement to paid rest breaks for every four hours of overtime worked. Consequently, there is no overlap between the two clauses as they apply in different scenarios.
3. Clause 9.4 and 9.6 should thus remain unchanged.

¹ Being the Electrical, Energy and Services Division of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia ("the ETU")

² [2017] FWCFB 3541

4. The Full Bench has requested that the parties clarify when overtime is payable and whether each day stands alone. Overtime is payable when a worker performs works:
 - a. beyond their ordinary hours of work;
 - b. outside the agreed number of hours; or
 - c. outside the spread of ordinary hours.
 5. For the purpose of calculating overtime, each day stands alone.
 6. With respect to the interaction of clauses 10.7(b) and 14.3(a), the ETU maintains that, consistent with its original drafting of the Power Award, there is and should be no requirement for the higher duties to be ongoing following a period of annual leave. That is the current effect of the Award and the ETU submits that no proper basis has been advanced for varying this position.
 7. The ETU supports the change of the terms “shift allowance” to “shift penalty”.
 8. The ETU supports any references to the “*Fair Work Act 2009*” to change to “the Act”.
 9. The Full Bench has requested that parties clarify whether an employee will be paid out accrued annual leave under clause 14.9 of the *Electrical Power Industry Award 2010*. The ETU is of the position to not limit what type of accrued leave is to be paid out. Employees may be entitled other accrued (i.e. Rostered Days Off and Long Service leave) and to protect this clause 14.9 should remain unchanged.
 10. The ETU submits that the leave entitlement at clause 15.2 should apply only to ‘personal/carer’s’ leave (as distinct from personal leave alone).
 11. The ETU supports the proposed variation regarding “occupational health and safety”.
- Business Equipment Award 2010***
12. The ETU does not make further comment on the model casual conversion clause to be adopted in the exposure draft of the Business Equipment Award 2010 (“the BEQ Exposure Draft”).
 13. The Parties are asked to clarify the operation of clause 7.2(a)(i) of the BEQ Exposure Draft. The intention of the clause is that the spread of hours can be altered by up to one hour total That is to say, the spread of hours cannot be 5:30am to 7:30pm³.
 14. The ETU supports previous comments and submissions by Australian Service Union (ASU) on their interpretation of the definition of “country territory”.
 15. The ETU supports any references to the “*Fair Work Act 2009*” to change to “the Act”.
 16. The ETU supports the insertion of the footnote regarding “ordinary hourly rate” in Schedule B of the Business Equipment Award 2010.
 17. The ETU does not oppose arrangements for the definition of ‘business equipment industry’ to be referred to clause 3.2 of the Business Equipment Award 2010 to resolve concerns of duplication.
- Coal Export Terminals Award 2010 [MA000045]***
18. The ETU does not make further comment on the model casual conversion clause to be adopted in the exposure draft to the Coal Export Terminals Award 2010 (“the CET Exposure Draft”).
 19. The ETU supports the position expressed by the Construction, Forestry, Mining and Energy Union (CFMEU) throughout the review of the CET Exposure Draft regarding:

³ Cl 7.1(a) & (b) *Business Equipment Award 2010*.

- a. the “applicable adult weekly wage” for clause 10.2(b); and
 - b. the term ‘lowest adult classification’ in clauses 10.3(c) and (e).
20. The ETU supports the proposed variation regarding ‘occupational health and safety’ in the CET Exposure Draft.

The Electrical Trade Union of Australia