

**MEA Exposure Draft Submission – Drafting and Technical Issues**

1. MEA appreciate the opportunity to make submissions on the *Electrical, Electronic and Communications Contracting Award 2010* – Exposure Draft and are willing to assist the Commission in order to provide additional clarification on any of the submissions made.

**Response to questions in the *Electrical, Electronic and Communications Contracting Award 2016* Exposure Draft****Clause 10.5 – Part-time Employment – public holidays**

Clause 13.15(b) appears to apply to shiftworkers on other than continuous work only. Is the clause reference in 10.5(b) correct? Should it instead refer to clause 13.15 and 19.4(b)?

2. MEA submits that the reference should be to clause 13.15 – Rate for working on a Sunday and public holiday shifts and clause 19.4 – Sunday and public holiday work.

**Clause 11 – Casual Employment**

Parties are asked to clarify whether clause 11.4 correctly refers to clause 13.13. For example, is the provision intended to provide that shift provisions apply to casual workers, or is it to specify what overtime provisions apply to casual workers, which may include the overtime provisions for shiftworkers (which are actually in provision 13.16)?

3. MEA believes it is clear the provisions in clause 13.13 – Shift allowances apply to casual workers.
4. However, any additional wording to provide more clarity would be appropriate.

**Clause 12 – Apprentices**

Parties are asked to confirm whether the reference to clause 16.2 in clause 12.10 should instead be to clause 16.4—Apprentice minimum wages.

5. MEA agrees that the reference should be to clause 16.4 – Apprentice minimum wages.

**Clause 13.6 – Late comers**

Could clause 13.6 be clearer as to how it works in practice? If this provision means an employee can be paid for working less time than actually worked, is this inconsistent with

6. MEA have had limited exposure from its members in regards to the operation of clause 13.6 and is not in a position to provide relevant input.

**Clause 13.9 – Rest Breaks**

Does clause 13.9 only apply to day workers?

7. MEA submits that this provision applies to both day workers and shift workers.

**Clause 13.10 – Crib Time**

Can 'crib time' in clause 13.10 and 13.11 be replaced with 'rest break'?

As a consequence, the definition of 'crib time' in clause 2 would also be deleted.

8. The term "crib time" is universally established to mean a 20 minute paid break in replacement of meal break during overtime or shift work.
9. In contrast to "crib time" a "rest break" is not in replacement of a meal break.
10. It is unnecessary and confusing to have a single term for two different types of breaks.
11. MEA submits "crib time" should not be replaced with "rest break" in clause 13.10 – Ordinary hours of work – continuous shiftwork and clause 13.11 – Ordinary hours of work – other than continuous shiftwork.
12. MEA submits the definition of "crib time" in clause 2 should remain the same.

**Clause 13.11 – Ordinary hours of work – other than continuous shiftwork**

Is it the timing of the crib time in clause 13.11(c)(ii) which is at the discretion of the employer? If so, parties are asked to comment on whether 'except for crib time at the discretion of the employer' could be deleted from 13.11(c)(ii) and 13.11(c)(iii) amended to read:

'(iii) The timing of crib time is at the discretion of the employer, provided that an employee must not be required to work for more than five hours without a break for crib time.'

Please also note the question to parties at clause 13.10 in relation to replacing references to

13. MEA agrees that it is the timing of the taking of "crib time" that is at the discretion of the employer. The wording provided in the comment is acceptable to replace in clause 13.11 (c) (ii) and (iii) in order to provide clarity.

## Clause 14 – Breaks

Should clause 14.1(c) be amended to ‘The timing of meal breaks **will** be at the discretion of the employer’?

It is also noted that clause 14.1(c) appears to be inconsistent with 13.11(c)(iii) in relation to the timeframe for a meal break to be taken by shiftworkers working on other than

14. MEA submits that clause 14.1 (c) applies to employees who are not performing continuous or non-continuous shift work.
15. MEA submits clause 13.11 – Ordinary hours of work – other than continuous shiftwork applies to shift workers who do not meet the definition of continuous shift worker as provided for in clause 2.2 – Other definitions.
16. Notwithstanding the submission we have made below in relation to dedicated shift work clauses, it should be made clear the reference to the 20 minute paid break for shiftworkers as referred to in both clause 14.1 – Meal and rest breaks (b) and clause 13.10 – Ordinary hours of work – continuous shiftwork (c) (iii) is one entitlement to a 20 minutes paid crib time.
17. MEA recommends clause 14.1 - Meal and rest breaks (b) is amended to read:

*“(b) A shiftworker will be entitled to a paid crib time of 20 minutes per shift in accordance with clause 13.10 – Ordinary hours of work – continuous shiftwork (c) (iii).”*
18. MEA submits there is no inconsistency between clause 13.11 (c) (iii) and clause 14.1 (c), as clause 14.1 (c) does not apply to employees engaged as non-continuous shiftworkers.
19. There are three (3) types of breaks referred to in the Award; rest break, meal break and crib time.
20. MEA submits in order to avoid confusion a definition of rest break and meal break should be inserted into clause 2.2 – Other definitions as follows:

*“rest break means a 10 minute paid break taken between the time of commencing work and the usual meal break or crib time.”*

*“meal break means an unpaid break of at least 30 minutes for employees other than shift workers”*



**Clause 15.4 – Payment for lost time due to inclement weather**

What provisions of clause 15 need to be observed to satisfy the requirement in clause 15.4(b)? Should 'the provisions of this clause' be amended to 'the provisions of clause 15.2'?

21. MEA submits that this is not a major issue, can refer to specifically to clause 15.2. Plain reading indicates the term "provision of this clause" refer to clause 15.2 anyway.

**Clause 16.4 – Apprentice minimum wages**

How do 16.4(a)(iii) and 16.4(a)(iv) interact?

22. MEA submits that clause 16.4 (a) (iii) outlines the allowances the apprentice is entitled to and whether they receive the full allowance or relevant percentage amounts of those allowances.
23. While, clause 16.4 (a) (iv) outlines what the all-purpose rate is for an apprentice and what allowances (and relevant percentage amounts) are included in the all-purpose rate.
24. MEA recommends a clearer drafting of the clause would be:
- iii. *The weekly all-purpose rate to be paid to an apprentice will be the sum of the minimum wage rate arising from clause [16.4\(a\)](#), the full amount of the tool allowance in clause [17.2\(a\)](#) and the percentages shown in clause [16.4\(a\)](#) of the electrician's licence allowance in clause [17.2\(b\)](#) and the industry allowance in clause [17.2](#). The weekly all-purpose rate of pay is payable for all purposes of the award and will be included as appropriate when calculating payments for overtime, all forms of paid leave, annual leave loading, public holidays and pro rata payments on termination.*
  - iv. *In addition to the weekly all-purpose rate, an apprentice will be paid the percentage shown in clause 16.4 (a) of the travel time allowance in clause 17.5 (c). **Apprentices will be paid the full amount of the start/finish on the job allowances of clause 17.5 (d), and any other special allowances in clauses [17.3](#) and [17.4](#) and allowances for travel and expenses in clauses [17.5 \(b\) or \(f\)](#) and [17.6](#) will be paid to apprentices on an 'as incurred' basis at the rate specified, subject to clause [17.1\(b\)](#).***

**Clause 17.1 – Special allowances**

Parties are asked to clarify which special allowances are not cumulative. For example, if an employee is entitled to both the first aid allowance and the multi storey allowance, are they entitled only to payment for the higher of those two allowances? Is it just the 'special allowances—work related allowances' in clause 17.4 of the current award that are not cumulative?

25. MEA submits the purpose of the provision to provide “Special allowances” are not cumulative where a situation would entitle an employee to more than one special allowance in compensation for the same ability, responsibility or disability,
26. As an example, an employee is not entitled to both allowances in clause 17.3 (a) Multistorey allowance and clause 17.3 (b) Towers allowance if the employee is working in an airshaft in a multi-store building, as both allowances are compensation for the same disability.
27. However, an employee would be entitled to both the first aid allowance and multistorey allowance if they are working on a multistorey building as defined in clause 17.3 (a) Multistorey allowance and appointed to perform first aid duty as outlined in clause 17.3 (c) First aid allowance. The first aid allowance is in compensation for an employer appointed responsibility and the multistorey allowance is compensation for a working condition disability.

**Clause 17.5 (e) – Start/finish at employer’s registered office**

Parties are asked to clarify which allowances do not apply under clause 17.5(e).

28. MEA submits that it is those allowances under (b), (c) and (d) which would otherwise be payable under clause 17.5 – Travel and expenses.
29. However, for the benefit of clarity MEA submits the wording of clause 17.5 (c) – Travel time allowance should be amended as follows:

***“(c) Travel time allowance***

*All employees must be paid an allowance of \$5.78 for each day on which they are required to commence and/or finish work on the job site by their employer. The allowance must also be paid for rostered days off.”*

30. MEA agree with the view the “Travel time allowance” is only payable when an employee is required to commence and/or finish on the job. However, this interpretation raises questions regarding the requirement for the allowance to be payable on a rostered day off. As an example, if an employee subject to a RDO system is only required to commence and/or finish on the job once in a calendar month would this allowance be payable when the employee takes their RDO at the end of the month.

**MEA Submissions – Drafting and Technical Issues****Dedicated Shift Work clause**

31. MEA submits the Award should include dedicated and separate clauses for employees categorised as either **Day workers, Continuous shiftworkers and Non-continuous shiftworkers** under Part 3 – Hours of Work.
32. Each of the three (3) separate clause categories would include their own sub-clauses which deal with the ordinary hours of work, breaks, overtime, shift allowances, minimum breaks between shifts, and work on Sunday and public holidays.
33. MEA has found its membership often has difficulty determining which clauses do and do not apply to continuous shiftworkers and non-continuous shiftworkers.

**Clause 7 - Facilitative provisions for flexible working practices**

34. MEA submits clarification to this addition is required in relation to scope of the flexibility.
35. As an example - with regard to clause 13.3 – Spread of hours – day workers: Can an employer and a group of employees agree to have the spread of ordinary hours between 4am and 4pm meaning that there is no obligation to consider overtime rates time worked in the altered spread?
36. In relation to the above example MEA seeks clarification as to whether there is any requirement to ensure the employee is better off.
37. MEA is seeking clarification If such an agreement is made with an individual employee should this form part of an Individual Flexibility Agreement (“IFA”).
38. MEA submits it appears that these facilitative provisions could result in a dispute regarding whether an IFA should have been used and ensured that the employee was better off as a result of the variation of the award term.

**Clause 17.5 (d) (ii) – Payment for travelling time**

39. MEA requests for additional wording to be inserted in clause 17.5 (d) (ii) which confirms that payment for travelling time is paid at ordinary rates.



**Clause 17.5 (d) (iii) – Employer provided transport**

40. It should be made more clear that the \$3.37 per day is instead of the \$18.80 per day when the employer is offering to provide transport.
41. Upon simple reading of the clause a layperson may believe an employer offering to provide transport is required to pay the \$18.80 and \$3.37 per day.
42. MEA submit the following amendments should be made to clause 17.5 (d) (iii)

*“(iii) where the employer offers to provide transport free of charge, whether from the employee’s home or the employer’s registered office or depot(s) an amount of \$3.37 per day instead of the \$18.80 per day in clause 17.5 (i); or”*

**Clause 21 – Personal/carers leave and compassionate leave**

43. In the Exposure Draft the term “all-purpose rate” has been replaced with “ordinary rate” in clause 21 – Personal/carers leave and compassionate leave.
44. MEA do not agree with the change.
45. The change may cause confusion as to whether the employees “all-purpose rate” or another rate of pay, such as the base rate is payable.
46. The clause should be clear the “all-purpose rate” and not the base rate or some other is payable during a period of paid personal/carers leave and compassionate leave.

Yours faithfully,



Jason O'Dwyer

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