

FAIR WORK COMMISSION

Fair Work Act 2010

s.156 - 4 Yearly Review of Modern Awards

AM 2014/265.

Electrical, Electronic and Communications Contracting Award 2010
MA000025

**ELECTRICAL, ELECTRONIC AND
COMMUNICATIONS CONTRACTING AWARD
2016
EXPOSURE DRAFT**

**SUBMISSION ON DRAFTING AND TECHNICAL
ISSUES**

**NATIONAL ELECTRICAL & COMMUNICATIONS
ASSOCIATION (NECA)**

BACKGROUND

1. The National Electrical & Communications Association (NECA) is a registered organisation under the *Fair Work (Registered Organisations) Act 2009* (as the 'National Electrical Contractors Association') and also maintains registration under various state jurisdictions.
2. On 10 May 2016, VP Ross of the Fair Work Commission issued a Statement and Amended Directions [2016] FWC 2924 ("the Directions") requiring, inter alia, interested parties "to file in the Commission comprehensive written submissions on the technical and drafting issues related to exposure drafts in sub-groups 4A, 4B and 4C" by 4.00 pm on Thursday 30 June 2016.
3. The Commission issued an Exposure Draft of the *Electrical, Electronic and Communications Contracting Award 2016* ("Exposure Draft") and comparison table of the current Award and the Exposure Draft ("Comparison Table") on 23 May 2016.
4. These submissions are in two parts.

5. Part 1 is NECA's submissions on the Exposure Draft with particular reference to questions asked by the Commission appearing in the Exposure Draft.
6. Part 2 is NECA's submissions on the Comparison Table.
7. Common issues before the Fair Work Commission, specifically, Annual Leave (AM2014/47), Part Time Employment (AM2014/196), Casual Employment (AM2014/197), Overtime (AM2014/300) and Public Holidays (AM2014/301) are matters that will affect the final version of the Modern Award.

PART 1 – EXPOSURE DRAFT

8. Clause 10 of the Exposure Draft is headed "Part time employment" and states that "part time provisions may be affected by AM2014/196"
9. Below 10.5, the Exposure Draft asks "*is the clause reference in 10.5(b) correct? Should it instead refer to clause 13.15 and 19.4(b)*"
10. NECA submits that the reference to clause 13.15 (b)(ii) is not incorrect but does not best meet the Modern Award Objective of ensuring a simple, easy to understand (etc) modern award system.
11. In NECA's view the words "in accordance with clause 13.15(b)(ii)" should be deleted and replaced with "250% of the employee's ordinary hourly rate." This amendment would not be inconsistent with the definition of ordinary hourly rate at clause 2.2 of the Exposure Draft and clause 19.4(b) of the Exposure Draft.
12. Alternatively, NECA submits that a reference to 19.4(b) would be preferable.
13. Clause 11 of the Exposure Draft is headed "Casual employment" and asks whether clause 11.4 correctly refers to clause 13.13
14. It is submitted that Clause 11.4 should be retained with the addition of a reference to clause 13.16. Clause 19 deals with overtime on day work. Clause 13.16 deals with overtime on shift work. Clause 13.13 deals with shift work.
15. Clause 12 of the Exposure Draft is headed "Apprentices" and asks whether the reference to clause 16.2 in clause 12.10 should be a reference to clause 16.4 – Apprentice Minimum Wages, instead
16. NECA agrees that the reference to 16.2 in clause 12.10 should be replaced with a reference to 16.4.

17. Clause 13.6 of the Exposure Draft is headed “Late comers” and asks whether the clause could be clearer.
18. NECA submits that the clause does not mean that employees may be paid for (working) less time than actually worked. However, it is submitted that the intent of the clause would be clearer if the words “may apply such proportion in the calculation of the working time of employee” at clause 13.6(a) were replaced with “may deduct such proportion when calculating the working time of employee.”
19. Clause 13.9 of the Exposure Draft is headed “Rest break” and asks whether clause 13.9 only applies to day workers.
20. NECA submits that clause 13.9 should be retained in its current form. It is noted that clauses 13.5, 13.6, 13.7 and 13.8 do not only apply to day workers. Conversely, clauses 13.2, 13.3 and 13.4 specifically refer to day workers.
21. It is further submitted that the understanding of the Award would be improved if clauses specifically referring to day workers were relocated to immediately before 13.10.
22. Alternatively, NECA would not oppose the creation of a new clause 14, “Shiftwork” with the subsequent renumbering of 13.10 to 13.18.
23. Clauses 13.10 and 13.11 of the Exposure Draft deal with Shift Work and asks whether the reference to ‘crib time’ can be replaced with a reference to ‘rest break’
24. NECA submits that the term ‘crib break’ is commonly understood and distinguishes the paid 20 minute meal break entitlement for shift workers from the unpaid meal break entitlement for day workers. Crib breaks and meal breaks are in addition to the paid rest break. There is no need to change the reference.
25. The Exposure Draft asks whether sub clause 13.11 (c) should be amended to read “the timing of the 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.”
26. NECA submits that the proposed amendment better meets the modern award objective.
27. In the same vein, NECA supports the proposed amendment to clause 14.1(c) whereby “The timing” is inserted at the beginning of the paragraph.
28. Clause 15 of the Exposure Draft is headed “Inclement weather” and asks what provisions of clause 15 need to be observed to satisfy the requirement in clause 15.4(b).

29. NECA submits that the requirements to be satisfied under clause 15.4(b) include and extend beyond the requirement to consult in 15.2. The clause defines inclement weather and permits the employer to transfer employees affected by inclement weather.
30. Clause 16.4 of the Exposure Draft is headed “Apprentice minimum wages” and asks how paragraphs 16.4(a)(iii) and 16.4(a)(iv) interact.
31. NECA submits that these paragraphs say the same thing. However paragraph (iv) is to be preferred because it refers to the weekly all-purpose rate. Paragraph (iii) should be deleted. Paragraph (iv) should be retained (and re-numbered) with the addition of the words “Any other special allowances in clauses 17.3 and 17.4 and allowances for travel and expenses in clauses 17.5 and 17.6 will be paid to an apprentice on an ‘as incurred’ basis at the rate specified, subject to clause 17.1(b).”
32. Clause 17 of the Exposure Draft is headed “Allowances” and asks parties to clarify which special allowances are not cumulative.
33. NECA submits that skill allowances are not cumulative, disability allowances are not cumulative but a relevant skill allowance can be paid as well as a relevant disability allowance. For example a person in receipt of the First Aid Allowance working on a multistorey building (as defined) would be entitled to both the first aid allowance and relevant multistorey allowance. However a worker, working on a service core is not entitled to both the service core allowance and multistorey allowance. Disability allowances are paid to compensate a worker experiencing an adverse working condition. The worker can only experience one such condition at any one time.
34. The Award may be clearer in its intent if the First Aid Allowance were relocated away from the wage related special allowances.
35. Clause 17.5 of the Exposure Draft is headed “Travel and expenses” and asks the parties to clarify which allowances do not apply under clause 17.5(e)
36. NECA submits that an employee is not entitled to motor vehicle allowance, travel time allowance or the start and/ or finish on job allowance if the employee starts and finishes work at the employer’s registered office or depot.
37. An employee who starts and finishes work at his employer’s registered office or depot is experiencing no greater inconvenience than any other worker who attends their employer’s workplace.

PART 2 – COMPARISON TABLE

38. Clause 2.2 of the current Award states “The monetary obligations imposed on employers by this award may be absorbed into overaward payments. Nothing in this award requires an employer to maintain or increase any overaward payment.”
39. That provision is not in the 2016 Award. NECA submits that as the Award is a minimum rates award, the provision about absorption into overaward payments should be retained.
40. Clause 2.2 of the 2016 Award, Definitions contains a definition of “all purposes” NECA submits that, to provide certainty, the word “shift work” should be added after “overtime” in the definition.
41. The definition of “default fund employee” from the current Award has been omitted. This definition should be retained. An employee who does not choose a superannuation fund will be included in the employer’s default fund.
42. Clause 16.4 of the 2016 Award, “Apprentice minimum wages” at sub-clause (b) deals with adult apprentices minimum wages. Paragraph (ii) contains a table of wages applying to adult apprentices commencing their apprenticeship before 1 January 2014. This table applies to adult apprentices in Queensland only.
43. The paragraph should refer to adult apprentices commencing their apprenticeship in Queensland.
44. Clause 17.4 of the 2016 Award is headed “Special allowances – expense related” and inter alia, rewords paragraph (iii) of the current Award as paragraph (iv).
45. NECA submits that the new wording is confusing and not as clear in its intent as paragraph (iii) of the current Award. The current wording should be retained.
46. It is also noted that there are two sub clauses 17.3 and 17.4 in the 2016 Award.
47. Clause 16.6 of the 2016 Award is headed “Payment of Wages.”
48. It is submitted that the reference to 16.6(a)(ii) in sub paragraph (a) should be a reference to 16.6(b)(i).
49. Clause 13.10 of the 2016 Award is headed “Ordinary hours of work – continuous shiftwork”

50. It is submitted that for the purposes of clarity and ease of understanding, clause 13.10 should be headed “Shift work” and the present title of the clause be made a sub-title.
51. Clause 13.15 of the 2016 Award is headed “Rate for working on a Sunday and public holiday shifts”.
52. NECA submits that the title of the clause should be “Rate for working Sunday and public holiday shifts”
53. NECA also submits, that for the purpose of clarity, the words “and after 11.00 pm” should be inserted between “before midnight” and “on the day preceding a Sunday or public holiday.”

NECA