

## IN THE FAIR WORK COMMISSION

**Matter No:** AM2020/12 - Variation of awards on the initiative of the Commission

### **Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia Submissions**

#### **Introduction**

1. The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (**'CEPU'**) files these submissions in response to the National Electrical and Communications Association (**'NECA'**) submissions, dated 8 May 2020 (**'NECA's submissions'**).
2. NECA's submissions and these submissions are limited to the Electrical, Electronic and Communications Contracting Award 2010 (**'the Contracting Award'**).

#### **Background**

3. On 1 April 2020, the Full Bench of the Fair Work Commission (**'the Commission'**) issued a Statement [2020] FWCFB 1760 (**'the Statement'**) which set out the Commission's provisional view to insert:
  - a. a new entitlement of up to 2 weeks' unpaid pandemic leave; and
  - b. introduce the flexibility to take annual leave at half pay,across 103 modern awards.
4. The Contracting Award was listed as one of the 103 modern awards.<sup>1</sup>
5. At paragraph [125] of the Statement, the Commission invited interested groups to file submissions supporting or opposing the provisional view by 4pm 6 April 2020.
6. On 6 April 2020, the CEPU filed submissions opposing the Commission's provisional view in respect of the Contracting Award.<sup>2</sup> These submissions were posted to the Commission's website.
7. On 8 April 2020, the Full Bench of the Commission issued a Decision [2020] FWCFB 1837 (**'the Decision'**), which was posted to the Commission's website. The Decision provided, *inter alia*, that the Contracting Award should be considered part of the "Construction Awards"<sup>3</sup> and that

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<sup>1</sup> Para [108] of the Statement.

<sup>2</sup> <https://www.fwc.gov.au/documents/documents/awardmod/variations/2020/am202012-sub-cepu-060420.pdf>

<sup>3</sup> Para [32] of the Decision.

the Commission did not propose to vary the Contracting Award.<sup>4</sup> (**‘the Contracting Award Matter’**).

8. The Decision also contemplated submissions from other employer representatives (with an interest in the Contracting Award)<sup>5</sup> which were in support of the Commission’s provisional view.
9. NECA filed no submissions in respect of the Commission’s provisional view prior to the Decision being issued.
10. The Decision directed parties to enter in discussions in relation to the matters raised and to report by 17 April 2020. Again, NECA did not communicate with the CEPU in respect of the Statement and/or the Decision.
11. On 24 April 2020 the CEPU emailed the Commission outlining that no relevant employer association had approached the CEPU in respect of the Decision.

#### **NECA’s submission**

12. The CEPU understands the effect of NECA’s submissions to be that it requests:
  - a. that the Commission to reopen the Contracting Award Matter;
  - b. that the Commission vary the Contracting Award by inserting an additional schedule to the same effect as the schedules attached in the Commission’s 8 April; and
  - c. that the Commission then consider a further application to vary to this schedule following discussions between the CEPU and NECA on 15 May.
13. The CEPU opposes the Commission reopening the Decision on the bases that:
  - a. the Contracting Award Matter has already been determined;
  - b. the CEPU and NECA are meeting on 15 May to discuss an alternate Schedule.
14. As noted above, on 8 April the Commission issued its Decision. The *Fair Work Act 2009* provides only limited grounds for varying a decision once made<sup>6</sup>. None of these grounds obtain to the present situation.
15. Further, there is a public interest in upholding the finality of decisions of the Commission. This interest again militates against the reopening of the Contracting Award Matter.

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<sup>4</sup> Para [33] of the Decision.

<sup>5</sup> Specifically, the Australian Security Industry Association and the Fire Protection Association of Australia.

<sup>6</sup> See ss 602 and 603.

16. Nothing in NECA's submission evidences or suggests any denial of procedural fairness<sup>7</sup>. Rather, it is apparent from its submission that that NECA chose not to make submissions.
17. Nothing in NECA's submissions provides any explanation for why its submissions have now been filed some five weeks late.
18. Finally, and as noted above and in NECA's submission, the CEPU and NECA are meeting on 15 May to discuss an alternate schedule which will likely be the subject of a separate application. Reopening the Contracting Award Matter, in circumstances where an alternate application is foreshadowed, further weighs against reopening the matter.
19. In circumstances where:
  - a. the Commission has made its decision;
  - b. there has been no denial of procedural fairness; and
  - c. the CEPU and NECA are separately meeting to discuss an alternate variation,there is no proper basis for the reopening of the Contracting Award Matter.
20. Should the Commission, notwithstanding the above, elect to reopen this matter, the CEPU requests the right to be heard in relation to the merits of NECA's proposal.

**13 May 2020**

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<sup>7</sup> Save for a reference to the CEPU not "serving" its submissions on NECA, though how such obligation arises is not particularised and, in any event, the submissions were publicly available and directions did not provide for the filing of submissions in reply.