



Fair Work
Commission

Modern Awards Review 2023-24 (AM2023/21)

Submission cover sheet

Organisation

(If this submission is completed on behalf of an organisation or group of individuals, please provide details)

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services
Union of Australia (CEPU)

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Modern Award Review Stream:

Arts and Culture:

Job Security:

Work and Care:

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MODERN AWARDS REVIEW 2023-2024

(AM2023/21)

Stream 3 (Work and Care)

SUBMISSION IN REPLY OF THE CEPU

1. In response to the FWC's Discussion Paper- Work and Care, the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (**CEPU**) filed submissions in support of the Australian Council of Trade Unions (**ACTU**) Submissions in this matter on 12 March 2024.¹
2. The CEPU continues to rely on its initial submission and that of the ACTU filed on 12 March 2024.²
3. Pursuant to Deputy President O'Neill's Statement of 21 February 2024, Submissions in Reply for Stream 3 are required to be filed on 26 March 2024.³
4. The CEPU has had the opportunity to review the Reply Submissions prepared by the ACTU. The CEPU supports and adopts the ACTU's submissions in reply.
5. In addition to the ACTU's submissions in reply, the CEPU makes the following brief submissions in response to various statements made in the submissions of National Electrical and Communications Association (**NECA**) and Australian Industry Group (**AIG**).⁴
6. For ease of reference, we have broken down these submissions into similar headings as those posed in the submissions of NECA and AIG.

RESPONSE TO NECA

Part – Time Employment

7. The CEPU opposes any change to notice periods to start and finish times for part-time employees, as currently entrenched in Modern Awards.⁵ These notice periods serve to provide part-time workers

¹ (AM2023/21) Modern Awards Review 2023-2024 (Stream 3 – Work and Care) [CEPU Submission \(12 March 2024\)](#).

² AM2023/21) Modern Awards Review 2023-2024 (Stream 3 – Work and Care) [ACTU Submissions \(12 March 2024\)](#).

³ Modern Awards Review 2023-2024, Deputy President O'Neill Statement (21 February 2024) at [4].

⁴ (AM2023/21) Modern Awards Review 2023-2024 (Stream 3 – Work and Care) [NECA Submissions \(12 March 2024\)](#); (AM2023/21) Modern Awards Review 2023-2024 (Stream 3 – Work and Care) [AIG Submissions \(12 March 2024\)](#).

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with greater stability and certainty regarding their work hours and the time to make necessary arrangements where need be. It is challenging to comprehend how altering these notice periods would facilitate employees in balancing their work and care responsibilities. Workers with caregiving duties often rely on established routines and have part-time schedules tailored to accommodate these responsibilities. The ability to abruptly change employees' work hours does not effectively support caregiving responsibilities, particularly when strict routines, such as childcare arrangements, are in place. The CEPU therefore submits, any proposal aimed at enhancing workplace flexibility must not undermine or compromise the existing rights of employees.

8. Additionally, it has long been entrenched under the Electrical, Electronic and Communications Contracting Award (**Electrical Contracting Award**), that part-time employees cannot work overtime unless for urgent and/or unforeseen circumstances.⁶ This is not a new concept for the Electrical Contracting Award and predates Award Modernisation.
9. The inclusion of such a prohibition in the Award serves as a safeguard to protect the rights of both full-time and part-time employees and prevents potential exploitation by employers within the industry. This measure aims to prevent employers from utilising part-time employment as a means to circumvent their obligations under the National Employment Standards (**NES**) and superannuation legislation. Superannuation contributions are calculated based on ordinary time earnings, while NES entitlements accrue based on an employee's ordinary hours of work. Affording employers an avenue through which they could pressure or require part-time employees to work overtime could foreseeably lead to the exploitation of these workers. Employers might exploit this flexibility by hiring workers on a part-time basis but requiring them to work increased or even full-time hours through the use of overtime, thereby reducing their NES and superannuation obligations, thus undermining the very essence of full-time employment.
10. The CEPU strongly opposes any proposals to amend the part-time provisions as suggested by NECA under the Electrical Contracting Award. Such proposals operate to the detriment of workers and fail to align with industry-wide customs and practices.

⁵⁵ (AM2023/21) Modern Awards Review 2023-2024 (Stream 3 – Work and Care) NECA Submissions (12 March 2024) at [page 1, dot points 1 and 2].

⁶ Electrical Contracting Award, cl.10.6.

Span of Hours & Overtime

11. Under modern awards such as the Electrical Contracting Award, employees attract overtime rates of pay in circumstances where they:
 - a. work outside the span of hours (6.00am to 6pm Monday to Friday);
 - b. work in excess of 8 hours per day; and
 - c. work in excess of a 38-hour week.
12. The reason for this is because under the Electrical Contracting Award, employees attract overtime in situations where they work outside the span of ordinary hours. That is, ordinary hours are 8 hours per day, 38 hours per week.⁷
13. Accordingly, it has been a long-standing principle that for the purposes of overtime, each day stands alone.
14. The NECA proposal to change when overtime is payable⁸ will have a detrimental impact on employees and create an opportunity for exploitation by employers. The concept of flexibility for the purpose of assisting employees with their work and care responsibilities should not be employed to erode employees' existing rights; rather, it should serve as a guiding principle to ensure that employees' rights are respected and protected. Flexibility in the workplace should not come at the expense of sacrificing or trading off employees' established entitlements and protections. Any such proposal should not be entertained.
15. Additionally, the current span of hours under the Electrical Contracting Award for example, already allows for flexibility to meet caring, childcare, and school obligations by facilitating a later start (nominally up to 9.30 am if you finish at 6 pm) and an earlier finish (nominally 2.30 pm if you commence at 6 am). In the CEPU's experience these requests are not being made except in limited circumstances, and when they are, they are normally rejected. NECA's proposal undermines the principle of overtime, which is paying a premium for requiring workers to work unsociable hours - commencing before 6 am and working beyond 6pm.

⁷ Electrical Contracting Award, Clause 13.

⁸ (AM2023/21) Modern Awards Review 2023-2024 (Stream 3 – Work and Care) NECA Submissions (12 March 2024) at [pages 2-3].

16. The CEPU submits that the Modern Award objectives related to gender equality and job security should not be used to adjust working hours with the sole purpose of avoiding employer obligations with respect to overtime rates of pay and alike under the guise of “flexibility”. Any such outcome whilst no doubt desirable to employers is not consistent with the modern award objectives and minimum wage objectives in ss138 and 134 of the *Fair Work Act 2009* (Cth) (**FW Act**).

RESPONSE TO AIG

Question 1 – Part Time Employment

17. The fundamental purpose behind the establishment of part-time work is to foster a more balanced work-life dynamic to accommodate and promote a healthier work-life balance, particularly for individuals with family responsibilities or personal interests outside of work. AIG's assertion that the Standard Part-Time Model is overly rigid and lacks flexibility⁹ is misguided for the purposes of this review. AIG's proposal to introduce a new model allowing for greater flexibility to fixed ordinary hours, increased variation in work hours, and the option to work additional hours at standard rates¹⁰ is antithetical and should not be entertained.
18. Implementing such a proposal would undermine the predictability of working hours and jeopardise access to existing entitlements which protect their part time hours and compensate the employee for working outside of their ordinary hours, e.g. to overtime rates of pay. It is also somewhat suggestive of the establishment of a new category of employment, that is a hybrid of casual and part-time employment. AIG's proposal will not address the need for flexibility for workers but instead exacerbate employee exploitation and perpetuate insecure work conditions. Provisions allowing for additional work at their standard rate would, in actuality, grant employers excessive authority to dictate the hours part-time employees must work to suit their operational requirements:
- a. enhancing flexibility for employers only;
 - b. further eroding workers' rights and stability in the workplace; and

⁹ (AM2023/21) Modern Awards Review 2023-2024 (Stream 3 – Work and Care) AIG Submissions (12 March 2024) at [87 and 194].

¹⁰ (AM2023/21) Modern Awards Review 2023-2024 (Stream 3 – Work and Care) AIG Submissions (12 March 2024) at [88 to 89].

- c. facilitating a means by which part-time employees could be pressured to undertake additional hours of work without adequate compensate in the form of overtime rates of pay.

Question 3 – Facilitative Provisions – Alter and Shift Span of Hours.

19. At paragraphs 113 to 123, AIG seek to ventilate what occurred during the Four Yearly review Modern Awards case with respect to altering the spread of hours.¹¹
20. At 123 of their submissions, AIG state that they do not seek to contest the Commission’s decision in that case,¹² but that provisions that permit the Span of hours to be shifted should be instead varied to enable them to be expanded by up to one hour on both ends.
21. The expansion of the span of hours does nothing more than assist employers in circumventing the payment of overtime and provide them with increased power to demand employees work unsociable hours. If genuine flexibility were the objective, existing provisions allowing for the shifting of the span of hours would be more readily utilized by employers so as to accommodate employees with work and care responsibilities.
22. The CEPU opposes the proposal to expand the span of hours in awards and stresses that such a proposal should not be entertained.
23. Furthermore, the issue of shifting the span of hours was extensively discussed during the Modern Awards Altering Spread of Hours Case. Therefore, this forum should not be utilized, as a means by Employer Groups to reagitate such issues in attempts to obtain a different outcome.

Question 11 – Span of Hours

24. The CEPU fundamentally opposes any proposals to amend awards to allow for the performance of ordinary hours during weekends.¹³ It is evident that AIG’s proposal does nothing to favor worker flexibility but rather pursues employers' commercial interests.

¹¹ (AM2023/21) Modern Awards Review 2023-2024 (Stream 3 – Work and Care) AIG Submissions (12 March 2024) at [113 to 123]; *Four yearly review of modern awards – plain language re-drafting – facilitative provisions altering spread of hours* [2021] FWCFB 3426 (**‘Modern Awards Altering Spread of Hours Case’**).

¹² Modern Awards Altering Spread of Hours Case.

¹³ (AM2023/21) Modern Awards Review 2023-2024 (Stream 3 – Work and Care) AIG Submissions (12 March 2024) at [175].

25. Expanding the scope of ordinary hours is only likely to result in employees feeling pressured and/or being required to work unsociable hours without appropriate compensation in the form of overtime penalty rates. The AIG's proposals overlook the power imbalances in the employment relationship and disregard employees' ability to assertively decline unreasonable demands from their employer.
26. Additionally, in blue-collar industries, workers have traditionally worked weekends, with such work attracting overtime penalties. Despite these penalties, employers have continued to engage blue-collar employees for weekend work.
27. For the reasons above, it's challenging to reconcile how altering the scope of ordinary hours in the manner proposed will assist employees in balancing their work and care responsibilities.

Question 12 - Notice of Rosters

28. The CEPU opposes any variation to pre-existing rostering provisions that stipulate a notice period in Awards.¹⁴
29. Allowing employers to alter rosters at short notice and without employee input will not promote greater flexibility for workers in balancing their work and carer responsibilities. Instead, it fosters an environment of instability, uncertainty, and unreliability, which is particularly detrimental to employees with caregiving responsibilities. The current notice regime provides employees with a crucial safeguard, granting them the necessary time to make alternative family arrangements or secure childcare services in the event of unexpected changes to their work schedules. This ensures that employees can effectively manage their caregiving responsibilities without undue stress or disruption to their personal lives.
30. The current notice regime offers essential protection to employees, providing them sufficient notice to adjust family arrangements in response to changes in rosters.

CONCLUSION

31. In closing, the CEPU firmly asserts that this review should not serve as a platform for employers to diminish or erode existing entitlements of employees. This Awards review is not a forum for

¹⁴ (AM2023/21) Modern Awards Review 2023-2024 (Stream 3 – Work and Care) AIG Submissions (12 March 2024) at [181 - 182].

entitlements to eroded, traded off or compromised in exchange for greater commercial flexibility for employers. The primary focus of this review should be to uphold and strengthen flexibility measures for those with work and care responsibilities while safeguarding the rights and protections of all employees.

32. The changes proposed by AIG and NECA are nothing more than an attempt by the employer associations to secure increased commercial profits for their members to the detriment of their employees. The employer associations' proposals are not based on evidence of such demand from employees to work longer and later for the same pay or to have their hours adjusted with reduced notice. In fact, the changes sought by AIG and NECA would have a detrimental effect on employees, by casting aside employee protections and replacing it with employer flexibility.

ADDITIONAL REPLY SUBMISSIONS

33. The CEPU has also had the opportunity to review the reply submissions of the Construction, Forestry and Maritime Employees Union (Construction & General Division). The CEPU supports and adopts these submissions.

Name:

CEPU Legal Team

Date:

26 March 2024