

IN THE FAIR WORK COMMISSION

Matter No: AM2020/12

s.157 – Variation of a modern award to achieve the modern award objective

Variation of awards on the initiative of the Commission

THE COMMUNICATIONS, ELECTRICAL, ELECTRONIC, ENERGY, INFORMATION, POSTAL, PLUMBING AND ALLIED SERVICES UNION OF AUSTRALIA AND THE CONSTRUCTION, FORESTRY, MARITIME, MINING AND ENERGY UNION AND THE AUSTRALIAN SERVICES UNION

SUBMISSIONS

1. On 1 April 2020 the Full Bench of the Fair Work Commission (**'Commission'**) issued a Statement [2020] FWCFB 1760 (**'the Statement'**) which sets out the Commission's provisional view to vary 103 modern awards, pursuant to section 157(3) of the *Fair Work Act 2009 (Cth)* (**'the FW Act'**), to provide:
 - a. an entitlement to unpaid pandemic leave (up to 2 weeks unpaid leave); and
 - b. introduce the flexibility to take annual leave at half pay.

(collectively, **'the variations'**)
2. In the statement, the Commission identifies a "phase 1" list of priority awards in respect of which the variations would be made as a matter of urgency. One of the principal reasons for the selection of these phase 1 awards is that they relate to industries in which there is a high level of direct award dependence.¹ The apparent rationale being that employers and employees in these industries require the flexible arrangements contained in the variations in order to assist with dealing with some of the challenges posed by the COVID-19 pandemic.
3. The Commission has requested for written submissions to respond to the provisional view to be filed by 4pm on Monday 6 April 2020.²
4. The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia – Electrical, Energy and Services Division (**'the CEPU'**), the Construction, Forestry, Maritime, Mining and Energy Union (**'the CFMMEU'**) and the Australian Services Union (**'the ASU'**), (collectively, **'the Unions'**) have an interest in a number of awards listed at paragraph [108] of the Statement, including relevantly the Electrical Power Industry Award 2020 (**'the Power Award'**).

¹ At [88] to [90] of the Statement.

² Para [4] of the Statement.

5. The Unions support and adopt the submissions filed by the ACTU.
6. However, the Unions wish to make further specific submissions with respect to the Power Award.
7. The thrust of the Unions' submissions is that the Power Award should not be included in the phase 1 variations as it do not meet the criteria identified by the Commission itself for inclusion in this first tranche of award variations.³ In addition, it will be our submission that given the existing regulatory arrangements applying in the industries covered by the Power Award, the proposed variations will do little or nothing to assist employers and employees in meeting the challenges of the COVID-19 pandemic.
8. As the Commission is aware, the electrical power industry plays a crucial role in the Australian economy and society at large, in supporting essential services directly and provide ancillary support for essential services in the community at large. These essential services include (but are not limited to):
 - a. Power generation for both domestic and industrial purposes;
 - b. public transport;
 - c. medical and health facilities;
 - d. emergency service facilities;
 - e. factories;
 - f. construction sites; and
 - g. mining sites.

Unlike many other sectors, the available evidence concerning the impact of COVID-19 on the industries covered by the Power Award does not suggest a dramatic decline in economic activity. In fact, in particular sectors covered by the Power Award there is evidence of an increased demand for services and labour partly in response to the adverse impact of the pandemic on other parts of the economy.

9. The Unions' reasons as to why the variations are not appropriate in respect to the Power Award are detailed below.

The Power Award

10. The Unions oppose the variation in the Power Award for the following reasons:

³ Refer to Chart 4, page 25 of the Statement

- a. The electrical power industry has not yet experienced a significant downturn in demand.⁴ In fact, there is some evidence of an increased demand for skilled labour with the major power companies looking to secure and even supplement the existing workforce to meet this demand.⁵
 - b. The electrical power industry is an essential service in which the greatest challenge in the coming period will be to maintain the existing skilled workforce required in order to keep power stations and associated infrastructure operating at a sufficient level. There is for the foreseeable future, very little prospect of the power industry employers seeking to stand-down or demobilise employees falling within the scope of the Power Award in response to the COVID-19 pandemic.
 - c. The electrical power industry is covered by the ‘electricity, gas, water and waste services’ industry⁶. Therefore, the electrical power industry is one of the least adversely impacted industry as identified at paragraph [25] of the Statement.
 - d. The electrical power industry is not an award reliant industry. Electrical power workers engaged in the ‘electricity, gas, water and waste services’ industry, as identified in the Statement.⁷ In fact, the electrical power industry has blanket enterprise agreement coverage, with all major power stations subject to enterprise agreements to which the Unions are party.
11. Based on the above matters, the Unions object to the proposed variation of the Power Award. At the very least, the Power Award should not be an award listed in the selected phase 1 awards.
 12. Further, the proposed variations will do nothing in a practical sense to assist employers and employees in the electrical power industry to meet the challenges of COVID-19. Rather, productive and cooperative discussions between the Unions, electrical power industry employers and employees are already occurring at an enterprise and company level with the aim of ensuring a consistent supply of electrical power to the Australian community whilst at the same time protecting the health and safety of power industry workers.

⁴ “The global energy industry responds to COVID-19” *Australian Energy Market Regulator* 2 April 2020: <https://aemo.com.au/news/global-energy-industry-responds-to-covid19>

⁵ Given the confidential nature of these discussions, we have chosen not to cite specific examples in this submission. However, if necessary such information can be provided confidentially to the Commission.

⁶ In award terms, the brown coal mining operations in Victoria are not regarded as part of the coal mining industry. It has always been regarded and regulated as part of the electrical power industry.

⁷ See paragraph [80] of the Statement and Chart 4.

END