

12 March 2024

Fair Work Commission

11 Exhibition Street
Melbourne, Victoria 3000

By Email: awards@fwc.gov.au

To whom it may concern,

I write on behalf of the National Electrical and Communications Association (**NECA**) with regard to the **Modern Awards Review 2023-24 – Work and Care stream**.

Having had the benefit of reading the Australian Chamber of Commerce and Industry's (**ACCI**) submission in response to the Commission's Discussion Paper in the abovementioned stream, NECA would like to lodge its support for that submission via this correspondence.

In addition to ACCI's submissions in this regard, NECA would also like to make the following submissions. We have broken these down in similar headings to those in your discussion paper for ease of reference.

Part-time employment

- Currently it is not easy for employer's and part-time employees to agree on changes to their start and finish times without entering into an individual flexibility agreement (**IFA**). This limits the flexibility for both parties, particularly where a carer would like to change their hours on short notice due to unforeseen caring requirements but does not necessarily want to enter into an IFA nor have to take leave and/or lose valuable income. This is also relevant when looking at part-time employees who work some or part of their role from home. Arguably, a genuinely flexible approach appears to be that the start and finish times are set (where possible) but that when there is genuine agreement between the employer and the employee (on short notice or otherwise) to change those start and finish times, that this would facilitate better outcomes and allow higher degrees of flexibility for carers based on their changing and sometimes last minute needs.
- A further current limitation for part-time employees (including carers) is the inability to agree to work overtime other than under an IFA, which as noted in the ACCI submissions are not particularly well utilised, nor are they useful in changing and unforeseen circumstances. For example, in the *Electrical, Electronics and Communications Contracting Award 2020 (Award)*, a part-time employee is unable to work overtime unless there are 'urgent and/or unforeseen circumstances', meaning an employer and employee cannot simply genuinely agree for the

part-time employee to undertake overtime even if in conjunction with the award provision enabling an employee to take 'time off instead of payment for overtime'. By allowing part-time employees the ability to agree to work overtime, particularly when taken as 'time off instead of payment', this gives the employer and employee the flexibility to work around unforeseen circumstances and enables a carer to take the agreed overtime during periods of intense caring such as school holidays, while still being paid for this time.

- The above two dot points also relate to part-time employees working from home. The ability to change working hours and/or work overtime on short notice where possible and genuinely agreed by the employer and the employee would only further enable flexible working arrangements for carers, having regard to the needs of the business and its part-time employees.

Individual Flexibility Agreements

- Although IFAs under the awards is a current entitlement. It is noted that these entitlements are often excluded from other industrial instruments and other areas are included (to ensure compliance with the need for a mandatory flexibility clause) that do not allow the same level of flexibility for carers. Although we recognise that this may fall within the scope of this review, NECA would like the opportunity to further consider this concern and reserve its right to provide further commentary in the response due 26 March 2024.

Facilitative provision

- If the Commission decides to include working from home entitlements in the Award (which we would similarly object to, unless it was discretionary), we would like you to also consider including work from home in the facilitative provision.

Work from home provision

- See comments above regarding part-time employees and the facilitative provision.

Span of Hours

- Although there is an option for averaging hours under the awards, in some awards there is still a requirement to set those averaged hours in advance, which does not allow for flexibility for carers without a formal agreement.
- Further, the Award provides that overtime is payable after 7.6 hours each day and not for a full 38-hour week (as is the case with other awards). This inconsistent approach limits the flexibility that an employer can offer an employee to average their hours, particularly on a short-term basis to meet the employee's caring needs, as the employer may be unable or unwilling to agree to change an employee's hours in situations where it will trigger overtime rates. This is further discussed under 'Overtime' below.

Overtime

- NECA would welcome a consistent approach as to when overtime is triggered, i.e. after 38 hours per week rather than 7.6 hours per day. This would give employees (including carers) and employers more flexibility to work hours that may change from week to week depending on their short-term caring requirements.
- See comments above regarding overtime for part-time employees.

Yours sincerely



**Oliver Judd
Chief Executive Officer
National Electrical and Communications Association**