



Fair Work Commission  
GPO Box 539  
CANBERRA CITY ACT 2601

By email: [canberra@fwc.gov.au](mailto:canberra@fwc.gov.au)

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### **NECA Submission to the Fair Work Commission Draft Determination-Shutdown Provisions**

Thank you for the opportunity to make a submission to the draft determination (“the Draft”) of the quadrennial review of modern Awards—plain language redrafting—shutdown provisions.

The National Electrical and Communications Association (NECA) is the peak body for Australia’s electrical and communications sector, which employs 170,000 people and turns over more than \$23bn annually. NECA represents more than 6,000 businesses performing works including the design, installation, and maintenance of electrical and electronic equipment in the building, construction, mining, air conditioning, refrigeration, manufacturing, communications, and renewables sectors.

NECA has advocated on behalf of the electrotechnology industry for over 100 years. It helps members and the industry operate their businesses more effectively, and represents their interests to all levels of government, regulators, and within other bodies such as the Australian Chamber of Commerce and Industry (ACCI) and Standards Australia.

NECA members make an essential economic contribution – connecting businesses, homes, and infrastructure – encouraging investment, improving reliability and energy security, and delivering affordable, environmentally sustainable outcomes. The safety and reputation of the electrotechnology industry is critical to all tradespeople, consumers, and the community.

In preparing this submission, NECA has held a number of roadshow events nationally, and has also had substantive face-to-face meetings with members regarding these matters, which are outlined below.

NECA has discussed these provisions with its members. The feedback has been a mix of apprehension and concern as to how these can be implemented, and consequent contemplation of possible methods of mitigation should the provisions be implemented in their current form.

Further, NECA Legal has reviewed the changes and consulted on their impact on the sector.

NECA members work collaboratively with their employees, and if NECA Legal’s interpretation is correct, where employees do not have accrued leave the flexibility for employers to allow for shutdowns of their sites becomes limited or comes at significant cost. Mitigation of this will detrimentally impact current employees, prospective employees, and employers alike.



Within the electrotechnology sector, NECA members advise it is common that ten to fifteen days over the Christmas/New Year period is utilised by employees for holidays and leave. The average leave period is ten days, from Christmas Eve to early January.

The adoption of these provisions will lead in some cases to new employment decisions being deferred to ensure only employees with the adequate accrued leave are retained. Further, the flexibility for employees to take leave outside shutdown periods will need to be closely monitored and, in some circumstances, curtailed to ensure adequate accrued leave is available during shutdowns.

It is critical in the electrotechnology sector that shutdown periods are allowed where staffing levels decrease during the Christmas break, major maintenance periods, and extended holidays. The impact of the Draft's decisions will impact all participants – including small, medium and large enterprises – in the electrotechnology sector.

On sites and workplaces that include substantial numbers of subcontractors from various companies, shutdowns are at a minimum occurring annually, particularly during Christmas periods. As many trades and skills are sourced from a diverse range of contractors working in concert, should (for example) one or more of these contractors utilise shutdowns for their employees' holidays, all other trades and suppliers on that site will be severely impacted, and be required to reduce their workload for the same or similar periods. The ability for all trades to shutdown together should not be impacted in the manner to which these provisions may lead.

Many small contractors in particular employ fewer than five (5) people (including owner/operators) and consequently, when annual leave is taken, all employees of the business would be required to take similar leave to ensure a safe and functioning workplace. Apprentices require specific supervision by a qualified tradesperson. Many sites require a full complement of the employees of the small enterprise to be in attendance. Without flexibility, these businesses cannot operate.

## **Conclusion**

In regard to the draft determination, NECA's input would echo that of many in the construction and industrial sectors, in that NECA believes the Commission is in error to conclude that it lacks the power under the Fair Work Act to include a provision in an Award enabling employers to direct employees to take unpaid leave because it would not fall within the permissible Award term of "leave, leave loadings and arrangements for taking leave" (s 139(1)(h)). Such a provision does constitute "leave" for the purposes of this power.

NECA further contends that even if such a provision does not fall within this particular Award term, it would fall within other permissible Award terms, such as "arrangements for when work is performed, including hours of work, rostering, notice periods, rest breaks and variations to working hours" in s 139(1)(c). Accordingly, the Commission has the power to include this provision in modern Awards.

If the Commission determines that it lacks the power under the Fair Work Act to include this provision it should, at a minimum, include in the model term an ability for employers to direct employees who have not accrued sufficient annual leave to take annual leave in advance.



Should you have any questions, or wish to discuss this submission further, please contact NECA's Head of Government Relations and Regulatory Affairs, Kent Johns, at [kent.johns@neca.asn.au](mailto:kent.johns@neca.asn.au) or on 0467 660 110.

Yours sincerely

A handwritten signature in black ink, appearing to read "O. Judd", is written below the text "Yours sincerely".

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