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Sent: Friday, 3 February 2017 10:39 AM
To: Chambers - Gostencnik DP
Cc: Jason O'Dwyer; Gordon Jervis; Cameron Young; Guy Noble; Vasuki Paul;
louise.hogg@ablawyers.com.au
Subject: Electrical, Electronic and Communications Contracting Award 2010 - shift work proposal

Ms. Suzie Kairouz
Associate to Deputy President Gostencnik.

Dear Ms. Kairouz,

Please find attached a letter to his Honour setting out details of the recent discussions of the respective parties concerning a proposal to adjust the current Hours of Work clause (clause 13) of *the Electrical, Electronic and Communications Contracting Award* (and subsequent *Exposure Award*) to try to better reflect shift work arrangements/entitlements. Accompanying this correspondence is a revised clause which seeks to do no more than to reflect those arrangements/entitlements for shift workers.

Should there be a need for clarification, please don't hesitate to contact me.

Regards

Richard Krajewski

Workplace Relations Manager

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3rd February 2017

Deputy President Gostencnik
Fair Work Commission
80 William Street,
MELBOURNE, NSW

Associate to his Honour Deputy President Gostencnik

Dear Associate

Further the Conference conducted by his Honour on 23rd January 2017 in connection with the ***Electrical, Electronic and Communications Contracting Award 2010 (MA0000025)*** (the "Modern Award"), a programme was suggested by his Honour for the respective parties to meet to discuss and attempt to resolve a number of matters. The purpose of this correspondence is to provide his Honour with an up-date in connection with a proposal to make technical changes to clause 13 – Hours of Work – as provided for in the ***Electrical, Electronic and Communications Contracting Industry Exposure Award (the "Exposure Award")*** – the Hours of Work/Shift Work clause. It is noted that a copy of the proposed changed had been forwarded to his Honour Deputy President Lawrence on 28th November 2016 and which it is understood was part of a Report that was subsequently provided to the Full Bench of the Fair Work Commission which heard submissions on 6th December 2016.

One of the outcomes of a Conference following the Full Bench Hearing was a programme which would seek to clarify the outstanding issues in relation to the Exposure Award. A conference was conducted by his Honour Deputy President Gostencnik on 23rd January 2017 where the respective issues were discussed. His Honour then required the parties to meet to progress the outstanding matters including that of the shift work proposal.

In line with that programme, a telephone conference took place between the CEPU, NECA, Master Electricians (MEA) and Fire Protection Association Australia (FPA) on 25th January 2017 to discuss the proposed Hours of Work/Shift Work clause change. General consensus was reached between the major parties to proceed with the identification of shift work in the current clause as indicated in the proposal before the Full Bench. In doing so, however, one further outcome of that conference was a proposal from Master Electricians to remove some duplication that currently exists in the Modern Award clause and this correspondingly appeared in sub-clauses 13.10 and 13.11 of that draft clause proposal. These two sub-clauses were then amalgamated with a subsequent re-numbering. In addition, the amended clause included a proposed variation to sub-clause 13.2 by NECA for the separate identification of ordinary hours for Day Workers (Monday to Friday) as well as for Shift Workers (Monday to Sunday). This amended proposal was then provided to AIG and ABI, the other two Employer Associations.

A telephone conference involving the Employer Associations took place on Tuesday 31st January 2017. The meeting was advised that the major players in the industry (CEPU, NECA,

MEA and FPA) had agreed to the proposed clause change to make it simpler for the reader to understand which clauses apply to shift workers and which apply to day workers and which apply to both.

However, that Conference concluded with no common outcome with respect to the shift work proposal.

Following this Conference, a telephone conference of the above mentioned three Employer Associations and the CEPU took place Thursday 2nd February 2017 where broad agreement was confirmed including some further minor changes to the proposal (i.e., specific reference to a clarification of hours of work for continuous and non-continuous workers and crib time). These changes including the items provided to the 31st January 2017 meeting are highlighted in the attached amended clause.

Based on the above developments, it is respectfully requested that the Fair Work Commission uses the conference scheduled for the 28th February to assist the parties to resolve this matter, or if the Commission is of the view that it might be more appropriate for another, perhaps earlier, conference to be arranged to facilitate this the parties would be open to this course.

Yours sincerely



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Part 3—Hours of Work – Day Workers and Shift Workers

13. Ordinary hours of work and rostering

13.1 Maximum weekly hours and requests for flexible working arrangements are provided for in the NES.

13.2 Ordinary hours of work

- (a) The ordinary hours of work for day workers may be worked Monday to Friday inclusive.
- (b) The ordinary hours of work for shift workers may be worked Monday to Sunday inclusive.

13.3 Spread of hours—day workers

The ordinary hours of work will be 6.00 am to 6.00 pm, provided that:

- (a) the usual starting and finishing time within the spread of hours may not be varied except by agreement of the employer and individual employee or the majority of the employees concerned; and
- (b) the spread of hours may be altered as to all or a section of the employees by agreement of the employer and individual employee or the majority of the employees.

13.4 Work cycles—day workers

The ordinary hours of work for day workers will be an average of 38 per week to be worked on one of the following bases:

- (a) 38 hours within a work cycle not exceeding seven consecutive days;
- (b) 76 hours within a work cycle not exceeding 14 consecutive days;
- (c) 114 hours within a work cycle not exceeding 21 consecutive days; or
- (d) 152 hours within a work cycle not exceeding 28 consecutive days.

13.5 Twelve hour shifts – day workers and shift workers

By agreement between the employer and the majority of employees concerned, ordinary hours not exceeding 12 on any day may be worked subject to:

- (a) proper health monitoring procedures being introduced;
- (b) suitable roster arrangements being made; and

- (c) proper supervision being provided.

13.6 Late comers – day workers and shift workers

- (a) An employer may select and utilise for time-keeping purposes, any fractional or decimal proportion of an hour (not exceeding quarter of an hour), and may apply such proportion in the calculation of the working time of employees who, without reasonable cause which is promptly communicated to the employer, report for duty after their appointed starting times or cease duty before their appointed finishing times.
- (b) an employer who adopts a proportion for the purpose of clause 13.6(a) may apply the same proportion for the calculation of overtime.

13.7 Implementation of 38 hour week – day workers and shift workers

The ordinary hours of work may be arranged in accordance with one of the following:

- (a) by employees working less than eight ordinary hours each day; or
- (b) by employees working less than eight ordinary hours on one or more days in each week; or
- (c) by employees working less than eight ordinary hours on one or more days in each fortnight; or
- (d) by fixing one weekday on which all employees will be off during a particular work cycle; or
- (e) by rostering employees off on various days of the week during a particular work cycle so that each employee has one day off during that cycle.

13.8 Rostered day off – day workers and shift workers

- (a) **Rostered day off** for the purpose of this award is the weekday, not being a holiday that an employee has off duty when working in accordance with an average hours system.

- (b) **Notice of rostered day off**

Where an employee, in accordance with clause 13.7, is entitled to a day off during the employee's work cycle, they must be advised by the employer at least four weeks in advance of the weekday the employee is to take off.

- (c) **Rostered day off not to coincide with public holiday**

Where an employee's ordinary hours are arranged in accordance with clause 13.7, the weekday or part of the weekday taken off must not coincide with a public holiday as prescribed in the NES.

(d) Substitution of rostered day off

- (i)** An employer may substitute the day an employee is to take off in accordance with clause 13.7(d) and 13.7(e) for another day and require the employee to work on that day off if such work is necessary to allow other employees to be employed productively or to carry out out-of-hours maintenance or because of unforeseen delays to a particular project or a section of it or for other reasons arising from unforeseen or emergency circumstances on a project.
- (ii)** Provided that if a substitute day off is not granted, then the employee must be paid in addition to the payment for the day off, for work performed in ordinary hours at the rate of **150%** of the ordinary hourly rate, and for work outside ordinary hours, at the rate of **200%**.
- (iii)** An individual employee, with the agreement of the employer, may substitute the day the employee is to take off for another day.
- (iv)** Any substitute day off must be taken either in the current work cycle or in the next succeeding work cycle.
- (v)** Where any employee, in accordance with clause 13.7(d) and 13.7(e) is entitled to a day off during the employee's work cycle and that day off falls on a public holiday, as prescribed in the NES, the next working day will be substituted as the day off unless an alternate day in that work cycle or the next succeeding work cycle is adopted by agreement between the employer and the employee.
- (vi)** In clause 13.8 the reference to a day or working day may also be taken as reference to a part day or part working day as the case may be and is appropriate.

(e) Calculation of weekly wage rates—Rostered day off (RDO) system

Where an employee's ordinary hours in a week are greater or less than 38 hours and such employee's pay is averaged to avoid fluctuating wage payments, the following is to apply:

- (i)** the employee will accrue a credit for each day they work ordinary hours in excess of the daily average;
- (ii)** the employee will not accrue a credit for each day of absence from duty, other than on annual leave, long service leave, public holidays, paid personal/carer's leave, workers compensation, paid compassionate leave, paid training leave or jury service; and

- (iii) an employee absent for part of a day, other than on annual leave, long service leave, public holidays, paid personal/carer's leave, workers compensation, paid compassionate leave, paid training leave or jury service, accrues a proportion of the credit for the day, based on the proportion of the working day that the employee was in attendance.

13.9 Rest break – day workers and shift workers

Employees must be allowed a rest break of 10 minutes on each day between the time of commencing work and the usual meal break. The rest break must be counted as part of time worked.

13.10 Ordinary hours of work—shiftwork—shift workers

- (a) The ordinary hours of shift workers must average 38 hours per week inclusive of crib time and must not exceed 152 hours in 28 consecutive days and in the case of non-continuous shift workers are to be worked in one of the following shift cycles:
 - (i) 38 hours within a period not exceeding seven consecutive calendar days; or
 - (ii) 76 hours within a period not exceeding 14 consecutive calendar days; or
 - (iii) 114 hours within a period not exceeding 21 consecutive calendar days; or
 - (iv) 152 hours within a period not exceeding 28 consecutive days.
- (b) Shift workers must work at such times as the employer may require, subject to the following conditions:
 - (i) a shift must not exceed eight ordinary hours, inclusive of crib time. Provided that by mutual agreement between the employer and an employee or majority of employees concerned, a shift may be up to 12 ordinary hours;
 - (ii) except at the regular changeover of shifts, an employee must not be required to work more than one shift in each 24 hours;
 - (iii) the ordinary hours must be worked continuously except for crib time which must be counted as time worked and which for continuous and non-continuous shift workers will be 20 minutes; and

- (iv) the timing of crib time is at the discretion of the employer, provided that an employee must not be required to work for more than five hours without a break for crib time.

13.11 Rosters – shift workers

A shift roster must specify the commencing and finishing times of ordinary hours of work of each shift.

13.12 Shift allowances – shift workers

- (a) An employee whilst on afternoon or night shift as defined in clause 2.2 must be paid for such shift **115%** of the employee's ordinary hourly rate.
- (b) An employee who works on an afternoon or night shift which does not continue for at least five successive afternoons or nights must be paid for such shift at **150%** of the ordinary hourly rate for the first two hours and **200%** thereafter.
- (c) An employee is on **permanent night shift** when the employee;
 - (i) during a period of engagement on shift, works night shift only;
 - (ii) remains on night shift for a longer period than four consecutive weeks; or
 - (iii) works on a night shift which does not rotate or alternate with another shift or with day work so as to give the employee at least one third of their working time off night shift in each shift cycle.
- (d) An employee on permanent night shift must, during such engagement, period or cycle, be paid **130%** of the employee's ordinary hourly rate for all ordinary hours worked on the night shift.

13.13 Rate for working on Saturday shifts – shift workers

The minimum rate to be paid to a shiftworker for work performed between midnight on Friday and midnight on Saturday is **150%** of the ordinary hourly rate. The extra rate is in substitution for and not cumulative upon the shift premiums prescribed in clause 13.13.

13.14 Rate for working on a Sunday and public holiday shifts – shift workers

- (a) The rate at which continuous shiftworkers are to be paid for work on a rostered shift, the major portion of which is performed on a Sunday or public holiday is **200%** of the ordinary hourly rate.

- (b) The rate at which shiftworkers on other than continuous work are to be paid for all time worked on a Sunday or public holiday is as follows:
 - (i) Sunday—**200%** of the ordinary hourly rate.
 - (ii) Public holidays—**250%** of the ordinary hourly rate.
- (c) Where shifts commence between 11.00 pm and midnight on a Sunday or public holiday, the time so worked before midnight does not entitle the employee to the Sunday or public holiday rate for the shift. However, the time worked by an employee on a shift commencing before midnight on the day preceding a Sunday or public holiday will be regarded as time worked on the Sunday or public holiday.
- (d) Where shifts fall partly on a public holiday, the shift that has the major portion falling on the public holiday will be regarded as the holiday shift.
- (e) The extra rates in clause 13.15 are in substitution for and not cumulative upon the shift premiums prescribed in clause 13.13.

13.15 Overtime on shiftwork – shift workers

- (a) Subject to clause 13.16(b), for all time worked in excess of or outside the ordinary hours of work prescribed by this award or on a shift other than a rostered shift, a shiftworker must be paid:
 - (i) if employed on continuous shiftwork—at the rate of **200%** of the ordinary hourly rate; or
 - (ii) if employed on other than continuous shiftwork—at the rate of **150%** of the ordinary hourly rate for the first two hours and **200%** thereafter.
- (b) Clause 13.16(a) does not apply where the time is worked:
 - (i) by arrangement between the employees themselves;
 - (ii) for the purpose of effecting customary rotation on shifts; or
 - (iii) on a shift to which an employee is transferred on short notice as an alternative to standing the employee off in circumstances which would entitle the employer to deduct payment for a day in accordance with the Act. Provided that when less than eight hours' notice has been given to the employer by a relief worker that the relief worker will be absent from work and the employee whom the relief worker should relieve is not relieved and is required to continue to work on the employee's

rostered day off, the unrelieved employee must be paid **200%** of the ordinary hourly rate.

- (c) Such extra rates will be in substitution for and not cumulative upon the shift premiums.

13.16 Rest period after shiftwork – shift workers

- (a) A shiftworker, when going on shift, changing shift or returning to day work must have at least 10 consecutive hours off duty on completion of day work, shiftwork and any overtime and must not suffer any loss of pay for any ordinary time, or any ordinary shift time as is appropriate in the circumstances for any such off duty period.
- (b) Provided that, if on the instructions of the employer, the employee resumes or continues to work without having had 10 consecutive hours off duty, the employee must be paid at **200%** of the ordinary hourly rate until released from duty and then be entitled to 10 hours off duty and must not suffer any loss of pay for any ordinary time, or any ordinary shift time as is appropriate in the circumstances, for any such off duty period.

13.17 Daylight saving – day workers and shift workers

For work performed which spans the start or finish of a system of daylight saving as prescribed by relevant State or territory legislation, an employee will be paid according to adjusted time (i.e. the time on the clock at the beginning of work and the time on the clock at the end of work where the clock in each case is set to the time according to the relevant legislation).