

FAIR WORK COMMISSION

Fair Work Act 2010

s.156 - 4 Yearly Review of Modern Awards

AM 2014/265.

Electrical, Electronic and Communications Contracting Award 2010
MA000025

**ELECTRICAL, ELECTRONIC AND
COMMUNICATIONS CONTRACTING AWARD
2016
EXPOSURE DRAFT**

**SUBMISSION ON DRAFTING AND TECHNICAL
ISSUES**

**NATIONAL ELECTRICAL & COMMUNICATIONS
ASSOCIATION SA CHAPTER (NECA SA)**

BACKGROUND

1. The National Electrical & Communications Association SA Chapter (NECA SA) is a registered organisation under the *Fair Work (Registered Organisations) Act 2009* (as the 'National Electrical Contractors Association') and also maintains registration under various state jurisdictions.
2. On 10 May 2016, VP Ross of the Fair Work Commission issued a Statement and Amended Directions [2016] FWC 2924 ("the Directions") requiring, inter alia, interested parties "to file in the Commission comprehensive written submissions on the technical and drafting issues related to exposure drafts in sub-groups 4A, 4B and 4C" by 4.00 pm on Thursday 30 June 2016.
3. The Commission issued an Exposure Draft of the *Electrical, Electronic and Communications Contracting Award 2016* ("Exposure Draft") and comparison table of the current Award and the Exposure Draft ("Comparison Table") on 23 May 2016.
4. These submissions are in two parts.

5. Part 1 is NECA SA's submissions on the Exposure Draft with particular reference to questions asked by the Commission appearing in the Exposure Draft.
6. Part 2 is NECA SA's submissions on the Comparison Table.
7. Common issues before the Fair Work Commission, specifically, Annual Leave (AM2014/47), Part Time Employment (AM2014/196), Casual Employment (AM2014/197), Overtime (AM2014/300) and Public Holidays (AM2014/301) are matters that will affect the final version of the Modern Award.

PART 1 – EXPOSURE DRAFT

8. Clause 10.5 in the Exposure Draft asks *“is the clause reference in 10.5(b) correct? Should it instead refer to clause 13.15 and 19.4(b)”*
9. NECA SA submits that the reference to clause 13.15 (b)(ii) should be changed to reference clause 13.15 and clause 19.4(b), to better achieve the Modern Award Objective and ensure all circumstances relating to Public Holiday work by a part time employee are covered.
10. Clause 11 of the Exposure Draft is headed “Casual employment” and asks whether clause 11.4 correctly refers to clause 13.13
11. It is submitted that Clause 11.4 should be retained with the addition of a reference to clause 13.16. Clause 19 deals with overtime on day work. Clause 13.16 deals with overtime on shift work. Clause 13.13 deals with shift work.
12. Clause 12 of the Exposure Draft is headed “Apprentices” and asks whether the reference to clause 16.2 in clause 12.10 should be a reference to clause 16.4 – Apprentice Minimum Wages, instead
13. NECA SA agrees that the reference to 16.2 in clause 12.10 should be replaced with a reference to 16.4.
14. Clause 13.6 of the Exposure Draft is headed “Late comers” and asks whether the clause could be clearer.
15. NECA SA submits that the current wording of the clause is relatively clear. However, further clarity could be provided if the words “may apply such proportion in the calculation of the working time of employee” at clause 13.6(a) were replaced with “may deduct such proportion when calculating the working time of employee.”
16. NECA SA submits that 13.6 is not inconsistent with section 326 of the Fair Work Act 2009 as late comers and those who stay back and work

overtime are subject to the same proportion of time increments when calculating the working time of the employee.

17. Clause 13.9 of the Exposure Draft is headed “Rest break” and asks whether clause 13.9 only applies to day workers.
18. NECA SA submits that clause 13.9 should be retained in its current form. It is noted that clauses 13.5, 13.6, 13.7 and 13.8 do not only apply to day workers. Conversely, clauses 13.2, 13.3 and 13.4 specifically refer to day workers.
19. It is further submitted that the understanding of the Award would be improved if clauses specifically referring to day workers were relocated to immediately before 13.10.
20. Alternatively, NECA SA would not oppose the creation of a new clause 14, “Shiftwork” with the subsequent renumbering of 13.10 to 13.18.
21. Clauses 13.10 and 13.11 of the Exposure Draft deal with Shift Work and asks whether the reference to ‘crib time’ can be replaced with a reference to ‘rest break’
22. NECA SA submits that the term ‘crib break’ is commonly understood and distinguishes the paid 20 minute meal break entitlement for shift workers from the unpaid meal break entitlement for day workers. Crib breaks and meal breaks are in addition to the paid rest break. All references in the Award to ‘crib time’ should therefore be changed to ‘crib break’.
23. The Exposure Draft asks whether sub clause 13.11 (c) should be amended to read “the timing of the 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.”
24. NECA SA submits that the proposed amendment better meets the modern award objective (with the caveat that ‘crib time’ should be replaced with ‘crib break’ as per paragraph 24 above).
25. In the same vein, NECA SA supports the proposed amendment to clause 14.1(c) whereby “The timing” is inserted at the beginning of the paragraph.
26. Clause 15 of the Exposure Draft is headed “Inclement weather” and asks what provisions of clause 15 need to be observed to satisfy the requirement in clause 15.4(b).
27. NECA SA submits that the requirements to be satisfied under clause 15.4(b) include and extend beyond the requirement to consult in 15.2. The clause defines inclement weather and permits the employer to

transfer employees affected by inclement weather. The clause should therefore stay as is.

28. Clause 16.4 of the Exposure Draft is headed “Apprentice minimum wages” and asks how paragraphs 16.4(a)(iii) and 16.4(a)(iv) interact.
29. NECA SA submits that these paragraphs in the most part say the same thing. However paragraph (iv) is to be preserved because it refers to the weekly all-purpose rate. Paragraph (iii) should be deleted. Paragraph (iv) should be retained (and re-numbered as (iii)). A new Paragraph (iii) should be inserted with the words “Any other special allowances in clauses 17.3 and 17.4 and allowances for travel and expenses in clauses 17.5 and 17.6 will be paid to an apprentice on an ‘as incurred’ basis at the rate specified, subject to clause 17.1(b).”
30. Clause 17 of the Exposure Draft is headed “Allowances” and asks parties to clarify which special allowances are not cumulative.
31. NECA SA submits that skill allowances are not cumulative, disability allowances are not cumulative but a relevant skill allowance can be paid as well as a relevant disability allowance. For example a person in receipt of the First Aid Allowance working on a multistorey building (as defined) would be entitled to both the first aid allowance and relevant multistorey allowance. However a worker, working on a service core is not entitled to both the service core allowance and multistorey allowance. Disability allowances are paid to compensate a worker experiencing an adverse working condition. The worker can only experience one such condition at any one time.
32. The Award may be clearer in its intent if the First Aid Allowance were relocated away from the wage related special allowances.
33. Clause 17.5 of the Exposure Draft is headed “Travel and expenses” and asks the parties to clarify which allowances do not apply under clause 17.5(e)
34. NECA SA submits that an employee is not entitled to motor vehicle allowance, travel time allowance or the start and/ or finish on job allowance if the employee starts and finishes work at the employer’s registered office or depot.
35. An employee who starts and finishes work at his employer’s registered office or depot is experiencing no greater inconvenience than any other worker who attends their employer’s workplace.
36. Clause 17.5(e) should be revised to offer further clarity and specifically state “the allowances set out in clauses 17.5(b), (c) and (d)”.

PART 2 – COMPARISON TABLE

37. Clause 2.2 of the 2016 Award, Definitions Comparison Table contains a definition of “all purposes” NECA SA submits that, to provide certainty, the word “shift work” should be added after “overtime” in the definition.
38. Clause 13.10 of the 2016 Award is headed “Ordinary hours of work – continuous shiftwork”. Clause 13.11 of the 2016 Award is subsequently headed “Ordinary hours of work – other than continuous shiftwork”.
39. It is submitted that for the purposes of clarity and ease of understanding, clause 13.10 and clause 13.11 should be reversed. Clause 13.10 (formally 13.11) should be renamed “Ordinary hours of work – shiftwork”. Clause 13.11 (formally 13.10) should retain it’s title “Ordinary hours of work – continuous shiftwork”.