

3 April 2020

The Hon. Christian Porter, MP
Attorney General and Minister for Industrial Relations
PO Box 6022
House of Representatives
Parliament House
CANBERRA ACT 2600

By email: Christian.Porter.MP@aph.gov.au

Dear Minister Porter,

Proposal to Amend Fair Work Act 2009 To Provide Flexibility in Enterprise Agreements in Response to the COVID-19 Pandemic

The National Electrical and Communications Association (NECA) requests that you give consideration to introducing a bill amending the *Fair Work Act 2009* (the Act) to allow for provisions to be included in Enterprise Agreements (either universally on a group of agreements basis) similar to those recently adopted in schedules to several awards. The schedules now attached to those awards vary conditions to 'cater for the unique circumstances pertaining to the COVID-19 pandemic.'

NECA is an industrial organization of employers engaged in the supply and installation of electrical products.

NECA has 5,200 members nationally engaged in the maintenance, alteration and installation of electrical products in a range of settings from small domestic projects to major construction and civil engineering projects.

A significant number of NECA's members are covered by enterprise agreements and will therefore not be able to utilise the provisions introduced by those award schedules. If the employers were not covered by enterprise agreements they would be covered by the

NATIONAL OFFICE

Level 4,
30 Atchison Street,
St Leonards NSW 2065
Locked Bag 1818,
St Leonards NSW 1590

T +61 2 9439 8523
F +61 2 9439 8525
E necanat@neca.asn.au
W www.neca.asn.au

ABN 78 319 016 742



Electrical, Electronic and Communications Contracting Award 2010 (the Electrical Award).

Variations to Modern Awards

On 28 March 2020 a Full Bench of the Fair Work Commission approved a joint application made by ACCI and the AIG to vary the *Clerks Private Sector Award 2010* [2020 FWCFB 1690] the variation attached a new Schedule to the Award that was to remain in effect until at least 30 June 2019. The Application was supported by the ASU and the ACTU. A submission supporting the application was also filed on your behalf.

The schedule to the Clerks Award provided for greater flexibility by expanding the duties employees could be required to perform; the taking of annual leave; the spread of hours for employees working from home and the minimum daily engagement for those employees. It also provided for a temporary reduction in hours by agreement; an ability of an employer to direct an employee to take accrued annual leave with one weeks notice and to take leave during a close down.

A Full Bench of the Commission issued a Statement [2020 FWCFB 1760] on 2 April foreshadowing its intention to vary 103 awards (including the Electrical Award) to provide temporary measures “*in the context of the unique circumstances pertaining to the COVID-19 pandemic*” by utilizing the powers available to the Commission under sect 157(3) of the Act. The variations foreshadowed by the Statement will introduce unpaid Pandemic Leave of up to two weeks and the facility to take up to twice accrued annual leave on half pay.

In the Statement the Full Bench confirms that the foreshadowed variations to awards made under section 157(3) do not preclude other parties (employers, employer organisations or unions) from applying to make other temporary variations to awards to deal with the COVID-19 Pandemic.

Enterprise Agreement

A significant number of NECA’s members are covered by enterprise agreements approved by the Fair Work Commission. Those employers will not have the benefits of the temporary measures approved by the Commission in the Clerks, Hospitality and Restaurant and Catering Awards or to be made to 103 Awards foreshadowed by the Full Bench of the Commission on 2 April.



There is no equivalent in the Act to section 157(3) which would allow the Commission to vary enterprise agreements generally. Part 2-4 of the Act specifies that an agreement can only be varied on application by the employer(s) or an employee(s) who are covered by it.

It would not be practicable to seek to vary all of the Enterprise Agreements covering employers and employees individually in time to provide adequate responses to the COVID-19 pandemic.

Proposed Amendment to the Fair Work Act 2009.

NECA respectfully submits that a bill should be drafted that would amend the Fair Work Act to insert a provision similar to section 157(3). This would allow the Commission to vary groups of enterprise agreements to introduce temporary measures to deal with the COVID-19 pandemic either on its own initiative or on application. The measures would be similar to those introduced in the Schedules to awards referred to earlier and would only endure for a specified term.

Such a Bill is necessary to allow employers and employees covered by Enterprise Agreements to benefit from the same flexibilities introduced in Awards.

I note that on 2 April 2020 the Minister for Planning published the *Environmental Planning and Assessment (COVID-19 Development—Construction Work Days) Order 2020* in NSW Government Gazette No 68.

That order permits the *carrying out of any building work or work, or the demolition of a building or work on a Saturday, Sunday or public holiday.*

In making the Order the Minister, Rob Stokes, noted *I am satisfied this Order is necessary to protect the health, safety and welfare of members of the public during the COVID-19 pandemic, as it will facilitate social distancing by spreading construction work over more days in a week.*

NECA's members will be disadvantaged in applying the order if the current weekend and public holiday penalty rates contained in the Electrical Award and most enterprise agreements are maintained for the duration of the COVID-19 Pandemic. It is submitted that the proposed bill should address that deficiency by allowing for the alteration of weekend and public holiday penalties.



Please contact Oliver Judd on 0400 134 569 or by email to oliver.judd@neca.asn.au if a representative of your department wishes to discuss this proposal further.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Suresh Manickam", with a horizontal line drawn underneath the signature.

Suresh Manickam

Chief Executive Officer

National Electrical and Communications Association