

Provide your views to the IR Working Group process

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Working Group/s to consider your submission:	Award simplification

The National Electrical and Communications Association (NECA) is the peak industry body for Australia's electrical and communications contracting industry, which employs some 170,000 workers and delivers an annual turnover in excess of \$23 billion. We represent the interests of over 5,500 contracting businesses and our members make an integral contribution to the Australian economy, encouraging investment, improving reliability and security across the energy system and delivering greater environmentally sustainable and affordable outcomes for the community.

General Comments: NECA has a number of concerns with the Awards and the impact that the Awards have on the economic viability and sustainability of electrical contracting businesses especially during the Covid19 pandemic.

The Australian Government should amend the Fair Work Act 2009 (Cth) so that the Full Bench of the Fair Work Commission is empowered to make temporary variations in Awards in exceptional circumstances even after an annual wage review has been completed.

It should include power to the Full Bench to temporarily suspend Award entitlements for the Industry, a region or for a particular employer, to avoid redundancies, subject to the Federal Minimum Wage being complied with in respect of all hours worked. This should occur on application by an affected party or by the Full Bench of the Commission on its own motion.

NECA would like to see a complete restructure of all Modern Awards to reduce it to no more than 10 to 20 industry and / or vocational Modern Awards. For example, by combining all 'trades related' Awards such as the Electrical, Electronic and Communications Contracting Award, the Electrical Power Industry Award, the Gas Industry Award, the Joinery & Building Trades Award, the Manufacturing and Associated Industries and Occupations Award, the Plumbing and Fire Sprinklers Award, and others into one single award.

In the 21st century many business in these industries operate 24/7. The minimum weekly or hourly wage rates (as a 'safety net') for ordinary hours should for simplicity sake:

- include all allowances such as industry, licence, tool, start & finish on the job, etc, as well as other loadings and penalties and
- ordinary hours of 38 per week should be able to be spread and averaged over a four week period Monday to Sunday.

The Electrical, Electronic and Communications Contracting Award 2010 (the 'Electrical Award'): Award provisions should not hamper productivity and, if a major restructure of all the Modern Awards including the Electrical Award is not considered, NECA would like to see the committee at least consider minor changes to simplify the Electrical Award namely:

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- Section 115(3) of the *Fair Work Act 2009* (Cth) - the Electrical Award should be amended by incorporating terms that permit an employer and an employee to agree to substitute a public holiday for an alternative day in accordance with this section.
- Clause 7.3 – Individual Flexibility Agreement should be able to be made a condition of an offer of employment and this sub-clause should be deleted. The employee would still be able to give notice of cancellation and revert to the Award conditions and rates after commencement.
- Clause 10.2(f) – If urgent and due to unforeseen circumstances a part-time employee is required to work additional hours, they should only be entitled to ‘overtime’ after completing 38 hours in a week as opposed to after completing their rostered part-time hours.
- Clause 10.3(b) – casual loading of 25% in lieu of annual and personal leave. The casual loading was never meant to be an ‘all-purpose’ allowance and NECA opposes the adoption of the ‘compounding approach’ to the calculation of the overtime rate to be paid to casual employees and submit it should be calculated on the ordinary rate of pay exclusive of loadings and allowances. This should be clarified.
- Clause 12.4 – time spent by an apprentice in attending training and/or assessment is currently considered time worked for the purposes of calculating wages, however, if such attendance for assessment is required because the apprentice has failed a previous assessment, a second or third attendance should not be considered time worked.
- Clause 16.4 - The minimum wage structure of the Electrical Award for apprentices and trainees in general should adopt competency-based pay progression similar to clause 19.7(b) of the Building and Construction General On-site Award 2010, rather than wages based on the year of commencement.
- Clause 24.2 & 24.3 – Many businesses, if not the majority, operate six days a week and the ordinary hours of 38 per week should be able to be spread and averaged over six days of the week Monday to Saturday between 6am to 6pm.
- Clause 24.8(b) – the notice an employer is required to give an employee to take an RDO should be reduced to one week rather than four weeks to enable employers to manage quiet periods in a more productive and cost effective way.
- Clause 28.4 – Annual leave loading. With regards to Superannuation on annual leave loading, the commonly held view has always been that annual leave loading is not ordinary time earnings (‘OTE’) because its initial purpose was to compensate for the lost opportunity to work overtime when annual leave is taken. However, most Awards, including the Electrical Award, do not specifically state that. In March 2019, the Australian Taxation Office (ATO) acknowledged some uncertainty around this topic and the evidentiary difficulties. The ATO has said it will not take issue with non-payment of SG contributions on annual leave loading in past quarters however, moving forward employers are expected to prove an entitlement to annual leave loading arising under an Award is demonstrably referable to a lost opportunity to work overtime, i.e. in the express words of the Award. Such wording should be inserted into all the Awards which provide for annual leave loading.