



REPORT

Fair Work Act 2009
s.156 - 4 yearly review of modern awards

Electrical, Electronic and Communications Contracting Award (AM2014/265)

DEPUTY PRESIDENT LAWRENCE

SYDNEY, 30 NOVEMBER 2016

1. An initial conference of the parties took place in Sydney on 7 November 2016.
2. The following parties participated and have continued to participate in the subsequent proceedings:
 - Cameron Young and Jason O’Dwyer - Master Electricians.
 - Louise Hogg - Australian Business Lawyers (Industrial); NSW Business Chamber and Business S.A.
 - Vasuki Paul - AIGroup
 - Richard Krajewski - Fire Protection Association Australia
 - Gordon Jervis – NECA
 - Guy Noble, David Mier - CEPU
3. I distributed to the parties a progress report on the substantive matters discussed on 8 November. NECA then provided a re-draft of two matters where a compromise appeared possible. This was then the subject of comment by the CEPU.
4. With respect to drafting/technical issues, the employers agreed to produce a common consolidated document. This was then the subject of comment by the CEPU.
5. A telephone conference of the parties took place on 28 November to summarise the position reached in the consultations.

Substantive Matters

6. The following is a summary of the result of discussions in respect of substantive matters:
 - (1) Removal of overtime penalty for shifts of less than five successive afternoon/night shifts:

NECA claim	Current Award	Clause 24.13(b)	
	Exposure Draft	Clause 13.13(b)	* No Agreement

(2) Deletion of fares allowance where employer provides transport:

NECA claim	Current Award	Clause 17.5(d)(iii)	
	Exposure Draft	Clause 17.5(d)(iii)	* No Agreement

(3) Insert travel time provision for distant work:

MEA claim	Current Award	Clause 17.6
	Exposure Draft	Clause 17.6

The CEPU has indicated agreement with this proposal. The effect is that the Award would be varied to insert a subclause titled “Payment for travel time to distance work” following subclause (a) in existing clause 17.6 and renumber other subclauses accordingly.

“17.6 Living away on distant work

(a) Board and lodging

...

(b) Payment for travel time to distant work

(i) Travelling time calculations – for the purpose of this clause, travelling will be calculated as the time taken for the journey from the central or regional rail, bus or air terminal nearest the employee’s usual place of residence to the locality of the work (or the return journey, as the case may be) and is paid at ordinary time rates.

(ii) The maximum travelling time to be paid for is 12 hours out of every 24 or, when a sleeping berth is provided by the employer for all-night travel eight hours out of every 24 hours.

(c) Regular return home

...”

AIGroup asked that it neutrality on this be noted.

(4) Add 24 hour cap to inclement weather provision:

NECA claim	Current Award	Clause 25.4	
	Exposure Draft	Clause 15.4	* No Agreement

(5) Amend 10 hour break provisions after working overtime:

NECA claim	Current Award	Clause 27.4
	Exposure Draft	Clause 14 and 13.17

NECA proposed a compromise draft as follows:

A. By inserting a new paragraph (iv) in clause 27.4(a) [Exposure Draft 14.4(a)] as follows:

(iv) overtime worked by an employee on a call back under clause 26.5 [Exposure Draft 19.5] is to be disregarded when calculating the employee's rest period after work on successive working days where the actual time worked by the employee on the call back finishes eight hours or more before the employee's starting time on the next day.

B. By deleting clause 27.4(b) [Exposure Draft 14.4(b)] and inserting instead:

(b) Shift workers

For shift workers, the required period of consecutive hours off work is eight hours. Other arrangements are as per clauses 27.4(a)(i) to (iv) above.

However, the CEPU rejected this as well. **There is therefore no agreement**

(6) Allow accumulation of RDOs:

NECA claim	Current Award	Clause 24.8
	Exposure Draft	Clause 13.8

There was ultimately agreement on the NECA re-draft which involves accumulation of RDOs but not pay out.

The agreed variation is:

1. By inserting a new paragraph (e) in clause 24.8 [Exposure Draft 13.8] as follows:

(e) an employee with the consent of the employer may accumulate up to five rostered days off for the purpose of creating a bank of rostered days off.

(i) The rostered days off may be taken by the employee on days agreed between the employee and the employer.

(ii) An employee will not be permitted to retain a bank of more than five rostered days off at any time.

2. By renumbering 24.8(e) [Exposure Draft 13.8(e)] as 24.8(f) [Exposure Draft 13.8(f)]

(7) Apprentice travel time not to be paid if course non-performance:

NECA claim	Current Award	Clause 12
	Exposure Draft	Clause 12

*** No agreement. CEPU says it is an issue which has broader implications**

* With respect to its 5 outstanding claims, NECA will consider whether it will press them to argument before the Full Bench.

* An additional matter was raised by the F.P.A.A. just before the 28 November telephone hook-up. This involves grouping the provisions relating to shift work. It is put forward as a technical issue and there is no intention to change a matter of substance. This is not accepted by some of the other employers who think it may be a substantial change. The CEPU reserves its position. The proposal is Attachment A to this report.

Drafting/Technical Matters

7. Attachment B is the consolidated list of employers' claims plus CEPU comments. It can be seen that there is a large measure of agreement. I note that there is an incorrect reference, in item 39, to clause 33.2(c). It was intended that clauses 19.4(b) and 23.1 be referred to. This seems to have eased the CEPU's concerns. Attachment C is the employers' response to the CEPU's comments. It does not really change the overall summary.

J. Lawrence

Attachments:

- (A) FPAA shiftwork proposal
- (B) Summary re technical issues
- (C) NECA Reply on technical issues

BROWN, Bronwyn

From: Richard Krajewski <richard.krajewski@fpaa.com.au>
Sent: Monday, 28 November 2016 2:47 PM
To: Chambers - Lawrence DP
Cc: Gordon Jervis; Jason O'Dwyer; Cameron Young; Vasuki Paul; louise.hogg@ablawyers.com.au; guy@etuaustralia.org.au
Subject: RE: Electrical Contracting Exposure Award - shift work clause
Attachments: Exposure Award - Electrical Contracting - Hours of Work - Shift Work proposal.pdf

Deputy President Lawrence,

Your Honour,

As referenced during this afternoon's telephone conference, to a shift work proposal which is still incorporated within the structure of the current hours of work clause, and as set out in the email to the Commission and the respective parties earlier today, 28th November 2016:

1. Change in title of Clause – new Heading – Part 3 – Hours of Work – Day Workers and Shift Workers (Exposure Award);
2. Including a Table summarising the application of each sub-clause to each category of worker;
3. Sub-clause headings are amended to refer to either “day workers” or “shift workers” of both “day workers and shift workers”

Regards

Richard Krajewski

Workplace Relations Manager

Fire Protection Association Australia

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From: Richard Krajewski
Sent: Monday, 28 November 2016 11:05 AM
To: 'Chambers - Lawrence DP'
Cc: 'Gordon Jervis'; 'Jason O'Dwyer'; 'Cameron Young'; 'Vasuki Paul'; 'louise.hogg@ablawyers.com.au'; guy@etuaustralia.org.au
Subject: Electrical Contracting Exposure Award - shift work clause

Ms. Bronwyn Brown,

Associate to Deputy President Lawrence.

Dear Ms. Brown,

On 15th November 2016, the Employer parties' position (Master Electricians – Mr. Cameron Young) concerning Technical and Drafting Issues associated with *Electrical, Electronic and Communications Contracting Award* was forwarded to His Honour. The Preamble to that summary made reference to the Employers conferring with respect to the addition of a "Shift Work" clause which intends to group various shift work provisions under the one heading.

The purpose of this email is to firstly inform the Commission that discussions have taken place between the Employer parties since that time. To assist: the proposal is to do no more than group those current/exposure award provisions relating to shift work (current award clause 24 – Ordinary hours of work and rostering/Exposure Award clause 13 – Ordinary Hours of work and rostering) to a new Heading – Part 3 – Hours of Work – Day Workers and Shift Workers (Exposure Award).

Under this "Heading", Clause 13 – Ordinary Hours of work and rostering (heading remains the same), sub-clause headings are amended to refer to either "day workers" or "shift workers" of both "day workers and shift workers" (including a Table summarising the application of each sub-clause to each category of worker).

The second point here is to seek the possible assistance/advice of the Commission on whether such a proposal of grouping the various shift work provisions falls under the Technical and Drafting process or whether such a proposal would fall under a more substantive process.

The intention of the proposal is to do no more than to more clearly identify between day workers and shift workers and whether a particular sub-clause applies to both day workers and shift workers. There is no intention to change in any entitlement or provision. It is noted that a change to a provision may well be a substantive process matter, and so be dealt with otherwise than as a technical/drafting matter. However, such is not the intention of this proposal. An example of this and which may assist the Commission with this proposal is whether a sub-clause applies to day workers or to shift workers or to both categories of worker.

Accordingly, the assistance of the Commission with this item would be appreciated and beneficial and one for discussion during this afternoon's teleconference.

Regards

Richard Krajewski

Workplace Relations Manager

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

Clause 13 – Hours of Work applies to both Day Workers and to Shift Workers. Some provisions of Clause 13 – Hours of Work (Day Workers and Shift workers) apply solely to day workers, or solely to shift workers or the respective provisions apply to both categories of worker.

The following Table provides a summary of the application of the various Clause 13 provisions:

Clause Reference	Day Workers	Shift Workers	Both Day Workers & Shift Workers
13.1 – Maximum Hours			13.1
13.2 – Ordinary Hours of Work – day workers	13.2		
13.3 – Spread of Hours – day workers	13.3		
13.4 – Work cycles – day workers	13.4		
13.5 – Twelve hour shifts			13.5
13.6 – Late comers			13.6
13.7 – Implementation of 38-hour week			13.7
13.8 – Rostered Day Off			13.8
13.9 – Rest Break			13.9
13.10 – Ordinary Hours of Work – continuous shiftwork		13.10	
13.11 – Ordinary Hours of Work – other than continuous shiftwork		13.11	
13.12 – Rosters		13.12	
13.13 – Shift Allowances		13.13	
13.14 – Rate for working on Saturday shifts		13.14	
13.15 – Rate for working on a Sunday or public Holiday shifts		13.15	
13.16 – Overtime on Shiftwork		13.16	
13.17 – Rest Period after shiftwork		13.17	
13.18 – Daylight Saving			13.18

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—day workers

The ordinary hours of work in clause 13 may be worked Monday to Friday, 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—continuous shiftwork – shift workers

- (a) Clause 13.10 will only apply to continuous shiftworkers as defined in clause 2.2.
- (b) The ordinary hours of continuous shiftworkers must average 38 hours per week inclusive of crib time and must not exceed 152 hours in 28 consecutive days.
- (c) Shiftworkers 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 change over of shifts, an employee must not be required to work more than one shift in each 24 hours;
 - (iii) 20 minutes must be allowed to continuous shiftworkers each shift for crib which must be counted as time worked; and
 - (iv) An employee must not be required to work for more than five hours without a break for a meal.

13.11 Ordinary hours of work—other than continuous shiftwork – shift workers

- (a) Clause 13.11 will apply to shiftworkers working on other than continuous shiftwork.
- (b) The ordinary hours of work must be an average of 38 per week, 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.
- (c) Shiftworkers working on other than continuous shiftwork 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) The ordinary hours must be worked continuously except for crib time at the discretion of the employer.
- (iii) An employee must not be required to work for more than five hours without a break for crib time.
- (iv) Except at the regular change-over of shifts, an employee must not be required to work more than one shift in each 24 hours.

13.12 Rosters – **shift workers**

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

13.13 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.

13.14 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.

13.15 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.

13.16 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.

13.17 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.

13.18 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).

CEPU comments in response to the document:

AM2014/265 – Employer Parties Position Summary of Technical and Drafting Issues

The CEPU responses are in blue type. We have limited ourselves to the issues where they appear in the portrait part of the document and not to the same technical and drafting issues contained in the table of the original document. The CEPU notes a number of the comments in respect of claims that have been withdrawn etc., but does not specifically repeat that it has been noted after each point.

Technical and drafting issues

Monterey obligations

1. NECA to withdraw claim in relation to the removal of the “The monetary obligations imposed on employer by this award may be absorbed into over award payments...”.

Clause 2.2 – Other definitions – All purposes

2. NECA to withdraw claim in relation to definition of “all purposes”.

Clause 2.2 – Other definitions – Default

3. NECA to withdraw claim in relation to the definition of “default fund” being omitted from exposure draft.

Clause 2.2 – Other definitions – Continuous shiftworker

4. FPA to withdraw claim in relation to the definition of “continuous shiftworker” in relation to adding reference to part-time or casual employees.

Clause 7 – Facilitative provision for flexible working practices

5. MEA to withdraw claim in relation to seeking clarification and inserting example.
6. All parties agree with BSA submission in relation to the facilitative provision for clause 16.6 (b) (i) that the “Agreement between employer and” should read “An individual or the majority of employees”. However, AIG does not agree with the BSA amendments as sought in clause 3.1.1 of their submission in relation to the incorrect reference of 16.6 (a) (ii), the exposure draft already correctly references 16.6 (b) (i).

Clause 10 – Part-time employment

7. BSA to withdraw claim in relation to replacement of “the” to “their” ordinary rate.

8. FSA to withdraw claim in relation to clause 10.5 (b) to read “(b) Where the employee works on a holiday, such employee must be paid 250%”.
9. In response to the question posed, all parties agree the reference should be to clause 13.15 and 19.4 (b).
 - **CEPU agrees.**

Clause 11 – Casual employment

10. In response to the question posed, all parties agree clause 11.4 correctly refer to clause 13.13.
 - **CEPU agrees.**

Clause 12 – Apprentices

11. In response to the question posed, all parties agree clause 12.10 should refer to clause 16.4.
 - **CEPU agrees.**
12. All parties agree with AIG submission in relation to retaining clause 12.14 in its current form with the reference to the employment of “minors” not “juniors”
 - **CEPU agrees.**

Clause 13 – Ordinary hours of work

13. FPA to withdraw claim in regards to including reference to “38 hours” in clause 13.1.
14. In response to the question posed in clause 13.6 – Later comers, all parties agree the provision is not inconsistent with s.326 of the Act. All parties agree to leave wording as is.
 - **CEPU agrees.**
15. All parties agree with AIG submission to insert “at the rate of 200% of the ordinary hourly rate” at the end of clause 13.8 (d) (ii).
 - **The CEPU is not opposed.**
16. In response to the question posed in clause 13.9 – Rest breaks, parties are split
 - a. MEA/NECA contend clause 13.9 – Rest breaks also applies to shift workers.
 - b. AIG/FPA contend clause 13.9 – Rest break only applies to day workers.
 - c. BSA/ABI no position.
 - **The CEPU agrees with the position of MEA and NECA at point a.**
17. In response to the question posed in clause 13.10 – Ordinary hours of work – continuous shift work, all parties agree the term “crib time” should remain.
 - **CEPU agrees.**
18. All parties agree with AIG submission to remove “employee’s” in clause 13.13 (a) and (d)
 - **The CEPU does not see the need for the removal of “employee’s” – the Award is concerned with minimum entitlements only and is not directed to anything over and beyond the award entitlements.**

19. All parties agree with AIG submission to insert “200% of the ordinary hourly rate” in clause 13.13 (b), (d)(ii).

- **The CEPU is not opposed.**

20. All parties agree with NECA submission to alter the wording of clause 13.15 (c), parties agreed on the following wording:

“(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 between 11.00 pm and midnight ~~before midnight~~ on the day preceding a Sunday or public holiday will be regarded as time worked on the Sunday or public holiday.”

- **The CEPU disagrees; the current wording should be retained, as the proposed alteration would appear to be more than a drafting or technical matter.**

21. All parties agree with AIG submission in relation to insert “200% of the ordinary hourly rate thereafter” in clause 13.16.

- **The CEPU is not opposed.**

Clause 14 – Breaks

22. In response to the question posed in clause 14.1, all parties agree it is the timing of the crib break which is at the discretion of the employer.

- **CEPU agrees.**

23. In response to the question posed in clause 14.1, all parties agree to use the wording in BSA submission – *“[the timing of] meal breaks will be at the discretion of the employer. Provided that an employee (other than a shiftworker) must not be compelled...”*

- **CEPU agrees.**

Clause 15 – Inclement weather

24. In response to the question posed in clause 15, all parties agree the wording should remain the same.

- **CEPU agrees.**

Clause 16 – Minimum wage and Classifications

25. In response to the question posed in clause 16.4 (a), parties agree to refer to their own submissions.

- **The CEPU agrees with the proposed approach.**

Clause 17 – Allowance

26. In response to the question posed in clause 17.1 (b) – Special allowance, parties agree to the interpretation in the MEA and NECA submissions –

“MEA submits the purpose of the provision to provide “Special allowances” are not cumulative where a situation would entitle an employee to more than one special allowance in compensation for the same ability, responsibility or disability.

As an example, an employee is not entitled to both allowances in clause 17.3 (a) Multistory allowance and clause 17.3 (b) Towers allowance if the employee is working in an airshaft in a multi-store building, as both allowances are compensation for the same disability.

However, an employee would be entitled to both the first aid allowance and multistory allowance if they are working on a multistory building as defined in clause 17.3 (a) Multistory allowance and appointed to perform first aid duty as outlined in clause 17.3 (c) First aid allowance. The first aid allowance is in compensation for an employer appointed responsibility and the multistory allowance is compensation for a working condition disability.”

- **The CEPU agrees, but as already submitted does not think that the text is unclear.**

27. BSA to withdraw claim in relation to the word “only” be inserted into the first bullet point of clause 17.2 (f) (ii).

28. All parties agree with AIG submission regarding the drafting error of the cross reference in clause 17.2 (f) (ii) should be clause 17.2 (f) (iii).

- **CEPU agrees.**

29. All parties except AIG agree with BSA submissions in relation to clause 17.3 (b) (ii) being inserted into the facilitative provisions table at clause 7.2.

- **CEPU disagrees.**

30. FPA/NECA agree with the NECA proposal as set out in paragraphs 44-46 of their submission regarding Clause 17.4. AIG does not agree, and submits no amendments are required. MEA have no position.

- **The CEPU does not have a position on this, but is not opposed to the heading in the exposure draft.**

31. All parties agree with MEA submission in relation to additional wording be inserted in clause 17.5 (d) (ii) to make it clear payment for travelling time is paid at ordinary rates.

- **The CEPU does not think this is required.**

32. All parties agree with MEA submission in relation to additional wording be inserted in clause 17.5 (d) (iii) to make it clear the \$3.37 per day is instead of the \$18.80

- **The CEPU does not think this is required.**

33. In response to the question posed in clause 17.5 (e), all parties agree the allowance the clause is referring to are: Clause 17.5 (b) – Motor vehicle allowance, Clause 17.5 (c) – Travel time allowance and Clause 17.5 (d) – Start and/or finish on job as the allowance which do not apply where an employee starts and finishes at the employers registered office.

- **CEPU agrees.**

34. All parties agree with BSA submission in relation to clause 17.6 (b) reflecting more closely the current award.

- The CEPU is not opposed.

Clause 19 – Overtime

35. All parties agree with AIG submission regarding inserting the words “of the ordinary hourly rate” after “200%” in clause 19.1 (b).

- The CEPU is not opposed.

Clause 21 – Personal/carers leave and compassionate leave

36. MEA to withdraw claim in relation to the term “all-purpose rate”.

Clause 30 – Transfer to lower paid job on redundancy

37. AIG maintains claim relation to use of the word “job” in the title of clause 30 and proposed new title.

38. AIG maintains its claim in relation to employees leaving during redundancy notice period. Cross reference in clause 31 should be replaced with references to clause 29 and 30. AIG maintains claim relation to use of the word “job” in the title of clause 30 and proposed new title.

- The CEPU is not opposed.

Schedule B – Summary of hourly rates

39. All parties agree with AIG various submissions in relation to schedule B.

- The CEPU notes the submissions of the AIG in relation to Schedule B and agrees with most of those submissions. However, we are not clear about the reference made at paragraph 116 and 123 of their submissions to clause 33.2(c). We agree that it would be beneficial to have a discussion about these matters in a conference, and if there is an opportunity for this to occur prior to the hearing of these matters (which we doubt) the CEPU would be willing to participate.



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24 November 2016

Ms Bronwyn Brown
The Associate to Deputy President Lawrence
Fair Work Commission
80 William Street
East Sydney NSW 2011

By email: brownwyn.brown@fwc.gov.au

Dear Ms Brown

**AM2014/265 Electrical, Electronic and Communications Contracting Award 2010
s. 156 – 4 Yearly Review of Modern Awards**

Employer's Response to CEPU Comments on Employer Parties Position Summary

I refer to His Honour's request for a summary of interested employer responses to the CEPU comments on the Employer Parties Position Summary previously provided to the Commission (the Employer Summary)

Attached are responses from NECA, Master Electricians and AIG that address the CEPU's objections to specific proposals made by those organisations in the Employer Summary.

I confirm that the above responses will be discussed in the telephone conference before His Honour on Monday 28 November 2016

Yours faithfully

Gordon Jervis
Industrial Relations Manager

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NECA Response to CEPU comments provided on 16 November 2016.

20. Clause 13.15 (c)

“(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 between 11.00 pm and midnight before midnight on the day preceding a Sunday or public holiday will be regarded as time worked on the Sunday or public holiday.”

The CEPU maintains that this amendment is more than a drafting or technical matter

NECA maintains that the proposed amendment meets the modern award objective insofar as it contributes to making the Award simpler, more easily understood and stable. The proposed amendment will rectify a potential ambiguity or uncertainty. As such it is a drafting or technical matter.

MEA Response to CEPU comments provided on 16 November 2016

“31. All parties agree with MEA submission in relation to additional wording be inserted in clause 17.5 (d) (ii) to make it clear payment for travelling time is paid at ordinary rates.

- ***The CEPU does not think this is required.”***

In response, MEA submits the alteration is required in order to bring clarification to the entitlement in the clause. Upon simple reading a layperson could mistakenly determine the payment for travelling time is paid at overtime rates where travel occurs outside the employee’s ordinary hours of work. The clarification is not attempting to add or remove any existing entitlement and is inline with the modern awards objective to ensure a simple, easy to understand modern award system.

“32. All parties agree with MEA submission in relation to additional wording be inserted in clause 17.5 (d) (iii) to make it clear the \$3.37 per day is instead of the \$18.80

- ***The CEPU does not think this is required.”***

In response, MEA submits the alteration is required in order to bring clarification to the entitlement in the clause. Upon simple reading of the clause it is not clear the \$3.37 per day is instead of the \$18.80. A layperson may mistakenly believe an employee is entitled to both \$3.37 per day and \$18.80 per day where an employee is required to start and/or finish onsite and the employer is offering to provide free transport. The clarification is not attempting to add or remove any

existing entitlement and is inline with the modern awards objective to ensure a simple, easy to understand modern award system.

Matter number AM2014/265: Ai Group Response to the CEPU comments provided on the 16 November 2016

The Employer parties had provided the Commission and the CEPU their Position Summary of Technical and Drafting Issues ("Employer Position"). The CEPU provided a response on the 16 November 2016. The following is Ai Group's reply.

1. At Clause 16 of the Employer Position, Ai Group maintains its position that Rest Break only applies to day workers, and refers to paragraph 171 and 172 of its reply submissions dated 22 July 2016.
2. At Clause 18 of the Employer's Position, Ai Group has proposed the removal of the word "employee's ". We refer to paragraphs 93- 95 of our submissions filed on 8th July 2016. The payment of shift allowance is calculated on the ordinary hourly rate of the Award not a particular employee's ordinary hourly rate. The additional word "employee's" adds confusion and is not consistent with the drafting in the rest of the clause.
3. At Clause 30 of the Employer's Position, Ai Group would seek to understand which heading the CEPU is not opposed to. Ai Group maintains that no amendments are necessary as proposed by NECA as set out in its submission.
4. At Clause 39 of the Employer's Position, the CEPU seeks clarification of Ai Group's submission at paragraph 116 and 123 of our submissions to clause 33.2 (c). We believe that this is a matter that would be best discussed at the conference scheduled.