

## IN THE FAIR WORK COMMISSION

**Matter No:** AM2020/12

*s.157 – Variation of a modern award to achieve the modern award objective*

### Variation of awards on the initiative of the Commission

#### THE COMMUNICATIONS, ELECTRICAL, ELECTRONIC, ENERGY, INFORMATION, POSTAL, PLUMBING AND ALLIED SERVICES UNION OF AUSTRALIA

#### SUBMISSIONS

1. On 1 April 2020 the Full Bench of the Fair Work Commission (**‘Commission’**) issued a Statement [2020] FWCFB 1760 (**‘the Statement’**) which sets out the Commission’s provisional view to vary 103 modern awards, pursuant to section 157(3) of the *Fair Work Act 2009 (Cth)* (**‘the FW Act’**), to provide:
  - a. an entitlement to unpaid pandemic leave (up to 2 weeks unpaid leave); and
  - b. introduce the flexibility to take annual leave at half pay.

*(collectively, ‘the variations’)*
2. The Commission has requested for interested parties to file written submissions in response to the provisional view by 4pm on Monday 6 April 2020.<sup>1</sup>
3. The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia – Electrical, Energy and Services Division (**‘the CEPU’**) has an interest in a number of awards listed at paragraph [108] of the Statement, including relevantly:
  - a. Electrical, Electronic and Communications Contracting Award 2010 (the **“Contracting Award”**); and
  - b. Electrical Power Industry Award 2020 (the **“Power Award”**).<sup>2</sup>
4. The CEPU supports and adopts the submissions filed by the ACTU.
5. The CEPU now makes further specific submissions with respect to the Contracting Award.
6. As the Commission is aware, the Contracting Award plays a crucial role in the Australian economy and society at large, in supporting essential services directly and providing ancillary support for essential services in the community at large. These essential services include (but are not limited to):

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<sup>1</sup> Para [4] of the Statement.

<sup>2</sup> See Joint submissions – CEPU, CFMMEU and ASU regarding the Power Award, dated 6 April 2020.

- a. public transport;
- b. medical and health facilities;
- c. emergency service facilities;
- d. factories;
- e. construction sites; and
- f. mining sites.

Currently, there is insufficient evidence to demonstrate that COVID-19 is having an adverse impact on the industries covered by the Contracting Award.

7. The CEPU's objections to the variations are stated below.

### **The Contracting Award**

8. The CEPU opposes the variation to the Contracting Award.
9. The CEPU identifies that the 'Information note- Modern awards and industries' document (**'Modern awards and industries' document'**), dated 30 March 2020,<sup>3</sup> incorrectly lists the Contracting Award under the 'manufacturing industry'.<sup>4</sup> If an electrician is engaged in the 'manufacturing industry', the worker is covered by the Manufacturing and Associated Industries and Occupations Award 2010.<sup>5</sup> Electrical contractors cannot be covered by the manufacturing industry.
10. The electrical contractors are significantly engaged in the 'construction' industry. This is supported by the Contracting Award mapped under the Construction industry in the Modern Awards and industries' document.<sup>6</sup> The electrical contracting industry has not yet experienced a significant downturn in work and thus it ought to be categorised similarly to the construction awards at paragraph [109] of the Statement.
11. In circumstances where the Building and Construction General On-Site Award has been *excluded* from the list of awards, there is no basis for the *inclusion* of the Contracting Award.
12. Electrical contractors are also engaged in the 'electricity, gas, water and waste services' industry. This is one of the least adversely impacted industries due to COVID-19 as identified at paragraph [25] of the Statement.

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<sup>3</sup> <https://www.fwc.gov.au/documents/documents/awardmod/variations/2020/am202012-information-note-awards-industries-010420.pdf>

<sup>4</sup> Ibid, page 4.

<sup>5</sup> See clause 4.11(h) of the Manufacturing and Associated Industries and Occupations Award 2010. See clause 4.2 of the Electrical, Electronic and Communications Contracting Award 2010.

<sup>6</sup> See page 6 of the Modern awards and industries' document.

13. The electrical contracting industry is not an award reliant industry, namely because electrical contractors fall within the 'construction' and 'electricity, gas, water and waste services' industries which rank low in the award reliance chart, as identified in the Statement.<sup>7</sup>
14. The exception to award reliance lies with apprentices. A significant number of electrical apprentices are employed pursuant to, or at least by reference to, the Contracting Award. Apprentices are typically amongst the most industrially vulnerable classes of employees in the Australia workforce. The CEPU has concerns that the variations currently do not provide enough safeguards for vulnerable workers, and for these workers consent will not be genuinely reached and the draft provisions will be used disproportionately for the following reasons:
  - a. that employers will use these options as a means to sidestep the stand down process by coercing apprentices to adopt these options; and/or
  - b. that this will disproportionately affect apprentices where their training contracts are extended.
15. Based on the above, the CEPU objects to the variation of the Contracting Award. At the very least, the Contracting Award should not be an award listed in the selected phase 1 awards.

**END**

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<sup>7</sup> See paragraph [80] of the Statement and Chart 4.