

IN THE FAIR WORK COMMISSION

AM2019/17 - 4 YEARLY REVIEW OF MODERN AWARDS

Exposure Draft of the Electrical, Electronic and Communications Contracting Award – Published 29 January 2020

The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia

Submissions in Reply

1. On 29 January 2020, the Full Bench of the Fair Work Commission ('**Commission**') issued a Decision¹, directing interested parties to file written submissions on the content of the updated Tranche 3 exposure drafts by 4 March 2020 and submissions in reply by 27 March 2020.
2. On 6 March 2020, the Australian Industry Group ('**AIG**') and Australian Business Industrial and NSW Business Chamber ('**ABI**') filed submissions with respect to several Award exposure drafts, including the Electrical, Electronic and Communications Contracting Award [MA 000025] ('**the Electrical Contracting Award**').²
3. On 23 March 2020, the Full Bench of the Commission issued a Statement³ and Background Paper⁴, directing interested parties to file reply submissions addressing issues raised in submissions filed on 6 March 2020, the provisional views and other issues raised by the Commission in the Background Paper by 7 April 2020.
4. This Submission is made by the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia ('**CEPU**') in reply to the issues raised by ABI and the Commission as summarised in paragraphs 81(a), 82(a), 82(g) and 83 of the Background Paper and is limited to the Electrical Contracting Award.

BACKGROUND PAPER & ABI SUBMISSION

Ordinary Hourly Rate in Schedule B.1.1

¹ [2020] FWCFB 421.

² <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201467-sub-aig-060320.pdf> ;
<https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201917-sub-abinswbc-060320.pdf>

³ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/2020fwcfb1539.pdf>

⁴ <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/am201917-background-paper-230320.pdf>

5. As summarised at paragraph 81(a) of the Background Paper,⁵ it is suggested by ABI that there is an issue with the definition for ‘ordinary hourly rate’ in clause B.1.1 as it does not provide the same definition for ‘ordinary hourly rate as in clause 2 of the Exposure Draft.
6. As summarised at paragraph 82(a) of the Background Paper,⁶ ABI propose resolving the issue by amending the definition for ‘ordinary hourly rate’ in B.1.1 to reflect the definition provided in clause 2 of the Exposure Draft.
7. The CEPU opposes ABI’s proposal on the basis of that correctly noted by the Commission at paragraph 83 of the Background Paper, which states that ‘Schedule B.1.1 does not contain a definition of ‘ordinary hourly rate’ as such, but simply explains the basis for the calculation of the rates in the table.’
8. The CEPU submits that to maintain clarity and consistency with the foot notes which appear in Schedule B with respect to the basis for the calculations in the rates tables in Schedule B, the wording in Schedule B.1.1 should be amended as follows:

Ordinary hourly rate includes the industry allowance (clause 18.3(a)) and for grade 5 and higher classifications the tool allowances ~~as applicable~~ (clause 18.3(g)) which are payable for all purposes.

Fare Allowance in Clause 18.6(d) And Travel Time Allowance in Clause 18.6(c)

9. As summarised at paragraph 84 of the Background Paper, in the Exposure Draft, the Commission asked the parties to consider whether the fare allowance in clause 18.6(d) and travel time allowance in clause 18.6(c) should be included in the all-purpose rate for apprentices.
10. As summarised at paragraph 82(g) of the Background Paper, ABI made the following proposed amendment in its submissions⁷:

(g) depending on the Commission's decision in relation to the all-purpose rate for apprentices, this might involve either:

(i) amending clauses 16.4(a)(iii), 16.4(b)(iii), 16.4(b)(iv), 16.4(b)(vi) and 16.4(b)(vii) so references to fares allowance in clause 18.6(d) and travel time allowance in clause 18.6(c) are removed; or

⁵ ABI’s submissions dated 6 March 2020, at 25(a).

⁶ ABI’s submissions dated 6 March 2020, at 28(a).

⁷ ABI’s submissions dated 6 March 2020, at 28(g).

- (ii) *amending the footnotes for 'apprentice hourly rate' in Schedule B.4 so that it includes "full amount of tool allowance and fares allowance, and the relevant percentage as set out in clause 16.4 of the travel time allowance, electrician's licence allowance and industry allowance"; and*
- (iii) *amending the rates in the tables in Schedule B.4 so it includes the fares allowance, and percentage of the travel time allowance.*

11. The CEPU opposes the proposed amendment detailed in paragraph 82 (g)(i) of the Background Paper⁸ to clauses 16.4(a)(iii), 16.4(b)(iii), 16.4(b)(iv), 16.4(b)(vi) and 16.4(b)(vii) on the basis that by deleting reference to fare allowance in clause 18.6(d) and travel allowances in clause 18.6(c), in the above mentioned clauses, may result in employers failing to pay the said allowances all together or, at the very least, cause confusion as to how the travel time allowance in clause 18.6(c) will be paid to apprentices.

Example of ABI's Proposal to Clause 16.4(iii):

In addition to the minimum wage payments arising from clause 16.4(a), apprentices will be paid the full amount of the tool allowance in clause 18.3(g) and ~~the fares allowances in clause 18.6(d) and~~ the percentages shown in clause 16.4(a) of the electrician's licence allowance in clause 18.3(b), ~~the travel time allowance in clause 18.6(e)~~ and the industry allowance in clause 18.3. These weekly payments in total will form the all-purpose rate to be paid to an apprentice. The weekly all-purpose rate of pay is payable for all purposes of the award and will be included as appropriate when calculating payments for overtime, all forms of paid leave, annual leave loading, public holidays and pro rata payments on termination. Any other special allowances in clauses 18.4 and 18.5 and allowances for travel and expenses in clauses 18.6 and 18.7 will be paid to apprentices on an 'as incurred' basis at the rate specified, subject to clause 18.2(b).

12. Currently, apprentices receive the percentage shown in clause 16.4(a) and 16.4(b)(ii) of the travel time allowance in clause 18.6(c). The calculation of how much of the travel time allowance an apprentice is to receive is detailed in clauses 16.4(a)(iii), 16.4(b)(iii), 16.4(b)(iv) and 16.4(b)(vi) and not in clause 18.6(c). Further, no other clauses in the Electrical Contracting

⁸ ABI's submissions dated 6 March 2020, at 28(g)(i).

- Award apart from clauses 16.4(a) and (b) specify that an apprentice is to receive a percentage shown in clauses 16.4(a) and 16.4(b)(ii) of the travel time allowance in clause 18.6(c).
13. The CEPU proposes that rather than removing references to fares allowance and travel time allowance from clauses 16.4(a)(iii), 16.4(b)(iii), 16.4(b)(iv), 16.4(b)(vi) and 16.4(b)(vii), that clause 16.4(a)(iii) be reverted back to the wording of the current version of the Electrical Contracting Award.⁹
 14. The wording of clause 16.4(a)(iii) and 16.4(a)(iv) in the current Electrical Contracting Award accurately and clearly categorises and describes the fare and travel allowance as well as the all-purpose allowances payable to apprentices and therefore should remain unchanged.
 15. The CEPU submits clause 16.4(a)(iii) of the exposure draft should be amended as follows:

CEPU Proposed Amendment to Clause 16.4(a)(iii):

Delete clause 16.4(a)(iii) as it appears in the Exposure draft and insert the following:

(iii) In addition to the minimum wage payments arising from clause 16.4(a), apprentices will be paid the full amount of the tool allowance in clause 18.3(g) and the fares allowances in clause 18.6(d) and the percentages shown in clause 16.4(a) of the electrician's licence allowance in clause 18.3(b), the travel time allowance in clause 18.6(c) and the industry allowance in clause 18.3. Any other special allowances in clauses 18.4 and 18.5 and allowances for travel and expenses in clauses 18.6 and 18.7 will be paid to apprentices on an 'as incurred' basis at the rate specified, subject to clause 18.2(b).

(iv) The all-purpose rate to be paid to an apprentice will be the sum of the minimum wage rate arising from clause 16.4(a), the full amount of the tool allowance in clause 18.3(g) and the percentages shown in clause 16.4(a) of the electrician's licence allowance in clause 18.3(b), and the industry allowance in clause 18.3. The weekly all-purpose rate of pay is payable for all purposes of the award and will be included as appropriate when calculating payments for overtime, all forms of paid leave, annual leave loading, public holidays and pro rata payments on termination.

16. We note, at present clauses 16.4(b)(iii), 16.4(b)(iv), 16.4(b)(vi) and 16.4(b)(vii) of the exposure draft are consistent with the current Electrical Contracting Award. It is submitted that the

⁹ https://www.fwc.gov.au/documents/documents/modern_awards/pdf/ma000025.pdf , 19 December 2019

current wording of clauses 16.4(b)(iii), 16.4(b)(iv), 16.4(b)(vi) and 16.4(b)(vii) should be retained.

Amending the footnotes for 'apprentice hourly rate' in Schedule B.4

17. Further, should fares allowance in clause 18.6(d) and travel time allowance in clause 18.6(c) be found not to be included as all-purpose allowances for the purposes of clauses 16.4(a) and 16.4(b), then the CEPU proposes amending the footnotes for 'apprentice hourly rates' in Schedule B.4 as follows:

“Apprentice hourly rate includes the industry allowance, tool allowance and electricians licence allowance payable to all employees for all purposes. Any additional ~~all-purpose~~ allowances applicable need to be added to these rates.”

18. The removal of the words 'all purpose' from the last line of the footnotes will allow the footnote to capture all other allowances to be paid in addition to the apprentices' hourly rate including the fare and travel time allowance.

CEPU

7 April 2020