



## DECISION

*Fair Work Act 2009*

s.158 - Application to vary or revoke a modern award

**Communications, Electrical, Electronic, Energy, Information, Postal,  
Plumbing and Allied Services Union of Australia**  
(AM2010/213)

**ELECTRICAL, ELECTRONIC AND COMMUNICATIONS  
CONTRACTING AWARD 2010**  
[MA000025]

SENIOR DEPUTY PRESIDENT ACTON

MELBOURNE, 26 OCTOBER 2010

*Variation to modern award.*

[1] The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU) has applied to vary the *Electrical, Electronic and Communications Contracting Award 2010*<sup>1</sup> in respect of adult apprentice minimum wages in Western Australia and certain allowances for such adult apprentices until 31 December 2014. The variation sought is as follows:

“3.1 Insert a new c1.16.4(d) as follows:

**(d) Adult apprentices minimum wages (Western Australia only)**

- (i) Adult apprentices will be paid the percentages of the minimum wage rate for the Electrical worker grade 5 classification in clause 16.2 as set out in the following table:

<b>Year of apprenticeship</b>	<b>%</b>
1st year	67
2nd year	67
3rd year	67
4th year	79

- (ii) In addition to the minimum wage payments arising from clause 16.4(d)(i), adult apprentices will be paid the full amount of the tool allowance in clause 17.2(b), and the fares allowances in clause 17.5(d), and the percentages shown in clause 16.4(d)(i) of the electrician's licence allowance in clause 17.2(c), the travel time allowance in clause 17.5(c) and the industry

allowance in clause 17.2(a). Any other special allowances in clauses 17.3 and 17.4 and allowances for travel and expenses in clause 17.5 will be paid to apprentices on an 'as incurred' basis at the rate specified, subject to clause 17.1(b).

3.2 Delete the existing clause 16.5 and insert the following:

**16.5** Clauses 16.4(b), 16.4(c) and 16.4(d) cease to operate on 31 December 2014.”

[2] The CEPU submit the proposed clauses were not included in the modern award as a result of error and are necessary to achieve the modern awards objective. The variation is opposed by the National Electrical Contractors’ Association (NECA).

[3] The exposure draft of the Electrical, Electronic and Communications Contracting Award 2010 issued by the Full Bench of the Australian Industrial Relations Commission (Commission) on 23 January 2009 contained apprentice minimum wages.

[4] The Statement of the Commission accompanying the issuing of the exposure draft said:

“[51] In their joint draft, the NECA and the CEPU noted that some issues are the subject of ongoing discussions. Generally, we have not included such matters in the exposure draft, subject to clarification by the NECA and the CEPU. In relation to one such issue, payment to apprentices, we have included the percentage of the trades rate for apprentices in Victoria reflected in the [*National Electrical, Electronic and Communications Contracting Industry Award 1998*] in the exposure draft, subject to further consultation.”<sup>2</sup>

[5] In written submissions regarding the exposure draft:

- the Electrical and Communications Association Queensland Industrial Organisation of Employers (ECAQ) objected to the exclusion of adult apprentice provisions from the exposure draft and proposed minimum wage rates for adult apprentices;
- the Electrical Trades Union of Employees, Queensland (ETUQ) pointed out adult apprentice rates existed in Queensland pursuant to the *Electrical Contracting Industry Award - State 2003* (Qld)<sup>3</sup> and state industrial instruments of general application;
- the National Electrical & Communications Association supported the inclusion of apprentice minimum wages in a modern award; and
- the CEPU noted that the proposed apprentice minimum wages in the exposure draft were less than those in some existing industrial instruments.

[6] Subsequently, during consultations before the Full Bench on 25 February 2009 concerning the exposure draft, the following exchange took place between Senior Deputy President Watson and Mr Benfell representing the CEPU:

“PN2103

SENIOR DEPUTY PRESIDENT WATSON: Mr Benfell, while you're on your feet, the issue raised by CEPU Queensland about adult apprenticeship rates, that arises does it because there is no provision within the current federal Contracting Award nor is there in the draft proposed by NECA and the CEPU, nor is there an exposure draft, so

that the junior apprentice rates if you like, if I could put it that way, would apply. Is that - - -

PN2104

MR BENFELL: Yes. We certainly don't oppose adult apprentice provisions in the modern award, but because there wasn't one before we didn't like our chances of getting one. So we certainly support the ETU Queensland provision, but NECA do oppose the addition of adult apprentice rates. NECA do oppose the addition of adult apprentice rates. The federal minimum wage would apply to those employees.

PN2105

SENIOR DEPUTY PRESIDENT WATSON: Is there a capacity to engage adult apprentices currently under the award?

PN2106

MR BENFELL: There's no classifications, there's no provisions for those people.

PN2107

SENIOR DEPUTY PRESIDENT WATSON: Yes. Well, I wonder if that's something perhaps you could talk further to NECA about, and it may well be appropriate to have provision for adult apprenticeship and, on my examination of it, the Queensland rates seemed as percentages to be broadly in line with the metal industry adult apprenticeship rates. So perhaps you could explore that further with NECA and you and/or NECA advise in writing if there's any desire to augment the award by adult apprenticeship provision.”<sup>4</sup>

[7] NECA and the CEPU then made a written submission to the Commission on 6 March 2009 as follows:

#### **“Adult Apprentices**

In the consultations before the Full Bench in Sydney on 25th February 2009, SDP Watson sought the views of NECA and the CEPU on the ETUQ proposal to include adult apprentice minimum weekly wage rates in the proposed modern award. The Qld NAPSA has adult apprentice rates of pay.

The CEPU and NECA hold different views in relation to setting adult apprentice rates of pay and put our different views as follows.

#### **CEPU Position**

The CEPU supports the ETUQ proposal to set adult apprentice rates in the modern award (see paragraph 29 of the ETUQ submission of 13 February).

In short, the CEPU supports adult apprentices being paid the following proportion of the award rate (including all purpose allowances):

1st year 75%  
2nd year 80%  
3rd year 84%  
4th year 90%

It is the CEPU's view that adult apprentices are often trade assistants (ECW 2) who are invited by their employer to undertake an adult apprenticeship. Such employees normally retain their TA rate until the normal apprentice rate is higher than the TA rate after which the normal apprentice rate applies.

### **NECA Position**

NECA does not support the inclusion of adult apprentice rates. Adult apprentice rates are not presently contained in the NEECCIA or any of the relevant NAPSAS with the exception of the Queensland NAPSA.

This has not proven to be a disincentive to the employment of adult apprentices in the industry nor is there any evidence that adult apprentices have been disadvantaged in any way.

On the contrary, it is NECA's experience that the current situation provides employers and adult apprentices with the flexibility to negotiate and agree upon wage rates appropriate to suit their particular circumstances. It is also NECA's experience that these negotiations generally result in adult apprentices being paid more than the general award apprentice rates.

"Adult" in this context is defined according to the age (21 years or more) at which someone commences an apprenticeship, however beyond age, there are numerous other individual factors which in NECA's experience are taken into account when employers and adult apprentices negotiate wage outcomes.

Much of this flexibility will be lost if adult apprentice rates were to be included in the proposed modern electrical contracting industry award.

However, should the Commission decide to insert adult apprentice rates into the modern electrical contracting industry award then NECA would submit that the percentages proposed above by the CEPU are not appropriate.

As we understand the CEPU submission, adult apprentice wage rates would be calculated by applying those percentages to the minimum weekly wage rate and relevant all purpose allowances. **This would result in adult apprentice wage rates being significantly higher under the modern electrical contracting industry award than they currently are under the Queensland NAPSA, which is the only existing instrument which provides adult apprentice rates.**"

[8] Research information prepared by staff of the Australian Industrial Registry and posted on the Commission's website on 26 September 2008 indicated there were also adult apprentice wage rates contained in the *Electrical Contracting Industry Award R22 of 1978* (WA).<sup>5</sup>

[9] In its decision of 3 April 2009 leading to the making of the *Electrical, Electronic and Communications Contracting Award 2010*, the Full Bench of the Commission said:

“[100] An issue arose concerning adult apprentices. The Queensland CEPU and Electrical Contractors’ Association proposed that adult apprenticeship provisions reflective of those in the Queensland NAPSA should be adopted. The CEPU support that course. The NECA oppose it. We have included provisions in the modern award but they will operate only in Queensland. The provisions will cease operation on 31 December 2014. This transitional arrangement will accommodate current arrangements in Queensland, and what we understand to be the current practice in other States, whereby trades assistants are invited to undertake an adult apprenticeship by employers and normally retain their trades assistant rate until the normal apprentice rate overtakes that rate. While the transitional arrangement is operating the parties should attempt to reach agreement on appropriate adult apprenticeship provisions to be included in the award.”<sup>6</sup>

[10] In the circumstances, I am not persuaded the non-inclusion in the *Electrical, Electronic and Communications Contracting Award 2010* of the adult apprentice wage rates contained in the *Electrical Contracting Industry Award R22 of 1978 (WA)* was an error. The existence of the adult apprentice wage rates contained in the *Electrical Contracting Industry Award R22 of 1978 (WA)* was before the Full Bench, as was the issue of adult apprentice minimum wage rates for the modern award. In the event, the Commission only decided to include in the modern award adult apprentice minimum wages for such apprentices in Queensland until 31 December 2014.

[11] Nor am I persuaded the modern awards objective requires the making of the variation sought by the CEPU. In support of the contention the variation was necessary to achieve the modern awards objective, the CEPU specifically noted the national shortage of electrotechnology skills. The CEPU also submitted that the granting of the variation would not result in adult apprentice minimum wage rates that were as high as those in the pay scales derived from the *Electrical Contracting Industry Award R22 of 1978 (WA)* and that fairness and relevancy required the approach adopted in the modern award with respect to adult apprentices in Queensland also being adopted for adult apprentices in Western Australia. However, the material the CEPU provided in this regard and their assertions that the variations were necessary to achieve the modern awards objective were insufficient to establish that the variations were necessary to achieve the modern awards objective. The CEPU’s submissions and material did not indicate the Full Bench’s understanding about trades assistant wage rates and adult apprenticeships, as expressed in its decision of 3 April 2009,<sup>7</sup> was correct.

[12] The CEPU’s application in AM2010/213 is, therefore, dismissed.

## SENIOR DEPUTY PRESIDENT

### Endnotes:

<sup>1</sup> MA000025.

<sup>2</sup> *Re Award Modernisation*, [2009] FIRCFB 50.

<sup>3</sup> AN140103.

<sup>4</sup> Transcript of proceedings before the Australian Industrial Relations Commission in AM2008/18 on 25 February 2009.

<sup>5</sup> AN160108.

<sup>6</sup> *Re Award Modernisation*, [2009] AIRCFB 345.

<sup>7</sup> *Ibid* at paragraph 100.