



**DEPARTMENT OF EDUCATION,
EMPLOYMENT AND WORKPLACE
RELATIONS**

Inquiry into:

**National Employment
Standards
Exposure Draft**

NECA Submission

April 2008

NECA – WHO WE ARE

The National Electrical & Communications Association (NECA) is the national voice of the electrotechnology contracting industry. NECA is the only association that represents the interests of electrical and communications contractors Australia-wide, from employers and business people to technicians.

NECA's services are tailored to the unique needs of contractors working in the electrotechnology industry. We save members time and money by providing timely information, advice and practical tools to make business easier, safer and more cost-effective.

With offices in every state, NECA employs specialists in industrial relations, occupational health and safety, management, education and training, human resources and technology who are on-hand to offer advice on a range of topics and provide representation and support in industrial relations matters.

It has representatives on 37 Standards Australia technical committees. NECA is also a registered organisation in federal and state industrial jurisdictions.

The Association actively represents the needs and entitlements of contractors at all levels of government and industry, ensuring members' needs are heard. We regularly provide more than 5,000 members nationwide with up-to-date industry-relevant information including current training, occupational health and safety, industrial and legislative requirements.

NECA membership is responsible for 90% of the dollar value of all installation work in the electrotechnology industry. While there are many thousands of licence holders, the NECA membership is estimated at 70% of all contractors operating full time businesses and 95% of all the employers' labour in the industry.

The contracting sector is responsible for the skill development opportunities in the technology:

- Of electrical apprentices, NECA members employ three of every four electrical apprentices;
- For voice and data communications skills, NECA members are responsible for 100% of the vocational training opportunities.

NECA employs more than 2,000 apprentices in joint Group Training Companies.

NECA's interests in this area are represented through:

- VICTEC Group Training (Victoria)
- NECA Group Training (New South Wales & Australian Capital Territory)
- PEER VEET Group Training (South Australia)

- NECA Electrical Group Training (Western Australia)

Representations and Affiliations

The network of contacts and affiliations is extensive. NECA is represented on the following organisations:

- Australian Construction Industry Forum (ACIF) Council
- Australian Communications and Media Authority, Cabling Provider Rules Advisory Committee
- EE-OZ Training Standards
- Australian Chamber of Commerce and Industry (ACCI)
- CONNECT Superannuation Fund
- NESS Superannuation Fund
- Joint Industry Training and Education Committee (JITEC)
- International Forum of Electrical Contractors (IFEC)
- International Association of Electrical Contractors (AIE)
- TRAA Central Trades Committee
- Copper Development Centre, Smart Wiring Project
- National ICT Industry Alliance
- Australian Cabler Registration Service Pty Ltd (ACRS)
- Standards Australia
- Australian Refrigeration Council (ARC)
- Federation of Asia and Pacific Electrical Contractors Associations (FAPECA).

Most of this information, as well as NECA media releases, parliamentary submissions and reports, are available on our website – www.neca.asn.au.

INTRODUCTION

- A. NECA is familiar with, and indeed gave input to, the Australian Chamber of Commerce & Industry's (ACCI) submission on the National Employment Standards (NES) Exposure Draft.
- B. NECA generally supports the ACCI submission in whole. NECA would be willing to elaborate upon the suggestions of the ACCI submission, with reference to the Electrotechnology industry, if required.
- C. However, the primary purpose of this submission by NECA is to provide the Government with additional information as to the impact of the Draft NES in light of the peculiar circumstances in our industry.
- D. Almost all NECA members carry-out at least some portion of their work in the construction sector. We are concerned that NECA members and their employees may be adversely affected by the NES if it does not take stock of the unique nature of arrangements in the construction industry – particularly with respect to redundancy.

REDUNDANCY PAY

1. The proposed Redundancy Pay NES is set out at pp.51-56 and xviii-xx of the Discussion Paper.
2. The Discussion Paper would appear to suggest that this NES would apply to all employees of employers with 15 or more employees, not just those employees who are traditionally award-covered.
3. NECA recommends this NES should be subject to an earnings cap, so that it does not apply to highly remunerated employees.

REDUNDANCY FUNDS

4. Since the late 1980s, employers in the construction industry have typically operated by making payments into redundancy trust funds in lieu of needing to later make redundancy payments to their employees.
5. Some such funds are Incolink, the Australian Construction Industry Redundancy Trust (ACIRT) and the Mechanical & Electrical Redundancy Trust (MERT).
6. The trustees of these funds are typically shared equally between employer and employee organisations.
7. Some of these funds have a large quantum of funds under management. MERT – of which NECA is a trustee – is by no means the largest fund, yet it currently has approximately \$90 million in funds under management.
8. Owing to the success of the Australian economy since the last recession in the early 1990s, there have been few businesses in the Electrotechnology sector that have been forced to make redundancies for reason other than the ordinary and customary turnover issues discussed above.
9. Therefore, many employees have been accruing a significant level of funds in their relevant accounts – upwards of \$75,000 for some, awaiting the day they are made redundant.
10. Employers who make contributions to redundancy trust funds usually do so as a result of enterprise bargaining outcomes, but many also do so voluntarily.

11. NECA's concern with the Draft NES is that it does not presently address the issue of redundancy trust funds.
12. NECA is therefore concerned that the current drafting of the NES could lead to 'double dipping' by employees, which is neither fair nor economically sustainable for employers in our industry.
13. If the NES fails to recognise the existence of redundancy trust funds, this will inevitably lead to the death of such funds, as employers will not want to make significant contributions in addition to their obligations under the NES.
14. NECA also reinforces the submission by ACCI that Modern Awards should be prohibited from extending the application of the Redundancy Pay NES to small business employers.
15. Modern Awards should be precluded from additionally addressing the Redundancy Pay NES, and in any way adding to or varying the operation of the Redundancy Pay NES, except with respect to the matter outlined in paragraph 19 of this submission.

Proposed Amendments

16. NECA proposes that the Draft NES should be amended to recognise that employers in Electrotechnology have already been making contributions to their employees' future redundancy pay.
17. As such, an employer should be allowed to offset the value of an employee's trust fund account against any required contribution under the table in proposed Section 52.
18. NECA believes that it is not sufficient to deal with this issue via the Award Modernisation process, as most employers who contribute to redundancy funds are involved in enterprise bargaining, and as such, the Award system would not be as relevant or effective a tool.
19. However, as a fall-back position, NECA does consider that empowering the AIRC to only include provisions in a Modern Award which provide for trust fund off-set to be better than no alternative.

DEFINITION OF REDUNDANCY

20. As noted in the ACCI submission, the Draft NES also does not include a definition of what is ‘redundancy’.
21. Paragraph 269 of the Discussion Paper states:

“Redundancy pay is designed to compensate employees for the loss of non-transferable employee entitlements such as sick leave and long service leave and the inconvenience and hardship imposed by being made redundant.”
22. The construction industry operates quite differently to other industries with respect to its labour turnover practices.
23. NECA has many members whose businesses will lay dormant without employees for months, and even years, until they win a tender. They may then take on 100 or more employees for a specific project, before making them all redundant upon completion.
24. This is what is known as the ‘ordinary and customary turnover of labour’.
25. All employees who are hired this way know that their employment will come to an end once their project is completed, so there is little moral argument that they will suffer any inconvenience or hardship as a result.
26. The same employees do not lose their long service leave entitlements, as all employees in the construction industry can access the various state portable long service schemes; and the amount of sick leave foregone is extremely low, as employees usually ensure its use prior to their foreseen termination.
27. That being the case, the justification for a Redundancy Pay NES just does not exist where there has been an ordinary and customary turnover of labour.
28. The Draft NES should be amended to provide for an exemption in such circumstances.