Submission

To

Senate Education Employment and Workplace Relations and Standing Committee on

Inquiry into the Provisions of the *Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009*

Submitters: **Paul Daly**
Manager
Workplace Policy

Angela Szczepanski
Workplace Relations Manager

Organisation: **Electrical and Communications Association**

Address: **PO Box 2438 Fortitude Valley BC Qld 4006**

Phone: **(07) 3251 2444**

Fax: **(07) 3251 2400**

Email: **pdaly@ecaq.asn.au; angela@ecaq.asn.au**

BACKGROUND

1. The Electrical and Communications Association (ECA) is the peak industry body for contractors who operate in the electrical, data, communications and fire sector of the Building and Construction and domestic services industry in Queensland.

2. ECA is an industrial organisation of employers registered in the Queensland Industrial Relations Commission and is transitionally registered in the Australian Industrial Relations Commission.

3. The electrical contractor is second only to the principle contractor (builder) on site in terms of percentage of work performed and dollars generated by our sector of the industry, but unlike the builder the electrical contractor can find themselves working in any of eleven different areas, or types of workplaces throughout their normal working day.

4. ECA membership is over 1,750 (with approximately 85% defined as constitutional corporations) and is as diverse as the industry it represents, ranging from many small "Mum and Dad" businesses that employ only one or two people, right up to large multinational companies who employ more than 1,500 electricians in Queensland alone. This vast differential in size and demographic coupled with a need to stay competitive across a wide range of worksites has lead many of ECA's members to fully embrace the flexibility that the *Workplace Relations Act 1996* and its most recent amendments, allowing them to move away from the "one size fits all" Award or Collective Agreementand towards a more logical outcome that provides benefits to both employer and employee.

5. The Association is appreciative of the opportunity to submit its views on the Bill, and while ECA is mindful of the fact that the Bill is placing into the House the Government's policies leading up to last year's election, it is concerned that some aspects of the Bill if passed as it currently reads, would be detrimental to its members.

6. As such ECA's submission will not focus on the Bill as a whole, but target certain sections of the Bill which we believe will make operating an electrical business in Australia more difficult, make our members less inclined to take on further staff, has the potential for increased industrial disputation, has the ability to increase inflationary pressures or will impact economically on members.

ECA SUBMISSION

Transition to new system

7. The majority of the new industrial relations laws will commence on 1 July 2009. However, provisions relating to the National Employment Standards (NES) and modern awards are expected to commence on 1 January 2010.

8. The *Fair Work (Transitional Provisions and Consequential Amendments) Bill 2009* (the Transitional Bill) provides for a bridging period between 1 July 2009 and 1 January 2010. During this time, some of the current laws under the *Workplace Relations Act 1996* (Cth) will continue to operate such as Individual Transitional Employment Agreements (ITEAs).

9. However the ECA, is concerned that many businesses, in particular small business will have difficulty in understanding when the different aspects of the Fair Work laws. ECA proposes the Federal Government offers assistance to these businesses, through the relevant State and federally registered industrial organisations, by providing information through seminars and fact sheets.

Institutions

10. The *Fair Work Bill 2009* (the Bill) also provides that Fair Work Australia (FWA) and Office of the Fair Work Ombudsman (FWO) will commence before the substantive provisions of the Bill. From 1 July 2009 the current functions of the Workplace Ombudsman and the advisory duties of the Workplace Authority will be replaced by FWO.

11. On 31 January 2010 the Workplace Authority will cease to exist. The Bill will allow collective agreements made before 1 July 2009 to be assessed using the current no-disadvantage test and ITEAs made until 31 December 2009 under saved provisions of the *Workplace Relations Act 1996* (Cth).

12. The Australian Industrial Relations Commission (AIRC) and the Australian Industrial Registry will cease to exist on 31 December 2009. This will enable AIRC to complete matters commenced under the *Workplace Relations Act 1996* (Cth).

13. It is important for current matters to remain under the control of the relevant institutions, such as the AIRC. This will enable parties to complete any matters that commenced under the current laws, thus minimising any confusion or misunderstanding of the law, particularly with regard to the operation of the no-disadvantage test.

14. ECA supports the implementation of these institutions for employers and employees and the independence of the institutions from political influences.

Bargaining, agreements and industrial action

15. Parties may enter into bargaining for enterprise agreements (formerly referred to as collective agreements) under the Fair Work Bill from 1 July 2009. Workplace Agreements, such as collective agreements, will continue to be able to be made and lodged with the Workplace Authority until 1 July 2009, where the no-disadvantage will continue to be applied. From this date, any collective agreements not made, negotiated and approved by the employee's, will need to start the agreement making process under the new laws.

16. This may cause some issue with collective agreements, being currently negotiated, particularly where parties cannot reach agreement and negotiations have reached a stale-mate. The negotiating parties would then need to recommence negotiations under the laws which may cause confusion and uncertainty, particularly with regard to union collective agreements.

17. Although the Fair Work Bill includes provisions that require FWA to take into account the previous dealings between bargaining participants when exercising discretion under the bargaining provisions. ECA proposes that where parties have commenced negotiations for collective agreements they be allowed to continue to negotiate those agreements under the current laws. Parties would apply to FWA for an order which enables the parties to continue negotiations under the current laws, and parties would be able to make argument to the FWA as to why negotiations should continue under the current laws if all parties did not agree to continue in this fashion.

18. ECA proposes that the same principle applies to current protected industrial action under

the *Workplace Relations Act 1996* (Cth).

18.

Take-home pay orders

19. FWA will be able to make take-home pay orders where one or more employees' take-home pay (as defined) is reduced as a result of award modernisation. ECA notes that an order cannot be made if any reduction is minor or the employee/s has been sufficiently compensated for any reduction in other areas of their agreement, e.g. additional annual leave. The reduction in pay is based on an overall test, not condition-by condition. ECA supports the application of the overall test and acknowledges the difficulties faced by the AIRC in determining modern Awards.

Registered organisations

20. The Transitional Bill makes consequential amendments to Schedules 1 and 10 to the *Workplace Relations Act 1996* (Cth) and provides for new legislation called the *Fair Work (Registered Organisations) Act 2009*.

21. Under the Transitional Bill FWA will have the power to make new and additional forms of representation orders that do not require the existence of a dispute that threatens to, disrupts or harms the employer's business. ECA supports the inclusion of this provision as there is major concern regarding demarcation disputes.

22. The Transitional Bill includes new provisions that make it easier for State and Federal unions to operate across multiple jurisdictions. These provisions extend the transitional registration provisions and provide for the reciprocal recognition of State and Federal unions where the State union has no Federal counterpart. The relevant jurisdictional law has been prescribed in the regulations. ECA believes these provisions should extend to employer associations, and strongly supports the inclusion of the term 'employer associations' to this provision.