



## Electrical and Communications Association

Representing the electrical and communications industry in Queensland

Committee Secretary  
Senate Education, Employment and Workplace Relations Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Attention: Mr John Carter

Dear Mr Carter

### **Inquiry into the Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008**

Please find enclosed the Electrical and Communications Association (ECA) submission to the Senate Education, Employment and Workplace Relations Committee inquiry into the Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008.

ECA is appreciative of the opportunity to provide the Committee with its views and concerns on the Bill.

Should you have any queries with regard to the content of ECA's submission or have any further requirements, please contact Mr Paul Daly, Manager Workplace Policy on (07) 3251 2444.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M Richards', is written over a light grey background.

Malcolm Richards  
Chief Executive Officer

28<sup>th</sup> February 2008

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## **Submission**

**To**

**Senate Education Employment and Workplace  
Relations and Standing Committee**

**on**

**Inquiry into the Workplace Relations Amendment  
(Transition to Forward with Fairness) Bill 2008**

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Manager  
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**Organisation: Electrical and Communications Association**

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## 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 1,600 (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 multi national 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 Agreement and 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 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 who cannot access individual statutory agreements



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## ECA SUBMISSION

### 7. **Abolition of individual statutory agreements**

Although individual statutory agreements have been a part of the industrial landscape for some ten years, electrical contractors in Queensland did not have easy access to industrial instruments that allowed them the flexibility to develop wages and conditions structures that suited both their business and their employees.

8. Many simply paid “above award” wages to employees in a bid to try and keep employees in a burgeoning marketplace. While employees were certainly not disadvantaged by this method of remuneration, it did have the ability to leave employers open to wage claims on matters such as payment of allowances and the like, given that the Award does not allow “all in rates”.
9. The advent of Australian Workplace Agreements (AWAs) into the mainstream of the industrial relations sector in 2006, coupled with the ever increasing shortage in qualified tradespeople and a greater demand to work outside the standard working hours that has emerged over the past five years, has provided a perfect opportunity for many of ECA’s smaller members to be able to not only adequately compensate their employees for the work undertaken, but to structure the working conditions around the business and the sector of the industry they worked in. This allowed businesses to keep their overheads to a minimum while not placing their employees at a disadvantage in terms of reduced wages or conditions.
10. During 2007 ECA assisted members lodge over 100 AWAs. Further to this ECA is aware of many more businesses that lodged AWA’s without the assistance of ECA. ECA worked closely with its members in developing their company specific AWA’s, and was mindful of the fact that the employees could not be coerced into signing an AWA nor could they be worse off under an AWA. To the best of ECA’s knowledge, every AWA that was lodged by its members not only passed the fairness test, but also left the employee better off and with an agreement that they had direct input into.



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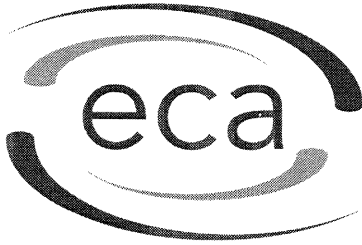
11. While on the whole 100 – 150 AWA's in an industry the size of the electrical sector in Queensland may not sound like many, one has to take into consideration that to make the move from an antiquated but stable award system to a more fluid and beneficial individual statutory agreement system is a large cultural shift for any industry, but especially for one as militant and as union dominated as the electrical industry.
12. Electrical contractors on the whole (as with any small business owner) are very cautious with regard to change, and for the vast majority the award system was the only system they had known
13. Once they had established for themselves the facts pertaining to AWA's, and the parameters under which they could be used, they quickly saw the benefits of implementing them into their business, including the benefits they would bring to their employees.
14. Given that the opportunity to absorb the information pertaining to the benefits of individual agreements, establish whether or not it would be suitable to implement into their business, discuss the issue with staff, develop a series of individual agreements that were tailored to each employee and were code compliant, comply with regulatory requirements in terms of presenting the agreements to employees and then lodge the agreements was a little more than twelve months, ECA believes that the take up of individual agreements by electrical contractors was high, and would have increased substantially had the opportunity remained as an industrial option.
15. ECA is concerned that the abolition of AWA's will have a detrimental effect on the economic and growth potential of many of its smaller members as it was they who were able to gain the most benefit from implementing them into their businesses.
16. Benefits such as the flexibility to amend start and finish times to suit worksites such as shutdowns in mining and engineering. Benefits such as providing an all up rate for employees which meant the employee was receiving the same amount of wages for the same time worked, but was receiving more superannuation due to a higher Ordinary Times Earning rate, while the employer received significant reductions in overheads such as payroll in trying to determine correct pay rates. Benefits such as tailoring an agreement to suit an employee's specific work/life situation to include additional leave in lieu of a reduced hourly pay rate if more leave was a driving factor for the employee.





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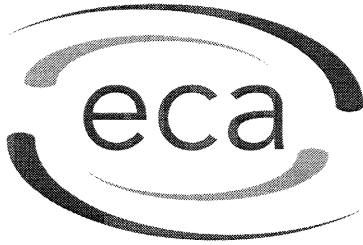
17. The benefits described above provided many small businesses with the opportunity to employ additional staff in a growing economy and even more importantly allowed them to retain staff by tailoring the industrial instrument to best suit the employer/employee relationship.
18. The “one size fits all” style of industrial relations that this Bill reverts back to will not allow contractors to negotiate directly with individual employees on a case by case basis, nor will it allow contractors to adequately or appropriately reward employees for individual productivity gains or achieving personal key performance indicators.
19. **Individual transition employment agreements**  
Further to ECA’s concern with the abolishment of individual statutory agreements, ECA is also concerned at the Bill’s extremely limited parameters under which the proposed Individual Transition Employment Agreements (ITEA) can be made.
20. ECA agrees that it would be impractical to remove all individual agreements from the market place immediately, but strongly disagrees with the Government’s restrictions and limitations pertaining to what companies may enter into an ITEA once the Bill is passed.
21. ECA has already outlined its concern at the abolition of individual agreements and the effect this will have on its members, but to then add the further restriction of applying retrospectivity to the use of ITEAs (that is, only companies who had individual agreements lodged prior to 1<sup>st</sup> December 2007) provides further restrictions on contractors who are already well down the path of establishing individual agreements in their business.
22. Essentially Section 326 (2) of the Bill means that any company who lodged individual agreements on 5<sup>th</sup> December 2007 for all twenty of their existing staff must now enter into a collective agreement (either union or employee) or embrace the National Electrical, Electronic and Communications Contracting Industry Award 1998 for any future employees.
23. This becomes increasingly difficult for contractors in Queensland, when Queensland is not a respondent to the federal award, leaving the contractor with little choice but to be forced into collective negotiations.



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24. ECA has always maintained that an electrical contractor should be free to choose the industrial instrument that best suits their business and their employees. Abolishing individual agreements and restricting the use of ITEAs heavily reduces the employer's choice in this matter.
25. ECA is mindful of the fact that the Electrical Trades Union (ETU) will use this situation to try to coerce smaller contractors into signing union collective agreements. This will, as ECA has seen many times over, place the smaller contractor in a position where they become uncompetitive in their traditional markets, and unable to compete in the commercial market with much larger contractors.
26. Add to this the very real possibility of the ETU waging long and protracted industrial campaigns against these smaller contractors who have until now have not had to negotiate with the union but will now find themselves negotiating, "with a gun to their head" style.
27. Because of this many contractors will be reluctant to expand their workforce as it will mean that they will be forced to (in most cases) negotiate directly with the union.
28. **The No Disadvantage Test**  
ECA has always supported the use of a no disadvantage test when negotiating an industrial agreement, be it individual or collective. Further to this ECA is supportive of a return to the overall, balanced analysis of the terms and conditions, as opposed to the more recent testing regime which only took into account the protected conditions.
29. ECA is however concerned that the No disadvantage test will be a "moving target" in that it will be a different benchmark for different companies.
30. The Association strongly believes that the "base line" for all no disadvantage test should be the relevant award for the industry of the company seeking the test.
31. ECA believes that to include relevant instruments such as collective agreements which traditionally provide for much higher wages and conditions than those set by the award will provide an artificial inflationary figure and push wages beyond the ability of some companies.





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32. This would be the situation in the case of a company that has a blend of industrial instruments (especially those with subsidiaries). A person being employed on an ITEA after the Bill has been passed would need to be “no worse off” against the companies collective agreement to pass the no disadvantage test, even though the ITEA may be well in excess of not only the award, but in excess of what the new employee was on in at their previous employment.
33. In the case of a company negotiating a new collective agreement, ECA’s understanding of the Bill’s requirements means that a company can never negotiate wages and conditions down. While ECA does not advocate this as a negotiation strategy, it is sometimes necessary in times of economic downturn. An agreement that has been negotiated with a reduction to any wage or condition (for example, a reduction in company redundancy payments from \$65 per week to \$60 per week) would still fail the no disadvantage test even though it greatly exceeds the awards expectations.
34. ECA strongly urges the Government to rethink the no disadvantage test benchmarking requirements.
- 35. Award Modernisation**

ECA supports the intention of the Bill to provide Australian companies with modern, easy to understand and apply awards that are relevant to the industry they are intended to serve.
36. ECA does however have some reservations pertaining to the process by which the Bill provides for the modernisation to occur.
37. Section 576T of the Bill suggests that modern awards must not include terms and conditions that are determined by reference to State and Territory boundaries or do not have effect in each State and Territory.
38. ECA’s understanding of this section would imply that Queensland, which is currently not a respondent to the National Electrical, Electronic and Communications Contracting Industry Award 1998, would become a respondent to the award. ECA’s also reads this section to suggest that the wages as they are presently set out in the Award (a different rate in each State based on different licence requirements) would be in breach of section 576T and that there would be one wage list for all of Australia. If this is the case then ECA can only assume that the highest hourly rate will be the rate used in the Award modernisation process.





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39. ECA is also concerned at the level of consultation that the Australian Industrial Relations Commission is likely to undertake during the Award Modernisation process.
40. Page 78 of the Bill's Explanatory Memorandum states;  
"As soon as practicable after receiving this award modernisation request, the President will consult with the major employer and employee representative bodies on the best process to be followed by the Commission when creating modern awards. The President will then release a clear program and timetable for completing the award modernisation process"
41. With many federal awards not having full coverage across Australia, ECA is concerned that the AIRC will only consult with organisations that are presently respondents to the award, and may not consult with organisations who will become respondents once the award is modernised.

#### **ECA CONTACTS**

42. The Electrical and Communications Association would like to thank the Senate Committee for the opportunity to tender its submission to the Inquiry into the Workplace Relations Amendment (Transition to Forward with Fairness) Bill 2008.
43. Should the Committee have any queries on any issues raised in this submission please contact Mr Paul Daly the Manager of Workplace Policy on 07 3251 2444.

