

**REVIEW OF DECISION OF THE CONSTRUCTION INDUSTRY LSL
PAYMENTS BOARD
WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION**

CITATION : 2019 WAIRC 00860

CORAM : SENIOR COMMISSIONER S J KENNER

HEARD : WEDNESDAY, 16 OCTOBER 2019

DELIVERED : WEDNESDAY, 11 DECEMBER 2019

FILE NO. : APPL 37 OF 2019

BETWEEN : QUANTUM BLUE PTY LTD
Applicant

AND

THE CONSTRUCTION INDUSTRY LONG SERVICE
LEAVE SCHEME
Respondent

Catchwords : *Review of a decision of the Construction Industry Long Service Leave Payments Board - Requirement to register as an employer under the Construction Industry Portable Paid Long Service Leave Act 1985 - Whether employees are engaged in the construction industry - Definition of "construction industry" and "telegraphic" - Whether employees are employed in classification of work in prescribed industrial instrument under the Regulations - Application to review upheld*

Legislation : *Construction Industry Portable Paid Long Service Leave Act 1985 (WA) ss 3, 30*

Telecommunications Act 1997 (Cth)

Trade Practices Act 1974 (Cth) s 6(3)

Fair Work Act 2009 (Cth)

Result : Application to review upheld. Order issued.

Representation:

Counsel:

Applicant : Mr S Kirkby
Respondent : Ms R Harding of counsel and with her Ms B Swanson of counsel

Solicitors:

Respondent : Jackson McDonald

Case(s) referred to in reasons:

Austereo Pty Ltd v Trade Practices Commission [1993] FCA 429; 115 ALR 14

Australian Competition and Consumer Commission v Jutsen and Others (No 3)
[2011] FCA 1352

Aust-Amec Pty Ltd t/a Metlab Mapel and SRC Laboratories and Ors v Construction Industry Long Service Leave Payments Board (1995) 62 IR 412

Construction Industry Long Service Leave Payments Board v Positron Pty Limited
(1990) 70 WAIG 3062

Darwin Turf Club v the Commonwealth (1966) 8 FLR 46

Doropoulos and Others t/a Swan Dry Cleaners v Transport Workers' Union of Australia, WA Branch (1989) 69 WAIG 1290

Federated Clerks' Union of Australia, WA Branch v Cary (1977) 57 WAIG 585

Jones v the Commonwealth [No 2] (1965) 112 CLR 206

Programmed Industrial Maintenance Pty Ltd v The Construction Industry Long Service Leave Payments Board [2019] WAIRC 00843

R v Gee (2003) 212 CLR 230; 196 ALR 282; [2003] HCA 12

RCR Resources Pty Ltd v The Construction Industry Long Service Leave Payments Board [2015] WAIRC 00984; (2015) 95 WAIG 1709

Case(s) also cited:

Sparks 'N' Security Pty Ltd v Ritzline Pty Ltd t/a IC Cool Refrigeration, Mechanical and Electrical Services [2017] WAIRC 00164; (2017) 97 WAIG 366

Reasons for Decision

Introduction

- 1 The applicant's business employs persons who install cabling and equipment and perform related work at residential properties for subscription television installations and work undertaken for the national broadband network. The employees are technicians (or training to become technicians) who hold a Certificate III in Telecommunications. The applicant maintains that its business and the work of its employees is in the telecommunications industry, which is regulated by federal legislation, including a federal award, applying to that industry.
- 2 The applicant disputes the position of the respondent that the applicant is, to any extent, engaged in the "construction industry" for the purposes of the *Construction Industry Portable Paid Long Service Leave Act 1985* (WA). It disputes that it is required to register as an employer under the Act and it does not wish to do so. As a result, the applicant disputes the respondent's decision that it is required to register and seeks a review of the decision and to have it set aside.
- 3 It is common ground that the applicant is an employer of persons and the work performed is performed on a "site". That being at a location away from the applicant's premises. A key issue in this case is whether the applicant employs employees who are engaged on "works for the transmission of wireless or telegraphic communications" as these phrases are used in the definition of "construction industry" in the Act. Another issue is whether the employees of the applicant are engaged in work involving the installation of "fixtures" for the above purposes, in the same definition.

Nature of the applicant's business

- 4 Mr Kirkby is a director of the applicant and he gave evidence that the applicant's business has two main aspects. The first is the provision of services under contract in relation to Telstra Foxtel for the installation of pay television equipment. The second is with Telstra NBN for connections to the NBN network to provide internet access to premises. Mr Kirkby explained that under the *Telecommunications Act 1997* (Cth) there exists a "network boundary" which essentially entails all work up to the outside of residential premises. Work done inside a house, is what is referred to as the "internal cabling system". This part of the scheme is the responsibility of the homeowner.

- 5 As noted in the introduction to these reasons, the applicant employs technicians under the Telecommunications Services Award 2010, a modern award made under the *Fair Work Act 2009* (Cth). The employees are engaged in the classification of Telecommunications Technician. The applicant employs a total of five technicians, three who are exclusively engaged on NBN work and two who are exclusively engaged on Foxtel installation work. In addition, Mr Kirkby's business partner, who in the main, provides supervision and performs other duties, also from time to time works as a technician. The company also engages trainees who are in the process of obtaining their Certificate III qualification and who assist technicians on the job as a part of their training. Mr Kirkby's evidence was that his wife assists in the business in relation to administration matters too. Mr Kirkby, who is also a qualified telecommunications technician, from time to time does some work in relation to the installation of security systems and television antennas. He said this is a very small part of the company's activities. The bulk of the business is in the two streams referred to above.
- 6 Mr Kirkby outlined how the work is obtained by the applicant. As a contractor, the company is contacted by a services company acting on behalf of Telstra. The applicant may accept a job that is offered. Once the job is accepted, the employees then travel to the location and undertake the required works.

Work done by the applicant's employees

- 7 Mr Kirkby outlined what the company's technicians do on a typical job. Firstly, in relation to the NBN work, the technicians are required to locate the closest access point. This may be outside the property address or somewhere else in the street. This will often involve the location of a "pit", in which are the ducts or conduits, through which the cabling is run to the particular property. In the case of the NBN work, fibre optic cabling is used and is run from the access point to the house. The cabling from the street is connected to the house by what is called a "Premise Connection Device". This is physically attached to the house with screws and acts as a connection point. From there, the cabling is then run into the house to a "Network Termination Device". This is, as described by Mr Kirkby, a white "router" type of box, located inside the property, at a location directed by the occupier. This device receives the signal from the NBN network and marks the outer boundary of that network.
- 8 At this point, Mr Kirkby said that essentially the applicant's technicians' work is complete. The customer then contacts their service provider and the necessary modem equipment is obtained and installed. This is done by a cable connection to the NTD, in order that the customer can then access the internet. The system

uses high speed VDSL broadband, which means that the network connection can be used for computers, telephones and television.

- 9 In terms of the origin of the connection in the street of the customer's property, Mr Kirkby said that sometimes work is required on a pit, to make it larger in order to accommodate new equipment that is now used for the NBN network. This is because, as Mr Kirkby explained, some of the pits were made for older telephone equipment and connections. Mr Kirkby said that it is not the applicant's responsibility to install pathways for cabling that his technicians use. In the case of new houses, this is the responsibility of the builder. In the case of older properties, Telstra ducts are used.
- 10 The second aspect of the work done by the applicant's technicians is in relation to Foxtel pay television installation. The pay television services are delivered via satellite or a cable network. In the latter case, Mr Kirkby said that the applicant uses a hybrid fibre coaxial cable. In the case of a satellite system, the applicant's technicians will install a satellite dish on the roof of a customer's property, in order to receive the satellite signal for pay television services. Cabling is then installed into the house so that the signal can be connected to the customer's pay television equipment. In addition to these two main aspects of the company's work, as mentioned above, Mr Kirkby testified that he himself, but not other employed technicians, may on occasion, do work to install a television antenna on a property. He said this work is now very rare and forms a very small part of the applicant's overall business. This work involves the physical installation of a television antenna onto the roof of the customer's property. The antenna is secured in place by screws on a mounting plate. The cable is then run from the antenna down into the house and then it is connected to the customer's television.
- 11 A final aspect of work performed by the applicant's business, again on Mr Kirkby's evidence, which is seldom performed, is the installation of security camera systems. Mr Kirkby said that as with the occasional work of installing television antennas, because it is only a very small part of the work done by the company, he does that type of work himself. This is because the other technicians are fully engaged on the two main streams of business. This work involves the fixing of a camera to premises or a structure with screws. A data cable is then run from the camera to a network video recorder unit inside the property. The cabling is often run through the roof space of the property. The cable between the camera and the recorder is both a power and data cable, which provides power to the camera from the recorder unit and returns data from the camera back to the recorder unit.

The statutory scheme

- 12 By its short title the Act is to “make provision for paid long service leave to employees engaged in the construction industry and for related purposes”. The scheme under the Act provides for the registration of employers under s 30. By s 3 of the Act, an “employer” is defined to mean “a natural person, firm or body corporate who or which engages persons as employees in the construction industry”. “Employee” in s 3 is defined to mean “(a) a person who is employed under a contract of service in a classification of work referred to in a prescribed industrial instrument relating to the construction industry that is a prescribed classification”. Thus, the focus is on the work performed by the employee being within a particular classification, without the requirement for the employee or employer to be covered by or bound by the award so prescribed: *Construction Industry Long Service Leave Payments Board v Positron Pty Limited* (1990) 70 WAIG 3062.
- 13 The obligation upon an employer to register under s 30(1) of the Act is not dependent on the employer being engaged in the construction industry. It is dependent on the employer employing persons as employees, who are engaged in the construction industry: *Aust-Amec Pty Ltd t/a Metlab Mapel and SRC Laboratories and Ors v Construction Industry Long Service Leave Payments Board* (1995) 62 IR 412.
- 14 The definition of construction industry in s 3 of the Act is quite complex. The introductory words to the definition provide:
- construction industry* means the industry —
- (a) of carrying out on a site the construction, erection, installation, reconstruction, re-erection, renovation, alteration, demolition or maintenance of or repairs to any of the following —
- ...
- 15 There follow several subparagraphs, of which subpars (xiv) and (xvi) are relied upon by the respondent in this case. These provide as follows:
- (xiv) works for the transmission of wireless or telegraphic communications; and
- ...
- (xvi) structures, fixtures or works for use on or for the use of any buildings or works of a kind referred to in subparagraphs (i) to (xv); and

It is necessary to consider the meaning of construction industry, in s 3 of the Act. In doing so, it is necessary to apply the well-settled principles in relation to the meaning of a statute. First and foremost, statutory interpretation is a text-based

activity and the process of interpretation must begin and end with the text of the statute in question. In *RCR Resources Pty Ltd v The Construction Industry Long Service Leave Payments Board* [2015] WAIRC 00984; (2015) 95 WAIG 1709 I observed:

The interpretation of legislation is a text based activity and it is to the text of the statute or other instrument, that primary regard must be given. An interpretation consistent with the purpose and object of the legislation should be preferred to one that is not: s 18 *Interpretation Act 1984* (WA). Recently, in *Taylor v Owens – Strata Plan No 11564* (2014) 88 ALJR 473, Gageler and Keane JJ said at par 65:

[65] Statutory construction involves attribution of legal meaning to statutory text, read in context. “Ordinarily, that meaning (the legal meaning) will correspond with the grammatical meaning ... But not always.”¹¹² Context sometimes favours an ungrammatical legal meaning. Ungrammatical legal meaning sometimes involves reading statutory text as containing implicit words. Implicit words are sometimes words of limitation. They are sometimes words of extension. But they are always words of explanation.¹¹³ the (sic) constructional task remains throughout to expound the meaning of the statutory text, not to divine unexpressed legislative intention or to remedy perceived legislative inattention. Construction is not speculation, and it is not repair.

- ¹⁶ First, work must be carried out on “a site”. This refers to a physical location or place at which work is performed. The word “site” is not prefaced by the word “construction”, thus it is not necessary for the relevant work to be performed on a building site or construction site, as those phrases are commonly understood, as long as it is performed away from the employer’s premises: *Aust-Amec* at 114. I also agree with Scott CC that the words “on a site” are to be construed in accordance with the following words in the introductory part of the definition, such that the “site” is the location at which the relevant “construction, erection, installation etc ...” work is performed: *Programmed Industrial Maintenance Pty Ltd v The Construction Industry Long Service Leave Payments Board* [2019] WAIRC 00843. As is noted at the outset of these reasons, it is not in dispute that the applicant’s employees work on a site, that being at a location where the relevant work is performed, other than the employer’s premises.

Does the applicant employ employees covered by the Act?

- ¹⁷ Two steps are required for the conclusion to be reached that a person is “engaged in the construction industry” for the purposes of the Act. The first is that they are employed in a classification of work in one of the prescribed industrial instruments under the *Construction Industry Portable Paid Long Service Leave Regulations 1986*. The second is that the work the employees do can be

characterised as work in the construction industry, as defined. This latter aspect will be a matter of fact and degree: *Aust-Amec* per Ipp J at 423.

- 18 Turning to the second issue first, that being whether the applicant's employees perform work in the construction industry. It was submitted by the respondent that in relation to the Foxtel installation work, the installation of satellite dishes on the roof of a house, involves works for the transmission of wireless communications because the dishes receive wireless signals from satellites used for pay television services.
- 19 In relation to the other aspects of the work, relating to the installation of the NBN services, the respondent submitted that the process of the installation of cabling for internet, telephone and television, involves work for the transmission of telegraphic communications. Furthermore, the installation of the devices such as PCDs and NTDs, are "fixtures", in connection with the works for such communications, and fall within the definition, on the respondent's case. This includes the installation of fixtures such as satellite dishes and television antennas. It was also contended by the respondent, as I understood the submissions, that these installation works for the NBN, performed by the applicant's technicians, "enable" the customer to access the internet. Thus, as the submission went, this work enables wireless internet signals and transmissions throughout a customer's property.
- 20 An issue that arises is the meaning of "telegraphic communications" used in subpar (xiv) of the definition of construction industry, set out above. The applicant contended that this refers to communication systems of a bygone era, having application to old technology such as telegrams and telegraph systems operated by, for example, the post office. The applicant submitted that this definition did not contemplate the advent of the internet and modern technology, such as the use of fibre optic and coaxial cables used by the applicant's employees in the course of their work. Thus, according to the applicant, this work comprises the modern telecommunications industry, which is not covered by the Act, being legislation dating back to the 1980s.
- 21 Consideration of this issue must begin with the foundation principle that in the construction of an Act of Parliament, one adopts the approach to the law as always speaking. This means a word or phrase in an Act, subject to its context, is to be accorded the meaning reasonably able to be given to it at the time it falls for consideration, and not at the time that the Act was made. Thus, future changes to the subject matter of an Act can be accommodated, without the need for constant amendment: *R v Gee* (2003) 212 CLR 230; 196 ALR 282; [2003] HCA 12 (see generally DC Pearce and RS Geddes *Statutory Interpretation in Australia* 8th edition par 4.9).

- 22 It is appropriate to have regard to dictionary definitions of “telegraphic” in order to determine its meaning. The Shorter Oxford Dictionary defines telegraphic to mean, relevantly, “**2.a.** making signals (as by glance or gesture); conveyed by sign or signal. **b.** resembling an (electric) telegraph; conveying impulses or intelligence as by electricity.” The Macquarie Dictionary defines telegraph to mean “**1.** an apparatus, system or process for transmitting messages or signals to a distance, especially by means of an electrical device consisting essentially of a transmitting or sending instrument and a distant receiving instrument connected by a conducting wire, or other communications channel, the making and breaking of the circuit at the sending end causing a corresponding effect, as on a sounder, at the receiving end.”
- 23 In *Australian Competition and Consumer Commission v Jutsen and Others (No 3)* [2011] FCA 1352, in proceedings under the *Trade Practices Act 1974* (Cth) in relation to misleading and deceptive conduct, the Court considered the meaning of “telegraphic” in the expression “postal, telegraphic or telephonic services” in s 6(3) of the TPA. In this connection, Nicholas J at par 100 said as follows:
- The expression “postal, telegraphic or telephonic services” as used in s 6(3) of the *Trade Practices Act* extends to conduct involving the use of the internet. I think this must be so having regard to the very broad way in which the word “telegraphic” is defined in most of the well-known dictionaries. For example, the Macquarie dictionary (3rd ed), the Maquaries Library, 1997 at p 1276 defines telegraph as:
- 1.** an apparatus, system or process for transmitting messages or signals to a distance, especially by means of an electrical device consisting essentially of a transmitting or sending instrument and a distant receiving instrument connected by a conducting wire, or other communications channel, the making and breaking of the circuit at the sending end causing a corresponding effect, as on a sounder, at the receiving end.
- 24 Whilst the above case applied the meaning of “telegraphic” in a different statutory context, in my view, it is of some assistance in understanding the breadth of the meaning of the word and it should not be construed as being limited to technology only in existence at the time that the Act was made (see too *Jones v the Commonwealth* [No 2] (1965) 112 CLR 206; *Darwin Turf Club v the Commonwealth* (1966) 8 FLR 46; *Austereo Pty Ltd v Trade Practices Commission* [1993] FCA 429; 115 ALR 14.
- 25 Therefore I am satisfied that the work of the applicant’s technicians, in relation to the installation of NBN services and Foxtel satellite pay television services, for customers, as outlined on Mr Kirkby’s evidence, is work falling within the definition of the “construction industry” for the purposes of s 3(a)(xiv) and (xvi) of the Act. I am satisfied that it can be concluded, given the breadth of the meaning to be accorded to “telegraphic”, that the relevant work, the installation of cabling etc for the NBN network can be viewed as works “for” (in the sense of

with the object or purpose of) the transmission of communications over the internet, including the installation of fixtures for these purposes. The work in relation to the installation of Foxtel cabling and satellite receive equipment is works for, in the sense described, the transmission of wireless communications and the installation of fixtures for these purposes.

- 26 Having reached that view, I also need to be satisfied that the applicant's employees are employed in a classification of work referred to in the awards set out in Schedule 1 to regs 2 and 3 of the Regulations. In this connection, the respondent referred to several possibilities, that it submitted may cover the work of the applicant's employees. These included the "Antenna Installer" under the Radio and Television Employees' Award; the "Cable Jointer" under the Electrical Contracting Industry Award; an "Installer and/or Serviceman" in groups B and C in the Electrical Trades (Security Alarms) Industry Award and the "Electronic Serviceperson" and "Installer" under the Electronic Industry Award. In addition, the respondent contended that other possibilities, of a more general description, included the "Tradesperson" classification under various awards including the Metal Trades (General) Award; the Airconditioning and Refrigeration Industry (Construction and Servicing) Award and the "Trades labourer" or "Builders labourer" or "Labourer" under the WA Civil Contracting Award, the Building Trades Award and the Metal Trades (General) Award.
- 27 Notwithstanding the length of this list of possible classifications, the respondent also, in a supplementary written submission, added to it the Materials Testing Employees' Award 1984 and the classifications contained in it, including that of "Technician". The respondent's citation of at least 11 classifications from some nine awards set out in Divisions 1 and 2 of Schedule 1 to the Regulations, suggests to me that it has had some difficulty in identifying a particular prescribed classification of work, for the purposes of establishing that the applicant's employees, were employees for the purposes of s 3 of the Act.
- 28 Before I consider the list of classifications and awards referred to by the respondent, I return to the definition of "employee" in s 3 of the Act, set out above. From that definition, to qualify as an employee, who is also required to register under the Act, the person must be employed under a contract of service "in a classification of work ...". To be so employed, a person must clearly have more than a passing association with the work identified by the classification in the relevant prescribed industrial instrument. To be employed "in" a prescribed classification, requires the employee to be substantively occupied in the work identified in the relevant classification in the award concerned. For the purposes of establishing a classification, in *Federated Clerks' Union of Australia, WA Branch v Cary* (1977) 57 WAIG 585, on an appeal to the Industrial Appeal Court

from an award enforcement proceeding, Burt J (as he then was) said at 58 as follows:

... one judges the question as it may arise in any particular case simply by finding as a fact what it is that the worker was employed to do and then deciding whether upon the facts so found he was employed to "make written entries, keep accounts" and other work of that character. Of course one has regard to the substantial nature of the employment in terms of the purpose to be achieved by it, the question being, I think, very much controlled by the difference, which is not always accepted by philosophers but which serves the purposes of practical men, between ends and means. If in substance the worker's job is to write and the job is done when the writing has been done he is a clerk, but if in substance the writing done by the worker is but a step taken in the doing by him of something extending beyond it then he is not. The "substance" of the work identifies the question as being one of degree and it indicates the answer to it will be, or may be, very much the product of a value judgment.

- 29 This issue raised in *Cary* was also discussed by the Full Bench of the Commission in *Doropoulos and Others t/a Swan Dry Cleaners v Transport Workers' Union of Australia, WA Branch* (1989) 69 WAIG 1290, where at 1293 the Full Bench observed:

Thus, incorporated in the consideration of major and substantial employment on that authority, are questions of substantial nature of the employment, the substance of it, and the purpose to be achieved by it. One has to look at the contract or evidence of it, and obtain a comprehensive picture of the whole of the employment, to enable one to apply Burt J.'s test.

- 30 I turn firstly to the award the subject of the respondent's supplementary written submission, that being the Materials Testing Employees' Award. This award can no longer be relied on by the respondent as a prescribed award, as it was cancelled by order of the Commission on 25 May 2015: (2015) 95 WAIG 726. Reference to this award should be removed from Division 2 of Schedule 1 of the Regulations.
- 31 In the Radio and Television Employees' Award in cl 29, there is a classification of "Antenna and/or Television Installer". There is no definition in the award as to what this classification may include but presumably, it applies to an employee whose job it is, and whose purpose for employment, is to install television antennas or at least the major and substantive part of the work they do, is to be so engaged. Presumably, this classification was referred to by the respondent given the evidence of Mr Kirkby, where he said that on the odd occasions when the applicant gets a job of this kind, he completes it. I do not consider that Mr Kirkby could realistically be classified as being an employee (accepting that as a working director of the applicant company he is an employee) who was employed

substantively, as a television antenna installer. The evidence was that Mr Kirkby is a qualified telecommunications technician who holds a Certificate III in Telecommunications and he runs the applicant business, with the assistance of his wife and business partner. Doing the occasional television antenna installation in my opinion, would fall far short of enabling Mr Kirkby to be described as an employee the substance of whose work, would identify him as an “Antenna and/or Television Installer”.

32 The next classification referred to by the respondent was a “Cable Joiner” under the Electrical Contracting Industry Award. This award extends to the industry of electrical contracting. The classification of “Cable Joiner” is defined as “an employee who is engaged in joining cables or sweating lugs in connection with the installing and maintenance of underground or overhead distributing systems”. Firstly, I have no idea as to what “sweating lugs” means and there was no attempt by the respondent to explain it. However, regardless of this, whilst it may be said on the evidence that some aspects of the work of the applicant’s technician employees may involve joining together cables that they install for NBN and Foxtel pay television services, that is not the principal or dominant nature of their work. But most importantly, this classification must be understood in the context of the phrase “underground or overhead distributing systems”. In the context of this award, which is an award about electrical power and electricity, the “distributing system” referred to in the definition must be taken to be in connection with an electricity distributing system. This makes sense when read with the rest of the award. The applicant’s employees do not work with nor are they qualified to work with power or electricity systems. That was the evidence. The applicant’s employees work on the installation of data cabling for the receipt of internet and pay television signals. Accordingly, this classification is not relevant.

33 The next classification said to be applicable was that of “Installer and/or Serviceman” in groups B and C in the Electrical Trades Security Alarms Industry Award. This award concerns itself with the installation and maintenance of security systems. The classification of “Installer and/or Serviceman” is defined to mean “an employee engaged in connection with the wiring, manufacturing, installation, testing and repair of all manner of electrical and electronic security surveillance detectors and equipment”. Presumably, this suggested classification was also directed at Mr Kirkby’s evidence that from time to time on occasions, he and he alone, may perform a security system installation for a customer. I regard this suggested classification in the same light as the very occasional television antenna installation job that Mr Kirkby also said that he may perform. No other person apart from Mr Kirkby does any of this work and as he said, overall, it forms a very small part of what the applicant business does. On the evidence, as

I have suggested, the substantial nature of Mr Kirkby's job is to run the business, seemingly assisted by his wife on the administration side. In my view, it could not be the case, and nor could it be reasonably construed, that the occasional security system installation job done by Mr Kirkby, means that he could be characterised as employed, in substance, as an installer and/or serviceman of security systems. It would be different if the evidence was that the applicant employed a person whose substantive job was to do this sort of work, and did do this sort of work, on an ongoing basis. That, however, was not the evidence.

- 34 The next classification sought to be relied upon by the respondent was that of "Electronic Service Person" and "Installer" under the Electronics Industry Award. This award concerns itself with various things in relation to electronic components, instruments, equipment and/or systems. The classification of "Electronic Serviceperson" is defined to mean:

... an employee, other than an apprentice, who has successfully completed an electronic servicing apprenticeship or another appropriate trade course or has otherwise reached an equivalent standard of skills and knowledge and applies general trade skills on work carried out by the employer ...

- 35 The definition of "Installer" is as follows:

... an employee who is engaged in connection with the installation or wiring of electronic equipment, provided that any work in the nature of fault diagnosis, testing, adjusting and commissioning which is complex in nature shall be the work of service people and above.

- 36 Despite the fact that the applicant's employees are not tradespersons who have completed an apprenticeship, and there was no evidence before the Commission to establish an equivalent standard of skills and knowledge specifically, a major difficulty with these suggested classifications is that they are concerned with employment in connection with electronics, which is the subject matter of this award. In the absence of a definition of "electronics" in the award, I apply its ordinary and natural meaning. The *Macquarie Dictionary* defines "electronics" as:

the investigation and application of devices involving the conduction of electricity in semiconductors, gasses or a vacuum.

- 37 Similarly, the *Concise Oxford Dictionary* defines "electronics" as:

branch of physics and technology concerned with phenomena associated with movement of electrons in vacuum, gas, semiconductors, etc, circuits etc ...

- 38 This is not what any employees of the applicant do, in terms of the substance of their employment. Their work does not involve semiconductors, circuits or the

movement of electrons and nor does it concern electronic equipment, involving the conducting of electricity.

- 39 I finally turn to consider the suggested general classifications of “Tradesperson” and “Labourer” under the various awards noted above. Firstly, as to the submission of the respondent that the applicable classification is that of “Tradesperson”, there was no evidence before the Commission that any of the applicant’s employees can be so described. For example, under the Metal Trades (General) Award, the level C10 classification of “Engineering Tradesperson” is a person with a Trade Certificate in the various branches of work set out in the award. The applicant’s employees, on the evidence, have not completed trade training in terms of an apprenticeship. On the evidence, they undertake and have undertaken a Certificate III qualification in telecommunications. Trainees may be employed too, undertaking on the job work and training and progressing towards this qualification. They are not tradesperson classifications in the sense used in the awards in question. It is also not apparent, in any event, how the “Tradesperson” classification under the Air Conditioning and Refrigeration Industry (Construction and Servicing) Award is relevant to the work of the applicant’s employees. Nor are any of the employees of the applicant employed as “labourers” or as “builders’ labourers” under the Building Trades Award, the WA Civil Contracting Award or the Metal Trades Award.
- 40 For example, in the Building Trades Award, in cl 6(3) definitions, there is a lengthy definition of “Builders Labouring” which encompasses work as a scaffolder, rigger, dogman, gear hand, hod carrier, mortar mixer or drainage worker employed in connection with building operations; working in and around lifts, filling boxes with materials to be lifted by winches, elevators and cranes etc, to service other trades; and also including a large number of other work descriptions, normally associated with unskilled work in a building and construction environment. This is not work that on the evidence, is undertaken by the applicant’s employees who are qualified and skilled technicians or training to be so.
- 41 In the Metal Trades Award there is no “labourer” classification as such. The basic, unskilled classifications are those of the Engineering/Production Employee level I and level II. A person at level I is one who is undertaking structured training to work at level II. The level II work includes work such as repetitive work on machines or equipment; assembling components; soldering and welding or cutting scrap metal, amongst other similar work. I do not consider this reflects the evidence as to the work of the applicant’s employees.
- 42 There are no classifications in any of the awards to which reference has been made by the respondent, which adequately cover the work performed by a “telecommunications technician” or a “telecommunications trainee” as defined

and described in the Telecommunications Services Award 2010 (Cth). At Schedule B – Classification Structure and Definitions of this award, at Part B.4 Technical Stream Classifications, is set out the work of Telecommunications Trainee, Telecommunications Technical Employee and Telecommunications Technician, in terms of role definitions and indicative tasks. These are broadly consistent with the duties of the applicant’s employees, on the evidence given in these proceedings.

Conclusions

- ⁴³ I am not satisfied that it has been established that the applicant’s employees are employed under a contract of service “in” one of the prescribed classifications of a prescribed industrial instrument for the purposes of the Regulations. Therefore, I cannot be satisfied on the evidence that the applicant is an “employer” as defined in s 3 of the Act as one who engages an “employee(s)” as defined. Thus, there is no obligation on the applicant to register under s 30 of the Act. The applicant’s application to review the respondent’s decision is upheld.