

*Fair Work Act 2009*

FAIR WORK COMMISSION

**IN THE MATTER OF:**                    **4 Yearly Review of Modern Awards – Group 4 Awards**  
**Broadcasting and Recorded Entertainment Award 2010**  
**AM2014/259**

## **Submission of Birch Carroll and Coyle Limited and other cinema industry employers**

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**4 Yearly Review of Modern Awards – Group 4 Awards**  
**Submission of Birch Carroll Coyle Limited and Other Cinema Industry Employers**

**Introduction**

- 1 This submission is made on behalf of:
  - (1) Birch Carroll and Coyle Limited
  - (2) The Hoyts Corporation Pty Limited
  - (3) The Greater Union Organisation Pty Ltd
  - (4) Village Cinemas Limitedand Independent Cinemas Association of Australia and its employer members.
- 2 The Employers named at paragraph 1 (the **Employers**) together comprise the overwhelming majority of employers in the cinema exhibition industry and employ virtually all the employees in the cinema exhibition industry.
- 3 This submission is made to the Full Bench in respect of the Broadcasting and Recorded Entertainment Award 2010 (**BRE Award**). The Commission's review of the BRE Award is matter AM 2014/259 and that matter is in sub-group 4D. The Employers have made submissions in that proceeding in relation to a number of issues affecting cinemas covered by the BRE Award.
- 4 This submission is made in response to the Statement and Directions dated 26 August 2016 which requests the filing of a short submission which confirms the substantive claims being pursued, including the following:
  - (i) the nature of the change sought;
  - (ii) a draft variation determination;
  - (iii) the type of case to be run (merits or evidentiary based); and
  - (iv) if the case is evidence-based, how many witnesses will be called?
- 5 The Employers have also participated in proceedings before the Casual and Part Time Employment Full Bench (AM2014/197) by filing Submissions dated 22 March 2016 and 4 August 2016. The Employers have not sought any change to the BRE Award in proceedings before the Casual and Part Time Employment Full Bench.

## Summary

- 6 The Employers have filed an Outline of Issues. These issues have been considered in meetings with the Media Entertainment and Arts Alliance (MEAA) and before Senior Deputy President Hamberger. As a result, the Employers and MEAA have reached an agreed position on each of the 3 issues and propose that their agreement be given effect in these proceedings.

## Submission

- 7 The Employers have proposed certain changes to the BRE Award. These changes are set out in the Outline of Issues document dated 10 December 2014, filed in these proceedings.
- 8 Subsequently, meetings were held between the Employers and MEAA and conferences were facilitated by Senior Deputy President Hamberger. As a result of these meetings and conferences, the Employers and MEAA have reached an understanding on each of the issues in the Outline of Issues.
- 9 Subsequently SDP Hamberger, by Memo dated 20 July 2016, reported to the President on the agreement reached between the Employers and MEAA.
- 10 Following agreement with MEAA the Employers confirm their claims, as set out in the Outline of Issues dated 10 December 2014, but modified as follows;
- (a) the claim in respect of part time employment is modified as set out in paragraph 11.1;
  - (b) the claim in respect of classifications is modified as set out in paragraph 11.2; and
  - (c) the claim in respect of junior employees is withdrawn.

## Nature of changes sought and draft Variation

- 11 The issues raised by the Employers and the agreement reached by the Employers and MEAA as reported to the President by SDP Hamberger are:

### 11.1 Part Time Employment

It was agreed between the Employers and MEAA that, in order to remove any possible ambiguity in their interpretation, and to clearly preserve long standing conditions, clauses 54 and 55 of the BRE Award may be amended in the manner noted by the underlining in the following paragraphs:

54.3(a) A part-time employee is an employee who works less than 76 ordinary hours in a 14 day cycle (or less than 152 hours in a 28 day cycle by written agreement between the employer and the employee, which may be terminated as provided in clause 55.1(d)); has regular, reasonably predictable and continuous employment within the terms of this clause and clause 55.1(c); and receives, on a pro rata basis at the rate of 1/38<sup>th</sup> of the weekly rate, equivalent pay and conditions to those full-time employees who do the same kind of work.

55.1(c) Part-time employees will be required to work an agreed number of ordinary hours in a 14 day cycle (or 28 day cycle by written agreement). The agreement about the

number of ordinary hours to be worked will be in writing and may be changed at any time by agreement between the employer and employee which will also be in writing. Part-time employees may by agreement be employed as full-time employees during school holidays.

55.2(d) To the extent practicable, the rostering process shall be undertaken in consultation with individual employees affected and in respect of part time employees, the employer will endeavour to provide a reasonably regular pattern of work which accommodates the fluctuating operational requirements of the employer.

## 11.2 Classifications

It has been agreed by the Employers and MEAA that, in order to properly recognise the team leader role and to clearly provide for career progression, there be an additional classification of team leader to be inserted at Grade 4, to be designated Cinema Worker Level 3, with higher classifications being redesignated Cinema Worker Level 4 to Cinema Worker Level 7 respectively. Consequently the Employers and MEAA have agreed that:

11.2.1 a new classification be inserted as Cinema Worker Level 3 at Grade 4;

11.2.2 current Cinema Worker Levels 3 to 6 be redesignated Cinema Worker Levels 4 to 7 respectively; and

11.2.3 Schedule E be amended by inserting the following:

### ***E.1.3 Cinema Worker Level 3***

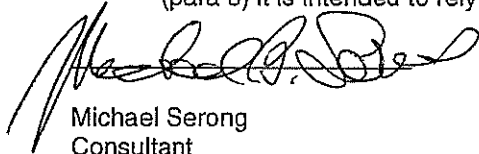
- (a) *A Cinema Worker Level 3 is an employee who is appointed by the employer as a team leader in a designated area and who performs work within the scope of this level using applied knowledge and necessary skills.*
- (b) *Consistent with their training and in addition to the competencies and tasks performed by an employee at level 1 and level 2:*
  - (i) *solves straightforward problems using readily available information;*
  - (ii) *works to complex instructions and procedures;*
  - (iii) *provides supervision and assists with training levels 1 and 2 employees in a designated area;*
  - (iv) *coordinates, organises and allocates work, materials and equipment in an efficient and effective manner for four or more level 1 and 2 employees in a designated area; and*
  - (v) *is responsible for work undertaken.*
- (c) *Tasks which an employee at this level may perform are:*
  - (i) *indicative tasks for level 1 and level 2 employees;*
  - (ii) *supervision of levels 1 and 2 employees in a designated area; and*
  - (iii) *assist in training of levels 1 and 2 employees.*

- 11.3 Schedule E be amended by redesignating paragraphs E.1.3 to E.1.6 as paragraphs E.1.4 to E.1.7 respectively and making consequential amendments to those paragraphs;
  - 11.4 clause 4.2(d) be amended by the insertion of "Cinema Worker Level 3"; and
  - 11.5 clause 14.2 (e),(g),(h)&(i) be amended to redesignate Cinema Worker Levels 3 to 6 as Cinema Worker Levels 4 to 7 respectively.
- 11.3 Junior Employees

The Employers, in their Outline of Issues dated 10 December 2014, referred to an issue with the calculation of junior rates of pay. Following discussions with MEAA and conferences before SDP Hamberger, the Employers do not wish to proceed with this issue.

**Type of case to be run**

- 12 In view of the detailed consideration of the issue in conferences before SDP Hamberger (para 8) it is intended to rely on the Memo of SDP Hamberger to the President (para 9)



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