



21 December 2016

Associate to Hon Justice Iain Ross AO
Fair Work Commission
Victoria Registry, Level 4, 11 Exhibition Street
Melbourne Vic 3000

By email: amod@fwc.gov.au

Dear Associate,

Re: 4 Yearly Review of Modern Awards – Broadcasting and Recording Entertainment Award 2010 (AM2014/259) – GROUP 4D – Technical and Drafting issues - Exposure Drafts

1. The Media, Entertainment and Arts Alliance (**MEAA**) refers to the Fair Work Commission (**the Commission**) Statement and Directions dated 26 August 2016 requesting the parties file submissions on the technical and drafting issues related to exposure drafts in Groups 4D, 4E and 4F.
2. MEAA, as the union representing employees in the broadcasting and recorded entertainment industry has an interest in the Broadcasting and Recorded Entertainment Award 2010 (**the Award**). MEAA makes the following submissions on the technical and drafting issues relating to the Exposure Draft of the Award - Broadcasting and Recorded Entertainment Award 2016.
3. MEAA has made separate submissions dated 2 March 2015, identifying the nature of proposed changes which MEAA is pressing in relation to the Award. MEAA has also, by separate correspondence to the Commission dated 14 and 21 October 2016 respectively, confirmed its intention to press for those changes to the Award and provided Draft Determinations to that effect. Accordingly, these submissions deal only with the technical and drafting issues MEAA has identified in the Exposure Draft of the Award - Broadcasting and Recorded Entertainment Award 2016.

Changes to calculating overtime and penalties

4. MEAA is concerned about any changes to the Award which may result in a reduction in the take home pay of employees. Of particular concern is the change to provisions relating to overtime – from being determined by “time” based formulas to “percentage” based formulas and in many circumstances, with a further limitation being included so that the rate of pay is calculated as a multiple of the “minimum hourly rate” or “ordinary rate” or “ordinary hourly rate”¹. The “minimum hourly rate” is now defined as the minimum rate for an employee’s classification as specified in clause 13 – Classifications and Minimum Wages. Of particular concern for MEAA are the following clauses:

16.3(c)
20.2(a)(i)
31.1
32.2(a) & (b)
40.2, 40.5
42.1, 42.2, 42.5, 42.6(a) & (b)

¹Such as clause 42.1 in the Exposure Draft which provides, “All time worked in excess of the rostered daily hours by full-time, part-time and casual announcers and broadcaster/journalists is overtime and is to be paid at 150% of the minimum hourly rate for the first two hours and 200% of the minimum hourly rate after that” rather than as it is currently drafted in clause 39.1 of the Award as, “All time worked in excess of the rostered daily hours by full-time, part-time and casual announcers and broadcaster/journalists is overtime and is to be paid at the rate of time and a half for the first two hours and double time after that.”

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43.1(a) – (d)
44.1, 44.2, 44.4
45.1(a) – (c)
45.3
53.3(d)(ii)
55.1(b)
55.2
57.3(b)
58.1
59.3
61.1(b)
61.2
61.4(b) & (d)
75.1 – 75.3
76.2
78.2
79.2(a) – (d)
80.4(a) – (c)

5. MEAA submits that changing the wording from “time” based formulas to “percentages” or multiples of the “minimum hourly rate” has the unintended effect of reducing the take home pay of employees who are receiving rates of pay higher than the Award minimums. Such a change will affect the relative living standards and the needs of the low paid. It will also affect the current modern award objective to provide additional remuneration for employees working overtime or shift work, or unsocial, irregular or unpredictable hours including on weekends and public holidays.²
6. Accordingly, MEAA submits that the “time” expression clauses referred to above be restored and references to “minimum hourly rate” that have been added to those relevant clauses be removed.

Part 7 - Television Broadcasting

7. MEAA submits that replacing the word “where” after “circumstances”, and replacing it with “because” in clause 34.3(g)(ii) is confusing. MEAA submits that the former wording be restored as per the current Award clause 32.14(b)(i) as follows:

Where an event occurs that is not covered by the employee’s insurance policy in circumstances where the employer has required the insured employee to work outside Australia, the employer will reimburse the employee for the actual cost of any medical examinations, treatment for an injury or related costs as covered by the insurance policy. This clause does not apply where the employer has taken out insurance for the employee the circumstances of which are no less favourable.

Part 10 - Cinemas

8. MEAA submits that the new subclause at 57.3(b) in the Exposure Draft could create confusion for employers and limit the ability of an employee to be paid above the Award rates if agreed with the employer. MEAA proposes that the subclause be amended by adding the words “no less than” so the subclause read as follows:

A part-time employee receives no less than the minimum hourly rate for ordinary hours worked.

² Section 134(1), Fair Work Act 2009



Part 11 - Actors

9. MEAA notes a typographical error at clause 66.2(b) of the Exposure Draft: 'at a' should be removed from line 5.

Responses to questions in the Exposure Drafts

10. MEAA agrees that clause 14.3(d) relating to allowances should be updated for mobile phone costs.
11. In relation to clause 43 and overtime for technical staff employed in the Radio Broadcasting stream of the Award, MEAA submits that the clause needs to be considered and applied in conjunction with clause 38.
12. In relation to clause 44.4, MEAA agrees that 'midnight to dawn' shift should be defined.
13. MEAA submits that clause 51.2 is self-explanatory. Where a shift attracts both penalties, only the higher one will apply as penalties are not cumulative. The clause does not mean that the hourly shift penalty rate payable must be less than or equal to the minimum hourly rate for Grade 5 (or Grade 3 as the case may be).
14. In relation to clauses 66.2, 67 and 68, MEAA does not believe a method of calculation is required to determine the overtime rate.
15. In relation clause 81.2, MEAA submits that the clause should refer to "gross agreed remuneration" rather than the minimum rates in clause 12. MEAA refers to paragraphs 4, 5 and 6 above to support that proposition.

Yours faithfully,

Matthew Chesher
Director, Legal and Policy