



Our Ref: SB:275221-1
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21 December 2016

The Manager
Fair Work Commission
80 William Street
SYDNEY NSW 2000

By Email Only: amod@fwc.gov.au

Dear Sir/Madam,

**Submissions on drafting and technical issues re sub-group 4D award:
Broadcasting and Recorded Entertainment Award 2010 MA000091
(AM2014/259)**

We act for Commercial Radio Australia Ltd (CRA).

On 26 August 2016, Justice Ross, the President of the Fair Work Commission, issued directions including (amongst others) that on or before 4.00 pm today, each interested party is to file in the Commission submissions on the technical and drafting issues related to exposure drafts in Groups 4D, 4E and 4F (except the awards that are subject to the Plain language process).

The CRA is an interested party in relation to the *Broadcasting and Recorded Entertainment Award 2010* (MA000091), which is in sub-group 4D.

Enclosed are CRA's submissions on a technical and drafting issue relating to the payment of annual leave loading.

Yours faithfully

SEAMUS BURKE
Partner

**Submissions made by Commercial Radio Australia Ltd on
drafting and technical issues re *Broadcasting and Recorded
Entertainment Award 2010 MA000091 (AM2014/259)***

1. Commercial Radio Australia Ltd (**CRA**) makes the following submissions regarding the *Exposure Draft Broadcasting and Recorded Entertainment Award 2016* dated 25 November 2016 (the **Exposure Draft**).
2. CRA submits that the current drafting of clause 16.7 of the Exposure Draft can be read as inappropriately entitling some employees covered by the Exposure Draft to payment of both the relevant shift loading (and potentially other amounts payable in respect of ordinary hours) and an additional annual leave loading.
3. In support of its submissions, CRA relies upon the decision of a Full Bench of the Fair Work Commission dated 5 December 2016: [2016] FWFCB 8463, paragraphs [161] to [197] (the **Full Bench Decision**), which specifically addressed a similar issue in three modern awards identified in paragraph [161].
4. In order to give full effect to the outcome of the Full Bench Decision, CRA submits that:
 - (a) clause 16.7(a) of the Exposure Draft should be deleted and replaced with the following:

“(a) subject to clause 32.2(d), instead of the base rate of pay referred to in s.90(1) of the Act, the amount the employee would have earned for working their normal hours had they not been on leave, but excluding overtime, shift rates, penalty rates, special rates or any other payment which might have been payable to the employee as a reimbursement for expenses incurred; and”
 - (b) a new paragraph should be added to clause 16.7 of the Exposure Draft after clause 16.7(b) as follows:

“An employee who would have worked on shiftwork had they not been on leave must be paid a loading equal to that prescribed in clauses 16.7(a) and 16.7(b) or the shift rates prescribed by this award, whichever is the greater, but not both.”
5. The intent of the variations submitted by CRA is to ensure that employees do not receive both a shift loading and an annual leave loading during a period of annual leave, rather, they will receive whichever is the greater.