

**IN THE FAIR WORK COMMISSION**

**2014 Award Review**

(AM2014/259)

**Community and Public Sector Union (CPSU) (PSU Group)**

**Submissions in re Broadcasting and Recorded Entertainment Award Exposure Draft technical and drafting**

**IN REPLY**

1. On 21 December 2016 President Ross amended his directions of 26 August 2016 to provide for submissions in reply to the Broadcasting and Recorded Entertainment Award Exposure Draft (“Exposure Draft”) drafting and technical issues by 22 February 2017. These submissions are made pursuant to those Directions regarding the *Broadcasting and Recorded Entertainment Award [MA000091]*.
2. The CPSU represents members performing work in commercial television and radio who are covered by the *Broadcasting and Recorded Entertainment Award* (the current Award). The CPSU does not provide commentary in this submission regarding parts of that award which do not relate to our areas of coverage.

**Submissions from Minter Ellison on behalf of Seven Network and Others of 18 January 2017 (the Companies submissions)**

3. The CPSU provides the following comments in reply to issues raised in the Companies submissions.

**Items 3.5 and 3.6 of the submissions re clause 9 and 10 Full time and Part time employment**

4. In this item the Companies say the words ‘is an employee who is’ should be re-inserted in clause 9.1 and 10.1 to reflect the current Award clause 10.2(a) and 10.3(a). While the CPSU sees this as a minor wording changes in the Exposure Draft, the CPSU supports the Companies submissions.

**Item 3.8 of the submissions re clause 14 First Aid allowance**

5. The CPSU supports the amendment proposed by the Companies submissions to specify separate rates for Full time employees and Part time and casual employees.

**Item 3.9 of the submissions re clause 16 and annual leave**

6. The CPSU does not support or oppose the inclusion of additional words regarding annual leave as proposed by the Companies.

**Item 3.10 of the submissions re clause 16 and annual leave**

7. In this item the Companies submission deals with a potential error in the cross referencing in clause 16.7(a) of the Exposure draft, which refers to clause 32.2(d) weekend penalties, rather than both 32.2(d) weekend penalties and 32.1(d) shift penalties. The underlying purpose of clause 16.7(a) in the Exposure Draft (and clause 23.7 in the current Award) was to deal with what the rate of pay was for annual leave loading prior to the 17.5% loading being added. Instead of being base rate of pay, it was to include various allowances, but not shift or weekend penalties. On that basis the CPSU supports the Companies proposed change of referencing to exclude clause 32.1(d).

**Item 3.12 of the submissions re clause 29.6 rostering**

8. The CPSU supports the issues raised in the Companies submissions regarding the new sub-clause inserted at 29.6(d) of the Exposure Draft regarding consultation on hours of work. However we suggest it be amended to be 'where applicable' rather than 'if applicable' given many changes to rosters would trigger a consultation obligation.

**Item 3.13 of the submissions re clause 30 meal breaks**

9. The CPSU does not agree with the Companies submissions regarding potential ambiguity in clause 30.1 but is not opposed to the proposed changes to revert to the current Award wording.

**Item 3.15 of the submissions re clause 31 Overtime**

10. The CPSU does not agree with the Companies submissions on this matter. The changes in issue are in clause 31 Overtime in the Exposure Draft, where the reference in the current award to the calculation of the hourly rate by dividing minimum weekly wage by 38 in clause 29.1 has been removed and replaced by reference in the Exposure Draft to ordinary rate of pay. The Companies seek to change references from ordinary rate of pay to minimum rate of pay.
11. The CPSU says clauses contained in the Exposure Draft are appropriate as the current Award clause 29.1 provided a formula for calculation and needed to be read in context and consistently with other clauses in the Award, such as allowances, where the expression 'all purposes' was used to denote the inclusion of that allowance in the rate of pay for entitlements. On that basis the CPSU says under the current Award overtime would be paid on the minimum rate plus any relevant all purpose allowance. Therefore the changes contained in the Exposure Draft are appropriate and not an alteration in the overtime entitlement. The CPSU opposes the changes proposed in clause 31 of the Exposure Draft by the Companies.

**Items 3.17 and 3.18 of the submissions re shift and weekend penalties**

12. The CPSU supports the proposed changes contained in the Companies submissions, which return the Exposure Draft wording in clause 32.1(a) and (b) to their current form. However the CPSU does not believe the inclusion of shift headings in clause 32 is confusing and does not support their removal proposed by the Companies.

**Item 3.19 of the submissions re clause 34.2 wage related allowances**

13. The CPSU does not support the proposed alteration from the Companies to insert 'except where otherwise specified' at the beginning of the list of wage related allowances in the Exposure Draft. As the CPSU details above at [11], we believe the wage related allowances would be included in the calculation of overtime, and therefore there is no need to create an exception for overtime.

**Item 3.21 of the submissions re clause 34.3 Expense related allowances**

14. The CPSU supports the Companies submission regarding the return to the wording of 'where' from the current Award.

**Submissions of Norton Rose Fulbright on behalf of Birch Carroll and Coyle Limited and Others of 18 January 2017**

15. The CPSU notes the submissions made by of Birch Carroll and Coyle Limited and Others regarding casual employees. The CPSU does not have an interest in the Cinema industry, and the extent to which those submissions only relate to casual provisions for cinema employees the CPSU does not make a submission. If however those submissions relate to casual employees in the industry more broadly, the CPSU reserves its rights to make submissions on the matter.

**22 February 2017**

**CPSU - SYDNEY**