

FAIR WORK COMMISSION

DRAFT DETERMINATION

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards – Group 4 awards
(AM2014/250 and others)

JOURNALISTS PUBLISHED MEDIA AWARD 2010

Journalism

4 yearly review of modern awards – award stage – Group 4 awards

Further to the Full Bench decision issued by the Fair Work Commission on [date] the above award is varied as follows:

1. Definitions – clause 3.1

MEAA seek to reflect contemporary editorial occupational titles through adding the underlined text.

***Editorial employees** include reporters, writers, photographers, sub-editors, cartoonists, artists, video journalists, moderators of blogs on news websites, editorial content producers for online publications, chiefs of staff, picture editors, designers and production managers, editors, multimedia editors or producers, social media editors or producers and art directors.*

This claim will be argued on its merits and through direct evidence of contemporary occupational titles.

2. Coverage – clause 4.9 – exempt positions

MEAA seek to modify the Award's Coverage provision to ensure that low-earning editorial employees are not excluded from the Award's coverage by dint of occupying a senior position. MEAA seek to clarify that exempt employees must satisfy each of the following to be excluded from Award coverage:

- a. wholly occupy a senior managerial position;
- b. not practice journalism, i.e. gather, research, write materials, as part of their duties;
- c. have responsibility for no fewer than five editorial employees; and
- d. not be paid below Grade 8.

This claim will be argued on its merits and will be supported by evidence of extensive exemptions in modern industrial instruments and editorial employees being assigned the title, but not the remuneration of exempted positions.

3. Exclusions – online publications

MEAA seek to delete clause 4.10(a), clause 4.11 and clause 4.12 to provide equitable access to Part 5 of the Award, which governs ‘Hours of Work and Related Matters’. Editorial employees at online-**only** media entities do not currently have access to Part 5’s provisions, including breaks and penalty payments. MEAA will submit that the characteristics and structure of the media industry has been transformed since before the Award commenced, with an emphasis on digital and internet-related enterprises.

4. Exclusions – specialist publications

MEAA seek the deletion of clauses 4.13 and clause 23. MEAA submit that the exclusion of employees at specialist publications from accessing Part 5 conditions on an equal footing with editorial employees covered by those Award terms. We submit that the distinction between editorial employees engaged to produce specialist publications (i.e. an employer of 20 or fewer editorial employees other than in newspapers is inequitable and does not reflect the composition of modern editorial workforces and the media industry.

Claims 3 and 4 will be argued on their merits and will identify the scale of online-only operations compared to ‘traditional’ media entities.

5. Shiftwork – calculation of penalty

MEAA is advocating the removal of restrictions on the application of Part 5 conditions and entitlements to particular sections of the media sector.

MEAA advocate the deletion of clause 21.1 and replacing it as follows:

21.1 Subject to the provisions of this clause, an employee who is instructed by the employer to perform and performs ordinary hours on a shift, any part of which falls between the hours of 6.00 am and 7.00 am, or is instructed to perform and performs ordinary duty on a shift that concludes between the hours of 6.00 pm and 8.30 pm, will be entitled to a penalty of 10% of their minimum hourly rate for each hour of the shift.

6. Shiftwork and Weekend Penalties

6a. MEAA seek to amend current **clause 21.2** to extend eligibility to receive penalty payments when work is performed between 8.30pm and 6a.m. The current clause does not cover employees at ‘non-traditional’ media entities. MEAA believe that confining access to these penalty payments will have the effect of reducing the number of persons who may access such payments due to structural and technological shifts in the media industry:

21.2 Subject to the provisions of this clause, an employee who is instructed by the employer to perform and performs ordinary hours on a shift, any part of which falls between the hours of 8.30 pm and 6.00 am, will be entitled to a penalty of, in the case of employees employed by a:

(a) metropolitan daily newspaper, suburban newspaper, a magazine or a wire service—17.5%;

*(b) **any other employer** —15%, of their minimum hourly rate for each hour of that shift.*

6b. Current **clause 21.4** provides for 10% penalty for weekend work. It does not presently apply to country non-daily newspapers. MEAA seek to extend application of the clause to editorial employees in these workplaces. MEAA will produce evidence regarding the intensification of work at these mastheads and the now regular performance of weekend work.

We seek the following replacement clause:

***21.4** Subject to the provisions of this clause, an employee who is rostered to perform and performs ordinary hours on a shift where the greater part of the shift falls between the hours of midnight Friday and midnight Sunday will be paid an additional 10% of their ordinary rate for that shift.*

Claims 6a, 6b, and 6c. will be argued on their merits and through statements by affected employees.

7. Overtime

Clause 22 provides for overtime.

7a. MEAA support the Fair Work Ombudsman's contention that 'overtime and penalty rate clauses from modern awards... could be made clearer in setting out entitlements to overtime and penalties'¹ and 'could be made clearer in respect of expressing whether overtime is calculated on a weekly or daily basis.'²

7b. MEAA seek to remove the words 'subject to the forfeiture for inadequate notice as provided for under clause 11.2' from clause 22.3(d) as this wording is inconsistent with clause 11.2, which provides that the only monies to be withheld must be 'of an amount *not exceeding* the amount the employee would have been paid under this award in respect of the period of notice required by this clause.'

¹ Fair Work Ombudsman, *Research Paper on the Expression of Rates of Pay, Overtime and Penalty Rates in Modern Awards*, 4 [17].

² Fair Work Ombudsman, *Research Paper on the Expression of Rates of Pay, Overtime and Penalty Rates in Modern Awards*, 4 [21].

Non-payment of unpaid overtime accrued outside of the required notice period would necessarily exceed the amount the employee would have been paid (in wages) for the forfeited notice period.

MEAA therefore seek to replace current clause 22.3(d) with:

22(3)(d) *on termination of an employee's employment, all untaken time off instead of overtime will be paid out at overtime rates prescribed in clause 22.3(e).*

8. Annual leave and public holidays

Current clause 24.2 does not apply to editorial employees outside of daily newspapers formats (e.g. newspaper, magazine, wire service).

24.2 *Any employee required by their employer to work public holidays at ordinary hourly rates of pay who are:*

(a) engaged by a metropolitan daily newspaper, wire service, regional daily newspaper, suburban newspaper or a magazine, will be credited each year with an extra two weeks and three days' annual leave; or

*(b) engaged by a country non-daily newspaper, **or by any other employer** - will be credited each year with an extra two weeks' annual leave,*

instead of any penalty provisions as provided for in clause 27.4.

This claim will be argued on its merits.

9. Leave Loading

MEAA seek to clarify the application of clause 24.5 by amending it as follows:

24.5 *An employee is entitled to be paid a loading of 17.5% of the minimum rate of pay prescribed in clause 14 - Minimum Wages - **for all periods of annual leave.***

This claim will be argued on its merits.

10. Administrative

Clause 27.3(a) contains a possible cross-referencing error. The provision should refer to clause **24.3**, which governs an employer duty to notify an editorial employee that they will not be required to work on a public holiday. The clause currently refers to clause 24.2, which deals with the amount of additional annual leave.

The revised clause may read:

27.3(a) *An employee receiving additional annual leave in accordance with clause 24.2 is required to work on public holidays at ordinary rates of pay, unless directed to take a day of annual leave in accordance with clause 24.3.*