



Vice President Hatcher
Fair Work Commission
80 William Street
Sydney, NSW 2000

10 December 2019

By email: Chambers.hatcher.vp@fwc.gov.au
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Dear Associate,

Journalists Published Media Award 2010– Substantive Issues

I refer to the Full Bench decision **[2019] FWCFB 7603** dated 20 November 2019 by Vice President Hatcher, Deputy President Dean and Commissioner Booth (the 'decision').

Definition of Newspaper

The decision raised the question of an appropriate definition to replace 'newspapers', wherever occurring throughout the Journalists Published Media Award 2010 (the 'award'). The Full Bench noted its in principle support for the term 'news publication',¹ yet indicated that this did not fully reflect geographical areas of ongoing print circulation.

Existing definitions of 'country non-daily', 'metropolitan daily' and 'regional daily' newspapers state that these are newspapers published at a prescribed frequency that are principally distributed throughout nominated metropolitan, regional or country areas

In its March 2019 submission and marked-up Award, MEAA proposed, inter alia, the following substitute definition for 'newspapers', using metropolitan newspapers as an example:

metropolitan daily ~~newspaper~~ news publication means a newspaper publication published Monday to Saturday or published only on a Sunday and which is principally distributed throughout the metropolitan area of one or more capital cities or the metropolitan areas of Newcastle or Wollongong

In response to comments during proceedings on 8 August 2019, MEAA proposed an alternate definition in its 20 August 2019 marked-up Award. Again using the example of 'metropolitan daily newspaper', MEAA proposed:

Metropolitan daily newspaper means a news ~~publication paper~~ published Monday to Saturday or published only on a Sunday and ~~which is principally distributed throughout~~ whose content concerns news and commentary regarding the metropolitan area of one or more capital cities or the metropolitan areas of Newcastle or Wollongong.

¹ See paragraph 45 of the FWCFB decision

In its further submissions to the Commission dated 27 August 2019, Rural Press Pty Ltd stated that the impact of MEAA's 20 August 2019 variation would be to:

'limit the ability of those newspapers to publish certain content without fundamentally recharacterising their categorisation under the award. For example, it would mean that if a metropolitan newspaper in Newcastle published a national story, it may no longer fit the award definition', thereby 'limit[ing] the ability of newspapers to report on stories which would be of interest to their readership if those stories do not relate to the particular area where the newspaper's offices are located'.

Rural Press then proposed a further definition of 'metropolitan daily newspaper':

'a newspaper published Monday to Saturday or published only on a Sunday and which is principally produced, distributed or targeted at audiences in² the metropolitan area of one or more capital cities or the metropolitan areas of Newcastle or Wollongong'.

MEAA accept that it may be possible for its 20 August proposed variation to have the (unintended) consequence posited by Rural Press.

We do not however believe that the alternative definition of 'metropolitan daily newspaper' advanced by Rural Press in their submission addresses the twin issues of conveying that news publications are linked to discrete geographical locations *and* that the publication in question need not be a newspaper. MEAA is also unclear as to the utility of the words 'produced' and 'targeted' in the definition advanced by Rural Press.

MEAA therefore propose a further definition, again with respect to 'metropolitan daily newspapers':

*'**metropolitan daily newspaper-news publication** means a news publication published Monday to Saturday or published only on a Sunday and which is principally distributed within the metropolitan area of one or more capital cities or the metropolitan areas of Newcastle or Wollongong'.*

It may also be desirable to add a definition of 'news publication' to avoid doubt. MEAA propose this definition be incorporated in clause 3, Definitions, of the award and state:

***News publication** means a publication concerned with the dissemination of news content published in print and/or digital form*

Definition of Editorial Employee

MEAA note that MEAA's proposed amendment to 'editorial employee' at clause 3.1 of the award was discussed at paragraph 8 of the Full Bench's decision, but no apparent determination has been made.

MEAA's proposed definition of editorial employee was:

² Rural Press's emphasis

editorial employees include journalists, 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.

MEAA would be pleased to provide the Commission with any further information it requires to offer a concluded view about this proposed variation.³

Application of Shiftwork and Weekend Penalties

MEAA note that its proposed amendment to Part 5 of the award with respect to Country Non-Daily (CND) Newspapers editorial employees' (and others) ability to access weekend penalty payments was endorsed in the Commission's 20 November 2019 decision.

We further note that MEAA's proposals with respect to penalty payments extended beyond this publication type (and the deletion of clause 19.4(b) which precluded access to weekend penalty payments for CND newspaper employees).

In MEAA's May 2019 submissions and the accompanying MEAA-amended exposure draft provided to the Commission, MEAA also proposed the extension of night-time shift penalty payments to all editorial employees performing work between 8.30pm and 6.00am.⁴

Clause 21.2⁵ of the award as now in force provides:

***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) regional daily newspaper or a country non-daily newspaper—15%,

of their minimum hourly rate for each hour of that shift.

MEAA's position with respect to this clause is reflected in its marked-up awards from March, May and August 2019 (and in earlier correspondence).⁶ These documents presented an amended clause 21.2:

³ In award mark-up dated 20/8/2019. In MEAA's May 2019 submissions at pages 3 [para 9] and 37 [para 122]

⁴ See page 3 [para 9] and pages 77-79 [paras 213-233] of MEAA's May 2019 submissions.

⁵ Clause 19.2 of Exposure Draft of March 2019

⁶ See, for example, paragraph 218 of MEAA's May 2019 submissions and MEAA correspondence to the FWC dated 21 October 2016

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~~news publication, suburban ~~newspaper~~news publication, a magazine or a wire service—17.5%;
- (b) ~~regional daily newspaper or a country non-daily newspaper~~ any other publication (print and/or online)-15%,

of their minimum hourly rate for each hour of that shift.

MEAA concede that witness evidence and examination was confined to CND employees' ability to access penalty payments for weekend work in the 8 August 2019 proceedings. The union would nonetheless welcome the Commission's advice on the status of the proposed amendment to clause 21.2(b).

Annual Leave

Finally, MEAA note that its proposal to extend eligibility to a further 10 days' annual leave to all editorial employees required to work public holidays at ordinary rates of pay⁷ - irrespective of the type of publication they are employed by - has not been decided by the Full Bench. MEAA accept that this matter figured only briefly in its submissions⁸ before the Commission on 8 August, 2019, but has consistently sought a variation to annual leave provisions in the award since March 2015.

MEAA proposed the following in marked-up awards provided to the Commission during 2019:

23. Annual leave

23.1 Annual leave is provided for in the NES.

23.2 Notwithstanding clause 23.1 ~~24.1~~, employees required by their employer to work public holidays at ordinary hourly rates of pay who are:

(a) engaged by a metropolitan daily news publication ~~newspaper~~, wire service, regional daily news publication ~~newspaper~~, suburban news publication ~~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~~ engaged by any other publication, will be credited each year with an extra two weeks' annual leave,

instead of any penalty provisions as provided for in clause 26.4 ~~27.4~~.

⁷ Other than those captured in clause 23.2(a)

⁸ See PN73 and PN74 of 8 August transcript

The effect of this proposed variation would be for the award to apply in a platform agnostic manner and enable an editorial employee required⁹ by their employer to work public holidays at ordinary rates of pay to access a further ten days' leave.

We respectfully seek the Commission's views as to the status of this claim.

MEAA would be pleased to elaborate on any of the above matters at the Commission's discretion.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. Chesher', followed by a period.

Matthew Chesher
Director, Legal and Policy

⁹ MEAA emphasis