

From: Kingston Anderson [mailto:kingston@adg.org.au]
Sent: Friday, 14 September 2018 11:04 AM
To: Chambers - Ross J; AMOD
Cc: gerard@adg.org.au; Matthew Chesher; Owen Johnston
Subject: Broadcasting Recorded Entertainment and Cinema Award 2010 - ADG Proposals

Dear President and Parties

Further to the conference proceedings before President Ross on 17 August please find attached the variations to BREAC proposed by the ADG to address the concerns raised. They include removal of the two hour daily cap on prescheduled overtime, confirmation that the ordinary hourly rate for 50 hr week workers is based on the 50 hour rate, clarification and appropriate safeguards around the director's loading provision for both Television Broadcasting and Motion Picture Production. The directors loading is currently only applicable to Television Broadcasting but we propose a similar provision and appropriate safeguards for Motion Picture Production.

ADG is available to discuss the proposals in a further conference or directly with the parties.

Regards

Part XX Television Broadcasting – Broadcasting Recorded Entertainment and Cinema Award

XX Director's Loading Wage Arrangement

XX1 (a) An employer and a full time director including a Supervising Director, Director/Specialist, Senior Director, Director or Trainee Director may enter into a written agreement for the director to be paid a loading that is at least X% (to be determined) more than the weekly wage prescribed in clause X for the work being performed, in satisfaction, subject to clause X.1(d), of any or all of the following provisions of the award:

- (i) clause 16.9 Annual leave loading;
- (ii) clause 29 Ordinary hours of work and rostering ;
- (iii) clause 30.2 Meal Break Penalty
- (iv) clause 31 Overtime and
- (iv) clause 32 Shift and weekend penalties

(b) The director will be given two agreed consecutive days off work in each week.

(c) The director's loading is part of the director's rate of pay and accordingly is paid for all purposes of the award.

(d) The director must not be required by the employer in any pay period or roster cycle to work in excess of:

- (i) **depends on the %** YY ordinary hours (i) which would attract a penalty rate under this provisions of this award per week; or
- (ii) 12 additional hours per week

without being entitled to an amount in excess of the director's loading in accordance with clause XX.1(e).

(e) If in a pay period or roster cycle a director works any hours in excess of either of the outer limit amounts specified in clause XX.1(d), such hours will not be covered by the directors loading and must separately be paid for in accordance with the applicable provisions of this award.

(fd) If in a pay period or roster cycle a director works without access to ZZ unpaid meal breaks such breaks will not be covered by the director's loading and must separately be paid for in accordance with the applicable provisions of this award.

(g) Where a written agreement for a director's loading wage arrangement is entered into, the agreement must specify:

(i) the weekly wage including the % loading that is payable;

(ii) which of the provisions of this award will be satisfied by payment of the director's loading;

(iii) the outer limit number of ordinary hours which would attract the payment of a penalty rate under the award and the outer limit number of overtime hours which the director may be required to work in a pay period or roster cycle under clause XX.1(d) without being entitled to an amount in excess of the director's loading in accordance with clause X.1(e).

(iv) the number of occasions in a pay period or roster cycle a director may be required to work without access to unpaid meal breaks.

(he) The employer must give the director a copy of the agreement and keep the agreement as a time and wages record.

(if) The agreement may be terminated:

(i) by the employer or the director giving 3 months' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or

(ii) at any time, by written agreement between the employer and the director .

X.2 Director's loading arrangement not to disadvantage director

(a) The director's loading must be no less than the amount the director would have received under this award for the work performed over the period for which the loading is paid.

(b) The employer must each 3 months from the commencement of the director's loading arrangement or upon the termination of employment of the employee or termination of the agreement, calculate the amount of remuneration that would have been payable to the director under the provisions of this award over the relevant period and compare it to the amount of the director's loading actually paid to the director. Where the latter amount is less than the former amount, the employer shall pay the director the amount of the shortfall within 14 days.

(c) The employer must keep a record of the starting and finishing times, and any unpaid breaks taken, of each director subject to a director's loading wage arrangement for the purpose of undertaking the comparison required by clause XX.2(b). This record must be signed by the employee each pay period or roster cycle.

Part XX Motion Picture Production – *Broadcasting Recorded Entertainment and Cinema Award*

XX. Hours of Work

xx.1 Ordinary hours of work for full-time employees will average 38 hours.

By agreement between the employer and employees, hours will be worked on one of the following bases:

(a) in days of up to 10 hours each over five days between Monday to Saturday, such hours to be worked continuously with the exception of meal breaks; or

(b) by agreement with a majority of employees by any other arrangement to a maximum of 152 hours per 28 day cycle.

xx.2 All time worked on a Sunday will be overtime and paid in accordance with clause xx.4 — Overtime of this award.

xx.3 Except when living away from home and working on location, hours of work will commence and finish at a nominated place of call. A nominated place of call for the purposes of this award will mean, in the case of a capital city, a place nominated by the employer within 25 km of the GPO of such capital city or in other cases, a place nominated by the employer within 25 km of the employer's usual place of business.

xx.4 When living away from home and working on location, hours of work will commence and finish at the place where the employee is provided with accommodation.

XX. Overtime

xx.1 Overtime will be classified as scheduled or unscheduled in accordance with the provisions of this clause.

xx.2 Scheduled overtime is overtime which an employee has agreed to work and for which the employer has agreed to pay (whether worked or not) at the commencement of an engagement.

xx.3 Where a 50 hours week is worked, each day will comprise 7.6 ordinary hours and 2.4 hours (2hrs and 24 minutes) of scheduled overtime. The 50 hour week rate is part of the employee's rate of pay and accordingly is paid for all purposes of the award with the exception of unscheduled overtime see clause XX 4 e

(a) where a five-day week is worked, scheduled overtime up to a maximum of 2.4 hours (2 hours and 24 minutes) per day may be contracted for; or

(b) where a six-day week is worked, scheduled overtime up to a maximum of 2.4 hours (2 hours and 24 minutes) per day for each day between Monday and Friday inclusive and up to a maximum of 10 hours on Saturday may be contracted for.

xx.4 payment for all overtime will be made as follows:

(a) Monday to Saturday—calculated on a daily basis at 150% of the minimum ordinary hourly rate for the first two hours and 200% of the minimum ordinary hourly rate after that. or

(b) Sunday—200% of the minimum ordinary hourly rate and

(c) any time worked on any day in excess of 12 hours—300% of the minimum ordinary hourly rate.

(d) Insert Clause 81.3 Calculations will be made per quarter hour and work in excess of 5 minutes will be taken to the next quarter hour

(e) Insert Unscheduled Overtime rates will be based on hourly rates calculated from the employee's gross agreed remuneration. Gross agreed remuneration means the amount agreed for working a 50 hour week. A divisor of 38 will be used for such calculations.

Where 10 hour days are worked the following example shows how the actual ordinary hourly rate is calculated

7.6 hours x ordinary hourly rate (5 day total of 38 hours)

2 hours x 150% ordinary hourly rate (5 day total of 15 hours)

0.5 hours (30 mins) X 200% ordinary hourly rate (5 day total of 5 hours)

11.6 hours a day at ordinary hourly rate

58 weekly hours at ordinary hourly rate

The unscheduled hourly overtime rate is calculated as 58 weekly hours at ordinary hourly rate / 38

xx.5 Where overtime is worked on a day on which ordinary hours are not worked, payment will be made as for a minimum of four hours worked.

xx.6 Any employee recalled to work after leaving the employer's premises will be paid for a minimum of three hours work at the appropriate overtime rate.

XX Director's Loading Wage Arrangement

XX1

(a) An employer and a full time director covered by this award including a director working in series or serials, documentaries, animated productions or similar, feature film, mini-series and one shot drama /telemovie productions may enter into a written agreement for the director to be paid a loading that is at least X% (to be determined) more than the weekly wage prescribed in clause X for the work being performed, in satisfaction, subject to clause XX.1(d), of any or all of the following provisions of the award:

- (i) clause 16.9 Annual leave loading;
- (ii) clause 29 Ordinary hours of work and rostering ;
- (iii) clause 30.2 Meal Break Penalty
- (iv) clause 31 Overtime and
- (iv) clause 32 Shift and weekend penalties

(b) The director will be given two agreed consecutive days off work in each week.

(c) The director's loading is part of the director's rate of pay and accordingly is paid for all purposes of the award.

(d) The director must not be required by the employer in any pay period or roster cycle to work in excess of:

- (i) depends on the % YY ordinary hours which would attract a penalty rate under this provisions of this award per week; or
- (ii) 12 additional hours per week

without being entitled to an amount in excess of the director's loading in accordance with clause XX.1(e).

(e) If in a pay period or roster cycle a director works any hours in excess of either of the outer limit amounts specified in clause XX.1(d), such hours will not be covered by the director's loading and must separately be paid for in accordance with the applicable provisions of this award.

(f) If in a pay period or roster cycle a director works without access to Z unpaid daily meal breaks such breaks will not be covered by the director's loading and must separately be paid for in accordance with the applicable provisions of this award.

~~XX2~~

(g) Where a written agreement for a director's loading wage arrangement is entered into, the agreement must specify:

- (i) the weekly wage including the % loading that is payable;
- (ii) which of the provisions of this award will be satisfied by payment of the director's loading;
- (iii) the outer limit number of ordinary hours which would attract the payment of a penalty rate under the award and the outer limit number of overtime hours which the director may be required to work in a pay period or roster cycle under clause XX.1(d) without being entitled to an amount in excess of the director's loading in accordance with clause XX.1(e).

(iv) the number of occasions in a pay period or roster cycle a director may be required to work without access to unpaid meal breaks.

(ha) The employer must give the director a copy of the agreement and keep the agreement as a time and wages record.

(ib) The agreement may be terminated:

(i) by the employer or the director giving 3 months' notice of termination, in writing, to the other party and the agreement ceasing to operate at the end of the notice period; or

(ii) at any time, by written agreement between the employer and the director .

XX.23 Director's loading arrangement not to disadvantage director

(a) The director's loading must be no less than the amount the director would have received under this award for the work performed over the period for which the loading is paid.

(b) The employer must each 3 months from the commencement of the director's loading arrangement or upon the termination of employment of the employee or termination of the agreement, calculate the amount of remuneration that would have been payable to the director under the provisions of this award over the relevant period and compare it to the amount of the director's loading actually paid to the director. Where the latter amount is less than the former amount, the employer shall pay the director the amount of the shortfall within 14 days.

(c) The employer must keep a record of the starting and finishing times, and any unpaid breaks taken, of each director subject to a director's loading wage arrangement for the purpose of undertaking the comparison required by clause **XX.23(b)**. This record must be signed by the employee each pay period or roster cycle.