

Fair Work Act 2009

FAIR WORK COMMISSION

IN THE MATTER OF: 4 Yearly Review of Modern Awards – Group 4 Awards (Tranche 3)
Broadcasting, Recorded Entertainment and Cinemas Award 2010
AM2014/259, AM2018/17 and AM2019/17

Submission of Birch Carroll and Coyle Limited and other cinema industry employers

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Introduction

- 1 This submission is made on behalf of:
- (1) Birch Carroll and Coyle Limited
 - (2) The Hoyts Corporation Pty Limited
 - (3) The Greater Union Organisation Pty Ltd
 - (4) Village Cinemas Limited
- and Independent Cinemas Association of Australia and its employer members.
- 2 The employers named at paragraph 1 (the **Employers**) together comprise the overwhelming majority of employers in the cinema exhibition industry and employ virtually all the employees in the cinema exhibition industry.
- 3 This submission is made to the Full Bench in respect of the *Broadcasting, Recorded Entertainment and Cinemas Award 2010 (BREC Award)*. The Commission's review of the BREC Award is matter AM 2014/259 and that matter is in sub-group 4D. The Employers have made submissions in that and other proceedings in relation to a number of issues affecting cinemas covered by the BREC Award.
- 4 This submission is made in response to the Decision of the Full Bench in AM2019/17 on 29 January 2020.

5 Submission

This submission is made in respect of the Exposure Draft of the BREC Award republished on 29 January 2020 (**the Exposure Draft**) and the invitation of the Full Bench in its decision of 29 January 2020 (AM 2019/17) to comment on the provisional view of the Full Bench and the Exposure Draft by no later than 4:00pm on 4 March 2020.

5.1 Definitions

At clause 2 of the Exposure Draft, there is a definition of "cinema". At clause 62, at Schedule D (D.1.4(d), D.1.6, D.1.7(a) and D.1.8) and at Schedule H (H.1.1) the word "theatre" is used. It is submitted that there is a clear intention in the BREC Award that, at these places in the Exposure Draft, these words have an identical meaning. Any possible ambiguity should be resolved. This could effectively be done by changing "theatre", each time it appears in these places, to "cinema".

The word "theatre" is also used in Schedule E – Actors at E.2.5. It is not suggested that there be any change to Schedule E.

5.2 Casual conversion

Clause 8.2 states that Clause 11 – Casual employees will not apply to employees in cinemas. However clause 11.5(k)(ii) indicates that clauses 58.3 and 59.4, which apply to employees in cinemas, are relevant to casual conversion.

The intention of the Full Bench is noted in the Decision of 21 September 2018 as it is stated in AM2014/196 and AM2014/197:

We consider the cinema industry employers' concern will be addressed if paragraph (j)(ii) of the casual conversion is modified to read:

"(ii) if it is agreed that the employee will become a part-time employee, the matters referred to in clauses 54.3(a), 55.1(c) and 55.2(d) in respect of cinema employees and the matters referred to in clause 10.4(c) in respect of all other employees".

Current Award clause 54.3(a) is reflected in clause 57.3 of the Exposure Draft.

Current Award clause 55.1(c) is reflected in clause 58.3 of the Exposure Draft.

Current Award clause 55.2(d) is reflected in clause 59.4 of the Exposure Draft.

The inconsistencies in the Exposure Draft appear to be:

- 8.2 This states that clause 11.4 – Casual employees will not apply to employees in cinemas (see clause 57 – Types of employment).
- 11.5(k)(ii) This states that clause 10.1 applies to employees in cinemas. However clause 8.2 states that it does not apply. Clause 57.3 – Part-time employees corresponds with clause 54.3(a) in the current award and is the provision applicable to employees in cinemas.
- 11.5(k)(ii) This also refers to clauses 58.3 (55.1(c) of the current Award) and 59.4 (55.2(d) of the current Award). No recognition is given in the Exposure Draft to the Full Bench reference to clause 57.3 (54.3(a) in the current Award).

5.3 Minimum wages – Draft Determination

It is noted that the Draft Determination attached to the Decision of 20 November 2019 (AM2018/17) has not yet been made.

6 Variations to Exposure Draft

The Employers rely, in particular, on the Full Bench Decision of 21 September 2018 in support of these submissions, and submit that the Exposure Draft be amended as suggested at paragraphs 5.1 and, in due course, pursuant to the Draft Determination referred to at paragraph 5.3. In respect of the matter raised at paragraph 5.2, instructions are being sought on a suitable provision and a response. In view of the large number of employers which must be consulted, we will not be in a position to provide a final response by 4 March 2020, but expect to be able to do so before 6 - 7 April 2020.


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3 March 2020