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**Fair Work Commission: 4 Yearly Review of Modern Awards**

**SUBMISSIONS IN REPLY**

**GRAPHIC ARTS, PRINTING AND PUBLISHING AWARD  
2010**

**AMWU SUBSTANTIVE CLAIM  
(AM2016/33)**

**19 MAY 2017**

**AUSTRALIAN BUSINESS INDUSTRIAL  
- and -  
THE NSW BUSINESS CHAMBER LTD**

## 1. BACKGROUND

- 1.1 These submissions are filed on behalf of Australian Business Industrial (**ABI**) and the NSW Business Chamber Ltd (**NSWBC**). ABI is a registered organisation under the *Fair Work (Registered Organisations) Act 2009* (Cth) and has some 4,200 members. NSWBC is a recognised State registered association pursuant to Schedule 2 of the *Fair Work (Registered Organisation) Act 2009* (Cth) and has some 18,000 members.
- 1.2 These submissions are made in reply to the submissions of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union' known as the Australian Manufacturing Workers' Union (**AMWU**) dated 7 April 2017 (**AMWU Submissions**), and the Draft Determination (**Draft Determination**) set out in Attachment A to the AMWU Submissions.
- 1.3 The AMWU Submissions and Draft Determination relate to an application to vary the terms of the coverage of the *Graphic Arts, Printing and Publishing Award 2010* (**Award**) to explicitly include employers and employees engaged in the production of metropolitan daily newspapers, and to amend various provisions of that Award to reflect alleged industry standard entitlements with respect to redundancy pay, personal leave and jury service.
- 1.4 ABI and NSWBC have a material interest in these proceedings given that both entities represent numerous employers who operate in the graphic arts, printing and publishing industry, including a major employer - News Ltd (and its related entities).
- 1.5 ABI and NSWBC oppose the variations on the terms sought by the AWMU on the basis of the submissions outlined below.

## 2. LEGISLATIVE FRAMEWORK APPLICABLE TO 4 YEARLY REVIEW

- 2.1 The legislative framework applicable to the 4 Yearly Review has been considered in detail in *4 Yearly Review of Modern Awards: Preliminary Jurisdictional Issues* [2014] FWCFB 1788 (**Preliminary Issues Decision**).
- 2.2 Given the publication of the Preliminary Issues Decision, it is unnecessary to outline the legislative framework applicable to the present proceedings in detail. However, for the purposes of these submissions, there are three relevant categories of principles which arise from the Preliminary Issues Decision.

### **Modern awards objective must be considered**

- 2.3 The Preliminary Issues Decision confirms (at [23]) that the Fair Work Commission (**Commission**) remains at all times obliged to ensure that modern awards, together with the

National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions, taking into account:

- (a) relative living standards and the needs of the low paid;
- (b) the need to encourage collective bargaining;
- (c) the need to promote social inclusion through increased workforce participation;
- (d) the need to promote flexible modern work practices and the efficient and productive performance of work;
- (e) the need to provide additional remuneration for:
  - (i) employees working overtime; or
  - (ii) employees working unsocial, irregular or unpredictable hours; or
  - (iii) employees working on weekends or public holidays; or
  - (iv) employees working shifts;
- (f) the principle of equal remuneration for work of equal or comparable value;
- (g) the likely impact of any exercise of modern award powers on business, including on productivity employment costs and the regulatory burden;
- (h) the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards; and
- (i) the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.

(This is the modern awards objective).

2.4 This means that, when considering any variation, the Commission should be focused upon ensuring that any new version of the minimum safety net is consistent with the modern awards objective.

**Merit based evidence required**

2.5 The discretion to make determinations varying modern awards is expressed in general terms. However, the need for a 'stable' modern award system suggests that parties seeking to vary a modern award must advance a merit argument in support of the proposed variation (Preliminary Issues Decision at [60]).

2.6 When considering the merit basis to make variations, the Commission held in the Preliminary Issues Decision that:

- (a) there may be cases where the need for an award variation is self-evident. In such circumstances, proposed variations can be determined with little formality (at [23] and [60]);
- (b) where significant award changes are proposed, they must be supported by submissions which address the legislative provisions and be accompanied by probative evidence properly directed to demonstrating the facts supporting the proposed variation (at [23] and [60]); and
- (c) in conducting the Review, it is appropriate that the Commission take into account previous decisions relevant to any contested issue and the particular context in which those decisions were made (at [27]).

**Provisions included in a modern award may only go so far as to meet the modern awards objective**

2.7 Section 138 of the *Fair Work Act 2009 (FW Act)* (which is relevant to the review) does not require a party to prove that a variation is necessary for the award to meet the modern award's objective.

2.8 However, what section 138 of the FW Act does require is that the terms included in a modern award go only as far as is necessary so as to meet the modern awards objective:

*"In the Review, the proponent of a variation to a modern award must demonstrate that if the modern award is varied in the manner proposed then it would only include terms to the extent necessary to achieve the modern awards objective"* (at [36]).

### **3. CHARACTERISATION OF THE PROPOSED CHANGES**

3.1 In its preliminary decision in relation to the Group 2 awards,<sup>1</sup> the Full Bench identified the coverage of the Award as being a matter requiring further consideration:

*"We consider that the first three issues identified above are substantive issues which should be referred to a separately constituted full bench for hearing and determination. In relation to the fourth issue, we accept in principle that it should be made clear that the award's coverage extends to metropolitan daily newspapers. However that change or clarification of coverage may require consequential changes*

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<sup>1</sup> [2016] FWCFB 7254

*to various other provisions of the award having regard to the terms of the pre-2009 industrial instruments which applied. A number of parties have adverted to the need for this wider consideration to arise. Accordingly we will also refer this issue to the separately constituted full bench for finalisation.”*

- 3.2 ABI and NSWBC do not propose to advance submissions specifically addressing whether the coverage of the Award should be amended.
- 3.3 However, ABI and NSWBC submit that the “*consequential changes*” proposed by the AMWU represent significant changes of the kind contemplated in the Preliminary Issues Decision. Specifically, the changes proposed:
- (a) expand the existing paid jury service leave provisions of the Award and NES to an unlimited amount of jury service leave;
  - (b) expand personal leave entitlements from 10 days per year to 60 days per year; and
  - (c) dramatically increase redundancy payments to substantial and uncapped amounts.
- 3.4 It necessarily follows that the AMWU’s proposed changes must be supported by probative evidence and submissions directed towards the relevant legislative provisions which justify making the amendments sought.
- 3.5 The AMWU has not filed any evidence at all in support of any of the significant changes it has proposed.
- 3.6 Specifically, there is no evidence before the Commission regarding matters such as:
- (a) the correct definition of a “*daily metropolitan newspaper*”;
  - (b) whether the definition of “*metropolitan daily newspapers*” found in the *Journalists Published Media Award 2010* is applicable and transferable to this Award;
  - (c) whether there are groups of employees presently covered by the Award who may be unintentionally caught by the proposed variations;
  - (d) the “*industry standards*” which allegedly arise out of the pre-modern award instruments;
  - (e) the appropriateness of applying any such “*industry standards*” to the group of employees who will be captured by the proposed changes; and
  - (f) the merit associated with introducing the additional leave and redundancy entitlements sought.

3.7 In light of the failure of the AWMU to advance any evidence, the Commission should not make the variations proposed with respect to jury service leave, personal leave or redundancy payments.

#### 4. DO THE AMWU PROPOSED ARRANGEMENTS REFLECT “INDUSTRY STANDARDS”?

4.1 The AMWU has sought to argue that its proposed changes reflect “industry standards” primarily by relying upon the terms of enterprise awards presently applicable to News Ltd.

4.2 In order to respond to the AMWU’s contention, it is necessary to consider the award modernisation history applicable to the relevant enterprise awards.

##### **Award Modernisation Proceedings**

4.3 During the 2008 Award Modernisation Proceedings which led to the creation of the current Award,<sup>2</sup> News Ltd provided correspondence to the Australian Industrial Relations Commission addressing the coverage of the proposed *Graphic Arts, Printing, Publishing and Associated Industries and Occupations Award 2010 (AMOD Exposure Draft)*.

4.4 In its correspondence, News Ltd noted that it was not a respondent to the Federal industry award and had predominantly operated under its own industrial instruments; namely, the:

- (a) *Metropolitan Daily Newspapers Redundancy Award 1999*;
- (b) *Metropolitan Newspapers (South Australian and Tasmania) Printing Award 2003*;
- (c) *Chullora Printing Award 2001*;
- (d) *Queensland Newspapers Pty Ltd Printing (Murarrie) Award 2000*;
- (e) *Northern Territory News Award 2003*; and
- (f) *Printing Industry Herald and Weekly Times Production Award 2003*.

4.5 Despite its expressed view that the AMOD Exposure Draft should be amended so that it was “more clearly expressed” that it did not apply to major metropolitan newspapers, such an amendment was not made.

4.6 In 2014, the AWMU and News Ltd made applications under item 4 of Schedule 6 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (Transitional Act)* for the Commission to make modern enterprise awards to replace the majority of its pre-reform instruments (collectively, the **News Ltd Enterprise Awards**).

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<sup>2</sup> AM2008/17 Graphic Arts Group - Graphic Arts, Printing, Publishing and Associated Industries and Occupations Award

4.7 In its decision<sup>3</sup>, a Full Bench of the Commission noted that:

- (a) the News Ltd business grew through the acquisition of existing businesses, which had unregistered agreements and understandings between employers and employees governing terms and conditions of employment [7];
- (b) these unregistered agreements were formalised into site based enterprise awards, with Federal awards never applying to these locations [7];
- (c) in the 1990s, technological developments caused a movement away from printing operations being located at the same site as non-printing operations [8];
- (d) new enterprise awards were negotiated to cover employees engaged at these new printing sites [8];
- (e) during modernisation, the coverage provisions of the Award were not drafted in such a way as to include the metropolitan newspapers and accordingly the shift working arrangements and classifications peculiar to those papers are not reflected in the Award [9];
- (f) News Ltd stands alone in the industry in the operation of its business; that is, there were (at that time) no other print centres dedicated to the production of the newspapers like those operated by News Ltd [11]; and
- (g) accordingly, there are a range of differences between the News Ltd awards and the Award, which are 'wide ranging and quite extensive' [14].

4.8 The Bench relevantly stated as follows<sup>4</sup>:

***“Other publishers of metropolitan daily newspapers do not operate in such a manner [ie. in the manner operated by News Ltd]...***

*...As noted above, there are a range of differences between the News Limited awards and the modern industry award. Some of those differences concern entitlements for the same circumstances, such as the quantum of annual leave. Other differences concern working arrangements such as the definition of afternoon and night shifts. It is clear that the differences are wide ranging and quite extensive.*

*This can be explained by the circumstance that metropolitan daily newspaper publishing, as a subset of the general publishing industry, was not intended to be*

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<sup>3</sup> Application by AMWU and ors [2014] FWCFB 6167

<sup>4</sup> [2014] FWCFB 6167

*covered by the industry award and the terms of the industry award were determined without regard to the terms of the enterprise awards applying to metropolitan daily newspaper publishing. News Limited submits that the terms of the industry award are foreign to metropolitan daily newspapers. Further, the operations of the News Limited print sites are unique in the sense that there are no other print centres dedicated to the production of metropolitan newspapers."*

- 4.9 It is therefore apparent that News Ltd is a business which is unique and contrasts with the broader industry. The business of News Ltd could not be said to be reflective of broader industry standards.

#### **Inconsistency within the AMWU's Submissions**

- 4.10 The unsustainability of the argument that the News Ltd Enterprise Awards reflect industry standards is borne out by contradictions within the AMWU's own Submissions.
- 4.11 At paragraph 28 of the AMWU Submissions, the AMWU states that the News Ltd Enterprise Awards have not been taken into account in determining "*industry standards*" specifically because they are separate from the industry Award. However, the AMWU Submissions then proceed to state:

*"However, it is important to note what the redundancy provisions for the News Ltd Enterprise Awards are as they should be taken into account in establishing what the industry standard is."*

- 4.12 This view is plainly contradictory. The AMWU cannot on the one hand allege that the News Ltd Enterprise Awards do not reflect industry standards, presumably with respect to the things which are less advantageous than the Award (such as the lower shift allowances, weekend penalty rates and annual leave entitlements), whilst at the same time trying to sustain the view that the more beneficial entitlements (severance pay) are an accurate reflection of those standards.

#### **Other entities in the industry**

- 4.13 There are other awards that applied prior to 2010 to the industry, and a significant number did not contain the type of redundancy and leave provisions now sought by the AMWU.



4.14 By way of example:

- (a) the *Printing (West Australian Newspapers Limited, Guaranteed Employment and Voluntary Retirement) Award* only provided for redundancy payments in respect of voluntary redundancies;
- (b) the *Print Centre (Canberra Times) Award 2003* only provided for redundancy payments in respect of voluntary redundancies;
- (c) the *Fairfax Printers Award 1999* limited severance pay to a maximum payment of 8 weeks pay;
- (d) the *Printing Industries (State) Award* limited severance pay to 16 weeks for employees under 45 years of age and to 20 weeks for employees over 45 years of age;
- (e) the *Printing Award (SA)* limited severance pay to 12 weeks pay (with an additional 4 weeks for employees over 45 years of age with not less than 10 years of continuous service);
- (f) the *Printing Industry Award - State 2003* limited severance pay to 16 weeks; and
- (g) the *Printing (Newspaper) Award 1979* did not contain any redundancy provisions at all.

4.15 In the case of personal/sick leave:

- (a) the *Print Centre (Canberra Times) Award 2003* only provided an entitlement to sick leave of five days in the first year of service and eight days in each subsequent year;
- (b) the *Fairfax Printers Award 1999* limited sick leave to a maximum of 60.8 or 64 hours per year (depending on the employee's ordinary hours);
- (c) the *Printing Industries (State) Award* limited personal leave to 64 hours of working time per year in the second and subsequent years of employment;
- (d) the *Printing Award (SA)* limited sick leave to 10 days per year; and
- (e) the *Printing Industry Award - State 2003* limited sick leave to 7.6 hours after each 6 weeks of employment (with payment for no more than 13 weeks' absence in any one year).

### **Conclusion on industry standards**

4.16 Having regard to the submissions identified at paragraphs 4.1 to 4.15 above, it cannot be said that the variations now proposed by the AMWU constitute “*industry standards*”.

### **5. PRE-PRESS EMPLOYEES**

5.1 It does not appear that the AMWU has appreciated that the “*consequential changes*” it proposes will have the effect of altering the terms and conditions of employment for employees currently covered by the Award.

5.2 This is particularly the case for employees some businesses describe as “*pre-press employees*”. By way of example, News Ltd engages employees it describes as “*pre-press employees*”, who are essentially graphic artists.

5.3 Other than pre-press employees who are covered by the *Metropolitan Newspapers (South Australia and Tasmania) Printing Award 2015*, these employees are excluded from the coverage of the News Ltd Enterprise Awards for the following reasons:

- (a) the enterprise award operative in NSW (*Chullora Printing Award 2015*) is specific to the print site at Chullora and does not contain a classification covering graphic artists;
- (b) the enterprise award operative in Victoria (the *Printing Industry - Herald and Weekly Times - Production Award 2015*) does not contain a classification covering graphic artists; and
- (c) the *Queensland Newspapers Pty Ltd (Murrarie) Award 2015* is specific to the print site at Murrarie and does not contain a classification covering graphic artists.

5.4 Having regard to the coverage provisions of the Award, which include “*commercial and/or lithographic designing, writing and/or drawing*”, this group of pre-press News Ltd employees are currently covered by the Award.

5.5 For this group of employees, the effect of the proposed variation would be that:

- (a) instead of an entitlement to redundancy pay pursuant to the National Employment Standards, employees would receive four weeks pay for each year of service up to ten years, and three weeks’ pay for each year of service thereafter; and
- (b) instead of personal leave in accordance with the National Employment Standards, employees would be entitled to receive sixty days of paid sick leave per year (at varying rates).

- 5.6 This is an outcome which should not be accepted by the Commission, especially considering the total lack of evidence supporting any assertion that this group of employees should somehow be subject to an “*industry standard*” which is not applicable to nor appropriate for the type of work they undertake.
- 5.7 The terms and conditions of employment applicable to this group of employees only serves to further undermine the AMWU’s reliance on an alleged ‘industry standard’. It is clear that there are clearly categories of graphic artists currently covered by the Award who do not currently receive the more generous redundancy and leave provisions sought in the AMWU Submissions, such as:
- (a) most of News Ltd’s pre-press employees;
  - (b) any graphic artists presently engaged by the Fairfax group of companies; and
  - (c) graphic artists operating outside the newsprint industry.

## **6. DEFICIENCY IN DEFINITIONS PROPOSED BY THE AMWU**

- 6.1 As has already been discussed, the Draft Determination confers additional entitlements intended to apply to a category of employees called “*metropolitan daily newspaper employees*”. Unfortunately, the Draft Determination does not in any way define who falls within this category of employees.
- 6.2 It is possible that “*metropolitan daily newspaper employees*” is intended to comprise of employees employed in a “*metropolitan daily newspaper office*” (which is a term defined in the Draft Determination).
- 6.3 However, this definition is itself problematic. For instance, where a newspaper conducts its operations across multiple sites, it is entirely possible that confusion may arise regarding whether employees are employed in the “*metropolitan daily newspaper office*”. By way of example the “*newspaper office*” might be where journalists are located but printing and other graphic arts activities might be conducted off-site.
- 6.4 In the case of News Ltd, there are certainly newspaper operations which are split across multiple sites, with some work being performed at head office (for instance, Holt Street Surry Hills, Sydney) and other work being performed elsewhere within Sydney.

## **7. SUBMISSIONS SPECIFIC TO JURY SERVICE LEAVE**

- 7.1 As has been identified in the submissions filed on behalf of Fairfax Media Limited on 12 May 2017, the question regarding whether modern awards should include a provision with

respect to jury service leave was specifically considered by the Award Modernisation Full Bench in 2008. The Full Bench determined not to supplement the NES jury service provisions in modern awards (notwithstanding the existence of these terms in some industries - including the printing industry), holding as follows:

*“We have given further consideration to whether modern awards should supplement the NES in relation to the amount of jury service leave to which an employee is entitled. The NES provides that jury service leave should be limited to 10 days. So far as we know jury service leave provisions in awards and NAPSAs are not subject to any cap at all. If we were to maintain an unlimited entitlement it would be necessary to supplement the NES in every modern award. Such a course would be inconsistent with the NES and tend to undermine it.*

*A similar consideration arises in relation to the rate of pay while on jury service leave. For similar reasons we shall not make general provision for a rate of pay other than the base rate as defined in the NES. It follows that the standard community service leave clause will simply refer to the NES.”<sup>5</sup>*

7.2 The attempt to re-include more beneficial jury service leave provision in the Award is nothing more than an attempt to re-agitate matters that were squarely considered and determined during the Award Modernisation Proceedings.

## **8. SUBMISSIONS SPECIFIC TO PERSONAL LEAVE**

8.1 In supporting its claim for substantially increased personal leave, the AMWU has argued that:

*“...it makes sense that there should be an entitlement for additional sick leave for employees who consistently work night shift or intermediate shift in order to ensure newspaper production. The evidence points to employees who regularly work night shift have negative impacts upon their health.”*

8.2 These assertions have not been supported by any evidence filed in the proceedings. Furthermore, even if evidence was filed to establish that there are some deleterious effects associated with night work, no evidence has been filed to identify:

- (a) the specific quantum of additional leave that would be required to address such effects; or
- (b) that 60 days personal leave per year is required to address such effects.

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<sup>5</sup> *Re Award Modernisation* (2008) 177 IR 364 at [103]

**9. CONCLUSION**

- 9.1 For the reasons advanced above, the substantive award changes proposed by the AMWU with respect to personal leave, jury service leave and redundancy pay should not be made by the Commission.
- 9.2 Should the Commission wish to vary the Award to expressly identify that employees engaged by a daily metropolitan newspaper are covered by the Award, ABI and NSWBC do not oppose such a variation.
- 9.3 Given the breadth of issues addressed in the submissions, ABI and NSWBC consider that scheduling a hearing to determine the AMWU claims would be appropriate.

**Filed on behalf of ABI and the NSWBC by**

**Luis Izzo**  
**Director**  
**Australian Business Lawyers & Advisors**  
(02) 9458 7640  
luis.izzo@ablawyers.com.au



**Kate Thomson**  
**Lawyer**  
**Australian Business Lawyers & Advisors**  
(02) 4989 1003  
kate.thomson@ablawyers.com.au

**19 May 2017**

**FAIR WORK COMMISSION**

AM2016/33: 4 YEARLY REVIEW OF THE GRAPHIC ARTS, PRINTING AND PUBLISHING AWARD

AMWU SUBSTANTIVE CLAIM

**WITNESS STATEMENT OF DARYL MAKINS**

I, Daryl Makins, of [REDACTED] say as follows:

**BACKGROUND**

1. I am Senior Manager of Employee Relations for News Corp Australia (**News**).
2. News Corp Australia is the trading name for a group of Australian employing entities of a foreign registered company, News Corporation (ARBN 163 882 933).
3. I have been performing this role for 4 years, and was previously employed as Senior Employee Relations Advisor for Australia and New Zealand Banking Corporation.

**INDUSTRIAL RELATIONS BACKGROUND**

4. The primary trading activity of News is the production of newspapers. The majority of these are major metropolitan daily newspapers such as the Daily Telegraph in Sydney.
5. Since the 1970s, the News business has grown through the acquisition of different existing titles. Each of these newspapers had its own unregistered agreements or informal understandings between the employees and the previous owners of the business.
6. After acquisition by News, these unregistered agreements were formalised into state based enterprise awards. The federal industrial awards never applied to these sites.
7. In the 1990s, technological developments caused a movement away from having printing operations being located at the same location as the rest of the newspaper operations. By way of example, News' Sydney head office is located in Surry Hills, but the newspapers are actually printed at the Print Centre in Chullora.
8. As a result of this change in the organisation of the business, new enterprise awards were negotiated with the employees at these new printing sites.
9. During the Award modernisation process in the late 2000s, News made a submission to the Graphic Arts bench of the Australian Industrial Relations Commission in relation to the proposed *Graphic Arts, Printing, Publishing and Associated Industries and Occupations Award 2010*.
10. This submission, from my colleague Andrew Biocca, is **attached** to this statement and marked as Annexure A.
11. Currently, there are five modern enterprise awards which cover News production employees:
  - (a) *Chullora Printing Award 2015*;
  - (b) *Printing Industry - Herald and Weekly Times - Production Award 2015*;

- (c) *Queensland Newspapers Pty Ltd (Murarrie) Award 2015*;
- (d) *Metropolitan Newspapers (South Australia and Tasmania) Printing Award 2015*; and
- (e) *Northern Territory News Award 2015*

#### PRE-PRESS EMPLOYEES

12. News engages approximately 200 "pre-press employees" in NSW, Victoria, Queensland and South Australia who work on metropolitan daily newspapers (in addition to regional and community papers). These employees perform tasks that include the following:
  - (a) create layouts for all News Corp Australia advertising products that meet internal and external client requirements – including designing and building advertisements;
  - (b) quality check final output of completed pages to print sites, which meet both internal and external client requirements;
  - (c) classified pagination, which includes placing classified ads onto pages;
  - (d) engage in print quoting and co-ordination of special magazines; and
  - (e) copy management, which includes talking to clients about their requirements with respect to the advertisement design.
13. These pre-press employees do not typically work at the 'print centres' where the newspapers are actually produced (other than the Chullora Print Centre in Sydney from which some pre-press employees work), but at other locations (which are identified separately below at paragraph 20).
14. Pre-press employees engaged in the following parts of News' business are not covered by the relevant enterprise award for the following reasons:
  - (a) the enterprise award operative in NSW (*Chullora Printing Award 2015*) is specific to the print site at Chullora and does not contain a classification covering graphic artists;
  - (b) the enterprise award operative in Victoria (the *Printing Industry - Herald and Weekly Times - Production Award 2015*) does not contain a classification covering graphic artists; and
  - (c) the *Queensland Newspapers Pty Ltd (Murarrie) Award 2015* is specific to the print site at Murarrie and does not contain a classification covering graphic artists.
15. In terms of the current conditions applicable to News' pre-press employees, the relevant instruments applicable are as follows:
  - (a) In Victoria - the *Herald and Weekly Times Pty Ltd Pre-Press Agreement 2009* applies to some employees, but the balance are covered by the *Graphic Arts, Printing and Publishing Award 2010 (Award)* (for example, employees employed by Leader Associated Newspapers Pty Limited);
  - (b) In Queensland, some employees are covered by the *Queensland Newspapers Pty Ltd Pre-Press Agreement 2009* but the balance are covered by the Award; and
  - (c) In NSW, approximately 25 pre-press employees are subject to the provisions of the Award, while others are clerical employees or award-free.

16. In addition to employees in our pre-press area of the business, the Award also has application to other employees.
17. For example, News engages approximately 25 Graphic Designers in our sales and marketing functions who fall within the coverage of the Award, but work outside of the pre-press area of the business and outside of the printing area of the business. These employees are also not within the scope of the Enterprise Awards that apply at the Production sites. These employees are typically based at locations away from Print Sites, such as Surry Hills in Sydney, Southbank in Melbourne, Waymouth Street in Adelaide and Bowen Hills in Brisbane.
18. News also engages employees at production sites in New South Wales, Victoria, Queensland and South Australia who are covered by the Award, but not covered by the relevant enterprise awards set out in paragraphs 11 above. These employees are predominately involved in the distribution and warehouse functions of the print sites.

**LOCATIONS WHERE METROPOLITAN DAILY NEWSPAPER WORK IS PERFORMED**

19. In relation to metropolitan daily newspapers, work is performed in a number of locations.
20. The relevant locations for the performance of work in each state are as follows:
  - (a) In NSW:
    - (i) non-printing activities predominately occur at our premises in Surry Hills, and the printing occurs at the Chullora Print Centre (Hume Highway, Chullora);
    - (ii) pre-press employees work at the following locations:
      1. Chullora (Sydney print centre); and
      2. Surry Hills.
  - (b) In Victoria:
    - (i) non-printing activities predominately occur at our premises at Southbank, and the printing occurs at Westgate Park;
    - (ii) pre-press employees work at the following locations:
      1. Blackburn; and
      2. Geelong.
  - (c) In Queensland:
    - (i) the non-printing activities predominately occur at our premises at Bowen Hills, and the printing occurs at the Murrarie Print Centre, as well as other regional print centres in Townsville, Rockhampton, Yandina and Warwick.
    - (ii) pre-press employees work at the following locations:
      1. Bowen Hills.

  
Daryl Makins

19/05/2017



**STATEMENT OF DARYL MAKINS - ANNEXURE 'A'**

19 February 2009

Industrial Registrar  
AIRC  
11 Exhibition Street  
MELBOURNE VIC 3000

By email  
amod@airc.gov.au

Dear Registrar,

**Award Modernisation –  
AM 2008/17  
Graphic Arts Group  
Graphic Arts, Printing, Publishing and Associated Industries and Occupations  
Award 2010**

News Ltd seeks to comment upon the exposure draft award entitled *Graphic Arts, Printing, Publishing and Associated Industries and Occupations Award 2010* (the draft award) which was attached to the AIRC's decision of 23 January 2008 [2009] AIRC FB 50. In particular, News Ltd seeks that it be more clearly expressed in the draft award that it does not apply to major metropolitan newspapers.

**1 Metropolitan Daily Newspapers**

News Ltd publishes various major metropolitan newspapers such as the *Australian*, the *Daily Telegraph* (NSW), the *Adelaide Advertiser* (SA), the *Courier Mail* (Queensland), Perth's *Sunday Times* (WA), and the *Herald Sun* (Victoria).

**2 Background**

News Ltd has never been respondent to the *Graphic Arts Award*. Generally it has operated under its own industrial instruments. It is also covered by the Metropolitan Newspapers (South Australia and Tasmania) Printing Award which, despite its title is, in fact, an enterprise award as it only applies to News Ltd newspapers. News Ltd has advised the Industrial Registrar accordingly in the attached letter.

In its submissions to the AIRC of 28 October 2008 we indicated its surprise as to why the PIAA and others sought to include major metropolitan newspapers in the graphic arts industry given their long and separate industrial relations history.

The PIAA sought to clarify the matter in a supplementary submission by indicating that it was attempting to subsume the coverage of the *Country Publishing and Printing Award 2002*. That Award does not apply, however, to metropolitan newspapers.

In its decision of 20 June 2008 the AIRC stated:

*[126]” We also note the large number of awards referred to in PIAA’s submissions that cover aspects of the production of newspapers. We are unaware as to whether there has been any discussion with any of the unions or employers engaged in that sector who might have an interest in a modern award which would have a scope extending to this aspect of the printing industry. On balance we are inclined to the view that priority status should not be assigned to the industry and that discussions should occur prior to the Commission, in consultation with the parties that would then wish to participate, identifying the nature of the industry and the scope of any modern award.”*

### 3 Proposed Award

The PIAA, AIG and AMWU proposed an award for the “graphic arts group” in the Stage 2 proceeding which would cover:

‘non-daily and regional daily newspapers’

This wording was subsequently incorporated in the draft award prepared by the AIRC (see clause 4.5(n)).

As such, it appears that neither the industry groups, the AMWU or the AIRC (in the draft award) are seeking to cover metropolitan newspapers.

Nevertheless, in our submission the exclusion of metropolitan newspapers from the draft award could be clearer. For example:

- (1) The term ‘non-daily’ newspaper could cover major metropolitan newspapers not published daily. The *Australian* and the *Daily Telegraph* are not published on a Sunday and could be understood to be non-daily. Conversely, Perth’s *Sunday Times* and Sydney’s *Sunday Telegraph* are only published on Sundays and could be understood to be non-daily.
- (2) Clause 4, Coverage, includes a number of descriptors such as ‘publishing’ in 4.5(e) which could potentially cover News Ltd despite the apparent intent of clause 4.5(n) to exclude its metropolitan newspapers.

The publishing of major metropolitan newspapers is a significant industry of itself and it is important that its exclusion from the draft award is clear. To avoid doubt, News Ltd suggests that there be a new subclause included in clause 4, Coverage, as follows:

This award does not cover an employer publishing metropolitan newspapers on five or more times per week, or on a Sunday.

This proposed wording in our submission would clarify coverage of the draft award and allow the existing industrial regulation of metropolitan newspapers to continue.

Yours faithfully

**Andrew Biocca**  
**Group Employee Relations Manager**

28 October 2008

Industrial Registrar  
AIRC  
11 Exhibition Street  
MELBOURNE VIC 3000

**Also by email**

Dear Registrar,

**Award Modernisation-Designation of Enterprise Awards**

- 1.1 The purpose of this letter is to seek that the following awards be designated in the Commission's 'working' classification of industrial instruments as 'enterprise awards':
  - (a) Metropolitan Daily Newspapers Redundancy Award;
  - (b) Metropolitan Newspapers (South Australia and Tasmania) Clerical and Associated Officers Award 2003;
  - (c) Metropolitan Newspapers (South Australian and Tasmania) Printing Award 2003; and
  - (d) Newspaper Printing Superannuation Award 1988 ("the Awards").
- 1.2 The reason we make this request is that the title of the awards suggest that they apply to a range of employers when, in fact, they only apply to companies in the News Limited group. We are concerned that this has lead to them being designated as industry awards, and that this designation might cause confusion for the award modernisation process that the Commission is undertaking.
- 1.3 In our view, these Awards are 'enterprise awards' as:
  - (a) the employers listed in each Award are "related bodies corporate" for the purposes of section 50 of the *Corporations Act 2001*;
  - (b) those employers are deemed a single employer;
  - (c) the separate businesses undertaken by those employers are deemed to be a single business; and
  - (d) the Awards therefore specifies the single business which it regulates.

## 2 Rationale

2.1 Section 576U of the *Workplace Relations Act 1996* (Cth) (**WR Act**) defines an "enterprise award" as:

an award that regulates the terms and conditions of employment in a **single business** only (being the single business specified in the award).

2.2 Section 4 of the WR Act provides that 'single business' has the meaning given by s.322.

2.3 Section 322 of the WR Act defines a 'single business' as:

a business, project or undertaking that is carried on by an employer;

2.4 Section 322(2) of the WR Act provides that if:

(a) two or more employers carry on a business, project or undertaking as a joint venture or common enterprise, the employers are taken to be one employer; or

(b) if 2 or more corporations **that are related to each other** for the purposes of the *Corporations Act 2001* each carry on a single business:

(1) the corporations may be treated as one employer; and

(2) the single businesses may be treated as one single business.

2.5 Relevantly section 50 of the *Corporations Act 2001* (Cth) provides that:

Where a body corporate is:

(a) a holding company of another body corporate; or

(b) a subsidiary of another body corporate; or

(c) a subsidiary of a holding company of another body corporate;

the first-mentioned body and the other body are related to each other.

2.6 As we understand it, in order for any of the Awards to qualify as an enterprise award it must regulate a 'single business'. For an award which binds more than one employer to be an enterprise award, those employers must be deemed to one employer by the operation of section 322.

2.7 The Awards are expressed as binding the following employers (all of which are News Limited companies):

Metropolitan Daily Newspapers Redundancy Award 1999

2.8 This Award is binding on:

(a) Advertiser Newspapers Limited;

- (b) Herald and Weekly Times Limited;
- (c) Nationwide News Pty Limited (but only in respect of the Mirror Australian Telegraph Publications Division, the Sunday Times, Perth Division and the Northern Territory News Division); and
- (d) Davies Bros Limited.

Metropolitan Newspapers (South Australia and Tasmania) Clerical and Associated Officers Award 2003

2.9 This Award is binding on:

- (a) Advertiser Newspapers Limited; and
- (b) Davies Brothers Limited.

Metropolitan Newspapers (South Australian and Tasmania) Printing Award 2003

2.10 This Award is binding on:

- (a) Advertiser Newspapers Limited; and
- (b) Davies Brothers Limited.

Newspaper Printing Superannuation Award 1988.

2.11 This Award is binding on:

- (a) Advertiser Newspapers Limited;
- (b) Nationwide News Pty Limited; and
- (c) Davies Brothers Limited.

2.12 In our submission, as the employers specified in each award are related bodies corporate for the purposes of section 50 of the *Corporations Act 2001*, those employers are deemed a single employer and the separate businesses undertaken by those employers are deemed to be a single business. The Awards would therefore be deemed to bind a single business and qualify as an 'enterprise award'.

Please contact us should you require any further information.

Yours faithfully

Andrew Biocca  
Group Employee Relations Manager