

IN THE FAIR WORK COMMISSION

Matter No: AM2018/24

Re: Review of the *Journalists Published Media Award 2010*

ADDITIONAL SUBMISSIONS OF NINE ENTERTAINMENT CO. PTY LTD

1. Introduction

- 1.1. These submissions are filed by Nine Entertainment Co. Pty Ltd (**Nine Entertainment**), including on behalf of its various subsidiaries which employ award-covered journalists, photographers, and other editorial employees, in accordance with the direction in paragraph [93] of the Full Bench's decision of 20 November 2019¹ (**November Decision**).
- 1.2. This document deals with two potential variations to the *Journalists Published Media Award 2010* (**Award**) where the Commission has invited further submissions from interested parties:
 - (a) variations consequential to the extension of Part 5's coverage to online-only publications, and specifically how a framework where some provisions apply in different ways to particular types of defined "newspapers" is to be adapted to accommodate online publications without causing the difficulties identified in paragraph [50] of the November Decision; and
 - (b) the replacement of the "exemption" provision in clause 4.9(b) of the current Award.
- 1.3. Nine Entertainment has previously put its primary and alternative positions in relation to these matters in its written submissions of 8 July, 26 July and 27 August 2019. It does not repeat those submissions here.

2. Definitions of publications

- 2.1. In Nine Entertainment's submission, it is not necessary to change the definitions of various publications in the Award from referring to "newspapers" and adopt some other nomenclature. As the employer parties have previously submitted, and the Full Bench noted at [50] of the

¹ [2019] FWCFB 7603.

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November Decision, moving away from the definition of a publication by reference to its principal area of distribution and/or frequency of publication risks unintended consequences.

- 2.2. Rather, in order to accommodate the extension of Part 5 of the Award to online-only publications, the Commission ought insert into clause 3.1 a definition of “digital publication”, capturing those publications which currently are not subject to Part 5 due to clause 4.10(a) of the Award. This definition would be to the effect that:

digital publication means an online publication, other than an online publication which is an associated publication of a print publication (such as a metropolitan daily newspaper or a regional daily newspaper).

References to “digital publications” would then be added to the small number of Award provisions which apply in different ways to various types of publications, as necessary.²

- 2.3. The above approach is the simplest way to fill the “gap” created by the extension of Part 5 of the Award to online-only publications. Were it adopted, then:
- (a) employees who work on the associated online publication of a newspaper would continue to be covered by provisions relating to the relevant type of newspaper, by reason of clause 3.2; and
 - (b) otherwise, there would be a default provision for how the Award applies to employees on “online only” publications.
- 2.4. If the above position is adopted by the Commission, it would follow that the proposed variation to clause 4.9 of the Award should retain the term “metropolitan daily *newspaper*” in paragraph 4.9(a), rather than substitute the term “metropolitan daily news publication”.

3. Exempt positions

- 3.1. Noting the matters which the Commission has identified as necessary to address in order for a replacement exemptions provision to meet the modern awards objective (November Decision at [84]–[88]), Nine Entertainment supports the adoption of a new clause 4.9(b) in the terms of the *provisional view* expressed by the Full Bench (at [91]).³
- 3.2. Throughout the review process, Nine Entertainment’s concern in relation to exemptions has been that the MEAA’s proposal would bring employees within the coverage of the Award where they are appropriately exempt, because it would impose an unreasonably high standard of the level of “managerial” functions that an employee must exercise to be exempt.

² Relevantly, these would include current clauses 10.3(c), 21.2 and 24.2.

³ The proposed clause 4.9(a) is however subject to the comment at [2.4] above.

- 3.3. Noting in particular the Commission's statement in its reasons that the replacement clause 4.9(b) it sets out would cover all the exempt employees at *The Age* described by Mr Alex Lavelle in his evidence,⁴ the *provisional view* deals with this concern. Nine Entertainment supports an approach whereby an employee may be exempt by virtue of their editorial, artistic or managerial functions, and considers that this better reflects the reality of contemporary newsrooms than the MEAA proposal. As noted by the Commission (November Decision at [89]), Nine Entertainment takes no issue with the threshold annual salary for exemption being equal to the Level 11 rate of pay.

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⁴ November Decision at [90], [92].