

**From:** Serong, Michael <michael.serong@nortonrosefulbright.com>  
**Sent:** Monday, May 25, 2020 11:18 AM  
**To:** Chambers - Clancy DP <Chambers.Clancy.DP@fwc.gov.au>  
**Cc:** jmurdoch@qldbar.asn.au; Kerry Westwood (Kerry\_Westwood@evt.com) <Kerry\_Westwood@evt.com>  
**Subject:** Broadcasting Recorded entertainment and Cinemas Award 2010 AM2019/17 (2808338)[NRF-APAC.FID1241824]

Dear Associate

**Re: Conference at 12 noon on Tuesday 26 May 2020**

In respect of this conference:

1. We propose to tender a copy of the pages of the Exposure Draft dated 20 May 2020 with the changes we propose tracked for ease of reference. These pages are attached.
2. Do any other parties intend participating in the conference? If so, could you please advise so that we can provide them with a copy of the pages before the conference.
3. We have detected, and will raise at the conference, what appear to be further anomalies in the Exposure Draft:
  - Clause 13.5(d) is not correct. It requires the adult rate specified for juniors in clause 13.5(b) but clause 13.5(b) deals with junior employees in cinemas.
  - Clause 13.5(e), where it refers to clause 13.5(b) appears to be similarly in error. Again, perhaps clause 13.5(c) is intended.

Should you have any queries, please contact me on the mobile number below.

Regards

**Michael Serong** | Consultant  
Norton Rose Fulbright Australia  
Level 15, RACV Tower, 485 Bourke Street, Melbourne, Australia  
Tel +61 3 8686 6978 | Mob +61 417 324 422 | Fax +61 3 8686 6505  
[michael.serong@nortonrosefulbright.com](mailto:michael.serong@nortonrosefulbright.com)

**NORTON ROSE FULBRIGHT**

*Law around the world*  
[nortonrosefulbright.com](http://nortonrosefulbright.com)

Please be aware that all Australian staff other than those required to provide essential services and facilities are working remotely, so we are not currently hosting meetings in our offices. To find out more, [click here](#).

## ANNEXURE

### Broadcasting, Recorded Entertainment and Cinemas Award 2020

Clause	Provision	Agreement between an employer and:
30.1	Television Broadcasting – meal breaks	An individual
34.2(f)(v)	Television Broadcasting – director’s loading	An individual
35.3(b)	Radio Broadcasting hours on air	An individual
39	Radio Broadcasting <u>announcers and broadcaster/journalists</u> meal breaks	An individual
40.3	Radio Broadcasting <u>technical staff</u> meal break during shift	The majority of employees
43.3	Radio Broadcasting <del>overtime</del> <u>– overtime</u> technical staff meal break	An individual
47	Journalists annualised salary	An individual
49.1	Journalists rostering	The majority of employees
57.4(c)	Cinemas casual employment payment of wages	An individual
61.3(a)	Cinemas consecutive hours off duty	An individual
77.1	Motion Picture Production hours of work	The majority of employees

## Part 2 Types of Employment and Classifications

### 8. Types of employment

8.1 At the time of engagement an employer will inform each employee in writing of the terms of their engagement and, in particular, whether they are to be full-time, parttime or casual.

### 8.2 Special provisions for employees in cinemas

Clauses 9 Full-time employees to ~~11-Casual employees~~ 11.4 will not apply to employees in cinemas (see clause 57 Types of employment).

### 9. Full-time employees

9.1 Except as specified elsewhere in this award a full-time employee is an employee who is engaged to work 38 hours per week.

9.2 A full-time employee must be provided with a written statement setting out their classification, applicable pay scale and terms of engagement.

## Broadcasting, Recorded Entertainment and Cinemas Award 2020

## 10. Part-time employees

10.1 A part-time employee is an employee who:

- (a) works less than 38 hours per week;
- (b) has regular, reasonably predictable and continuous employment; and
- (c) receives, on a pro rata basis, equivalent pay and conditions to those of full-time employees who do the same kind of work.

10.2 A part-time employee is entitled to receive the ordinary hourly rate for ordinary hours worked.

10.3 An employer is required to roster a part-time employee for a minimum of 4 consecutive hours on any day or shift.

10.4 At the time of engagement, the employer and the part-time employee will agree in writing on a regular pattern of work which specifies as a minimum:

- (a) the hours worked each day including the starting and finishing time; and
- (b) the days of the week the employee will work.

10.5 A copy of the agreement in clause 10.4 must be provided to the employee.

10.6 The terms of the agreement in clause 10.4 may be varied by consent. Any agreed variation to the pattern of work will be recorded in writing, with a copy of the variation provided to the employee.

10.7 All hours worked in excess of the hours as mutually arranged will be overtime and will be paid as such.

10.8 Despite clause 10.4, the hours of a television journalist may be altered by the employer giving the employee 7 days' notice in writing, provided that there is no change to the total agreed number of ordinary hours of work.

## 11. Casual employees

11.1 A casual employee is an employee engaged and paid by the hour. An employer when engaging a casual must inform the employee that they are employed as a casual, of their hours of work, classification level and rate of pay.

11.2 A casual employee must be paid at the relevant minimum hourly rate plus a loading of 25%. Such loading is paid instead of all paid leave including annual leave, personal/carer's leave and public holidays not worked whether prescribed in this award or the [NES](#).

11.3 Casual employees must be paid at the termination of each engagement, but may agree to be paid weekly or fortnightly.

- 11.4 Casual employees are entitled to a minimum payment of 4 hours pay on each occasion they are required to attend for work unless otherwise specified in this Award.

14

MA000091

Broadcasting, Recorded Entertainment and Cinemas Award 2020

11.5 Right to request casual conversion

- (a) A person engaged by a particular employer as a regular casual employee may request that their employment be converted to full-time or part-time employment.
- (b) A regular casual employee is a casual employee who has in the preceding period of 12 months worked a pattern of hours on an ongoing basis which, without significant adjustment, the employee could continue to perform as a full-time employee or part-time employee under the provisions of this award.
- (c) A regular casual employee who has worked equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to full-time employment.
- (d) A regular casual employee who has worked less than equivalent full-time hours over the preceding period of 12 months' casual employment may request to have their employment converted to part-time employment consistent with the pattern of hours previously worked.
- (e) Any request under clause 11.5 must be in writing and provided to the employer.
- (f) Where a regular casual employee seeks to convert to full-time or part-time employment, the employer may agree to or refuse the request, but the request may only be refused on reasonable grounds and after there has been consultation with the employee.
- (g) Reasonable grounds for refusal include that:
  - (i) it would require a significant adjustment to the casual employee's hours of work in order for the employee to be engaged as a full-time or part-time employee in accordance with the provisions of this award that is, the casual employee is not truly a regular casual employee as defined in clause 11.5(b);
  - (ii) it is known or reasonably foreseeable that the regular casual employee's position will cease to exist within the next 12 months;
  - (iii) it is known or reasonably foreseeable that the hours of work which the regular casual employee is required to perform will be significantly reduced in the next 12 months; or
  - (iv) it is known or reasonably foreseeable that there will be a significant change in the days and/or times at which the employee's hours of work are required to be performed in the next 12 months which cannot be

accommodated within the days and/or hours during which the employee is available to work.

- (h) For any ground of refusal to be reasonable, it must be based on facts which are known or reasonably foreseeable.

MA000091

15

Broadcasting, Recorded Entertainment and Cinemas Award 2020

- (i) Where the employer refuses a regular casual employee's request to convert, the employer must provide the casual employee with the employer's reasons for refusal in writing within 21 days of the request being made.
- (j) If the employee does not accept the employer's refusal, this will constitute a dispute that will be dealt with under the dispute resolution procedure in clause 26 Dispute resolution. Under that procedure, the employee or the employer may refer the matter to the Fair Work Commission if the dispute cannot be resolved at the workplace level.
- (k) Where it is agreed that a casual employee will have their employment converted to full-time or part-time employment as provided for in clause 11.5, the employer and employee must discuss and record in writing:
- (i) the form of employment to which the employee will convert that is, full-time or part-time employment; and
  - (ii) if it is agreed that the employee will become a part-time employee, the matters referred to in clauses ~~10.4~~57.3, 58.3 and 59.4 in respect of cinema employees and the matters referred to in clause 10.4 in respect of all other employees.
- (l) The conversion will take effect from the start of the next pay cycle following such agreement being reached unless otherwise agreed.
- (m) Once a casual employee has converted to full-time or part-time employment, the employee may only revert to casual employment with the written agreement of the employer.
- (n) A casual employee must not be engaged and re-engaged (which includes a refusal to re-engage), or have their hours reduced or varied, in order to avoid any right or obligation under clause 11.5.
- (o) Nothing in clause 11.5 obliges a regular casual employee to convert to fulltime or part-time employment, nor permits an employer to require a regular casual employee to so convert.
- (p) Nothing in clause 11.5 requires an employer to increase the hours of a regular casual employee seeking conversion to full-time or part-time employment.
- (q) An employer must provide a casual employee, whether a regular casual employee or not, with a copy of the provisions of clause 11.5 within the first

12 months of the employee's first engagement to perform work. In respect of casual employees already employed as at 1 October 2018, an employer must provide such employees with a copy of the provisions of clause 11.5 by 1 January 2019.

- (r) A casual employee's right to request to convert is not affected if the employer fails to comply with the notice requirements in clause 11.5(q).