

## IN THE FAIR WORK COMMISSION

**Matter No:** AM2018/24

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

### SUBMISSIONS OF RURAL PRESS PTY LTD

#### 1. Introduction

- 1.1. These submissions are filed by Rural Press Pty Ltd (**Rural Press**), on behalf of its various subsidiaries which employ award-covered journalists, photographers, and other editorial employees.
- 1.2. Rural Press is the holding company for the corporate group trading under the Australian Community Media (**ACM**) name. ACM was formerly a division of Fairfax Media Limited, becoming entirely separate from the mastheads formerly associated with the Fairfax group (which are now ultimately owned by Nine Entertainment Co. Holdings Ltd) on 1 July 2019.
- 1.3. Within ACM, Rural Press subsidiaries publish:
  - (a) three newspapers which clause 3.1 of the Award defines as “metropolitan daily newspapers”, namely *The Canberra Times*, *The Newcastle Herald*, and *The Illawarra Mercury* in Wollongong;
  - (b) many newspapers which clause 3.1 of the Award defines as “regional daily newspapers”, including for example *The Border Mail* in Albury-Wodonga, *The Daily Advertiser* in Wagga Wagga, *The Courier* in Ballarat, and *The Examiner* in Launceston;
  - (c) many newspapers that clause 3.1 of the Award defines as “country non-daily newspapers”, which publish between once and three times per week in regional towns;
  - (d) a number of weekly agricultural publications such as *The Land*; and
  - (e) various other publications and inserts.
- 1.4. The submissions deal with the variations to the *Journalists Published Media Award 2010* (**Award**) proposed by the Media, Entertainment and Arts Alliance (**MEAA**). They respond primarily to MEAA’s submissions (**MS**) and other material filed on 2 May 2019. In accordance with the Commission’s directions of 21 June 2019, Rural Press may respond separately to the two witness statements filed on 20 June 2019.

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- 1.5. ACM's principal interest in the review of the Award is in the variations sought by MEAA which would:
- (a) impose additional conditions before an employee on a metropolitan daily newspaper or regional daily newspaper can be exempted from the coverage of the Award, as is currently the case under clauses 4.9(a), (d), (j) and (l) (**Exemptions Variation**);
  - (b) remove the limitation that an employee on a country non-daily newspaper or a regional daily newspaper cannot be classified above Level 9 or 10 respectively (**Maximum Classification Variation**);
  - (c) changes to the general terminology used in the Award so that references to "newspapers" become reference to "news publications", and the Award ceases to speak separately of newspapers and associated online publications (**News Publications Variation**); and
  - (d) extend the 10% weekend penalty rate in clause 21.4 of the Award to country non-daily newspapers (**Weekend Penalty Variation**); and

## 2. Principles in the review

- 2.1. The principles applicable to the review of the Award are well-settled and need not be repeated at length. Several matters are however of particular relevance to MEAA's proposed variations:
- (a) A modern award may include terms only to the extent necessary to achieve the modern awards objective (and, the extent applicable, the minimum wages objective): FW Act s 138.
  - (b) The modern awards objective requires the Commission to consider, amongst other things, the need to ensure a "stable" modern awards system: FW Act s 134(1)(g). This implies that the variation of a modern award must be supported by merit arguments: *Re 4 Yearly Review of Modern Awards – Penalty Rates* (2017) 265 IR 1 at [253] (**Penalty Rates Case**).
  - (c) While some variations may be obvious and require little detailed consideration, to found a case for a variation which represents a substantial change to an existing award requires the making out of a commensurately detailed case, supported by evidence and submissions: *Re 4 Yearly Review of Modern Awards – Preliminary Jurisdictional Issues* (2014) 241 IR 189 at [23] (**Jurisdictional Issues Case**); *Re Security Services Industry Award 2010* [2015] FWCFB 620 at [8] (**Security Services Award Case**).
  - (d) The burden of making out such a case lies with the party propounding a change: *Re Stevedoring Industry Award 2010* (2015) 249 IR 375 at [150] per Kovacic DP and Roe C (**Stevedoring Award Case**).
  - (e) In the review, the Commission will proceed on the prima facie basis that awards achieved the modern awards objective at the time they were made: *Jurisdictional Issues Case* at [24]. This emanates from the general approach that while the Commission is not bound by the doctrine

of *stare decisis*, it should generally (including in this review) follow previous Full Bench decisions in the absence of cogent reasons not to do so: *Jurisdictional Issues Case* at [23]-[27]; *Penalty Rates Case* at [254]

- (f) This of course does not fetter the Commission’s discretion in the exercise of its powers if it finds that a variation is necessary to ensure that an award achieves the modern awards objective, but the moving party must establish that matter by appropriate evidence: *Penalty Rates Case* at [259]-[260], [263]; *Security Services Award Case* at [40]; *Stevedoring Award Case* at [156]-[161].

### 3. The Exemptions Variation

3.1. Presently, clause 4.9 of the Award provides that the Award does not cover certain persons who otherwise would fall within the breadth of its coverage clause. So far as ACM’s metropolitan and regional daily newspapers are concerned, the persons exempt are:

- (a) the editor, editor in chief or chief of staff of a metropolitan daily newspaper (clause 4.9(a));
- (b) relevantly for Rural Press, a given number of additional positions on each metropolitan daily newspaper (10 in NSW and four in the ACT – clause 4.9(d)(i) and (j)(i));
- (c) one position on any other associated publication of a metropolitan daily newspaper (clause 4.9(d)(iii) and (j)(iii)); and
- (d) at a regional daily newspaper, the editor and, at certain locations, the 1–3 next most senior editorial employees (clause 4.9(l)).

3.2. The use of ‘exemptions’ in an award is unusual. It is necessary, however, due to the breadth of Band 3 (Levels 11-13) as defined in clause 13.5(a) of the Award, whereby employees in this Band:

*... exercise the highest level of skills and responsibility. Their duties require the exercise of sustained high levels of professional, technical and creative skills of mature and experienced judgment and outstanding levels of individual accomplishment.*

3.3. In other words, so long as a person falls within the broad definition of an “editorial employee” in clause 3.1, they will be covered by the Award unless they are ‘exempt’. Exemptions therefore effectively fulfill the same function as drafting a classification scale in a way that excludes appropriate senior and highly-skilled employees.

3.4. The Exemptions Variation would require that in addition to filling one of these positions, in order to be exempt an employee must:

- (a) be classified (and paid) as not less than a Level 11 employee; and

- (b) be in a “senior managerial role” on an ongoing basis.

*Minimum classification and salary*

- 3.5. The proposed requirement in [3.4](a) above would effectively institute a new minimum rate of pay (currently \$74,058 per annum) for exempt staff. It is based primarily on the proposition that one historical matter underlying the grant of ‘exemptions’ to employers was an “expectation that an exempted employee would earn a relatively high salary” (MS at [174]). The very short answer to this is that this “expectation” was not reflected in the actual terms of awards made by the Commission’s predecessors.
- 3.6. Further, for this requirement to work as intended, the Exemptions Variation would need to be implemented together with the Maximum Classification Variation. Otherwise, because employees on regional daily publications cannot be classified above Level 10 (see clause 13.7(b)), the requirement that exempt staff be at least a Level 11 employee would effectively abolish exemptions for these publications.

*Requirement that employees fill a “senior managerial role”*

- 3.7. The proposed requirement in [3.4](b) above that only employees in a “senior managerial role” should be eligible for exemption appears to be based primarily on the notion that the inclusion of ‘exemptions’ in the Award has drifted away from the original rationale for this mechanism (MS at [174]). There are a number of important matters to observe in this respect.
- 3.8. *First*, it is not clear what a “senior” or “managerial” role is intended to mean in this context. The word ‘senior’ imports considerations of both fact and degree, while the concept of ‘management’ may encompass a broad range of concepts depending on what it is that is ‘managed’ – this might be a team, a significant business function (regardless of whether the ‘managerial’ employee has direct reports), etc. Significant care is needed in this respect, for two overarching reasons:

- (a) *First*, the Commission must be satisfied that any variation does not result in the Award covering classes of employees who, because of the nature or seniority of their role, have traditionally not been covered by awards. A modern award must not include a coverage term which has that effect: FW Act s 143(7)(a). It would appear at first blush that the MEAA case would bring within coverage persons whom the Commission has, with the consent of all parties, generally seen fit to exclude from award coverage going back nearly 30 years in some cases and further in others.
- (b) *Second*, failure to apply the Award to an employee whom an employer wrongly believes to be exempt would expose it to civil penalty proceedings: FW Act ss 50, 539(2). There should therefore be no ambiguity as to whether an employee is exempt, such that by making the wrong value judgment an employer could become liable to pecuniary penalties: *Re 4 Yearly Review of Modern Awards – Casual Employment and Part-time Employment* (2017) 269 IR 125 at [376]; see also *City of Wanneroo v Holmes* (1989) 30 IR 362 at 380.

- 3.9. *Second*, in making the Award and determining the current coverage provisions, the Australian Industrial Relations Commission (**AIRC**) specifically averted to the long history of 'exempting' certain staff from coverage:

*[108] Certain editorial positions have been exempted from coverage. The exemptions were generally supported by all parties. The only exception was that MEAA did not expressly support the exemption for senior positions in on-line publications. Given that such publications are not currently covered by an award it is appropriate to exclude them also.*

*[109] All three parties [that is, a group of employers, Country Press Australia, and MEAA] pointed out that the published media industry has a long history of exempting certain editorial positions from award coverage. This is reflected in a wide range of pre-reform awards and NAPSAs. Specific reference was made to a decision of a Full Bench of the Commission in 1984 which maintained the exemptions at the time, noting the long history of journalists' awards having exemptions for senior editorial positions from the application of those awards. The Commission at the time confirmed that it was appropriate for senior editorial staff who had managerial or executive functions to be exempt from award coverage. The manner in which this principle has been implemented has been generally consistent across the various sectors of the industry, reflecting the agreed position between publishers and the MEAA regarding the types and number of positions appropriate to be exempted in a particular sector or market.<sup>1</sup>*

- 3.10. The 1984 case to which the AIRC referred is *Re Journalists' (Metropolitan Daily Newspapers) Award 1982* (1984) 293 CAR 69 (**Exemptions Case**). It was the result of an application by the Australian Journalists Association to remove specific exemptions from the coverage of the subject award. The Australian Conciliation and Arbitration Commission declined to lay down hard-and-fast rules as to whether particular staff could be exempt, instead establishing (at 81-82) a list of matters to be taken into account in determining whether a position is "truly a direct and major part of management". Some of what is said in the Full Bench's judgment remains apposite; other aspects, such as the need to give weight to the union's interest in ensuring that journalistic work was not done by non-members (see at 82), plainly would not be proper considerations under the FW Act.<sup>2</sup>
- 3.11. What is relevant in this respect is that the AIRC and the parties concerned were aware of and averted to the *Exemptions Case* when making the Award and setting the current exemptions framework. Having regard to that authority, the AIRC determined that the current framework was appropriate. There is no reason that the Commission ought not follow the AIRC's decision in this regard. None of the material

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<sup>1</sup> *Re Award Modernisation* (2009) 187 IR 192.

<sup>2</sup> Cf. FW Act ss 3(e), 336(b)

the MEAA has put forward would lead the Commission to doubt the correctness or appropriateness of the provisions the AIRC determined.

3.12. *Third*, the MEAA's submissions set out a lengthy recitation of historical cases where the Commission's predecessors have dealt with exempt positions, and conclude that the criteria once applied to determine whether a position ought be exempt have ceased to be applied. That some principles laid down many years ago are no longer applied in full is neither surprising nor objectionable. In that respect:

(a) The role of a modern award is to provide a fair and relevant minimum safety net, which inter alia provides the underlying basis for enterprise bargaining: FW Act ss 3(b), 134. Awards cannot go beyond including terms which are necessary to achieve that: FW Act s 138. That is very different to the role of awards prior to the introduction of enterprise bargaining in the mid-1990s, and particularly to older frameworks in which the awards of the former Commissions were paid rates and/or members-only awards, and were made in settlement of particular industrial disputes. These very significant changes in the legislative framework are a cogent reason that previous decisions ought not necessarily be adopted as binding or persuasive guidance: *Penalty Rates Case* at [255].

(b) As the Full Bench foreshadowed in the *Exemptions Case* at 81, systems of management, control and direction in workplaces generally, including newsrooms, have changed over time. This point is made in a different way by the MEAA itself (MS at [181]). If however (as MEAA submits) what were formerly 'command and control' responsibilities are now more broadly distributed, it is artificial to try to insist on an exempt employee specifically filling a "senior managerial role" where employees are "plainly set... apart from the rest of their editorial colleagues" (MS at [177]). That is all the more reason not to take guidance from decisions made in different times.

3.13. *Fourth* and finally, the MEAA has not demonstrated why, for the Award (together with the NES) to provide a fair and relevant minimum safety net of terms and conditions, it is necessary that the additional fetters on which staff can be 'exempt' are included. To the specific factors in s 134(1):

(a) The variation is irrelevant, or only marginally relevant, to relative living standards and the needs of the low paid, referring to employees earning less than around \$886.77 per week.<sup>3</sup> Journalism is skilled work, typically now done by persons with relevant tertiary qualifications, which attracts a wage premium. As of May 2018, the average weekly wage for "journalists and other writers" was \$1,661.80 (that is, over \$86,000 per annum).<sup>4</sup> In the Award itself, the lowest non-cadet minimum full-time wage is now \$941.10 per week.

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<sup>3</sup> *Re Annual Wage Review 2018-19* [2019] FWCFB 3500 at [205].

<sup>4</sup> Australian Bureau of Statistics, Release 6306 – "Employee Earnings and Hours, Australia, May 2018", Data Cube 11.

- (b) There is no evidence that the current exemptions framework has discouraged collective bargaining, or that reducing the number of exempt staff would change this. That follows logically – most staff are not exempt. In this respect, all ACM metropolitan and regional daily mastheads are covered by enterprise agreements.
  - (c) There is no evidence that exemption or otherwise would promote or discourage social inclusion through workforce participation. There is no basis to conclude that the variation sought would create jobs, or induce someone to take up a job when they would not otherwise do so.
  - (d) Subjecting additional employees to restrictions in modern awards would not promote flexible modern work practices or the efficient and productive performance of work.
  - (da) The need to provide additional remuneration for employees working in various circumstances outside of weekday “business hours” presupposes that such persons are covered by the Award, and is more directed to the terms of the instrument. In any case, it is not an unequivocal requirement that persons working such hours must be additionally compensated for it: *Penalty Rates Case* at [194]-[202].
  - (e) The variation is irrelevant to the need principle of equal remuneration for work of equal or comparable value. It is not relevant to the respective amounts paid to women and men.
  - (f) It could not be said that the variation would have a positive impact on business. To the extent there is any impact, it would be a negative one, because businesses would incur additional costs of administering the award (even if remuneration costs do not actually increase). Any effect would likely be on a small scale in absolute terms given the number of persons concerned.
  - (g) For the reasons set out in [3.7] above, the Exemptions Variation as proposed by MEAA would make the Award more complex and less easy to understand. This factor otherwise does not weigh in favour of the proposal.
  - (h) The impact on broader economic factors is likely to be nil or inconsequential given the scale of the effects, so this factor is not relevant.
- 3.14. The highest the MEAA’s case rises is that the Award is hypothetically open to abuse of some kind. There is no evidence that this has occurred, that any person who would but for their ‘exemption’ be covered by the Award has experienced any detriment as a result, or that any ‘exempt’ employee is dissatisfied with that state of affairs.
- 3.15. There is no reason to find that the Award is not playing the required role creating a fair and relevant minimum safety net of terms and conditions, or that limiting the persons who can be ‘exempt’ from its terms will remedy this. Indeed, to the extent that the MEAA merely seeks to return the Award’s coverage provision to one based on older conceptions of how newsrooms operate, this would tend to make the

Award less “relevant” in that it would not be adapted to contemporary circumstances (though accepting that this is not the only facet of “relevance”): *Shop, Distributive and Allied Employees Association v Australian Industry Group* (2017) 253 FCR 368 at [51], upholding the Full Bench’s decision in the *Penalty Rates Case*.

- 3.16. In this respect, it is worth making a concluding comment. The MEAA’s submissions recite a large number of matters, including reports into the current state and future of journalism. Much of its case substantially rests on the notion that the industry of news publication has fundamentally changed and the Award must ‘keep up’. Incongruously, though, these premises are used to justify variations which would (if anything) increase employment costs and decrease flexibility.
- 3.17. In the alternative, should the Commission make the Exemptions Variation as sought, Rural Press submits that it ought also vary the current clause 4.9(a) of the Award to specify that the relevant Part(s) of the Award will not apply to employees at a regional daily newspaper who are graded at (or above, if it makes the Maximum Classification Variation) Level 10. Otherwise, this could lead to an anomalous situation whereby:
- (a) non-exempt country non-daily employees classified at Level 9 are not subject to the relevant terms of the Award; but
  - (b) editors on regional daily newspapers who were formerly exempt become subject to its full suite of conditions relating to hours of work, penalty rates and overtime.

#### **4. Maximum Classification Variation**

- 4.1. Currently, clause 13.7 of the Award has the effect that notwithstanding the descriptions of the three Bands in clause 13.5, editorial employees:
- (a) at country non-daily newspaper cannot be classified above Level 9; and
  - (b) at regional daily newspapers cannot be classified above Level 10.
- 4.2. The Maximum Classification Variation would remove these limitations. It is therefore integral to first aspect of the Exemptions Variation (namely, a minimum classification of Level 11) as regards regional daily newspapers, for the reasons set out in [3.6] above.
- 4.3. The sole submission in support of this limitation is that (MS at [212]):
- ... this provision unreasonably curtails an employer and employee’s ability to appoint editorial employees at higher award levels.*
- 4.4. The rationale for clause 13.7 is readily explicable. The Award is in effect an amalgamation of a range of pre-modern awards, including awards covering metropolitan daily newspapers, regional daily newspapers, and country non-daily newspapers. Each of those awards had different grading structures

– relevantly, 10 grade structures for metropolitan daily newspapers and various other publications, and 8 grade structures for regional daily and country non-daily newspapers (incorporating two pay points within each of Grades 1, 2 and 5 in the former case).

- 4.5. When these structures were amalgamated into the Award, a single 13-level classification structure was adopted. Schedule B of the Award provides a Translation Table which sets out how the grades in the former awards were to map to the new structure. The Award precludes the classification of certain employees beyond Level 9 or 10, because those Levels correspond to the highest Grade in the former awards covering the relevant enterprises. The Award Modernisation Full Bench averted to this issue, and specifically re-instated the ‘grading cap’ for country non-daily employees when this was inadvertently excluded from a draft award: *Re Award Modernisation* (2009) 187 IR 192 at [112].
- 4.6. The Maximum Classification would therefore disturb the relativities between the pre-modern awards and the Award’s 13 Level structure. It would potentially increase minimum rates of pay for some employees at regional daily and country non-daily newspapers who, but for clause 13.7, would otherwise fall within Band 3 of the Award, in circumstances where the making of the Award already operated to significantly increase some rates of pay.<sup>5</sup> No case has been made for a variation that would substantially affect classifications structures and, in effect, lift minimum wages for some employees. No evidence has been led, and no submissions have been made addressing the modern awards objective or the merits of the case more broadly.
- 4.7. As to the sole submission made by the MEAA in support of the variation, the Award is a minimum safety net. It does not “unreasonably curtail” employers’ and employees’ ability to agree to a higher rate of pay, whether on an individual basis through above-award contractual payments or collectively through bargaining. The only effect of the variation would be to impose higher minima on employers in some cases. The variation ought therefore be refused as it is unsupported by any cogent reasoning or probative evidence.
- 4.8. There is nothing before the Commission to indicate that the Maximum Classification Variation is necessary to ensure a fair and relevant safety net. To the extent specific factors in s 134(1) of the FW Act are relevant, the relevant persons are not low-paid, as the current minimum Level 9 rate is \$1,301.90 per week, or around \$68,155 per annum. There is no feasible basis on which the variation could encourage bargaining, social inclusion or flexible work practices. The variation does not affect additional remuneration for unsocial work. It is not concerned with gender equality in remuneration, would not make the Award any simpler or easier to understand, and would not make change on a scale that might appreciably affect the economy.
- 4.9. In the alternative, if the Commission makes the Maximum Classification Variation as sought, Rural Press submits that it ought vary clause 4.9 of the Award:

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<sup>5</sup> *Re Award Modernisation* (2009) 182 IR 413 at [99].

- (a) as set out in [3.17] above, so that employees of a regional daily newspaper who are classified at Level 10 and above are not covered by the relevant Part(s); and
- (b) amending the bullet point dealing with country non-daily newspapers to provide that it applies to employees classified at Levels 9–13. Otherwise, employees at Levels 10–13 would be subject to conditions more prescriptive than those applying to Level 9 employees.

## 5. The News Publications Variation

- 5.1. In its submissions, the MEAA sets out various ways in which it is asserted that journalism and the published media industry have changed. The submission on this point concludes (MS at [119]):

*It is necessary for the modern award covering editorial employees to reflect the new digital reality – or in the alternative, the reality of integrated print and digital operations. Print is no longer dominant and is perhaps approaching its end days. The modern award should not give primacy to traditional notions of news and magazine production and consumption. It should cover and be accessible to the editorial workforce as it now stands.*

- 5.2. In substance, MEAA seeks that the separate treatment of online mastheads cease, that new terminology be included in the definition of “editorial employees”, and the News Publication Variation (that is, the replacement of references throughout the award to “newspapers” with “news publications”).
- 5.3. Rural Press is concerned that due consideration has not been given to the potential effects of the News Publications Variation if it operates to essentially treat a newspaper and its associated website as a single “news publication”. This is so because the definitions which currently delineate metropolitan daily, regional daily, country non-daily and suburban newspapers do so based on two factors: frequency of publication, and principal area of distribution (see definitions in clause 3.1). Both factors are potentially difficult to define in relation to a website which can be updated irregularly or at any time, and accessed from anywhere in the world with an internet connection.
- 5.4. What the MEAA has proposed may, in effect, be a fundamental change to the basis on which the Award is structured, by removing the distinctions that exist between newspapers in different locations and which maintain different publishing schedules, magazines, online publications, and so forth. Even if changes of that kind had some merit, a much more comprehensive suite of variations would need to be proposed, with accompanying evidence and submissions establishing what the new framework should be and why particular terms and conditions are appropriate in each case. It is not enough to simply change the word “newspaper” to “news publication” and delete references to associated online publications, but otherwise largely maintain a suite of conditions developed on a different basis.
- 5.5. As with the other variations sought, most of the matters which the Commission must take into account in assessing the modern awards objective are not relevant to this variation. The factor that looms large, however, is the need to ensure a simple, easy to understand, stable, and sustainable modern award

system (FW Act s 134(1)(g)). In particular, a system which creates uncertainty and might result in unpredictable results is not 'stable'. In this respect, Rural Press otherwise repeats its submissions in relation to the need for clarity in the framing of obligations apply on pain of carry civil penalties (see [3.8](b) above).

## **6. The Weekend Penalty Variation**

6.1. Finally, the MEAA seeks to extend the 10% penalty rate for work done on weekends to country non-daily newspapers, to which it does not currently apply. As the MEAA concedes, this penalty was not present in the applicable pre-modernisation award (MS at [219]). The rationale given for extending the penalty to country non-daily newspapers is that:

- (a) Employees at these publications have "endured workplace rationalizations" which has caused work intensification, and required the remaining employees to perform weekend work (MS at [221]).
- (b) This is consistent with a "fair and relevant minimum safety net of terms and conditions", and "the need to provide additional remuneration for... employees working on weekends" (MS at [223]).

6.2. On the material filed by the MEAA in accordance with the Commission's directions (as varied), there was no evidence in support of the Weekend Penalty Variation. It appears the Commission was invited to infer the inevitability of work intensification and increased weekend work at country non-daily newspapers from a number of figures about redundancy costs. There was no material that would support the introduction of a new penalty rate, and no attempt to address any aspect of the modern awards objective other than a 134(1)(da).

6.3. Very belatedly, and almost a month after it was apparently signed, the MEAA filed a witness statement of Samantha Camarri dealing with those matters. Rural Press is considering that statement and will file any further responsive evidence and submissions in accordance with the Commission's directions.

**Seyfarth Shaw Australia**

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8 July 2019

## IN THE FAIR WORK COMMISSION

**Matter No:** AM2018/24

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

### STATEMENT OF CHAD LEIGH WATSON

1. My name is Chad Leigh Watson. My work address is the Newcastle Herald office at 28 Honeysuckle Drive, Newcastle, NSW, 2300.
2. I am employed by Rural Press Pty Ltd (Rural Press) in the position of Managing Editor, NSW Central, for Australian Community Media (ACM).
3. Rural Press is the holding company for the corporate group trading under the ACM brand. ACM was formerly a division of Fairfax Media Limited, but since July 1, 2019, is entirely separate from the mastheads associated with the former Fairfax metropolitan newspaper titles which are still part of Nine Entertainment Co.
4. I have worked in journalism since I was a teenager, starting as a cadet reporter at the *Newcastle Herald*. I have almost 30 years of experience in journalism, gained through working mainly for Fairfax Media Limited and now ACM.
5. Over my career I have worked at various times as a sports reporter, general news reporter, police reporter, magazine feature writer, entertainment columnist, training editor, sub-editor, chief-of-staff, news editor, night editor, deputy editor and editor. As a result I have a working knowledge of many of the roles in regional newsrooms.
6. In my current role, I oversee ACM's "NSW Central" editorial group, which is made up of about 40 mastheads based from the Illawarra region in the south through to the north-west of NSW, with one publication across the Queensland border. The publications include:
  - (a) two daily newspapers, the *Newcastle Herald* in Newcastle and *Illawarra Mercury* in Wollongong, classified as metropolitan under their industrial instrument;
  - (b) one industry-defined regional daily newspaper, being *The Northern Daily Leader* in Tamworth;
  - (c) more than 30 newspapers that fall under the country non-daily industrial category, including tri-weekly paid title *The Maitland Mercury*, bi-weekly paid titles such as *The*

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*Armidale Express* and *The Inverell Times*, and weekly paid titles such as the *The Singleton Argus* and *The Scone Advocate* as well as free weeklies including the *Port Stephens Examiner* and Cessnock's *The Advertiser*.

- (d) three weekly inserted rural print publications, being the *Country Leader*, *North West Magazine* and joint-venture *Border News*, and the fortnightly agricultural insert *Town & Country - Hunter & North Coast*, with all these titles appearing in multiple newspapers.
  - (e) most of the newspapers in my group have associated websites and social media channels.
7. My role involves overseeing these mastheads and liaising with the editors working across them. I regularly communicate with editors regarding matters such as community engagement, staffing, content generation and presentation across platforms, as well as commercial opportunities, legal issues, contributed content, workplace concerns and the implementation of company strategies, policies and production deadlines. I also play an active role in recruitment and professional development. I provide feedback to editors and journalists.

### **Exempt employees**

8. Journalists working on ACM newspapers are covered by a range of enterprise agreements. These enterprise agreements contain "exempt" roles.
9. For regional daily and country non-daily newspapers, typically the editor is exempt.
10. Most editors, particularly those who work on regional daily and country non-daily newspapers, have carriage of multiple mastheads, often based in different locations. This can involve editors travelling between areas, although most communication with personnel is done through video conferencing, phone calls, emails and other digital messaging.
11. Editors are responsible for maintaining and building on the quality of mastheads. Editors of metropolitan daily newspapers, regional daily newspapers and country non-daily newspapers are usually involved in managerial duties as well as directing the news agenda, producing content and engaging with the community. ACM editors sometimes manage staff, content and community concerns across cities, towns or multiple geographical regions. The balance between the management and editorial aspect of the work done by editors is dictated largely by the nature and size of the publication (or cluster of publications) that they manage - including the number of staff, which can be a reflection of the print and digital output and/or audience of that particular masthead.
12. Seven mastheads in my group have a digital subscription model whereby readers can pay for full access to the website and digital replica editions of the newspaper.
13. NSW Central editors report to me. Editors operate with a substantial degree of autonomy. But there is a hierarchy whereby I have oversight, and potentially the final say when it comes to managerial and editorial decisions and direction. In turn, I report to the ACM executive editor who reports into the ACM editorial director. My preference is very much to make important masthead-level

decisions in conjunction with the editors, so it is beneficial that I remain informed of what is happening at the different publications which I oversee.

### **Daily metropolitan newspapers**

14. A higher number of employees at metropolitan daily newspapers are exempt under the applicable agreement, which is indicative of the size of the overall editorial workforce.
15. At the *Newcastle Herald* and *Illawarra Mercury* these roles are as follows:
  - (a) editors - as with regional daily and country non-daily newspapers, these editors operate with a significant degree of autonomy while carrying out a mix of managerial, editorial, managerial and community functions. I am generally involved in overseeing their various management tasks and, as with the editors at regional and country newspapers, I can make the final decisions. Editors are often the public face of the masthead, and are expected to be highly engaged. The work they do is based largely around the directing and development of staff as well as the commissioning and directing of content, rather than actually creating content themselves. Their tasks range across legal and ethical matters, content quality control, story allocation, prioritisation and presentation as well as audience expectations and engagement.
  - (b) heads of departments and deputy editors - for example, the *Illawarra Mercury* has a deputy editor, head of digital, head of photography, head of sport and head of news and the *Newcastle Herald* has a senior deputy editor, deputy editor, head of sport and Weekender editor. These employees report into the editor, who reports into me. People in these exempt roles may help manage teams under guidance from the editor but are often more closely involved in content creation. They may have instigated or been consulted with over managerial decisions (such as recruitment and rostering), or taken a lead role in the formation, support and implementation of editorial decisions (such as story prioritisation and the planning of community campaigns) but ultimately those decisions are the responsibility of the editor and, in turn, the managing editor.

### **Regional daily newspapers**

16. While editors of regional daily newspapers are likewise in positions of significant day-to-day autonomy, they also do not have a complete free rein in the management of their mastheads.
17. *The Northern Daily Leader*, for example, has one editor and approximately twelve editorial staff, including two photographers. The editor is also responsible for four other associated publications (two weekly inserts, a bi-weekly paid publication and a free weekly title). The *Leader* has a print circulation of 2700 average net paid sales Monday to Friday and 5200 sales on Saturdays (Audited Media Association of Australia data - December 2018 report).
18. The editor of *The Northern Daily Leader* takes a lead role in making management decisions in relation to staff - including recruitment and professional development - and connecting with the

community. The editor often makes such important decisions with my input and encouragement. While it is my preference to work constructively with editors when assisting with management decisions, I do have a final say and would have the power - under the ACM reporting structure - to overrule an editor if and when I strongly disagreed with a decision they wanted to make for or on behalf of the masthead and its staff or content.

19. In addition to these managerial roles, the editor of *The Northern Daily Leader* also carries out integral editorial functions. The editor is responsible for driving the news agenda, commissioning and publishing content, compiling letters to the editor and other community contributions, some news and opinion writing, quality assurance and production tasks. Editors are generally responsible for allocating stories, deciding on the placement of stories and being mindful of any legal or ethical considerations around those stories. These considerations tend to be more prevalent and complicated in regards to public-interest or campaign journalism. As with management tasks, editors make these decisions with some input from me where and as required. I am able to give feedback on editorial direction or the implementation of company policy, and the editor would take that into consideration.

### **Country non-daily publications**

20. Country non-daily newspapers are sorted into operating groups or clusters which generally share an overarching editor. These groups, and the mastheads within, are constantly reviewed from an editorial and commercial perspective. I am responsible for these clusters containing titles classified industrially as country non-daily newspapers:
- (a) Northern Tablelands - made up of *The Armidale Express*, *Armidale Express Extra*, *Glen Innes Examiner*, *Walcha News*, *Tenterfield Star* and the *Guyra Argus*;
  - (b) North West - *The Inverell Times*, *Moree Champion*, *Goondiwindi Argus* and an insert called *Border News*, which is created in conjunction with an external operator;
  - (c) Upper Hunter - *The Singleton Argus*, *Muswellbrook Chronicle*, *Scone Advocate*, *Hunter Valley News* and the *Town & Country - Hunter & North Coast* magazine, which is inserted into multiple mastheads;
  - (d) Hunter Communities - *The Port Stephens Examiner*, *Lakes Mail* and the *Newcastle & Lake Macquarie Star*, and;
  - (e) Lower Hunter - *The Maitland Mercury*, *Maitland & Lower Hunter Star*, *Dungog Chronicle* and Cessnock's *The Advertiser*.
  - (f) Peel Valley - includes the bi-weekly *Namoi Valley Independent*, two weekly rural inserts and the free weekly *Tamworth Times* (as part of the same geographically aligned operating group as regional daily *The Northern Daily Leader*).

21. In addition to the above clusters, I am also responsible for a group of Sydney suburban titles - comprising *Fairfield Champion*, *Liverpool City Champion*, *Wollondilly Advertiser*, *Campbelltown-Macarthur Advertiser*, *Camden-Narellan Advertiser*, *Hawkesbury Courier*, *Hawkesbury Gazette*, *Blue Mountains Gazette* and the *St George and Sutherland Shire Leader*. This group falls under the Journalists' (Fairfax Community Newspapers NSW) Collective Agreement 2016.
22. The role of editor in each cluster or group involves a mix of managerial and editorial functions. The prevalence of either function may also vary depending on the number of titles and their publishing frequency as well as the size of the print editions. That is, the number of actual pages and the amount of editorial content required to fill those pages. For example:
- (a) some publications are bi-weekly, such as *The Armidale Express* in the Northern Tablelands group, while others are weekly, such as *Walcha News* in the same group. Therefore, *The Armidale Express* would generally produce more pages in total per week over two editions, while *Walcha News* would have fewer pages in total per week requiring content for the editor or designated senior journalist to create, source or commission (with the size of print editions often determined by advertising volumes);
  - (b) some publications share resources, for example *The Maitland Mercury* and the *Maitland & Lower Hunter Star* are sister titles produced from the same office. The Lower Hunter group editor has responsibility for determining which content may be suitable to appear in both publications, and then producing, delegating or sourcing that content for each publication's specific paging needs;
  - (c) editors of country non-dailies are often not located in the same place as all the staff members they manage. For example, four of the Northern Tablelands' weekly mastheads operate without offices. The senior journalists attached to those mastheads work on a mobile basis. Editors are often required to direct staff and allocate operational tasks via video conference, phone and email, while retaining oversight of the content for the paper via the shared content management system;
  - (d) the Northern Tablelands cluster editor, for example, is based in Armidale. This editor does not typically write for the newspapers in the group but supports the journalists in such a way that enables them to cover news events and write stories. The editor focuses on the commissioning and checking of stories and the production of community-contributed and other content for print and/or online. Depending on the cluster, editors may do more writing and allow their staff to assume more responsibility for production-focused tasks such as story allocation for the newspaper.

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Australian Community Media

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