

## IN THE FAIR WORK COMMISSION

### Matter No:

AM2014/203

### Matter:

4 year Modern Award review

*Graphic Arts, Printing and Publishing Award 2010*

---

## WEST AUSTRALIAN NEWSPAPERS LTD COLOURPRESS PTY LTD

### SUBMISSIONS

---

#### Background

1. West Australian Newspapers Ltd (**WAN**) publishes a metropolitan newspaper, being The West Australian, in Perth, Western Australia. The West Australian is published Monday to Saturday (inclusive), but not on Sundays.
2. WAN and its associated entities also publish several regional newspapers.
3. ColourPress Pty Ltd (**ColourPress**) is responsible for the heat set printing and publishing of the coloured inserts which are included in the The West Australian.
4. Both WAN and ColourPress are wholly owned subsidiaries of Seven West Media Ltd which operates out of the Herdsman Print Centre in Osborne Park, Western Australia.
5. The activities undertaken by WAN employees include:
  - (a) writing and editing news articles for inclusion in The West Australian;
  - (b) preparing and compositing graphics for inclusion in The West Australian; and
  - (c) printing and publishing The West Australian.
6. The activities undertaken by ColourPress employees include printing and publishing the coloured inserts for inclusion in The West Australian.
7. WAN currently employs employees to assist with its printing and publishing work in a number of classifications including:
  - (a) compositor;
  - (b) graphic artist/designer;
  - (c) graphic reproducer;
  - (d) printer;
  - (e) publisher;
  - (f) newsprint handler;
  - (g) engineer; and
  - (h) electrician.
8. ColourPress currently employs employees in the following classifications to perform colour printing work including printing and publishing the coloured inserts for inclusion in The West Australian:
  - (a) printer;
  - (b) publisher;

**Lodged by:** West Australian Newspapers Ltd  
Address for Service: Allion Legal  
Level 2, 50 Kings Park Road  
West Perth 6005

Telephone: (08) 9216 7100  
Facsimile: (08) 9324 1075  
Email: kreid@allionlegal.com

- (c) graphic reproducer;
  - (d) newsprint handler; and
  - (e) trades assistant.
9. The following enterprise agreements apply to a majority of WAN employees who perform printing and publishing work:
    - (a) the *West Australian Newspapers Ltd Production Employees Enterprise Bargaining Agreement 2012*; and
    - (b) the *West Australian Newspapers Ltd Regional Production Employees Enterprise Agreement 2014*.
  10. A majority of ColourPress employees who perform printing and publishing work are covered by the *ColourPress Production Employees Enterprise Bargaining Agreement 2013*.

### Historical award coverage and the award modernisation process

11. Prior to the award modernisation process, WAN and its printing and publishing employees were historically covered by the *Printing (Newspaper) Award 1979* and the *Electrical, Engineering and Building Trades (Western Australian Newspapers Limited) Award 1988*.
12. ColourPress and its printing and publishing employees were historically covered by the *Graphic Arts – General – Award 2000*.
13. On 28 March 2008, the Minister for Employment and Workplace Relations issued a request pursuant to section 576C(1) of the *Workplace Relations Act 1996* for the President of the Australian Industrial Relations Commission (**AIRC**) to undertake award modernisation in accordance with the terms of the request. One of the terms of the request was as follows: ‘*When modernising awards, the Commission is to create modern awards primarily along industry lines, but may also create modern awards along operational lines as it considers appropriate. In creating modern awards...the Commission must have regard to the desirability of reducing the number of awards operating in the workplace relations system*’: at [4].
14. On 3 September 2008, the Full Bench of the AIRC published a statement setting out the industries that would be dealt with as part of Stages 2, 3 and 4 of the award modernisation process. The Full Bench listed the ‘*Graphic Arts Group*’ as an industry that would be dealt with as part of Stage 2 of the Award modernisation process. The Full Bench noted that the ‘*Graphic Arts Group*’ was made up of the graphic arts and printing industries. The Full Bench went on to list the relevant pre-reform awards and NAPSAs which it considered would be subsumed or replaced by the new modern award covering the graphic arts and printing industries. Both the *Graphic Arts – General – Award 2000* and the *Printing (Newspaper) Award 1979* were included in that list.
15. On 31 October 2008, the AMWU and a number of other union and employer groups made written submissions in relation to the proposed new graphic arts modern award. The AMWU submitted that ‘*The parties have agreed that the Graphic Arts Award should be the vehicle for a commercial and newspaper printing award*’. The AMWU and union and employer groups also jointly filed an exposure draft graphic arts award. Clause 4.1(c) of the exposure draft provided that the new graphic arts award was proposed to cover ‘*Published media print employees*’ who were employed in the ‘*production of daily and non daily newspapers*’.
16. On 27 November 2008, the AMWU and other union and employer groups filed an updated exposure draft graphic arts award which included an amended clause 4.1(c) which now provided that the new graphic arts award was proposed to cover ‘*Published media print employees*’ who were employed in the ‘*production of non daily and regional daily newspapers*’. No explanation or reasons were given for this change.
17. On 19 February 2009, News Ltd made written submissions in relation to the proposed new graphic arts modern award. News Ltd submitted that:
  - (a) there was some ambiguity as to whether newspapers that were published on Monday to Saturday (inclusive), but not on Sundays, could be considered ‘*non-daily*’ newspapers;
  - (b) there was therefore some ambiguity as to whether the new graphic arts award would cover major metropolitan newspapers;

- (c) the publishing of major metropolitan newspapers was a significant industry of itself which should be excluded from the new graphic arts award; and
  - (d) clause 4 'Coverage' of the new graphic arts award should therefore be amended to clarify that '*This award does not cover an employer publishing metropolitan newspapers on five or more times per week, or on a Sunday.*'
18. On 3 April 2009, the Full Bench of the AIRC published a decision in relation to the award modernisation process and the proposed new graphic arts award. The Full Bench held as follows: '*We have made only minor alternations to the coverage provisions in the exposure draft... We have not made any changes to the draft relating to coverage of web design, design generally, or metropolitan newspapers or plastics manufacturing. The provisions largely reflect the coverage of awards to be subsumed into the modern award*': at [142].
19. On 22 May 2009, the Full Bench of the AIRC published a statement in relation to Stage 3 awards including a modern journalism award. The AIRC noted that the exposure draft *Journalists Published Media Award 2010 (Journalists Award)* covered journalists employed by newspapers. The AIRC stated that: '*Non-journalists will generally be covered by the Clerks Modern Award, or the Graphic Arts, Printing and Publishing Award 2010 (for printing and pre-press employees)*': at [94].

#### **4 year Modern Award review**

20. Modern awards are intended to be simple to apply, easy to understand, economically sustainable and reduce the regulatory burden on employers: Modern awards request, Minister for Employment and Workplace Relations, 28 March 2008.
21. The Fair Work Commission must ensure that modern awards provide a fair and relevant minimum safety net of terms and conditions, taking into account the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards: section 134(1)(g) *Fair Work Act 2009* (Cth) (**FW Act**).
22. A modern award must include a coverage term which sets out the employers and employees that are covered by the award: section 143(1) FW Act.

#### **Award coverage**

23. In its Reply Submissions on the *Graphic Arts, Printing and Publishing Award 2010 (Graphic Arts Award)* Exposure Draft dated 16 February 2015, the *Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union (AMWU)* submitted that '*metropolitan newspapers that previously were covered by enterprise awards are now award free.*'
24. WAN and ColourPress respectfully disagree with the AMWU's position in this regard, and submit that they are covered by the Graphic Arts Award with respect to their printing and publishing employees, for the following reasons:
- (a) the Graphic Arts Award covers employers in Australia in the graphic arts printing, publishing and associated industries and their employees in the classifications listed in clause 17 and Schedule B of the Graphic Arts Award: clause 4.1;
  - (b) the graphic arts, printing, publishing and associated industries includes composing, '*printing of all classes*' and publishing: clause 4.9;
  - (c) WAN and ColourPress currently conduct composing, printing and publishing work and submit that they are in the printing and publishing industry;
  - (d) WAN and ColourPress are not covered by a modern enterprise award or an award-based transitional instrument;
  - (e) clause 17 and Schedule B of the Graphic Arts Award contain very broad classifications which could include those employees of WAN and ColourPress who perform printing and publishing work; and
  - (f) the award modernisation decisions of the AIRC dated 3 April 2009 and 22 May 2009 indicate an intention by the AIRC for employers and employees in the newspaper industry

in Australia performing printing and publishing work to be covered by the Graphic Arts Award.

25. WAN submits that its editorial and journalism employees are not covered by the Graphic Arts Award and are instead covered by the Journalists Award.
26. WAN submits that its administrative employees are not covered by the Graphic Arts Award and are instead covered by the *Clerks – Private Sector Award 2010*.
27. While WAN and ColourPress consider they are already covered by the Graphic Arts Award, WAN and ColourPress acknowledge there is clearly still some degree of ambiguity with respect to the award coverage of metropolitan newspapers.
28. It is submitted that, in line with the modern award objective, the coverage term of the Graphic Arts Award must be simple and easy to understand.
29. Accordingly, WAN and ColourPress submit that it would be appropriate for the Fair Work Commission to vary clause 4.9 of the Graphic Arts Award as part of the current 4 yearly review of Modern Awards to clarify this ambiguity.
30. WAN and ColourPress further submit that it is appropriate for major metropolitan newspapers to be covered by the same industry award as non-daily and regional daily newspapers. This meets the modern award objectives of:
  - (a) having a system of modern awards which are primarily defined along industry lines; and
  - (b) reducing the regulatory burden on employers like WAN who are responsible for the publication of metropolitan and regional newspapers.
31. WAN and ColourPress therefore submit that the Fair Work Commission should vary clause 4 of the Graphic Arts Award as follows:
  - (a) clause 4.9(n) be amended to include the words ‘, *metropolitan*’ after the words ‘*production of non-daily*’; and
  - (b) a new clause 4.10 be inserted into the Graphic Arts Award as follows: ‘*The award does not cover employees who are covered by the Journalists Published Media Award 2010 or the Clerks – Private Sector Award 2010.*’

#### **Other terms relating to metropolitan newspapers**

32. The AMWU submits in its Reply Submissions on the Exposure Draft dated 16 February 2015 that it will seek to consult with other parties with respect to varying the Graphic Arts Award to include ‘*specific metropolitan newspaper safety-net terms and conditions*’.
33. On 31 March 2015, the AMWU wrote to WAN and advised that the AMWU intended to make an application as part of the 4 yearly review of the modern awards to have the Graphic Arts Award varied to expressly cover metropolitan newspapers. The letter from the AMWU did not state what (if any) other amendments to the Graphic Arts Award the AMWU was proposing to seek in this regard.
34. On or about 13 April 2015, WAN wrote to the AMWU and advised that WAN considered itself to be covered by the Graphic Arts Award with respect to WAN’s publishing and printing employees. However, WAN agreed it would be useful for the Graphic Arts Award to be amended to make this clear. WAN asked to be consulted on any further changes the AMWU intended to seek in relation to the Graphic Arts Award regarding ‘*specific metropolitan newspaper safety-net terms and conditions.*’
35. On 4 May 2015, the AMWU wrote to WAN and asked whether WAN intended to make submissions in relation to the award coverage of metropolitan newspapers as part of the 4 yearly modern award review. However, the AMWU did not state what (if any) further changes to the Graphic Arts Award it intended to seek regarding ‘*specific metropolitan newspaper safety-net terms and conditions.*’
36. In the event any further changes to the Graphic Arts Award are sought regarding ‘*specific metropolitan newspaper safety-net terms and conditions*’, WAN and ColourPress reserve their rights to make submissions in reply in relation to those proposed changes on or before 9 June 2015, as per the directions issued by the Fair Work Commission dated 27 March 2015. WAN and

ColourPress further submit that any substantive changes sought to the Graphic Arts Award in relation to '*specific metropolitan newspaper safety-net terms and conditions*' must:

- (a) advance merit argument in support of the proposed variation: *4 Yearly Review of Modern Awards: Preliminary Jurisdictional Issues* [2014] FWCFB 1788;
- (b) be supported by submissions addressing the relevant legislative provisions: [2014] FWCFB 1788;
- (c) be accompanied by probative evidence properly directed to demonstrating the facts supporting the proposed variation: [2014] FWCFB 1788; and
- (d) demonstrate how the proposed variation is necessary to achieve the modern awards objective (rather than being simply desirable): *Shop, Distributive and Allied Employees Association v National Retail Association (No 2) (SDA v NRA (No 2))* (2012) 205 FCR 227.

Allion

Allion Legal  
Solicitors for WAN and ColourPress  
11 May 2014