

Fair Work Act 2009

FAIR WORK COMMISSION

IN THE MATTER OF: 4 Yearly Review of Modern Awards – Group 4 Awards (Tranche 3)
Broadcasting, Recorded Entertainment and Cinemas Award 2010
AM2014/259, AM2018/17 and AM2019/17

Submission of Birch Carroll and Coyle Limited and other cinema industry employers

7 April 2020

Norton Rose Fulbright Australia
ABN 32 720 868 049
Level 15, RACV Tower
485 Bourke Street
MELBOURNE VIC 3000
AUSTRALIA
Tel +61 3 8686 6000
Fax +61 3 8686 6505
GPO Box 4592, Melbourne VIC 3001
DX 445 Melbourne
nortonrosefulbright.com
Contact: Michael Serong
Direct line: +61 8686 6978
Email: michael.serong@nortonrosefulbright.com
Mobile: 0417 324422

4 Yearly Review of Modern Awards – Group 4 Awards (Tranche 3)
Broadcasting, Recorded Entertainment and Cinemas Award 2010
AM2014/259, AM2018/17 and AM2019/17 Submission of Birch Carroll
Coyle Limited
and other cinema industry employers

Introduction

- 1 This submission is made on behalf of:
 - (1) Birch Carroll and Coyle Limited
 - (2) The Hoyts Corporation Pty Limited
 - (3) The Greater Union Organisation Pty Ltd
 - (4) Village Cinemas Limitedand Independent Cinemas Association of Australia and its employer members.
- 2 The employers named at paragraph 1 (the **Employers**) together comprise the overwhelming majority of employers in the cinema exhibition industry and employ virtually all the employees in the cinema exhibition industry.
- 3 This submission is made to the Full Bench in respect of the *Broadcasting, Recorded Entertainment and Cinemas Award 2010 (BREC Award)*. The Commission's review of the BREC Award is matter AM 2014/259 and that matter is in sub-group 4D. The Employers have made submissions in that and other proceedings in relation to a number of issues affecting cinemas covered by the BREC Award.
4. This Submission is made in response to the Statement dated 23 March 2020 and the Background Paper of 23 March 2020 (the **Background Paper**) in AM/2019/17.
5. The Background Paper sets out the Commission's provisional views and invites interested parties to comment on certain submissions.
6. Paragraphs 35 to 61 of the Background Paper deal with the BREC Award and the responses of the Employers to matters pertaining to the cinema exhibition industry are set out below.
7. **Submission**

This submission is made in respect of the Exposure Draft of the BREC Award republished on 29 January 2020 (the **Exposure Draft**) and matters raised at paragraphs 35 to 61 of the Background Paper.
- 7.1 **Definitions – Clause 62.2(a) – Zone Managers – additional allowances**

ABI submitted that clause 62.2(a) may offend clause 154 of the Fair Work Act 2009 and suggested compliant wording of clause 62.2(a)(ii). The Employers support the suggested amendment and reasoning advanced by ADI (subject to the comment on the word "theatre" set out at paragraph 7.2 below) [Background Paper paras 40-44]
- 7.2 **Definitions – cinema and theatre**

At paragraph 5.1 of their submission dated 3 March 2020, the Employers noted the definition of “cinema” at clause 2 of the Exposure Draft and suggested that, to avoid ambiguity, the word “theatre” be changed to “cinema” each time “theatre” appears at clause 62, Schedule D and Schedule H (but not in Schedule E – Actors at E.2.5). The Background Paper expresses the Commission’s provisional view that the amendments proposed by the Employers be adopted. The Employers support this provisional view [Background Paper paras 52-54].

7.3 Casual conversion

As noted at paragraph 5.2 of the Employers’ submission dated 3 March 2020, there is an anomaly at clauses 8.2 and 11 of the Exposure Draft in respect of casual conversion of casuals in cinemas. Clause 8.2 states that clause 11 – Casual employees does not apply to employees in cinemas. However clause 11.5(k)(ii) implies that it does. Further, in its Decision of 21 September 2018, (AM2014/196 and AM2014/197), the Full Bench ordered specific words for the BREC Award in respect of conversion from casual in cinemas.

To give effect to the Full Bench Decision of 21 September 2018, the Employers propose the following:

- (i) Clause 8.2 of the Exposure Draft be amended to: *Clause 9 – Full-time employees to clause 11.4 will not apply to employees in cinemas.*
- (ii) Clause 11.5(k)(ii), as decided by the Full Bench on 21 September 2018, be expressed as follows (adopting the clause numbers in the Exposure Draft): *if it is agreed that the employee will become a part-time employee, the matters referred to in clauses 57.3, 58.3 and 59.4 in respect of employees in cinemas, and the matters referred to in clause 10.4 in respect of all other employees [Background Paper 55-56].*

7.4 Minimum wages – Determination

The Employers note that the BREC Award was varied, in particular at clause 14.12 (clause 13.4 of the Exposure Draft), by the Determination made on 20 March 2020 (AM2018/17).

8. Conclusion

The Employers:

- (i) support the ADI proposal at paragraph 7.1 above, in respect of Zone Managers,
- (ii) propose the change from “theatre” to “cinema” at paragraph 7.2 above.
- (iii) draw attention to the Full Bench Decision on casual conversion at paragraph 7.3 above and propose the suggested amendment to clause 8.2 of the Exposure Draft.

Michael Serong
Consultant
Norton Rose Fulbright Australia

7 April 2020