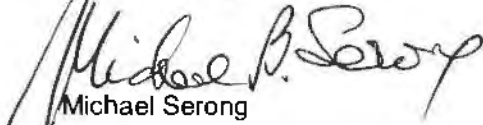


- (2) this would be directly contrary to the defined meaning and intended purpose of section 16 of the Fair Work Act 2009 which defines "base rate of pay" which definition is then used for various purposes throughout the Act;
 - (3) the consequences, at present, of an, in effect, all purposes loading being included in the minimum rate for cinema casuals would be to require payments not intended by the Fair Work Act such as for payment in lieu of a minimum period of work not performed, for long service leave, for jury service, etc.;
 - (4) the suggested casual minimum rate (including for all purposes the 8%) would continue to be contrary to the use required by the Fair Work Act of "standard rate" and payments for juniors calculated on the minimum rate for Grade 5;
 - (5) this would result in the creation of a new concept, being "relevant minimum hourly cinema wage", which would be contrary to the apparent intention that the modern award create one standard wage structure and would cause confusion by adding to the list of terms already used in the Award, including:
 - minimum hourly rate;
 - hourly ordinary rate;
 - standard rate;
 - minimum hourly wage;
 - minimum wages;
 - minimum rates;
 - adult minimum wages;
 - percentages of the minimum for Grade 5;
 - relevant minimum wage;
 - ordinary pay;
 - minimum weekly wage;
- 5 As stated in the employers' written and oral submissions, there is a long history of case law which holds that it is not customary for there to be a loading (in this case the 25% casual loading) on a loading (the 8% casual component) i.e. a compound calculation;
- 6 The major employers in the cinema industry have a history of regarding the 8% component as not being for all purposes and conducting the calculation on a cumulative basis. This has been supported by reference to case law and advice from the Office of the Fair Work Ombudsman (Exhibit 5).

Based on the above, the employers submit that:

- the amendments proposed by MEAA would introduce a substantive change to a well understood and long-observed term of the Award as presently expressed and yet another description for payments required by the Award;
- the exposure draft should remain as presently expressed and continue to be applied as at present.

Yours faithfully



Michael Serong
Consultant
Norton Rose Fulbright Australia