27 September 2018

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2808338

Your Honour

4 Yearly Review of modern awards **Broadcasting, Recorded Entertainment and Cinemas Award 2010** AM2014/256

We act for Birch Carroll and Coyle Limited, The Hoyts Corporation Pty Limited, The Greater Union Organisation Pty Limited, Village Cinemas Limited and Independent Cinemas Association of Australia and its employer members.

In a conference before you on Friday 17 August 2018, the Media Entertainment and Arts Alliance (MEAA) raised issues in respect of clause 13.4 of the Exposure Draft of the Broadcasting Recorded Entertainment and Cinemas Award 2010 and, in particular, whether the procedure for calculating the 8% penalty averaging amount is one that is based on a cumulative or compounding process.

On transcript (at PN112) you stated:

if you do (wish) to pursue a variation in whatever form, then if you could indicate by the date" that I'd suggested for issue one, 14 September and then we'll have an idea about where we go with it"

This date was extended to 21 September 2018 and MEAA did not make a submission in respect of issue one, the "equity" issue.

On 21 September 2018, MEAA filed a submission in respect of the cumulative/compounding issue. This letter is forwarded in respect of that MEAA submission.

It is the view of our clients that, insofar as the award review process is concerned, the starting point should be the status quo. To preserve the status quo, the words of clause 14.12 of the current award (clause 13.4 of the Exposure Draft dated 23 March 2018) would remain unchanged, subject only to the proposed variation agreed by the parties and referred to in the transcript (PN97).

APAC-#75636809-v1

As stated in the proceeding on 17 August 2018, major employers in the cinema industry have, for many years, applied award clause 14.12 in a different way from that now proposed by MEAA. Therefore the issue of cumulative or compounding is a very substantive matter.

On behalf of our clients, it is proposed that, if a party seeks a change to a longstanding and substantive award provision, that party should bring a merits case, and the award modernisation process is not an appropriate place for this.

Yours faithfully

Michael Serong

Consultant

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