

**FAIR WORK COMMISSION**

**DRAFT DETERMINATION**

*Fair Work Act 2009*

s.156 - 4 yearly review of modern awards

**4 yearly review of modern awards** – Group 4 awards  
(AM2014/250 and others)

**BROADCASTING AND RECORDED ENTERTAINMENT AWARD 2010**

Broadcasting and recorded entertainment industry

*4 yearly review of modern awards – award stage – Group 4 awards*

Further to the Full Bench decision issued by the Fair Work Commission on [date] the above award is varied as follows:

**1. Definitions – clause 3.1**

By deleting the definition of broadcasting and recorded entertainment industry and replacing it as follows:

***Broadcasting, recorded entertainment and cinema industry*** means the production (including pre-production and post-production), broadcasting, distribution, showing, making available, and/or sale of audio and audio/visual content including but not limited to feature films, television programs (including series, serials, telemovies and mini-series), news, current affairs, sport, documentaries, video clips, digital video discs, television commercials, training films and the like whether for television exhibition, theatrical exhibition, sale to the public, digital media release or release in any other medium

***This claim will be argued on its merits***

**2. Coverage – clause 4**

By deleting the title of the award and replacing as follows:

*Broadcasting, Recorded Entertainment and Cinemas Award 2010*

By deleting clause 4.1 and replacing it as follows:

***4.1*** This award covers employers throughout Australia in the broadcasting, recorded entertainment and cinema industry and their employees in the classifications set out in this award to the exclusion of any other modern award.

***These claims will be argued on their merits.***

**3. Part 10 and Schedule F – Actors**

**3a.** By deleting the **special definition of artist** at clause 59, which is restricted to artists *in a film* and replacing it as follows:

**Artist** means each and all of those persons engaged by the producer to take part audibly and/or visually in the production including performers, doubles, extras, stand-ins, stunt artists and dancers.

**3b.** By deleting the **special definition of performance** at clause 59 and replacing it as follows:

**Performance** means the work done by an artist in a film including but not limited to short films, feature films, advertising and promotional films, television commercials, television programs and any performance of an artist which is recorded, captured, simulcast, streamed and/or broadcast in any media or format, including but not limited to the internet and digital medial platforms, mediums and services.

**4. Schedule F – Actors**

MEAA seek the deletion of clauses F.1.4 and F.1.5 at Schedule F and replacing them as follows:

**F.1.4 Performer Class 1** means an artist who takes part in a performance and/or is engaged to take part in a rehearsal for a performance who is required to speak more than two lines of dialogue (except in the case of a dancer who may not be required to speak any lines of dialogue but who is engaged to take part in a performance as a dancer) and who has the necessary skills to the required standard to effectively audition, prepare, rehearse and perform the role required.

**(a) Indicative tasks:**

**(i) Audition**

- take direction with minimum instructions;
- integrate rapid instructions in an instant performance;
- present character effectively and instantaneously.

**(ii) Preparation**

- analyse character in terms of script and scene requirements;
- find appropriate emotions to express script requirements;
- interpret demands of production.

**(iii) Rehearsal**

- integrate skills to production and character requirements;
- take direction and interpret instructions and display necessary flexibility, versatility and adaptability;
- communicate effectively and develop professional working relationships with the Director, other performers and production staff.

**(iv) Performance**

- achieve the quality of performance to the required standard and be able to repeat performances to that standard;

- *maintain the emotional, physical and vocal continuity required for the performance;*
- *perform convincingly under diverse and adverse physical and mental conditions.*

*In relation to the indicative tasks of dancers that are classified as performers class 1, a dancer is able to:*

- (a) demonstrate a sound dance technique;*
- (b) demonstrate appropriate skills and knowledge for learning, rehearsing and performing dance roles;*
- (c) demonstrate an ability to perform in public;*
- (d) demonstrate screen craft skills;*
- (e) undertake all responsibilities associated with make-up and costume as required;*
- (f) demonstrate musicality as appropriate to performing as a dancer; and*
- (g) interpret physically and emotionally the choreographic content of a production.*

**F.1.5 Performer Class 2** means an artist who takes part in a performance and/or is engaged to take part in a rehearsal for a performance, who is required to speak more than six lines of dialogue or more than fifty words (except in the case of a dancer who may not be required to speak any lines of dialogue but who is engaged to take part in a performance as a dancer) and:

- (a) possesses the skills of a Performer Class 1;*
- (b) has worked professionally for a minimum of five years as a performer; and*
- (c) has gained 150 points under the Experienced Points Structure set below (excluding dancers).*

**Claims 3 and 4 will be argued on their merits.**

## **5. Motion picture production employees – overtime and penalty rates**

**5a.** MEAA support observations by the Fair Work Ombudsman that the methods of calculating and applying overtime and penalty rate provisions in Modern Awards.

MEAA otherwise support:

**5b.** Deleting clause 74.2 and replacing it as follows:

**74.2** *Any employee required to commence work at such time that the employee does not receive the breaks prescribed in clause 74.1 **will be paid double time** (current provision is single time) for all time actually worked after that until such time as the employee receives a break as set out in that clause.*

**5c.** Deleting clause 76.2 and replacing it as follows:

**76.2** *(a) Scheduled overtime is overtime which an employee has agreed to work and for which the employer has agreed to pay (whether worked or not) at the commencement of an engagement.*

*(b) Unscheduled overtime is any overtime worked that is not contracted for at the commencement of an engagement.*

***This claim will be argued on its merits.***

**5d.** Employees in the motion picture production industry are typically engaged to work a 10 hour day (or 50 hour week) to meet the necessities of any film or television shoot. This is variously reflected in clauses 73 and 76 which deal with hours of work and overtime.

Clause 73.1(a) provides that an employee may work ordinary hours 'in days of up to 10 hours each over five days between Monday to Saturday, such hours to be worked continuously with the exception of meal breaks'.

Clause 76.3 provides for the contracting for scheduled overtime, to a maximum of two hours per day, which is less than 10 hours per day. Clause 76.4 then provides for the method of calculation of all overtime (scheduled or unscheduled) on a daily basis.

MEAA seek that these provisions are given consistency and all hours, including overtime, are calculated on a daily basis. MEAA therefore seeks that clause 73.1(a) and clause 76.3 be amended to clarify that 'days of up to 10 hours each' includes 7.6 ordinary hours, and 2.4 hours of scheduled overtime, calculated in accordance with the provisions of clause 76.4.

*MEAA propose the following provisions:*

*Deleting clause 73.1(a) and replacing it as follows:*

***73.1*** Ordinary hours of work for full-time employees will average 38 hours each week, which will by agreement between the employer and employees be worked on one of the following bases: (a) in days of up to 10 hours each over five days between Monday to Saturday (which includes 7.6 ordinary hours and 2.4 hours of scheduled overtime, calculated in accordance with the provisions of clause 76.4).

*Deleting clause 76.3 and replacing it as follows:*

***76.3*** Scheduled overtime may be contracted as follows:

***(a)*** where a five-day week is worked scheduled overtime up to a maximum of 2.4 hours per day may be contracted for; or

***(b)*** where a six-day week is worked, scheduled overtime up to a maximum of 2.4 hours per day for each day between Monday and Friday inclusive and up to a maximum of 10 hours on Saturday may be contracted for.

***This claim will be argued on its merits.***