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Cc: [Chambers - Kovacic DP](#)
Subject: Broadcasting and Recorded Entertainment Award - TOIL
Date: Friday, 3 March 2017 1:27:03 PM

Hi Seamus,

A FWC conference has been notified for 10am on 16 March regarding TOIL provisions in the Broadcasting and Recorded Entertainment Award (BREA). The conference will be before Deputy President Kovacic. The listing is here: <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/nol-160317-300.pdf>

In a 22 February 2017 conference before DP Kovacic on the broad question of TOIL in BREA, I raised the impact of the FWC's proposed variations to BREA, as set out in the FWC's draft determination issued in September 2016 - see: <https://www.fwc.gov.au/documents/sites/awardsmodernfouryr/ma000091-flex-draft-det.pdf>

The issue of concern to MEAA that intersects with your client's interests is part 4 of the draft determination, which concerns penalty rates for *technical employees* at radio broadcasters. Part 4 recommended deleting clause 40.4 of the BREA.

Clause 40.4(b) of the BREA provided TOIL at overtime rates. The current clause states:

(a) If an employee takes time off instead of payment for overtime then the amount of time off is to be equivalent to the pay the employee would have otherwise received for working the overtime.

The effect of the FWC's determination - if confirmed - would be to reduce the TOIL entitlement from time off being linked to overtime rates to TOIL being made available on a hour for hour basis.

In the conference before DP Kovacic, His Honour requested that MEAA make contact with the legal representatives of commercial radio in Australia to seek the CRA's view on MEAA's position.

I would therefore be grateful if you could seek the views of your client on the above issue and advise me and DP Kovacic's chambers of any instructions that arise from that consultation.

I would of course be happy to discuss this matter over the phone.

Regards,



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