

## IN THE FAIR WORK COMMISSION

### Journalists Published Media Award 2010 – (AM2018/24)

#### The submission in summary:

1. The Media Entertainment and Arts Alliance [MEAA] makes these submissions in accordance with the directions dated 11 February 2018. This submission refers to the Journalists Published Media Award 2010 as the 'JPMA'.
2. The MEAA will demonstrate that the published media industry in Australia has transformed from analogue to a digital, with the latter usurping the former. By analogue, the MEAA means the period where editorial work was directed towards the print production of news and magazine. By digital, the MEAA means the use of publishing software and the use of the internet to publish content for audience consumption.
3. The modern award currently reflects the primacy of print and the ancillary nature of digital, when the reverse position is now true.
4. The MEAA proposes that the award be amended so that it applies in a platform neutral manner and provides the same regulation of employment for digital employees as it does for the print workforce.
5. The present and future for the Australian published media industry<sup>1</sup> is online. This is reflected in circulation of physical newspapers and magazines, publication expenditure, advertising income, audience data and work practices. It is driven by economic necessity and audience demand for immediate and updated content.

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<sup>1</sup> **published media industry** means the industry concerned with the publication of newspapers, magazines, periodicals, journals and online publications, and the provision of wire services – see clause 3 of JPMA 2010

6. It is difficult to understate the impact of digital technology on the published media sector over the past decade. The Tow Center at the University of Columbia, commented that:

*“The arrival of the internet did not herald a new entrant in the news ecosystem. It heralded a new ecosystem, full stop”.<sup>2</sup>*

7. The revolutionary impact of the internet is borne out by any number of statistics:

- Internet penetration in Australia now sits at 88 per cent of all households compared to 56% in 2004-05.<sup>3</sup>
- In 2018, 82% of Australians accessed news online.
- 2018 was the first year that mobile phones were used more than computers to access online news by news consumers, with almost 60 per cent of Australians using their smart phones to access news.<sup>4</sup>

8. The rise of the internet and declining media company revenues is also reflected in the loss of jobs. MEAA now estimate the total number of editorial job losses at more than 4,000 since the Global Financial Crisis (GFC). Most of these losses have occurred at Australia’s major news organisations, being: NewsCorp, Fairfax (now Nine Entertainment Co) and Seven West Media.<sup>5</sup> Smaller but influential companies such as Australian Associated Press (AAP) and APN<sup>6</sup> have also lost significant numbers of editorial employees.

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<sup>2</sup> Post-Industrial Journalism: Adapting to the Present, C.W. Anderson, Emily Bell and Clay Shirky, Tow Center for Digital Journalism, Columbia Journalism School, 2014, page 83

<sup>3</sup> For households with children aged under 15 years, 97% had access to the internet compared with 82% of households without children under 15. Households located in major cities were more likely to have internet access at home (88%) than those in remote or very remote parts of Australia (77%).

<sup>4</sup> There is also steady growth in the use of news apps and news alerts and notifications. See: Digital News Report 2018, News Media and Research Centre, University of Canberra, page 9

<sup>5</sup> IBIS World reported in 2018 that, ‘The industry’s three largest players, News Australia, Fairfax Media, and Seven West Media are expected to account for over 95% of industry revenue in 2017-18.

<sup>6</sup> APN was acquired by News Corp in 2016

9. The shift away from traditional (i.e. print) to digital news publication and the altered published media landscape over the past decade is the basis upon which MEAA propose to amend the Award with respect to:

- AMENDMENT 1 Acknowledging integrated – i.e. print and digital - production in how newspapers and ‘associated online publications’ are defined and recognised throughout the award;
- AMENDMENT 2 Modernise editorial job classifications to reflect digital editorial jobs;
- AMENDMENT 3 Removing distinctions between what appear to be two workforces: print and digital, when in fact these operations are now integrated;
- AMENDMENT 4 Allowing employers and employees to agree on appointment to higher award classifications by eliminating caps on appointment levels;
- AMENDMENT 5 Remove the separate recognition of specialist publications;
- AMENDMENT 6 Reflect the intensification of work practices in the published media sector by making penalty payments available to all employees - irrespective of the type of publication they are engaged to work for.
- AMENDMENT 7 At the same time, MEAA propose that several of the criteria that informed decisions to exempt senior employees from award coverage in the 20<sup>th</sup> Century be incorporated in the modern award.

### **Newspaper Industry**

10. This section details the financial welfare of the newspaper and magazine industries and the shift from print to digital production and distribution over the past decade. The section will conclude that the newspaper and magazine industries are now focused on reaching audiences online, with print publication diminishing. We canvass the migration from print circulation to unique digital audience numbers and cross-platform readership data.

- 11.** The digital transformation of news publications in Australia and elsewhere is not new. It was well underway from shortly after the internet became available for widespread use in the early 1990s.
- 12.** In the mid-1990s, news publications in Australia began to move online. For example, in 1995, Fairfax launched smh.com.au, at first containing only computer and communications sections and entertainment news, before becoming a daily news site in 1996. In 1998, Fairfax added a 'breaking news' service, signaling that the site was 'no longer an online version of the newspaper'. News Corporation (then News Limited) announced the creation of a new division, News Digital Media to manage the operations of the news site news.com.au, together with other online subsidiaries in 2006, but operated news-related websites prior to that time.
- 13.** By 2008, the authoritative *State of the News Print Media in Australia* report stated that,
- 'In dramatic contrast to the relative stability observed in readership for the hard copy versions of newspapers, online news sites have enjoyed a veritable explosion in readership since online data were first published'. The report also observed that 'in the last two years the number of unique browsers who access websites associated with Australia's metropolitan daily newspapers has doubled'.<sup>7 8</sup>*
- 14.** The shift to digital production has been accompanied, if not driven by, the loss of significant advertising revenues to companies such as Google and Facebook, the loss of classifieds revenue to discrete sales websites and the economic shock of the Global Financial Crisis in 2008. The combined loss of revenues is reflected in data produced by PWC in its annual Entertainment and *Media Outlook*.

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<sup>7</sup> State of the News Print Media in Australia, 2008, page 2-14

<sup>8</sup> The report cautioned that there may have been some double-counting of news media consumers in both the digital and print audience numbers, 'but the extent of the overlap between the two audiences is not clear'. page 2-14

**15.** PWC's reports from the last four years reveal newspaper revenues as:

*\$4.348bn in 2002*  
*\$5.132 billion in 2005*  
*\$5.696 billion in 2008*  
*\$4.819 billion in 2009*  
*\$4.048bn in 2012*  
*\$3.9 billion in 2014*  
*\$3.2 billion in 2017*<sup>11</sup>

**16.** Advertising revenue – which historically accounted for approximately 70% of newspaper revenues - has been lost to major digital platforms such as Google and Facebook and to dedicated online classified sites. Advertisers have followed audiences online, with online advertising now accounting for half of all advertising expenditure.<sup>12</sup>

**17.** This is reflected in PWC's data, which stated that print advertising in news publications was \$1.927 billion in 2013, rose to \$2.24 billion in 2014, but steadily declined to \$1.63 billion in 2017. PWC anticipate overall print ad revenues to fall to \$798 million in 2022.

**18.** PWC observed that losses in print advertising revenues will be partly offset by digital ad revenues, which are expected to increase from the \$463 million in 2017 to about \$570 million in 2022."<sup>13</sup>

**19.** As the Australian Consumer and Competition Commission (ACCC) noted in its recent analysis of digital platforms<sup>14</sup> impact on the Australian media and advertising sector, not only has the reduction in advertising revenue made it difficult for traditional media to monetise their content, these pressures have occurred at the same time as their

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<sup>11</sup> and projected to fall to \$2.77 billion in 2019

<sup>12</sup> ACCC Digital Platforms Inquiry, Preliminary Report, 2018, page 240

<sup>13</sup> PWC Entertainment And Media outlook 2018

<sup>14</sup> Principally Google and Facebook

content has been used by digital platforms to attract and retain consumers to their platforms.<sup>15</sup>

### **Circulation - Newspapers**

**20.** The fall in print newspapers is shown in the following tables, which are based on circulation audit figures as reported by the Audited Media Association of Australia (AMAA), formerly the Audit Bureau of Circulation.

#### **PRINT Circulation: Monday – Friday**

|                              | <b>2002</b> | <b>2008</b> | <b>2012</b> | <b>2016</b> | <b>2018</b> | <b>+/-</b> |
|------------------------------|-------------|-------------|-------------|-------------|-------------|------------|
| Sydney Morning Herald        | 228,800     | 212,500     | 157,931     | 95,733      | 78,789      | - 65%      |
| The Age                      | 197,700     | 208,000     | 157,480     | 87,979      | 74,360      | - 62%      |
| Daily Telegraph              | 406,200     | 385,000     | 333,424     | 233,857     | 192,007     | - 53%      |
| Herald Sun                   | 548,764     | 530,000     | 450,090     | 317,517     | 278,066     | - 49%      |
| Courier Mail                 | 218,104     | 217,575     | 190,915     | 147,122     | 125,010     | - 43%      |
| Advertiser                   | 204,320     | 189,668     | 169,889     | 120,931     | 106,171     | - 48%      |
| West Australian              | 222,000     | 195,033     | 190,251     | 124,472     | 128,365     | - 42%      |
| The Australian <sup>16</sup> | 130,378     | 136,000     | 126,901     | 97,419      | 88,581      | - 32%      |
| Australian Financial Review  | 88,674      | 89,329      | 68,425      | 48,009      | 39,834      | - 55%      |

#### **PRINT Circulation: Sunday**

|                   | <b>2002</b> | <b>2008</b> | <b>2012</b> | <b>2014</b> | <b>2016</b> | <b>2017</b> | <b>+/-</b> |
|-------------------|-------------|-------------|-------------|-------------|-------------|-------------|------------|
| Sunday Telegraph  | 726,906     | 663,000     | 600,326     | 437,560     | 401,702     | 378,449     | -48%       |
| Sun-Herald        | 559,725     | 483,220     | 322,959     | 205,667     | 182,626     | 164,652     | -70%       |
| Sunday Mail (Qld) | 601,851     | 565,173     | 453,871     | 347,108     | 321,840     | 289,888     | -52%       |
| Sunday Age        | 199,350     | 227,500     | 193,545     | 135,731     | 122,547     | 115,056     | -42%       |
| Sunday Herald-Sun | 570,647     | 622,000     | 524,237     | 396,251     | 374,918     | 349,252     | -39%       |
| Sunday Times      | 346,037     | 328,000     | 269,910     | ---         | 176,375     | 194,033     | -44%       |
| Canberra Times    | 39,075      | 34,316      | 28,808      | 19,652      | 17,271      | 15,775      | -60%       |

<sup>15</sup> ACCC Digital Platforms Inquiry – Preliminary Report, 2018 page 6

<sup>16</sup> News.com, together with the Daily Telegraph, the Herald Sun and The Australian, are owned and operated by News Corp. Content often overlaps.

## PRINT Circulation: Regional Newspapers

|                     | 2006   | 2011   | 2016   | +/-  |
|---------------------|--------|--------|--------|------|
| Illawarra Mercury   | 29,865 | 22,886 | 10,938 | -63% |
| Northern Star       | 11,771 | 11,211 | 7,612  | -35% |
| Bundaberg News Mail | 12,038 | 9,232  | 6,558  | -45% |
| Queensland Times    | 16,274 | 9,287  | 6,815  | -58% |
| Geelong Advertiser  | 27,156 | 24,707 | 17,416 | -36% |

**21.** Although there is widespread anticipation that print publication of newspapers will not survive over time, the industry's view is that print production remains viable and is still highly valued by consumers and advertisers. This view is reflected in survey results from Roy Morgan, which in its review of newspaper readership over the 2018 calendar year, stated:

*“Overall nearly 7 million Australians read the listed print newspapers, including almost 5 million who read weekday issues, over 4.1 million who read Saturday editions and more than 3.7 million who read Sunday titles. Although print readership has declined year-on-year, the latest figures show more than 1-in-3 Australians (34.1 per cent) are reading print newspapers. In today’s digitally-focused world print newspapers continue to be an important advertising medium to reach both mass and niche audiences.”<sup>17 18</sup>*

**22.** More recently, the industry body, News Media Works, commented that:

*‘Over 10 million Australians (10.1 million), or more than half the population (54%) read both print and digital news media, according to the latest emma (Enhanced Media Metrics Australia) data for February 2019.*

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<sup>17</sup> findings from the Roy Morgan Single Source survey of 50,853 Australians aged 14+ in the 12 months to December 2018.

<sup>18</sup> MEAA note that readership figures do not represent newspaper purchase, but rather a response to a survey question about how respondents consumed their news information.

*'In total, digital news media is read by 15.7 million Australians, or 85 per cent of the population and printed newspapers are read by 11.8 million people, or 64 per cent of the population.*

*'Across print and digital platforms, 17.4 million people, or 94 per cent of the population reads news media'<sup>19</sup>*

### **Digital Subscriptions**

**23.** The decline in print circulation has been offset in some measure by digital subscriptions. The data below is drawn from trade journals and official reporting by the news companies concerned.

**24.** The most recent data reveals that:

**Nine/ Fairfax (2018)** *313,000+ metro title digital subscribers in 2018<sup>20</sup>*

#### **News Corp mastheads (2018)<sup>21</sup>**

|                        |                                |
|------------------------|--------------------------------|
| <i>The Australian</i>  | <i>135,753 (print 88,581)</i>  |
| <i>Daily Telegraph</i> | <i>114,203 (print 192,007)</i> |
| <i>Herald Sun</i>      | <i>108,801 (print 278,066)</i> |
| <i>Courier Mail</i>    | <i>80,291 (print 125,010)</i>  |
| <i>The Advertiser</i>  | <i>85,770 (print 106,171)</i>  |

#### **Seven West Media 2017**

*The West Australian* *21,659 in 2018 (130,650 print)<sup>22 23</sup>*

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<sup>19</sup> More than 10 million Australians now read their news media across both print and digital platforms, News Media Works, 19 April 2019

<sup>20</sup> Cited in ASX Release, Fairfax Media Limited, 2018 Full-Year Results Commentary, 15 August 2018

<sup>21</sup> Based on News Corp's 2018 Annual Report, cited in: News Corp leans on growing digital subs as print numbers fall, Glenn Dyer, Crikey, 16 August 2018



- 25.** For News Corp, digital subscribers at the company's Australian mastheads as of September 30, 2018 were 442,400, compared to 375,400 in the prior year.<sup>24</sup>
- 26.** In Fairfax Media's final annual results announcement to the ASX before its takeover by Nine Entertainment Co, the company reported more than 313,000 paid digital subscribers and a 9% increase in digital subscription revenue. (The figure in the 2017 annual report was 236,000 subscribers across the Sydney Morning Herald, The Age and the Australian Financial Review - a 21% increase in revenue on 2016.)<sup>25</sup>
- 27.** The current largest selling formally audited news publication, *The West Australian*, recorded a 53% year on year increase in digital audience to 1.2 million per month in the 2017 financial year. The title's digital revenue also increased by 65% year on year and according to Seven West Media, these revenues 'continue to scale rapidly'.<sup>26</sup>
- 28.** The ACCC noted that news subscriptions are of increasing significance and that Australian news publishers have significantly increased their numbers of digital subscribers over the past five years.<sup>27</sup>
- 29.** The Commission's review of data from Fairfax, News Corp and Seven West Media showed that print subscriptions had fallen by around 40 per cent in the previous five years; however, 'those same publishers have experienced an increase in the number of subscriptions with regard to digital editions (or combinations of digital and print) of

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<sup>22</sup> Source: The West Australian becomes highest circulating audited newspaper following News Corp withdrawal, Zoe Samios, Mumbrella, 16 February, 2018

<sup>23</sup> The title is due to go behind a paywall in June 2019

<sup>24</sup> News Corp reports: digital subs in Australia grow 67,000 to 442,400, James Manning, Media Week, 8 November 2018

<sup>25</sup> ASX Release - Fairfax Media Limited 2017 and 2018 Full-Year Results Commentary

<sup>26</sup> Seven West Media, 2017 Annual Report, page 33

<sup>27</sup> ACCC Digital Platforms Inquiry – Preliminary Report, 2018 page 302

about 400,000 subscriptions since 2014',<sup>28</sup> with most subscriptions having some digital element.

**30.** The ACCC also noted that over the period 2014 to 2018, some smaller digital publishers had seen subscriptions grow by 27 per cent (although remaining under 100,000 in number).<sup>29</sup>

**31.** Due to the current absence of a unified system of measurement for print and online circulation or purchase, the industry's preferred means of measuring the popularity of their titles is cross-platform (digital and print combined) data drawn from consumer surveys.

#### Newspaper Cross-Platform Audience, 12 months to December 2018<sup>30</sup>

| Publication<br>(Popn '000) | Print   |         | Digital<br>(web or app) |         | Total Cross-Platform Audience<br>(print, web or app) |         | %<br>change |
|----------------------------|---------|---------|-------------------------|---------|--|---------|-------------|
|                            | Dec     | Dec     | Dec                     | Dec     | Dec  | Dec     |             |
|                            | 2017    | 2018    | 2017                    | 2018    | 2017   | 2018    |             |
|                            | ('000s) | ('000s) | ('000s)                 | ('000s) | ('000s)  | ('000s) |             |
| Adelaide Advertiser        | 583     | 543     | 713                     | 688     | 1,092  | 1,026   | -6.0%       |
| Canberra Times             | 106     | 90      | 398                     | 375     | 476  | 433     | -9.1%       |
| Courier-Mail               | 971     | 894     | 1,312                   | 1,095   | 2,022  | 1,779   | -12.0%      |
| Daily Telegraph            | 1,336   | 1,285   | 2,512                   | 2,091   | 3,446  | 2,989   | -13.3%      |
| Financial                  | 386     | 364     | 1,155                   | 1,169   | 1,453  | 1,439   | -1.0%       |

<sup>28</sup> ACCC Digital Platforms Inquiry – Preliminary Report, page 264

<sup>29</sup> ibid, page 264

<sup>30</sup> Cross-Platform Audience is the number of Australians who have read or accessed individual newspaper content via print, web or app. Source: Roy Morgan

|                       |       |       |              |              |       |              |        |
|-----------------------|-------|-------|--------------|--------------|-------|--------------|--------|
| Review                |       |       |              |              |       |              |        |
| Herald Sun            | 1,542 | 1,342 | <b>1,936</b> | <b>2,032</b> | 3,002 | <b>2,984</b> | -0.6%  |
| Mercury               | 106   | 108   | <b>126</b>   | <b>107</b>   | 212   | <b>193</b>   | -9.1%  |
| Newcastle Herald      | 176   | 120   | <b>156</b>   | <b>100</b>   | 292   | <b>209</b>   | -28.4% |
| Sunday Times          | 347   | 334   | <b>784</b>   | <b>676</b>   | 1,026 | <b>889</b>   | -13.4% |
| Sydney Morning Herald | 1,056 | 983   | <b>3,780</b> | <b>3,667</b> | 4,255 | <b>4,135</b> | -2.8%  |
| The Age               | 945   | 817   | <b>2,603</b> | <b>2,458</b> | 3,061 | <b>2,816</b> | -8.0%  |
| The Australian        | 888   | 862   | <b>1,899</b> | <b>1,866</b> | 2,550 | <b>2,480</b> | -2.8%  |
| The Saturday Paper    | 115   | 119   | <b>102</b>   | <b>160</b>   | 193   | <b>253</b>   | 31.0%  |
| West Australian       | 697   | 748   | <b>598</b>   | <b>557</b>   | 1,117 | <b>1,060</b> | -5.1%  |

*Print is net readership in an average 7 days; digital is net website visitation and app usage in an average 7 days.*

**32.** The data in the above table reveals substantial ongoing consumption of newspapers. It also discloses that all mastheads, except the *Newcastle Herald*, now have digital readership numbers well in excess of print readership numbers – see ***italicized bolded*** figures.

### **Digital News Websites**

**33.** The other compelling data concerns news consumers' uptake of digital news websites.

**34.** The MEAA has reproduced two tables – one from 2019 and another from 2014 – indicating the growth in consumer use of digital news websites over the past five years.<sup>31</sup>

<sup>31</sup> Reliable data from the pre-2014 period is not available

## JANUARY 2019 – Monthly Unique Audience

| Rank | Name                             | Unique Audience | Average Time Spent | Sessions Per Person |
|------|----------------------------------|-----------------|--------------------|---------------------|
| 1    | news.com.au                      | 10,239,360      | 00:26:44           | 9.8                 |
| 2    | ABC News Websites                | 8,496,456       | 00:31:35           | 8.9                 |
| 3    | nine.com.au                      | 8,489,663       | 00:24:47           | 8.8                 |
| 4    | smh.com.au                       | 8,298,319       | 00:19:30           | 5.9                 |
| 5    | Daily Mail Australia             | 6,322,716       | 00:12:55           | 5.0                 |
| 6    | Yahoo!                           | 4,681,801       | 00:08:54           | 5.3                 |
| 7    | The Guardian                     | 4,499,049       | 00:20:51           | 6.1                 |
| 8    | The Age                          | 3,915,360       | 00:28:53           | 7.1                 |
| 9    | Fairfax Digital Regional Network | 3,768,299       | 00:03:37           | 3.3                 |
| 10   | The West Australian              | 2,860,063       | 00:06:04           | 3.4                 |

Source: Nielsen Digital Rankings, 2019

**35.** In 2014, the unique audience figures were substantially lower.

## OCTOBER 2014 - Monthly Unique Audience

| Name                  | Unique Audience (000) | Page Views Per Person | Sessions Per Person | Time Per Person (hh:mm:ss) |
|-----------------------|-----------------------|-----------------------|---------------------|----------------------------|
| smh.com.au            | 3,824                 | 35                    | 11.27               | 01:01:54                   |
| news.com.au           | 3,734                 | 56                    | 13.28               | 01:45:44                   |
| ABC News Websites     | 2,697                 | 25                    | 9.33                | 00:40:31                   |
| ninemsn News Websites | 2,464                 | 27                    | 11.72               | 00:43:45                   |
| Daily Mail Australia  | 2,443                 | 18                    | 6.29                | 00:52:27                   |
| The Guardian          | 2,085                 | 14                    | 5.69                | 00:35:26                   |
| Yahoo!7 News Websites | 2,024                 | 21                    | 8.38                | 00:26:08                   |
| The Age               | 1,983                 | 43                    | 12.95               | 01:26:26                   |
| Herald Sun            | 1,895                 | 17                    | 7.53                | 00:39:52                   |
| BBC                   | 1,668                 | 21                    | 5.94                | 00:40:23                   |

Source: Nielsen Digital Rankings, 2014

**36.** The above two tables show enormous increases in the number of individual news consumers visiting news websites over time. Compare, for example, the 8,298,319 unique visitors to the smh.com.au site in 2019 versus the 3,824,000 million in late 2014. Similarly, The Guardian site (now an online-only digital newspaper in Australia, saw site visitation increase from just over 2 million per month in 2014 to 4.5 million in 2019.

- 37.** In addition, it is notable that five of the top ten in February 2019 were the online versions of traditional (print) commercial media mastheads.
- 38.** When examining the number of digital views on digital news websites and the cross-platform audience figures, it seems very clear that the future of the news publishing industry is digital. It attracts the greater number of ‘eyeballs’ and is the only future avenue for advertising revenue growth – once and still the single most critical source of industry revenues.

### **Magazine Sector**

**39.** The Australian magazine sector has also seen falls in advertising revenue and circulation and employment levels since the GFC, but especially in the last six years.

**40.** In the magazine sector, PWC recorded the consumer magazine market value as:

*2011: \$1.517 billion*

*2017: \$802 million*

**41.** Magazine print advertising revenue fell from \$480 million in 2013 to \$311 million in 2017, while digital advertising is expected to increase from \$87 million in 2017 to \$123 million in 2022.<sup>32</sup> As with newspapers, the advertising revenue gap has not been closed by the shift to online.

**42.** The following table - based on data drawn from the AMAA - reveals average print circulation falls of 40% across eight major weekly magazine titles over the six years to 2016.<sup>33</sup> (Historically, circulation revenues have comprised a greater share of revenues

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<sup>32</sup> PWC Entertainment and Media Outlook, various years

<sup>33</sup> Figures from 2017 to the present are not available due to Bauer and Pacific Magazines withdrawing from formal auditing processes.

than advertising revenues. This is largely the reverse of the funding formulae for newspapers. This can be attributed to the higher value consumers have placed on magazine titles and their enhanced physical value - i.e. glossy and bearing higher production values.)

#### Weekly Magazine Print Circulation Figures

|             | 2016    | 2015    | 2012    | 2010    | Change<br>2010 v 2016 |
|-------------|---------|---------|---------|---------|-----------------------|
| NEW IDEA    | 211,855 | 250,111 | 293,031 | 326,137 | -35%                  |
| NW          | 52,807  | 62,557  | 100,494 | 123,248 | -57%                  |
| OK!         | 48,029  | 59,022  | 90,096  | 101,562 | -52.7%                |
| TAKE 5      | 135,061 | 155,723 | 180,110 | 222,498 | -39.3%                |
| THAT'S LIFE | 161,557 | 175,152 | 218,161 | 274,106 | -41%                  |
| TV WEEK     | 114,223 | 132,086 | 155,664 | 198,186 | -42.4%                |
| WHO         | 82,789  | 96,207  | 126,124 | 134,546 | -38.5%                |
| WOMAN'S DAY | 249,244 | 288,186 | 350,494 | 400,015 | -14.8%                |

**43.** For the monthly title, *Australian Women's Weekly*, circulation was 605,039 in 2007, 470,331 during 2012, 459,175 in 2013; 416,117 in 2015 and 400,810 in 2016. Over nine years, print circulation decreased by about 34%.

**44.** As with the newspaper sector, the magazine industry's preferred method of gauging the popularity of their titles is 'readership'. The following table presents data comparing print and online magazine consumption at major titles over 2017 and 2018.

#### Magazine Cross-Platform<sup>34</sup> Audience, 12 months to December 2018<sup>35</sup>

| Print | Digital<br>(web or app) | Total Cross-Platform<br>Audience |
|-------|-------------------------|----------------------------------|
|-------|-------------------------|----------------------------------|

<sup>34</sup> Cross-Platform Audience is the number of Australians who have read or accessed individual magazine content via print, web or app

<sup>35</sup> Print is average issue readership; digital is website visitation and app usage in an average 4 weeks, except for weekly titles which are in an average 7 days (denoted by\*). \*\* TOTAL Magazines includes all magazines, including those with no website.

| <b>Publication</b>           | <b>Platforms</b>                        | <b>Dec 2017</b><br>( <b>'000s</b> ) | <b>Dec 2018</b><br>( <b>'000s</b> ) | <b>Dec 2017</b><br>( <b>'000s</b> ) | <b>Dec 2018</b><br>( <b>'000s</b> ) | <b>Dec 2017</b><br>( <b>'000s</b> ) | <b>Dec 2018</b><br>( <b>'000s</b> ) | <b>% change Total Cross-Platform Audience</b> |
|------------------------------|---|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|---|
| Australian Gourmet Traveller | Gourmet Traveller print, GT app, GT web | 174                                 | 170                                 | 215                                 | 261                                 | 369                                 | 409                                 | 10.7%   |
| Belle                        | Belle print, Homes to Love web          | 100                                 | 102                                 | 133                                 | 219                                 | 232                                 | 319                                 | 37.6%   |
| Better Homes & Gardens       | BH&G print, BH&G app, BH&G web          | 1,707                               | 1,566                               | 312                                 | 347                                 | 1,889                               | 1,801                               | -4.7%   |
| Cosmopolitan                 | Cosmo print, Cosmo app, Cosmo web       | 278                                 | 239                                 | 359                                 | 335                                 | 598                                 | 545                                 | -8.8%   |
| Elle                         | Elle print, Elle app, Elle web          | 171                                 | 127                                 | 262                                 | 260                                 | 427                                 | 370                                 | -13.3%  |
| Frankie                      | Frankie print, Frankie web              | 407                                 | 309                                 | 89                                  | 50                                  | 452                                 | 339                                 | -25.0%  |
| Girlfriend                   | Girlfriend print, Girlfriend web        | 153                                 | 153                                 | 117                                 | 103                                 | 252                                 | 240                                 | -4.7%   |
| Good Health                  | Good Health print, Now to Love web      | 240                                 | 286                                 | 887                                 | 1,058                               | 1,111                               | 1,313                               | 18.2%   |
| Harper's Bazaar              | Harper's print, Harper's web            | 111                                 | 146                                 | 206                                 | 206                                 | 310                                 | 340                                 | 9.7%  |
| Home Beautiful               | Home Beaut. print, HB. app, HB web      | 312                                 | 342                                 | 75                                  | 119                                 | 380                                 | 447                                 | 17.6%   |
| House & Garden               | H&G print, Homes to Love web            | 527                                 | 530                                 | 133                                 | 219                                 | 651                                 | 736                                 | 13.1%   |
| Marie Claire                 | Marie Claire print, MC app, MC web      | 260                                 | 268                                 | 135                                 | 96                                  | 376                                 | 348                                 | -7.4%   |
| Men's Fitness                | Men's Fitness print, Men's Fit web      | 124                                 | 113                                 | 168                                 | 95                                  | 279                                 | 202                                 | -27.6%  |
| Men's Health                 |   | 382                                 | 312                                 | 154                                 | 180                                 | 498                                 | 476                                 | -4.4%   |

|                     |  |       |       |       |       |       |       |        |  |
|---------------------|--|-------|-------|-------|-------|-------|-------|--------|--|
|                     | Men's Health print, MH app, MH web       |       |       |       |       |       |       |        |  |
| Motor               | Motor print, Motor app, WhichCar web     | 154   | 122   |       | 360   |       | 465   |        |  |
| National Geographic | NatGeo print, Nat G. app, Nat G. web     | 1,061 | 1,279 | 381   | 345   | 1,332 | 1,559 | 17.0%  |  |
| New Idea*           | New Idea print, NI app, NI web           | 1,079 | 992   | 175   | 163   | 1,218 | 1,123 | -7.8%  |  |
| NW*                 | NW print, NW app, Now to Love web        | 181   | 159   | 291   | 307   | 461   | 458   | -0.7%  |  |
| OK*                 | OK print, Now to Love web                | 145   | 153   | 280   | 307   | 422   | 450   | 6.6%   |  |
| Open Road           | Open Road print, O.R app, O.R web        | 1,051 | 1,012 | 61    | 71    | 1,081 | 1,043 | -3.5%  |  |
| Reader's Digest     | Reader's Digest print, Reader's D. web   | 436   | 415   | 230   | 100   | 645   | 502   | -22.2% |  |
| Real Living         | Real Living print, Homes to Love web     | 91    | 100   | 133   | 219   | 223   | 314   | 40.8%  |  |
| Street Machine      | Street M. print, SM app, WhichCar web    | 254   | 238   |       | 362   |       | 567   |        |  |
| Super Food Ideas    | Super Food Ideas print, SFI app, SFI web | 464   | 437   | 97    | 100   | 538   | 528   | -1.9%  |  |
| Take 5 (weekly)*    | Take 5 print, Now to Love web            | 495   | 497   | 280   | 307   | 733   | 777   | 6.0%   |  |
| Taste.com.au        | Taste print, Taste app, Taste web        | 646   | 649   | 2,642 | 2,794 | 3,113 | 3,233 | 3.9%   |  |
| That's Life*        | That's Life print, That's Life web       | 657   | 599   | 104   | 84    | 712   | 646   | -9.3%  |  |
| The Monthly         | The Monthly print, TM app, TM web        | 156   | 138   | 104   | 122   | 214   | 210   | -1.9%  |  |



|                |   |       |       |     |       |       |       |        |
|----------------|---|-------|-------|-----|-------|-------|-------|--------|
| Time Magazine* | Time print, Time web                                | 344   | 306   | 171 | 152   | 495   | 444   | -10.3% |
| TV Week*       | TV Week print, Now to Love web<br>UC print, UC app, | 433   | 378   | 280 | 307   | 696   | 669   | -3.9%  |
| Unique Cars    | TradeUniqueCars web                                 | 160   | 193   | 94  | 100   | 246   | 289   | 17.5%  |
| Vogue          | Vogue print, Vog. app, Vog. web                     | 355   | 397   | 206 | 237   | 505   | 601   | 19.0%  |
| Wheels         | Wheels print, Whl. app, WhichCar. Web               | 291   | 243   |     | 362   |       | 568   |        |
| Who*           | Who print, Who app, Who web                         | 312   | 274   | 52  | 90    | 359   | 345   | -3.9%  |
| Woman's Day*   | WD print, WD app, Now to Love web                   | 1,303 | 1,169 | 283 | 312   | 1,529 | 1,419 | -7.2%  |
| Women's Health | Women's H print, WH app, WH web                     | 306   | 306   | 127 | 143   | 419   | 442   | 5.5%   |
| Women's Weekly | AWW print, AWW app, Now to Love web                 | 1,494 | 1,570 | 887 | 1,064 | 2,293 | 2,496 | 8.9%   |

**45.** The above table includes readership figures for 37 popular titles over a two-year period.

The data indicate that while maintaining readers is an ongoing challenge, 25 of the 37 titles experienced year-on-year digital readership growth from 2017 to 2018, and 13 titles now have a digital audience greater than the number of print readers. MEAA expect this trend to continue, given the magazine sector's more recent (compared to newspapers) shift to digital modes of production.

**46.** A more recent table, based on emma statistics for the month of January, 2019, shows strong digital and cross-platform growth for major magazine titles.

## MAGAZINES – TOTAL AUDIENCE - JANUARY 2019

|                              | Print Audience<br>(000s) | Digital Audience<br>(000s) | TOTAL Audience<br>(000s) |
|------------------------------|--------------------------|----------------------------|--------------------------|
| Australian Geographic        | 726                      | 255                        | 974                      |
| Australian Gourmet Traveller | 258                      | 266                        | 512                      |
| Australian 4WD Action        | 441                      | 71                         | 509                      |
| Better Homes and Gardens     | 1,958                    | 535                        | 2,419                    |
| Delicious                    | 608                      | 698                        | 1,273                    |
| Golf Australia               | 128                      | 262                        | 387                      |
| Healthy Food Guide           | 240                      | 125                        | 363                      |
| Homes to Love                | 1,214                    | 311                        | 1,504                    |
| Marie Claire                 | 296                      | 180                        | 470                      |
| MiNDFOOD                     | 91                       | 77                         | 168                      |
| New Idea                     | 2,656                    | 966                        | 3,439                    |
| Now to love                  | 4,545                    | 1,073                      | 5,289                    |
| Reader's Digest Australia    | 453                      | 392                        | 835                      |
| That's Life                  | 1,219                    | 70                         | 1,284                    |
| Vogue Australia              | 424                      | 354                        | 744                      |
| Weight Watchers              | 112                      | 297                        | 408                      |
| Which Car                    | 1,061                    | 437                        | 1,460                    |

Source: emma™ conducted by Ipsos Connect, People 14+ for the 12 months ending January 2019, 14+ Nielsen Digital Panel data calibrated to Digital Content Ratings January 2019.

### Digital Circulation

It is not only vastly cheaper for published media entities to disseminate content digitally instead of physically, it is a reflection of audience expectations to be constantly informed and updated as news stories progress. As the Finkelstein Inquiry into the Media and Media Regulation noted in 2012:

*'In their traditional printed form, newspapers are the least capable of the media in providing updates on developing news events in between publication of editions. ... The internet has revolutionized access to news, having none of the limitations of radio, television and newspapers'.<sup>36</sup>*

<sup>36</sup> Report of the Independent Inquiry into the Media and Media Regulation, by The Hon R Finkelstein QC, Assisted by Professor M Ricketson, Australian Government, 28 February 2012, page 65

**47.** Finkelstein also acknowledged that the creation of news content online has also become ‘a more immediate, interactive and multi-directional process, where ever-increasing sources of information are continually monitored, distilled and updated by a network of participants and presented to widespread audiences in a rich variety of formats’.<sup>37</sup>

**48.** Six years on from the publication of the Finkelstein Inquiry’s report, the ACCC noted that:

*‘Advances in technology, particularly the rapid growth and uptake of the internet, significantly reduced the cost of publishing and distributing news and journalistic content for media outlets. In the digital environment, digital platforms provide new ways for media outlets to reach audiences’.*<sup>38</sup>

**49.** The ACCC further noted that the lower cost of digital production ‘enabled some publishers to drop physical print altogether .... This trend is evident in Australia and internationally’.<sup>39</sup>

**50.** According to PWC, circulation expenditure for print newspapers has fell from \$1.35 billion in 2013 to \$920 million in 2017, with projected expenditure of less than \$700 million in 2022.<sup>40</sup>

**51.** Conversely, digital circulation expenditure for the newspaper industry increased from \$35 million in 2013 to \$190 million in 2017. This figure, according to PWC, could rise to \$370 million by 2022.<sup>41</sup>

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<sup>37</sup> Ibid., page 94

<sup>38</sup> ACCC Digital Platforms Inquiry - Preliminary Report, page 255

<sup>39</sup> ACCC Digital Platforms Inquiry - Preliminary Report, page 256

<sup>40</sup> PWC Entertainment and Media Outlook 2018

<sup>41</sup> PWC Entertainment and Media Outlook 2018

52. With respect to magazine print circulation spending, PWC has noted a decline from \$763 million in 2013 to \$390 million in 2017, with further annual double-digit declines predicted between 2018 and 2022. Digital magazine circulation spending is now about \$14 million, but is predicted to increase to \$19 million per annum in 2022.<sup>42</sup>

### **How Australians Get Their News**

53. The escalating growth and dependence upon digital platforms and technology is mirrored in statistics relating to the level of internet penetration in Australia and the use of increasingly versatile digital devices.

54. The proportion of households with access to the internet at home has been steadily climbing since 2004-05 but remained constant between 2014-15 and 2016-17 at 86%.<sup>43</sup> In 2018, about 88 percent of the Australian population were active internet users.<sup>44</sup>

55. The ABS reported in 2017 data that desktop or laptop computers are used by 91% of connected households. Similarly, mobile or smart phones were also used by 91% of connected households. Tablets were the next most popular type of device used by 66% of households to connect to the internet.<sup>45</sup>

56. It is notable that Deloitte's 2018 *Technology, Media and Telecommunications Predictions* report asserted that smartphone penetration in Australia was expected to surpass 90% by the end of 2018 while the rest of the world will take until 2023.<sup>46</sup>

57. The News Media and Research Centre at the University of Canberra found that in 2017, 43.8% of Australians identified digital platforms as their main way of accessing news.

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<sup>42</sup> MEAA attribute the relatively slow rate of growth to reflect the far lower spending requirements for digital versus physical print production – including significantly higher production values - and distribution.

<sup>43</sup> ABS citation

<sup>44</sup> Statista: <https://www.statista.com/statistics/680142/australia-internet-penetration/>

<sup>45</sup> <https://www.abs.gov.au/ausstats/abs@.nsf/mf/8146.0>

<sup>46</sup> *Australia is ahead of the rest of the world when it comes to smartphone use*, Chris Pasha, Business Insider, 6 February 2018

This included the websites of print, radio and TV providers as well as social media and news aggregators.<sup>47</sup>

**58.** The Pew Research Centre in the United States found a higher rate of online news access in Australia. It surveyed people in 38 countries during 2017 about their use of social media and the internet to access news information. The result in Australia was 61% of respondents overall, with 73% of people between 18-29 years and 44% of people aged 50 and over. (By way of comparison, Australia's 61% is higher than Canada (59%), Germany (46%), Japan (55%), the UK (54%) and the USA (59%). The Australian figure was beaten only by Israel, Netherlands and South Korea.<sup>48</sup>)

## **Social Media**

**59.** Australians are some of the most avid users of social media sites in the world. Data from *Social Media Statistics Australia* for January 2019 revealed:

*Facebook – 15,000,000 Monthly Active Australian Users (steady)*

*Twitter – 4,700,000 Monthly Active Australian Users approx*

**60.** Approximately 6 in 10 Australians use Facebook and 1 in 2 of these users access Facebook on a daily basis. Twitter is also a popular means of communicating news and is often the first platform to break news through the release of short, sharp bursts of information.

**61.** The 2018 Digital News Report produced by the University of Canberra stated of its survey of more than 2000 people who access news online, 38% expressed preferences for accessing news through social media.<sup>49</sup>

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<sup>47</sup> Digital News Report 2017, News Media and Research Centre at the University of Canberra, page 7

<sup>48</sup> Global Attitudes and Trends, Pew Research Center, 11 January 2018

<sup>49</sup> Digital News Report 2018, News Media and Research Centre at the University of Canberra, page 95

**62.** The University of Technology, Sydney's Centre for Media Transition, observed with respect to social media's influence as a news source:

*'Arguably the headline news is about Australians' news consumption is the rise of social media. In 2018, more than half of Australians (52%) accessed the news via social media on a weekly basis, a 6 per cent rise on 2017, with one in six describing social media as their main news source. The young are particularly social, with 71 per cent of 10 to 34 year-olds using social to access news, and 36 per cent citing social media as their main source of news'.<sup>52</sup>*

**63.** Other notable findings from the Digital News Report from 2018, included:

- social media is now the main source of news for 18 to 24 year olds (36%);<sup>53</sup>
- about 79% of news consumers had used news apps, with 34% using an app in the previous 24 hours (prior to survey).<sup>54</sup>
- 2018 was the first year that mobile phones were used more than computers to access online news by news consumers.<sup>55</sup>
- 2018 was the first time access to online news (82%) has overtaken traditional offline sources, including television (79%).<sup>56</sup>
- 36% of news consumers access news mainly on mobile phones, up 7% on 2017.<sup>57</sup>

**64.** Overall, the Centre for Media Transition reported in 2018 that:

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<sup>52</sup> Cited in: The Impact of Digital Platforms on News and Journalistic Content, Centre for Media Transition, UTS, 2018, page 25

<sup>53</sup> 2018 Digital News Report, page 10

<sup>54</sup> 2018 Digital News Report, page 56

<sup>55</sup> There is also steady growth in the use of news apps and news alerts and notifications. See: Digital News Report 2018, News Media and Research Centre, University of Canberra, page 9

<sup>56</sup> 2018 Digital News Report, page 10

<sup>57</sup> 2018 Digital News Report, page 10

*'The biggest change in consumption is the switch to online. More Australian now consume news online than offline. In 2018, 82 per cent of Australians accessed online news, compared to 79 per cent who accessed traditional offline sources. Digital media have now surpassed television as the most widely used source of news in many countries. The switch to online is partly explained by the rise of the mobile. In 2018, 59 per cent of Australian news consumers used smartphones for news. Further, more than a third of Australians access news mainly on mobile phones, a group that is growing rapidly.'*<sup>58</sup>

65. The rise of digital production not only accords with consumer preferences; as stated above, costs associated with producing news digitally are also far lower compared to print circulation and have allowed published media companies to continue operations in an environment of falling circulation and advertising revenues.
66. The cost of the media and magazine industries' digital re-tooling is also reflected in the number of editorial (and other) positions lost since the GFC.

### **Workforce Impact**

67. This section will examine the decline in news publication and magazine workforces and the transference of resources into digital work practices and publication. The section will conclude that editorial workforces are now smaller, digitally capable, faster (i.e. more responsive to consumer data such as 'clicks' on stories), perform more steps in the editorial process than their predecessors and operate in a flatter, less hierarchical management structure than persisted in the pre-2000 publishing era.
68. IBIS World provides an annual report on the state of the Australian newspaper industry. IBIS World says that Australian newspapers had 23,472 employees (editorial and non-

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<sup>58</sup> The Impact of Digital Platforms on News and Journalistic Content, Centre for Media Transition, UTS, 2018, page 25

editorial) in 2010-11 and 13,907 employees in 2018 – a loss of 9565 positions (or 40%).<sup>59</sup>

**69.** There is variation in the number of editorial positions lost in the published media sector since 2008. As MEAA stated earlier in this submission, we estimate the number of editorial positions cut from the Australian news media sector since 2008 to be at least 4000.

**70.** Margaret Simon, a media academic, has stated that, ‘In 2013 industry commentators estimated that more than 3000 Australian journalists had lost their jobs in the previous five years. Since then, there have been further deep cuts ...’<sup>60</sup>

**71.** Evidence provided to the ACCC’S 2018 inquiry into digital platforms suggested that between 3000 – 3200 positions had been lost between 2012 and 2017.<sup>61</sup> However, Drs Andrea Carson and Dennis Muller of the University of Melbourne point to 3000 journalistic jobs being cut from ‘traditional newsrooms’ in 2012 alone.<sup>62</sup>

**72.** Evidence in support of the loss of several thousand editorial positions can otherwise be found in the annual reports of Australia’s two largest news publishers: News Corp and Nine/Fairfax.<sup>63</sup>

**73.** News Corp incurred restructuring costs in its newspaper businesses totaling \$1.034 billion from 2009 to 2018, principally in Australia and the UK.<sup>64</sup> Media reports in 2014

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<sup>59</sup> Some of the departed newspaper employees were printers, or worked in advertising and administrative roles.

<sup>60</sup> Journalism faces a crisis worldwide – we might be entering a new dark age, Margaret Simons, The Guardian, 15 April 2017

<sup>61</sup> ACCC Digital Platforms Inquiry – Preliminary Report, December 2018, page 29

<https://www.accc.gov.au/focus-areas/inquiries/digital-platforms-inquiry/preliminary-report>

<sup>62</sup> The Future Newsroom, Dr Andrea Carson & Dr Dennis Muller, University of Melbourne, September 2017, page 5

<sup>63</sup> See: <https://www.fairfaxmedia.com.au/Investors/annual-reports>

<sup>64</sup> Figures sourced from News Corp annual reports



pointed to internal News Corp's Australian accounts referring to about 1000 jobs being lost at News Corp titles in a single year.<sup>65</sup>

- 74.** Fairfax incurred Redundancy Costs of \$512.6 million across the company between 2007-2018.<sup>66</sup> These costs applied primarily to its Australian employees.
- 75.** Fairfax's annual reports reveal that in 2007, the number of Australian employees was 7,126 full-time and 1,643 part-time and casual; in 2018, the number of Australian employees was 4,136 full-time and 689 part-time and casual.
- 76.** This amounts to overall job losses of 3944 jobs (or 45%) between 2007 to 2018.<sup>67</sup>
- 77.** At *The West Australian* and its recently acquired *PerthNow* and *Sunday Times* mastheads, MEAA estimate that at least 150 editorial positions have been lost since 2012, with a further 30 positions made redundant in April, 2019.
- 78.** APN News and Media<sup>68</sup> was a major regional newspaper publishing business that was acquired by News Corp in 2016. Prior to the transfer of ownership, MEAA estimated job APN job losses at about 130 over the period 2011 to 2016. Further job losses followed News Corp's takeover of the company.<sup>69</sup>
- 79.** The ACCC noted in 2018 that 'the fall in traditional print journalist numbers (including those in print/online news media businesses) was 26 per cent 2006 to 2016. It further

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<sup>65</sup> 'News Corp Australia leaked accounts show 1,000 jobs cut across mastheads', Amanda Meade, *The Guardian*, 20 August 2014

<sup>66</sup> Figures sourced from Fairfax Annual Reports 2007 to 2018. Fairfax annual reports disclose discrete employee numbers in Australian and New Zealand, but do not separate restructuring costs by country.

<sup>67</sup> This includes editorial and non-editorial staff

<sup>68</sup> Formerly owned by Australian Regional Media (ARM)

<sup>69</sup> See: News Corp to axe 300 jobs in ARM acquisition, suggests report, Miranda Ward, *Mumbrella*, 12 September 2016

noted that data provided by newspaper companies showed the number of journalists in traditional print (now print/online) businesses fell by 21 per cent from 2014 to 2017.<sup>70</sup>

**80.** MEAA anticipate further consolidation of the Australian newspaper sector following the mooted sales by News Corps and Nine Entertainment Co. of their approximately two-hundred regional and country newspaper titles.<sup>71</sup>

**81.** MEAA is also yet to learn of the full (potential) consequences of the recent takeover of Fairfax Media by Nine Entertainment Co (Nine). Nine stated in its filings to the Australian Stock Exchange (ASX) prior to formal approval of the acquisition that: “The merger is expected to deliver annualised pro-forma cost savings of at least \$50m which will be fully implemented over two years.”<sup>72</sup>

**82.** In the magazine sector, the enterprise agreements covering Bauer Media and its predecessor, Australian Consolidated Press (ACP) covered 473 editorial employees in 2010 (then as ACP); 412 employees in 2015 and 337 in 2017 – a fall of 29% over seven years. We further note that several Bauer titles<sup>73</sup> and the company’s custom publishing arm, *BauerWorks*, have closed since the last Form 17 was lodged.

**83.** The current number of editorial employees at Pacific Magazines is not clear but is believed to number approximately two-hundred; however, an analysis of Seven West Media annual reports over the period 2012 to 2018 reveals that total operating costs

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<sup>70</sup> Digital Platforms Inquiry – Preliminary Report, ACCC, 2018, page 240

<sup>71</sup> Nine announced the sale of its regional and community newspapers on 30 April 2019. The sale, expected to be completed by June 30, will see more than 160 regional mastheads, including The Newcastle Herald, The Illawarra Mercury, The Canberra Times, The Land and The Examiner sold to a new media venture. *Source: ABC Online 30 May 2019*

<sup>72</sup> See: Nine-Fairfax merger to target savings in technology, media sales, lifestyle content sharing, Max Mason, Australian Financial Review, 14 October 2018. MEAA note however that Nine did state at the time that: None of the cost synergies expected to be realised depend on the consolidation of Nine's and Fairfax's newsrooms or reducing the number of journalists employed in the newsrooms."

<sup>73</sup> Titles to close include: Cosmopolitan, Men’s Style, Yours, Recipes+, Homes+ Weight Watchers and Shop Til You Drop magazine. In October 2016, Bauer sold five of its adventure titles to a group of investors led by staffer Robert Gallagher.

have fallen from \$247.4 million in 2012 to \$129.62 million in 2018 - a \$118 million (or 48%) drop over six years. Doubtless some of these reductions stem from reduced printing and distribution costs and the departure of non-editorial employees, but it is plausible to assert that much of the savings are a reflection of reduced editorial employee levels across the company's titles.

**84.** As the respected Tow Center for Digital Journalism at the University of Columbia observed:

*'Post-industrial journalism assumes that the existing institutions are going to lose revenue and market share, and that if they hope to retain or even increase their relevance, they will have to take advantage of new working methods and processes afforded by digital media'.<sup>75</sup>*

### **The Digital Newsroom**

**85.** The loss of at least one-quarter of the editorial workforce in the Australian published media sector and the (related) growth of digital technology has had a considerable impact not only on the number of editorial employees and the range of news delivered to consumers, but on the manner in which editorial work is performed.

**86.** Editorial workforces now work differently. Digital comes first and methods of work have been overhauled to reflect this reality. The ages-old, somewhat romantic image of news hounds wearing out shoe leather rushing from one location to the next and filing their stories by late afternoon or early evening so the printers could set plates for the printing presses is now either anachronistic or well on its way to redundancy.

**87.** Newsrooms are smaller; the number of freelance employees (or contributors) grows year-on-year; the news cycle has no end; and editorial employees, especially

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<sup>75</sup> Post-Industrial Journalism: Adapting to the Present, C.W. Anderson, Emily Bell and Clay Shirky, Tow Center for Digital Journalism, Columbia Journalism School, 2014, page 13

journalists, perform more steps in the editorial process, often with limited or no supervision.

**88.** Editorial employees are in almost all instances, digitally-aware in terms of both the tools they use to produce stories and the way in which they are disseminated. Content is increasingly driven by audience metrics and by audiences that expect constant updates of stories of interest, no matter the time of day.

**89.** As the Centre for Media Transition commented in 2018:

*'In a modern digital newsroom, success is now gauged on a story level. What might have previously been a page, site, edition or show is now fragmented into discrete units, with each unit's success measured in minutes and hours, not days and weeks'.<sup>76</sup>*

**90.** At a high-level, new digital-only (often referred to as 'digital natives') media companies have emerged since the JPMA came into force. They are not presently, however, major employers. As the News Media and Research at the University of Canberra asserted 'Six of the larger digital natives, with a combined monthly audience of close to five million, collectively employ fewer than 250 full-time equivalent editorial staff'.<sup>77</sup>

**91.** In the first report of its kind in Australia to investigate digital-only newsrooms, the University of Melbourne's Dr Andrea Carson and Dr Dennis Muller found (in 2017) that modern digital newsrooms were flourishing, with all but one of the case studies showing substantial newsroom growth in the preceding five years. This resulted in

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<sup>76</sup> The Impact of Digital Platforms on News and Journalistic Content, Centre for Media Transition, UTS, 2018, page 37

<sup>77</sup> The Guardian lists 50 journalists in its Australian team, BuzzFeed (formerly) had around 40 employees and The Conversation had about 24 editorial staff and the New Daily around 18 employees. See: Digital News 2018 Report, page 240

digital outlets hiring more journalists, thereby attracting larger audiences and increasing their revenues.<sup>78 79</sup>

**92.** Critically, the report also found that contemporary online newsrooms are a fraction of the size of old newspaper newsrooms. They are ‘smaller, more nimble and less hierarchical than their analog predecessors’.<sup>80</sup>

**93.** Carson and Muller also remarked that the culture in these online newsrooms ‘is more informal, as is the editorial voice within their stories’ and were overseen by a ‘light executive structure with only a couple of layers of management – editor and news editor – typically’.<sup>81</sup>

### **Social Media**

**94.** The report found that social media was ‘essential for distributing stories and allowing two-way conversations with the public. The reporter needs to consider the audience in every step of the process from gathering information to posting the story.’<sup>82</sup>

**95.** Social media connectedness was considered ‘absolutely central’, not only as a primary means of dissemination, but as the source of story ideas, information tip-offs, audience engagement and accountability to their audience. ‘Share-ability is a key criterion in news judgments’.<sup>83</sup>

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<sup>78</sup> The Future Newsroom, Dr Andrea Carson & Dr Dennis Muller, University of Melbourne, September 2017, page 3

<sup>79</sup> It should be noted that several of the digital newsrooms canvassed in the University of Melbourne study have since experienced significant restructuring or closure. *Buzzfeed*, for example went through a redundancy round in early 2019 that saw 25 editorial and non-editorial employees lose their positions – see: *Buzzfeed cuts 25 jobs in Australia*, Tracey Ferrier, AAP, 29 January 2019. In addition, most of *HuffPost* Australia’s (which was a joint venture between Huffington Post and Fairfax Media) 25 to 30 employees were made redundant at the end of 2017 – see: *HuffPost: Where did it go wrong?*, Zoe Samios, Mumbrella, 30 November 2017.

<sup>80</sup> The Future Newsroom, Dr Andrea Carson & Dr Dennis Muller, University of Melbourne, September 2017, page 3

<sup>81</sup> *ibid*, page 6

<sup>82</sup> *ibid*, page 3

<sup>83</sup> *ibid*, page 7

- 96.** The Centre for Media Transition at the University of Technology, Sydney, which prepared a paper for the ACCC’s digital platforms inquiry, also noted that ‘most newsrooms [now] employ social media editors whose job it is to take content produced by journalists, share it and monitor what “is going off”’.<sup>84</sup>
- 97.** Journalists, the Centre noted, make use of social media to monitor traditional sources for leads, such as governments and public institutions; to stay current with the stories being published by competing outlets; and to gauge public opinion on various issues.<sup>85</sup>
- 98.** Carson and Muller also commented that digital editorial staff were also found to ‘have a broader range of skills and can work on multiple platforms compared to their predecessors. They not only gather, prepare and present news in textual, audio and video formats, but they provide headlines and thumbnails on their stories and pay close attention to how their stories are followed in social media’.<sup>86</sup>
- 99.** Today’s reporter, the authors said, ‘is also a sub-editor, video-maker, audio-maker, provider of data for graphics, and creator of presentational aspects of a story, including headlines and thumbnails’.<sup>87</sup>
- 100.** Part of the Carson and Muller report included an interview with the then head of *Buzzfeed* in Australia, who in comparing ‘old’ to ‘new’ journalism, said:

*‘Then you just had to get the story, someone else would edit it, it would go to a copy queue (for publication) and the next day you’d wake up and either the boss had butchered everything or the treatment was all wrong, and you didn’t have that much input.’*

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<sup>84</sup> The Impact of Digital Platforms on News and Journalistic Content, Centre for Media Transition, UTS, 2018, page 35

<sup>85</sup> ACCC Digital Platforms Inquiry – Preliminary Report, 2018 page 261

<sup>86</sup> The Future Newsroom, Dr Andrea Carson & Dr Dennis Muller, University of Melbourne, September 2017, page 4

<sup>87</sup> *ibid*, page 6

*‘Whereas here [Buzzfeed], they build it in CMS (content management system). They write their own headlines. We have a thing called an optimizer. So you have four or six alternative headlines and thumbnails, and before we run it on social, it usually runs on our website and the algorithm figures out which headline and thumbnail will work’.*<sup>88</sup>

**101.** This shift in work practices is underpinned by the Tow Center’s observation that, ‘The list of what a journalist can do grows daily, as the plasticity of communications technology changes both reporting capabilities and audience behaviours’.<sup>89</sup>

**102.** Adaptation to new technologies and ways of performing work is reflected across all major Australian published media companies.

**103.** *The Age*  
The University of Melbourne’s Centre for Advancing Journalism published a lengthy commentary on ‘The evolution of a newsroom’ in late 2015. The article was based on interviews with editorial employees at *The Age* in Melbourne. In noting that before 2012, the Age had separate print and digital workforces, it was observed that:

*‘For the past decade, The Age newsroom – like those of newspaper companies worldwide – has been undergoing a metamorphosis, both in structure and mindset, as the paper evolves into a digital-first production on a path, ultimately, to becoming digital only’.*<sup>90</sup>

**104.** With respect to work practices, *The Age* introduced ‘a new content management system, CQ5, that allows publishing direct to the web, unlike its previous newsroom

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<sup>88</sup> The Future Newsroom, Dr Andrea Carson & Dr Dennis Muller, University of Melbourne, September 2017, page 15

<sup>89</sup> Tow Center, op cit., page 21

<sup>90</sup> The evolution of a newsroom, The Citizen, University of Melbourne, December 2015

tool, that was designed around building print pages, from where stories would later be funneled into the digital system'. An Age journalist observed:

*'[Reporters] are now asked to write their own SEO (search engine optimisation) captions ... . [It's] a lot more hands-on involvement compared to the past where [journalists] would simply be writing a story and handing it over to be somebody else's problem in getting together the photo,, the headline and the graphics'.*

*'We have restructured the newsroom. Roles have changed. The conversation is restructured. So, I file for digital and I don't sit on the story til five o'clock and hand it to print editors and pitch for the following day's page one'.*

#### Nine/Fairfax

**105.** The former Fairfax CEO, Greg Hywood, remarked in Fairfax Media's final annual report, that:

*'[The] Metro business now operates on an enhanced technology platform, having replaced complex legacy systems with new fit-for-purpose, agile, flexible and much lower cost solutions. ... During the year, Australian Community Media continued to optimize its operating structure to grow digital and maximise cash flows of low capital intensive and profitable print'.<sup>92</sup>*

**106.** The company's regional operations had also adapted to digital, with its more than 150 agricultural and regional mastheads 'growing its digital presence across highly-engaged local communities'.<sup>93</sup>

**107.** In his 2018 ASX Results Commentary, Mr Hywood commented that, 'We have turned a traditional media model, with a large fixed cost base, into a diversified and

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<sup>92</sup> Fairfax Media 2018 Annual Report, page 9

<sup>93</sup> Fairfax Media 2018 Annual Report, page 5



growth focused contemporary portfolio of multimedia and digital assets with a flexible, lower cost base.<sup>94</sup>

### News Corp

- 108.** News Corp introduced a \$60 million content management system called *Method* in 2012. The system is designed to enable journalists to edit, layout and publish their own stories, bypassing the need for subeditors and production journalists. The then CEO of News Corp in Australia, Kim Williams, described *Method* as a ‘foundation stone’ in engaging customers:

*“It will allow us to create once and publish many times across every platforms our customers use – print, online, tablet, mobile, smart devices and broadcast. ... The new operating model is designed to empower staff to work smarter and faster. We will upskill our central our central functions and eliminate wasteful duplication.”<sup>95</sup>*

- 109.** In a major redundancy announcement in April 2017, News Corp executives moved to increase efficiency measures so that the company could ‘preserve in print and excel in digital. The main step was to streamline in-house production and have journalists write headlines and add their own images to stories. In his email to staff, News Corp’s director of editorial management advised that:

*‘We are proposing some changes to workflow in an effort to make better use of the Method system and streamline our work on our digital platforms.*

*‘For example, we need all staff to write in Method at all times, except when filing remotely.*

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<sup>94</sup> ASX Release, Fairfax Media Limited 2018 Full-Year Results Commentary

<sup>95</sup> News Corp Australia sacks most of its photographers and subeditors to cut costs, Amanda Meade, The Guardian, 11 April 2017

*'Reporters will eventually write digital headlines, SEO headlines and standfirsts. They will be taught how to add images and to use digital templates. ... We will train [journalists] to use page templates, assign stories and complete the digital build.*

*'This training is designed to improve the skills of all reporters and section heads to ensure that they know how to work in an integrated newsroom'.<sup>96</sup>*

**110.** Across the new and traditional media, the ACCC found that:

*'When newsrooms embraced digital technologies, this drastically altered the way news was sourced and produced. For example, the use of computers significantly changed the writing, editing and technical production processes. The development of digital photography removed the costs and constraints associated with film. Mobile phones put reporters in constant contact with sources and newsrooms. In a relatively short space of time, the newsroom completely transformed from the pen and typewriter to the monitor and keyboard; from analogue to digital recording and broadcasting'.<sup>97</sup>*

**111.** The emphasis on digital means of production and embrace of social media is no less evident in the magazine sector.

### *Pacific Magazines*

**112.** In its 2013 Annual Report, Seven West Media stated of Pacific Magazines:

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<sup>96</sup> News Corp reveals drastic restructure including most photographers being made redundant, Miranda Ward, Mumbrella, 11 April 2017

<sup>97</sup> ACCC Digital Platforms Inquiry – Preliminary Report, page 256

*'Our drive to digital editions allows us to take advantage of new channels for the delivery of our content, connect with audiences who may not buy the print edition of a magazine and create new opportunities to build revenues'. ... 'Our objective is to build our magazine audiences through print, digital and social media, events and other media.'*<sup>98</sup>

**113.** In 2016, Pacific announced the closure and merger of several titles. Industry comment at the time observed that, 'Over the past 12 months, the publisher has turned its focus to digital, investing in its flagship multi-platform brands including *New Idea, Better Homes and Gardens, marie claire* and *Women's Health*'.<sup>99</sup>

**114.** Pacific CEO Gereurd Roberts said earlier this year: 'We're so early in our digital journey'. We're producing core content for more platforms than we have ever before, and we're doing it more efficiently than we ever have.'

**115.** Digital revenue for us is in significant growth as it should be, we've invested a lot in building that side of the business ...<sup>100</sup>

**116.** The company is now growing revenue contributions from digital advertising, social media, e-commerce, content marketing and video, up 91 per cent year-on-year, which now represents 20 per cent of total advertising revenue in FY17.<sup>101</sup> This push towards online capacity lead the company to claim:

*'Pacific has grown its online Unique Audience (UA) more than threefold (+ 188 per cent YOY), making it Australia's fastest-growing digital publisher. Pacific's monthly UA is 1.733 million. ... The Pacific brands now reach a combined*

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<sup>98</sup> Seven West Media, 2013 Annual Report, page 19

<sup>99</sup> Pacific Magazines To Close, Digitalise and Let Go of Various Titles, B&T Magazine, 22 August 2016

<sup>100</sup> Pacific Magazines making all the write moves, Lilly Vitorovich, The Australian, 7 January 2019

<sup>101</sup> Seven West Media, 2017 Annual Report, page 37

*audience footprint of approximately 23.8 million consumers per month via print, digital and social platforms – an increase of 20 per cent year-on-year. The business also now has 3 of the 20 most engaged Facebook pages in the country’.*<sup>102</sup>

- 117.** MEAA submit that the preceding information demonstrates that print publication is making way for digital publication. The economics of digital compared to print suit the challenging economic environment that has faced the Australian media sector for more than ten years. It also accords with audience preferences.
- 118.** It is beyond doubt that there are far fewer editorial employees in Australian media companies (commercial and public) than there were when the JPMA came into force. These workers, with few exceptions, produce their work with digital software and make it available online, with far less oversight than newsrooms of the 19<sup>th</sup> and 20<sup>th</sup> Centuries.
- 119.** It is necessary for the modern award covering editorial employees to reflect the new digital reality – or in the alternative, the reality of integrated print and digital operations. Print is no longer dominant and is perhaps approaching its end days. The modern award should not give primacy to traditional notions of news and magazine production and consumption. It should cover and be accessible to the editorial workforce as it now stands.
- 120.** MEAA’s proposed variations with respect to removing the distinction between print and digital employees and equalizing all editorial employees’ award entitlements is consistent with the modern awards objective set out in section 134 of the Fair Work Act, particularly with regard to the provision in sub-section (1) of providing **‘a fair and relevant minimum safety net of terms and conditions’**.

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<sup>102</sup> Seven West Media, 2017 Annual Report, page 38

**121.** It is also relevant – with respect to online-only employees’ inability to access Part 5 of the current JPMA (Parts 3 and 5 of March 2019 JPMA Exposure Draft) -that the Commission have regard to section 134(a)(da)(i) of the Act, which concerns the need to provide ‘**additional remuneration for employees working overtime**’.

**122.** Consistent with MEAA’s request, we also seek that the JPMA’s definition of editorial employee be varied to read:

**editorial employees** include *journalists*, reporters, writers, *correspondents, content writer, social media coordinator*, photographers, sub-editors, cartoonists, artists, video journalists, moderators, editorial content producers *and directors*, chiefs of staff, picture editors, designers, production managers, *editors, associate editors, multimedia editors and producers, social media coordinators, editors and art directors*<sup>103</sup>

**123. Exemptions from Award Coverage**

This section will (i) canvass the history of exempted positions in news and magazine companies; (ii) describe the JPMA’s facilitation of exemptions from award coverage; and (iii) question the scale of exemptions in the context of significantly reduced workforces and digital work practices.

**124.** MEAA will assert that the current award does too little to reflect the historical bases upon which exemptions were incorporated in pre-reform awards. Consistent with past decisions of the Commission and its predecessor bodies, MEAA seek to have the award reflect that exemptions are to be based upon a senior editorial employee bearing significant managerial responsibilities in an ongoing manner and being paid a minimum award salary as a precondition to their exemption.

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<sup>103</sup> highlighted and italicized text constitutes the amendments sought by the MEAA

125. In the marked-up JPMA exposure draft provided to the Commission on 1 April 2019, MEAA proposed that clause 4.4 of the Award be amended to state:

**4.4** *The award does not cover employees employed in the following positions **who occupy senior managerial editorial roles on an ongoing basis and who are classified and paid no less than level 11 of the award***<sup>105</sup>

126. *Exemptions History*

From the early 20<sup>th</sup> Century through to the 1980s, exclusion from Australian Journalists Association (AJA) membership eligibility meant exclusion from the award. In the alternative, to be excluded from the Award precluded AJA membership.

127. MEAA's rules still provide at Rule 4, Part C, paragraph (c):

(c) *Persons not eligible to be members of the Association are:*

1. ***the Editor-in-Chief and the Editor of a metropolitan daily newspaper;***
2. ***the chief of the general reporting staff permanently employed as such on a daily newspaper in a capital city;***<sup>106</sup>
3. *a proprietor or part-proprietor of a newspaper who does not derive the major part of his or her income from salary or other remuneration for journalistic work.*
4. *Any person eligible for membership of the Theatre Managers' Association as at the 27th day of March, 1958.*
5. *Any person who is a member, staff member or special member of the Australian Federal Police.*

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<sup>105</sup> Highlighted and bolded text is MEAA's proposed amendment

<sup>106</sup> Emphasis added

**128.** In an effort to confront union views that exemptions were inherently unwarranted and undermined union membership and union strength and reflect the need to separate senior management from journalists, industrial tribunals articulated a range of characteristics that should attach to exempted editorial employees.

**129.** These characteristics included reference to the geographical location of a newspaper,<sup>107</sup> executive editorial management responsibilities and the superior earning capacity of senior news media executives. The holders of these positions were often substantial public figures with their own standing within the community.

**130.** Exemptions increased over time to reflect the growth of the industry and the need for more managerial personnel, whom, it should be noted, did not regularly engage in writing for publication.

**131.** The AJA was registered as an organisation under the Act in 1911. At that time the Industrial Registrar with the consent of the parties inserted an exclusion from eligibility for membership of the positions of Editor-in-Chief and Chief of the general reporting staff permanently employed on each daily newspaper in capital cities. On 11 May 1917, Isaacs J gave a decision and made an award on claim by the AJA. At page 84 of his judgment his Honour referred to the exemptions in the AJA's rules as follows:

*“The claim itself excludes among others the editors-in-chief, and chiefs of staff of daily papers. The rules of the claimant organisation exclude these officers and consequently no award can embrace them. The award can only relate to such journalists as are members of the organisation, and the editor-in-chief, and the*

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<sup>107</sup> Location of a daily title had a direct bearing on the scale of the publisher's operations. For example, more exempt positions were provided for Sydney and Melbourne-based publications due to the density of circulation areas.

*chief of staff are therefore necessarily excluded. It ought to be stated why they are excluded from membership of the organisation.”<sup>110</sup>*

**132.** In 1925, Deputy President Quick upheld an appeal<sup>111</sup> by newspaper proprietors against the Industrial Registrar’s decision to include editors-in-chief, and chiefs of staff in the AJA’s eligibility rule.

**133.** DP Quick commented:

*“Probably the [employers’] strongest [objections] are those based on the fact that the editors in chief and chiefs of staff occupy the position of direct representatives of the employers ... and that men in that capacity and vested with such tremendous responsibilities should not be qualified to become members of a trade union which includes the employees over whom they have to exercise managerial supervision. It may be said that if qualified to join they would not be bound to join the association, but if they are qualified by law and refuse to join it would only lead to industrial suspicion and trouble.”<sup>112</sup>*

**134.** DP Quick continued:

*‘The [AJA’s] application is absolutely promoted by the organisation on behalf of journalists who may have some hopes or expectations of attaining these high positions and who desire, should they succeed in their aspirations, to be allowed to continue as members of the association. ... There is no force in the suggestion that future occupants of these high positions might want to continue their industrial association*

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<sup>110</sup> (1917) 11 CAR 67; cited in: (C no. 3292 of 1983) at page 70 – see **attached**

<sup>111</sup> (1925) 21 CAR 595

<sup>112</sup> (1925) 21 CAR 595; cited in: (C no. 3292 of 1983) at page 71



*with their fellow journalists. It is not a question of what these gentlemen desire. It is what the situation of responsibility demands.*<sup>113</sup>

**135.** Commissioner Blackburn dealt with a dispute concerning exemptions in the Journalists (Metropolitan Daily Newspapers) Award, in 1953. He noted the history of industrial regulation and Isaacs J's acknowledgment in 1917 that:

*"It was conceded by the employees from the first that the two officers mentioned, namely the Editor in Chief and the Chief of Staff should be regarded as representing rather the interests of the employers than those of the employees".*<sup>114</sup>

**136.** Commissioner Blackburn was urged by employers to approve further exemptions 'on the grounds that they exercise such managerial functions as to make it just that they should be excluded.'

**137.** Although Commissioner Blackburn did not rule on the employers' application for further exemptions, he enunciated several principles. The first of these was:

*"The underlying principle in [exemption cases] is that the Court has always been reluctant to include under the provisions of the same award the general employees and the employer's representative such as the manager of his business or such other representative as really represents the employer and exercises disciplinary control on behalf of the employer over the general employees".*

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<sup>113</sup> (1925) 21 CAR 595; cited in: (C no. 3292 of 1983) at pages 72-73

<sup>114</sup> In the matter of the Conciliation and Arbitration Acct 1904-1955 and of The Australian Journalists Association v Associated Newspapers Limited (No. 401 of 1953) and of Associated Newspapers Limited v The Australian Journalists Association (No. 812 of 1953)

**138.** In addition, he resolved:

*“I will express the view that any employee to whom has been delegated as a regular part of his duties, responsibilities and duties substantially the same as were exercised by the Editor-in-Chief and/or Chief of Staff when the [AJA] conceded that they should be excluded, should now be excluded.*

*“I am influenced by the fact that the growth of journalism over the last 35 to 40 years has been such that I am convinced that many of the responsibilities and managerial duties formerly carried out by the Editor-in-Chief and Chief of Staff are now delegated to other employees. At the same time I am not necessarily prepared to exclude from the award on this ground an employee who may be placed in charge of a few employees in some particular department, but who is himself substantially under other control, nor a person who so acts occasionally, or even regularly for short periods, such as a week-end, or once a year whilst relieving another employee on leave.*

And:

*“In expressing the views set out above, I think it right that I should record the undertaking by employers ... [that exemption] ... is conditional upon the proprietors affording to them salaries not less than those of A grade, and observing conditions of employment not less favourable than those prescribed in the award as to all important matters such as holiday leave, incapacity pay, termination of services etc.”*

**139.** MEAA draw attention to Commissioner Blackburn’s view as to the growth in journalism and salary levels of an exempted senior employee.

140. The exemptions arising from Commissioner Blackburn's consideration of the parties' submissions were as follows:

***Journalists (Metropolitan Daily Newspapers) Award, 1955***

*Clause 5*

*This award shall not apply to the undermentioned:-*

*In Victoria and New South Wales*

*(i) On a morning or an evening paper: Editor in Chief, assistant or deputy editor in chief, chief of general reporting staff, news editor carrying out the duties of the chief of the general reporting staff, and, if an employer so desires, a news editor not carrying out the duties of chief of the general reporting staff, and the chief sub-editor.*

*(ii) Any other member the greater part of whose regular duties can be demonstrated to a Conciliation Commissioner to place him in a position of executive authority equal or superior to any person exempted under paragraph (i) hereof.*

*In Western Australia, South Australia and Queensland*

*(iii) On a morning or an evening paper: Editor in Chief, assistant or deputy editor in chief, chief of general reporting staff, news editor carrying out the duties of the chief of the general reporting staff, and, if an employer so desires, a news editor not carrying out the duties of chief of the general reporting staff, and the chief sub-editor.*

*(iv) Any other member the greater part of whose regular duties can be demonstrated to a Conciliation Commissioner to place him in a position of executive authority equal or superior to any person exempted under paragraph (iii) hereof.*

*In Tasmania*

*(v) On a morning or evening paper:- Editor-in-chief or managing editor, editor or associate editor or assistant editor and chief of the general reporting staff*

*(vi) Any other member the greater part of whose regular duties can be demonstrated to a Conciliation Commissioner to place him in a position of executive authority equal or superior to any person exempted under paragraph (v) hereof.*

**141.** The Journalists (Metropolitan Daily Newspapers) Awards of 1958 and 1964 were practically identical with respect to exemptions to the provisions approved by Commissioner Blackburn in 1955.

**142.** In 1966, a Full Bench of the Australian Conciliation and Arbitration Commission retained the listing of exemptions by proprietor, masthead and specified positions to be exempted, but altered the clause commencing with the words: 'Any other member ...' to read:

*"By agreement or order of the Commission, any other member the greater part of whose regular duties place him in a position in which he exercises executive and disciplinary authority substantially similar or superior to any person exempted in paragraph (i) hereof."<sup>115</sup>*

**143.** The position prior to this decision was:

*(i) Any other member the greater part of whose regular duties can be demonstrated to a Conciliation Commissioner to place him in a position of executive authority equal or superior to any person exempted under paragraph (iii) hereof.*

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<sup>115</sup> in: (C no. 3292 of 1983) at page 73

**144.** MEAA note that the differences between the two clauses were the inclusion of the phrase ‘the greater part [of whose regular duties]’ instead of ‘regular duties’ and the confirmation of exemptions ‘By agreement or order of the Commission’ in place of establishing the merits of an exemption to the Commission only.

**145.** The 1966 Full Bench also observed:

*‘A complicating feature of the present situation is the relationship between award coverage and AJA membership. Speaking generally an employee whose work is covered by this agreement is required to be a member of the AJA, but if he is exempt he is not so required. We recognise the significance of AJA membership both to the AJA and to the industry generally but we must balance this against the long recognised principles that some executives should not be covered by the award.’<sup>116</sup>*

**146.** The Journalists’ Award of 1967 saw a move away from listing exemptions by State and publication type to exemptions being listed by proprietor and masthead.

***Journalists (Metropolitan Daily Newspapers) Award, 1967***

*3 – Exemptions from Award*

*This Award shall not apply to the undermentioned:*

*(a) Australian Consolidated Press Limited*

*Editor in Chief; Assistant Editor in Chief.*

*(i) Daily Telegraph: Editor, News Editor, Chief of Staff; Chief Sub-editor.*

*(ii) Sunday Telegraph: Editor, Chief of Staff.*

*(iii) Women’s Weekly: Editor, Assistant Editor.*

*(iv) Any other associated paper: Editor.*

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<sup>116</sup> Print B3900; (1967) 120 CAR 177 at 179; cited in (C no. 3292 of 1983) at page 73

*(b) John Fairfax and Sons Limited*

*(i) Sydney Morning Herald: Editor, Associate Editor, Executive Assistant to the Editor; News Editor; Chief of Staff; Chief Sub-editor*

*(ii) Financial Review: Editor; Chief Sub-editor.*

*(iii) The Sun: Editor; Assistant Editor; City Editor; News Editor; Chief of Staff; Chief Sub-editor.*

*(iv) The Sun-Herald: Editor; Assistant Editor.*

*(v) Any other associated paper: Editor.*

*(c) Herald and Weekly Times Limited*

*Editor in Chief: Editorial Assistant to Editor in Chief*

*(i) The Herald: Editor; Assistant Editor; News Editor; Chief of Staff; Chief Sub-editor.*

*(ii) The Sun-News Pictorial: Editor; Assistant Editor; News Editor; Chief of Staff; Deputy Chief of Staff; Chief Sub-editor.*

*(iii) Magazines Generally: Magazines Editor*

*(iv) Any other associated paper: Editor*

*(d) Mirror Newspapers Limited, Sydney*

*(i) Daily Mirror: Editor; Assistant Editor; News Editor; Chief of Staff; Chief Sub-editor.*

*(ii) Sunday Mirror: Editor; News Editor.*

*(iii) Any other associated paper: Editor.*

*(e) Sungravure Pty Ltd*

*(i) Woman's Day: Editor; News Editor.*

*(ii) Any other associated paper: Editor.*

*(f) David Syme and Co. Ltd.*

*(i) The Age: Editor in Chief; Assistant or Deputy Editor in Chief; Editor; Day Editor; Editorial Manager; Assistant Editor (news); Assistant Editor (features); News Editor; Chief of Staff; Chief Sub-editor; Deputy Chief of Staff.*

*(g) News Limited*

*(i) The News: Managing Editor; Associate Editor; News Editor; Chief of Staff; Chief Sub-editor*

*(ii) Sunday Mail: Editor; News Editor.*

*(iii) Any other associated paper: Editor.*

*(h) Advertiser Newspaper Limited*

*(i) The Advertiser: Managing Editor; Night Editor; Day Editor; News Editor; Chief of Staff; Chief Sub-editor; Editorial Manager.*

*(ii) Any other associated publication: Editor.*

*(i) West Australian Newspapers Limited*

*(i) The West Australian: Editor; Associate Editor; Night Editor; News Editor; Chief of Staff; Chief Sub-editor.*

*(ii) Daily News: Editor; Assistant Editor; News Editor; Chief of Staff; Chief Sub-editor.*

*(iv) Countryman Editor.*

*(v) Weekend News: Editor.*

*(j) Telegraph Newspaper Co. Pty. Ltd. And Queensland Newspapers Pty. Ltd.*

*(i) Courier Mail: Editor in Chief; Chief of Staff; News Editor.*

*(ii) Sunday Mail: Editor; Chief of Staff; or Assistant Editor.*

*(iii) Telegraph: Editor in Chief; Assistant Editor; News Editor; Chief of Staff.*

*(k) Mirror Newspapers Limited, Brisbane*

*(i) Truth: Editor, Associated Editor, Chief of Staff*

*(l) Davies Bros. Limited*

*(i) The Mercury: Managing Editor; Editor; News Editor; Chief of Staff; Chief of the Launceston Staff (if the employer so desires).*

*(m) Nationwide News Pty Limited*

*The Australian: Managing Editor; Assistant Managing Editor, Associate Editor; News Editor; Chief Sub-editor.*

*(n) By agreement or order of the Commission, any other member, the greater part of whose regular duties place him in a position in which he exercises executive and disciplinary authority substantially similar or superior to any person exempted in the preceding paragraphs.*

**147.** The *Journalists (Metropolitan Daily Newspapers) Award 1974* maintained the exemptions format of the 1967 Award.

**148.** Following the Award's confirmation by the Commission, the AJA lodged an application to significantly reduce the number of exemptions in the journalists' award.

**149.** Commissioner Heagney commented of the AJA's application:

*"This, of course, completely disregards both agreements that have been entered into between the A.J.A and the Proprietors over the years and also decisions of the Commission which include Full Bench decisions and it also disregards the changed character of the industry, particularly in relation to the growth of the Industry and the necessary changes in both production techniques and*



*administration control, to meet the needs of both this growth and change, as well as the overall competition that the industry is subjected to<sup>117</sup> and; in the light of all these circumstances, the general claim of the A.J.A. is refused and consideration will thus be given to each classification separately. To do otherwise, in my view, would require an overall review of the whole aspect of the award structure that currently regulates the industrial relations within the industry.”<sup>118</sup>*

**150.** The Commissioner concluded his decision by stating:

*“Having considered the evidence and the submissions of the parties and also having regard for the history of this award and the general principles that have been applied in relation to exemptions, I take the view that the only proper approach is to look at the nature of the duties that are being performed, the size of the department or section over which control is administered, the number of staff over which control is exercised and the general nature of the overall authority that is vested in the position or positions that are sought to be exempted, together with the significance of the section or department to the organization concerned. Having regard to these factors I have decided to allow a number of exemptions that will be set out later in this decision.”<sup>119</sup>*

**151.** The 1982 award adopted a different format to that previously used by declaring core exemptions for Editors-in-Chief, Editors or the Chiefs of Staff of daily newspapers in clause 3 and then listing further exempted positions by reference to specific positions at specific proprietors in clause 4.

**152.** The relevant clauses were:

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<sup>118</sup> Print C3896; (1975) 170 CAR 165; cited in: (C no. 3292 of 1983) at page 73

<sup>119</sup> *ibid*

***Journalists (Metropolitan Daily Newspapers) Award 1982***

*Clause 3(b) This award does not apply to the Editor-in-Chief, Editor or the Chief of Staff of a daily newspaper*

***4 – Exemptions from Award***

*This Award shall not apply to the undermentioned:*

***(a) Australian Consolidated Press Limited***

- (i) Australian Women’s Weekly: Editor; Associate Editor*
- (ii) Any other associated publication: Editor*

***(b) John Fairfax and Sons Limited***

- (i) Sydney Morning Herald: Photographic Manager, Associate Editor, News Editor; Deputy News Editor, Night News Editor; Chief Sub-editor*
- (ii) The Financial Review: Associate Editor*
- (iii) The Sun: Assistant Editor - Production; Assistant Editor – News and Sport; Assistant Editor – Features; Chief Sub-editor.*
- (iv) The Sun-Herald: Editor; Assistant Editor.*
- (v) The National Times: Editor.*
- (vi) Any other associated paper: Editor.*

***(c) Herald and Weekly Times Limited: Executive Editor, Executive Editor (magazines and books), Photographic Manager***

- (i) The Herald: Editor; Deputy Editor; News Editor; Deputy , Chief Sub-editor, Picture Editor.*
- (ii) The Sun-News Pictorial: Assistant Editor; News Editor; Deputy Chief of Staff; Chief Sub-editor, Picture Editor.*
- (iii) The Sunday Press: Editor or News Editor*
- (iv) Any other associated publication: Editor*

*(d) Mirror Newspapers Limited, Sydney*

- (i) Daily Mirror: Assistant Editor; News Editor; Production Editor, Chief Sub-editor.*
- (ii) Sunday Mirror: Editor; News Editor.*
- (iii) Any other associated paper: Editor.*

*(e) Magazine Promotions Australia*

- (i) Woman's Day: Editor, News Editor, Photographic Manager*
- (ii) Any other associated publication*

*(f) David Syme and Co. Ltd.*

- (i) The Age: Deputy Editor, Assistant Editor, Associated Editor, Editorial Manager, News Editor, Deputy News Editor, Day Chief of Staff, Chief Sub-editor, Pictorial Editor.  
Editor;*
- (ii) The Sunday Press: Editor or News Editor*

*(g) The News (Adelaide) Pty Limited*

- (i) The News: Assistant Editor, News Editor, Chief Sub-editor*
- (ii) Sunday Mail: Editor; Deputy Editor.  
(ii) Any other associated publication: Editor.*

*(h) Advertiser Newspaper Limited*

- (i) The Advertiser: Deputy Editor; Night Editor; News Editor; Chief Sub-editor;  
Editorial Manager.*
- (ii) Any other associated publication: Editor.*

*(i) West Australian Newspapers Limited*

- (i) The West Australian: Associate Editor, Night Editor; News Editor, Chief Sub-editor.*
- (ii) Daily News: Associate Editor; News Editor, Chief Sub-editor.*
- (iii) Any other associated publication: Editor*

*(j) Queensland Newspapers Pty Limited*

- (i) Courier Mail: Night Editor*
  - (ii) Sunday Mail: Editor, Chief of Staff or Assistant Editor*
  - (iii) Telegraph: Assistant Editor, News Editor*
- (k) Daily and Sunday Sun Newspapers Pty Limited*
- (i) Daily Sun: Deputy Editor, News Editor*
  - (ii) Sunday Sun: Editor, Associate Editor and Chief of Staff*
- (l) Davies Bros. Limited*
- (i) The Mercury: Editorial Manager, News Editor, Chief of the Launceston Staff (if the employer so desires), Features Manager.*
- (m) Nationwide News Pty Limited*
- (i) Daily Telegraph: Assistant Editor, News Editor, Chief Sub-editor, Bureau Chief (Canberra)*
  - (ii) Sunday Telegraph: Editor, Assistant Editor*
  - (iii) The Australian: Deputy Editor; Assistant Editor, News Editor; Chief Sub-editor, Production Editor, Bureau Chief (Melbourne), Associated Editor (Finance).*
- (n) A member whose minimum rate of payment per week is 15% or more in excess of the appropriate minimum rate of payment prescribed for Special A Grade by clause 8 – Minimum Rates of Payment, shall be exempted from the provisions of Clause 24, Calculation of Time Worked; clause 25, Hours of Employment; clause 26, Distant Engagement; clause 27, Rosters; clause 28, Overtime; clause 29, Time Book; clause 30, Duty Book; and sub-clauses (d), (e) and (h) of clause 35, Employment in Canberra; provided always that the member shall be given two clear nights off duty or two clear nights off duty in each week in accordance with the provisions of sub-clauses (d) and (i) of clause 25 – Hours of Employment.*

153. In 1983, MEAA sought to vary the 1982 award to constrain exemptions.<sup>120</sup> In its April 1984 decision, the Full Bench of the Commission determined that<sup>121</sup>:

*“We consider that there are dangers in attempting to lay down definitive rules against which every application for exemption should be judged. The most that can be done is the formulation of general guidelines as an aid to determining the fundamental question of whether the responsibilities of a position are of such a nature that the occupant is **truly a direct and major part of management**.”<sup>122</sup>*  
*With this in mind the following matters should be taken into account:*

1. *The status of the position, including:*
  - (a) *Its place in the senior hierarchy of the organisation; and*
  - (b) *The significance of the sections or departments within which the position is situated.*
  
2. *The nature of the position, including:*
  - (a) *The duties attached to the position;*
  - (b) *Policy and/or administrative responsibilities;*
  - (c) *The extent of authority for control, direction and discipline of staff;*
  - (d) *The number of staff over whom authority is exercised; and*
  - (e) *The extent of ultimate decision-making.*
  
3. *The incidence of the functions attached to the position, including:*
  - (a) *The degree to which policy and administrative matters and control and direction of staff predominate over any other functions;*
  - (b) *The extent of journalistic functions involved in the position; and*

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<sup>120</sup> In the matter of an application by the Australian Journalists Association to vary the Journalists (Metropolitan Daily Newspapers) Award 1982 in relation to exemptions from the award. (C No. 3292 of 1983)

<sup>121</sup> Decision **attached**

<sup>122</sup> emphasis added

*(c) Whether journalistic functions are substantially subordinate to managerial functions<sup>123</sup>*

**154.** The Full Bench then declared that:

*“... in our view, a position should only qualify for exemption if it is shown conclusively that its occupant is substantially occupied on a day to day basis with top level management functions and consequently is severely limited in any writing for the publication. As a general rule we consider it undesirable that positions where occupants regularly perform journalistic assignments such as feature articles should be exempted from the operation of the award”.<sup>124</sup>*

**155.** The 1990s marked a shift from exemptions applying to employees by position title and from positions ‘the greater part of [which] place [the employee] in a position in which he exercises executive and disciplinary authority substantially similar or superior to any person exempted, to one where exemptions applied to editors-in-chief, editors and chiefs of staff of daily newspapers *and* to a specified *number* of positions by publisher.

**156.** The 1991 Award provided:

***Journalists (Metropolitan Daily Newspapers) Award 1991 (Amended Up To 2002)***

## **5. SCOPE AND PARTIES BOUND**

5.2 *This award does not apply to:*

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<sup>123</sup> (C no. 3292 of 1983) at page 81-82

<sup>124</sup> Underlining added

5.2.1 *the Editor-in-Chief, Editor, or the Chief of Staff of a daily newspaper;*  
*and*

5.2.2 *the members from time to time holding positions as determined by the employer provided that the number of positions does not exceed those specified below.*

***Herald and Weekly Times Limited***

- (a) *The Herald and Weekly Times Limited: 2 positions;*
- (b) *The Herald-Sun: 10 positions;*
- (c) *The Sunday Herald-Sun: 2 positions;*
- (d) *Any other associated publication: 1 position.*

***Advertiser Newspapers Limited***

- (a) *The Advertiser: 4 positions;*
- (b) *Sunday Mail: 2 positions*
- (c) *Any other associated publication: 1 position.*

***Queensland Newspapers Pty Limited***

- (a) *The Courier-Mail: 4 positions;*
- (b) *The Sunday Mail: 2 positions;*

***Davies Bros Limited***

- (a) *The Mercury: 3 positions*

***Mirror Australian Telegraph Publications, a division of Nationwide News Pty Limited***

- (a) *Daily Telegraph: 10 positions*
- (b) *Sunday Telegraph: 2 positions;*
- (c) *The Australian: 6 positions;*

(d) *Any other associated publication: 1 position*

***Western Press, the Perth division of Nationwide News Pty Ltd***

(a) *The Sunday Times: 3 positions;*

***Northern Territory News, a division of Nationwide News Pty Ltd***

(a) *Northern Territory News: 1 position.*

*Each employer must notify the Alliance within fourteen days of the commencement of this Award of the positions which the employer has determined in accordance with clause 5.2.2 and will notify the Alliance of any change to such positions within fourteen days of a position being changed.*

*5.3 Members classified in Grades 9 or 10 shall be exempted from the provisions of clauses 17 - Hours of Employment and Rosters of Ordinary Hours of Employment; 29 - Distant Engagements; 18 - Overtime and 9 - Time Book: provided always that each member shall be given at least two clear days off duty in each week in accordance with the provisions of paragraph 17.3 – Days Off. The provisions of sub-clause 18.5 shall apply to a member who is not given clear days off.*

**157.** MEAA note that this change to the award's exemptions format was accompanied by a safeguard that employers were bound to notify the union within fourteen days of the positions employers determined to be exempted. No such provision is in the JPMA.

**158. *Magazine Exemptions***

Exemptions from award coverage in the magazine sector, where applicable, were covered by the *Journalists (Metropolitan Newspapers) Awards* over much of the 20<sup>th</sup> Century. When



major magazine publishers moved to individual award coverage, exemptions were listed as follows:

**159. The Journalists (Pacific Publications) Award 2001 provided:**

**6. EXEMPTIONS FROM AWARD**

**6.1** *This award shall not apply to the undermentioned:*

*Editor in Chief*

*Editor, TV Week*

*Editor, New Idea*

*Editor, Special Publications*

**6.2** *Members of the Alliance should be assigned to perform writing, subediting, layout, artistic and photographic work required by an editor for the production of a magazine. However, persons who occupy positions described under **subclause 6.1**, whether they are members or not, shall be entitled to perform work similar to that performed by members of the Alliance if:*

**6.2.1** *in the opinion of the editor the non-member has a special knowledge or expertise relevant to the work to be performed; or*

**6.2.2** *in the opinion of the editor the non-member has a reputation likely to cause public interest in material published under that person's name; or*

**6.2.3** *no member of the Alliance is available to do the required work to the reasonable satisfaction of the editor.*

**6.3** *A member who is classified in Grade 9 or Grade 10 shall be exempted from the provisions of **clause 17 - Hours of employment** and **Clause 18 - Rosters of Ordinary Hours of Employment**; **clause 21 - Distant engagements** and **clause 19 - Overtime** provided always that each member shall be given at least two clear days off duty in each week in accordance with the provisions of **subclause 17.4***

*and shall be entitled to have the days off on which they perform work determined in accordance with the provisions of **subclauses 17.2 and 17.3**, in so far as those provisions deal with the cycle of working days.*

**160. Journalists (Australian Consolidated Press) Award 1999**

**5.3 Exemptions from award**

**5.3.1** *This award does not apply to:*

**5.3.1(a)(i)** *any members (below the level of publisher) who have principal responsibility for the editorial aspect of more than one magazine published by the employer, including an Editor in Chief;*

**5.3.1(a)(ii)** *any members (below the level of publisher) who have principal responsibility for the artistic aspect of more than one magazine published by the employer, including an Art Director; and*

**5.3.1(a)(iii)** *Photographic Manager.*

**5.3.1(b)** *the members from time to time holding such positions as determined by the employer provided that the number of positions does not exceed those specified below:*

**5.3.1(b)(i)** *two (2) positions for each of the following publications:*

**5.3.1(b)(i)(A)** *The Australian Women's Weekly;*

**5.3.1(b)(i)(B)** *Woman's Day;*

**5.3.1(b)(i)(C)** *Cleo; and*

**5.3.1(b)(i)(D)** *The Bulletin; and*

**5.3.1(b)(ii)** *one (1) position for all other publications of the employer.*

*The employer will notify the Alliance within fourteen days of the commencement of this award of the positions which the employer has determined in accordance with 5.3.1(b) and will notify the Alliance of any change to such positions within fourteen days of a position being changed.*

*5.3.2 A member who is classified in Grade 9 shall be exempted from the provisions of clause 17 - Hours of employment; days off duty and rosters of days off duty; breaks and calculation of hours worked; clause 26 - Distant engagements; clause 18 - Overtime; provided always that each member shall be given at least two clear days off duty in each week in accordance with the provisions of 17.2 and 17.3. The provisions of 26.3.6 shall apply to a member who is not given clear days off.*

**161. *Journalists (Reed Publishing) Award 1996***

***5.3 Exemptions from provisions of award***

*5.3.1 Publishers (by whatever name known) employed by the employer in each publishing division (currently Medical, Scientific, Travel, Manufacturing, Financial Services and Retail), shall be exempted from the provisions of this award.*

*5.3.2 Trainees, casuals and regular part-time employees shall be exempted from clause 9 [Classification of Employees].*

*5.3.3 An employee whose weekly wage rate is at least the rate prescribed for a Grade 9 employee shall be exempted from the operation of the provisions of this award in relation to hours of work and overtime as set out in subclauses 17.1, 17.2 and 17.4.*

**162. MEAA draw the Commission's attention to:**

- the limit of one employee (the editor) at Pacific Magazines;

- the duty to notify the union of proposed exemptions (other than specifically nominated senior personnel) in the Australian Consolidated Press award; and
- the exemption of publishers by division, rather than title, at Reed Publishing.<sup>125</sup>

**163. Current JPMA Exemptions Clause**

Editorial workers in the published media industry engaged under the JPMA now find that exemptions for positions other than editor, editor in chief and chief of staff are limited only by a cap on the number of positions that may be exempted. There is no apparent logical basis for the exercise of a decision to declare an employee exempt from award coverage.

**164.** Clause 4.9 of the current JPMA states:

**4.9** *The award does not cover employees employed in the following positions:*

**(a)** *editor, editor in chief and chief of staff of a metropolitan daily newspaper; and*

**(b)** *Nationally:*

**(i)** *on a national metropolitan daily newspaper: six positions;*

**(ii)** *on any associated publication including an online publication: one position;*

**(c)** *in Victoria and New South Wales:*

**(i)** *on a metropolitan daily newspaper published in the respective state: 10 positions;*

**(ii)** *on its related Sunday newspaper: two positions;*

**(iii)** *on any other associated publication including an online publication: one position;*

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<sup>125</sup> Reed Publishing was acquired by a private equity company in 2013

*(d) in Queensland and South Australia:*

*(i) on a metropolitan daily newspaper published in the respective state: four positions;*

*(ii) on its related Sunday newspaper: two positions;*

*(iii) on any other associated publication including an online publication: one position;*

*(e) in Tasmania:*

*(i) on a metropolitan daily newspaper published in Tasmania: three positions;*

*(ii) on any other associated publication including an online publication: one position;*

*(f) in Western Australia:*

*(i) on a metropolitan daily newspaper published in Western Australia: five positions;*

*(ii) on a separately published metropolitan Sunday newspaper: three positions;*

*(iii) on any other associated publication including an online publication: one position;*

*(g) in the Northern Territory:*

*(i) on a metropolitan daily newspaper published in the Northern Territory: one position;*

*(ii) on any other associated publication including an online publication: one position;*

**(h)** *in the Australian Capital Territory:*

**(i)** *on a metropolitan daily newspaper published in the Australian Capital Territory: four positions;*

**(ii)** *on a separately published metropolitan Sunday newspaper: one position;*

**(iii)** *on any other associated publication including an online publication: one position;*

**(i)** *in a magazine publishing business that employs more than 20 editorial employees:*

**(i)** *any employee (below the level of publisher) who has principal responsibility for the editorial aspect of more than one magazine published by the employer, including without limitation an editor in chief;*

**(ii)** *any employee (below the level of publisher) who has principal responsibility for the artistic aspect of more than one magazine published by the employer, including without limitation an art director;*

**(iii)** *photographic manager;*

**(iv)** *on any weekly magazine: two positions;*

**(v)** *the editor on any other magazine;*

**(j)** *in a regional daily newspaper business, the editor and:*

**(i)** *the next most senior editorial employee employed in a regional daily newspaper published in Albury, Geelong or Launceston;*

**(ii)** *the next two most senior editorial employees employed in a regional daily newspaper published in Townsville;*

*(iii) the next three most senior editorial employees employed in a regional daily newspaper published on the Gold Coast;*

*(k) in an online publishing business (that is not an associated publication of a print publication) that employs more than 20 editorial employees:*

*(i) any employee (below the level of publisher) who has principal responsibility for the editorial or artistic aspect of more than one online publication published by the employer, including an editor in chief or art director;*

*(ii) the editor of any online publication;*

*(l) at Australian Associated Press: eleven positions.*

**4.10** *Part 5 – Hours of Work and Related Matters of this award will not have any application to the following employees:*

*(a) an employee employed on an online publication other than those employees described in clause 3.2 ; or*

*(b) an employee classified as:*

- i. Levels 12 or 13;*
- ii. Level 10 by a suburban newspaper; or*
- iii. Level 9 by a country non-daily newspaper.*

**4.11** *The overtime provisions applying to part-time and casual employees at clauses 10.2(e), 10.2(f), 10.3(c) and 10.3(d) will not apply to employees referred to in clause 4.10.*

**4.12** *Provided that, all the employees referred to in clause 4.10 will be given at least two days off in each week in accordance with clause 19.8. The provisions of clause 22.6 will apply to an employee not given two days off.*

**4.13** *The only clause in Part 5 of this award that will have any application to employees employed by a specialist publication is clause 23 – Specialist publications.*

**165. Other Modern Award Exemptions**

MEAA has reviewed other current modern awards and restated below those parts of these awards that explicitly<sup>126</sup> provide for exemptions.

**166. Book Industry Award**

**4.2 Exclusions**

*(a) Those employees who are employed as an executive or manager are excluded from this award.*

**167. Business Equipment Award 2010**

**4.3** *The award does not cover:*

*(b) persons wholly or mainly engaged in managerial positions;*

**168. Broadcasting, Recorded Entertainment and Cinemas Award 2010**

**4.3** *This award does not apply to news editors employed by a metropolitan television station.*

**4.4** *The provisions of Part 3—Types of Employment and Termination of Employment and Part 8—Journalists (except for clauses 45.2, 49.2 and 49.3) of this award will not apply to any journalist who would otherwise be covered by this award where:*

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<sup>126</sup> MEAA understand that awards may also exclude or exempt employees by providing maximum grading levels, without identifying specific positions.



- (a) the employee is employed on a fixed term contract; and*
- (b) in the case of metropolitan television station, the employee is paid an annual salary not less than \$93,198; or*
- (c) in the case of non-metropolitan television station, the employee is paid an annual salary not less than \$75,605.*

**169. Contract Call Centres Award 2010**

*4.4 The award does not apply to:*

- (c) any person who is a director or manager of an employer or a person to whom such person has delegated the right to engage and terminate the employment of employees;*

**170. Educational Services (Teachers) Award 2010 [MA000077]**

*4.6 This award does not cover:*

- (e) a principal or deputy principal, however named.*

**171. Miscellaneous Award 2010**

*4.2 The award does not cover those classes of employees who, because of the nature or seniority of their role, have not traditionally been covered by awards including managerial employees and professional employees such as accountants and finance, marketing, legal, human resources, public relations and information technology specialists.*

**172. Sporting Organisations Award 2010**

**4.2 Exclusions**

*This award does not cover:*

*(d) Chief Executive Officers;*

*(f) Chief Executive Officers and Executives at the second and third tiers of management, including the Director of Finance, Assistant Director and the State Coach or similar at the Cricket Australia level, provided that the State coach is remunerated at a level in excess of that laid down in this award; and*

**173. Local Government Industry Award 2010**

**4.3** *This award does not cover:*

*(a) the chief executive officer of a local government entity, however described;*

**174.** Over the course of the past fifty years, awards applying to journalists have had criteria and principles that holders of exempted positions (and their employers) once needed to firmly satisfy, removed. These include the performance of a managerial role with the capacity to hire and fire employees, the expectation that an exempted employee would earn a relatively high salary, that they not (or substantially not) regularly write content for publication, and that intended exemptions be notified to the union, presumably for the purpose of the union assessing the merits of a newly exempted position and in some circumstances, challenging them.

**175.** At present there are no clear or bright lines that compel an employer to not place an employee in an exempt position.

**176.** MEAA believe that the retention of pre-2000 exemptions in an environment of substantial workforce reductions and industry contraction, without suitable tests as to

how exemptions should be determined, is not reasonable and will risk editorial employees being exempted from award coverage simply as a result of the relevant publication filling its quota of exempt positions.

- 177.** MEAA submit that the JPMA exemption criteria should be directed at ensuring that exemptions are based upon genuine seniority and the performance of high-level managerial duties (including significant exercise of editorial judgments) - that plainly set exempted persons apart from the rest of their editorial colleagues.
- 178.** Other than integrating the number of print and online exemptions - thereby reducing the nominal range of exemptions by one employee - MEAA does not challenge the nominal cap in the JPMA with respect to exemptions for newspapers, magazines and online publishing businesses.
- 179.** MEAA seeks to guard against the inappropriate or unwitting exclusion of employees from award coverage in circumstances where they temporarily occupy a position and where they occupy a lower-graded position that is not commensurate with the exercise of significant managerial functions.
- 180.** In an environment of significantly downsized and multi-skilled newsrooms, where the number of clicks on a news item is replacing editorial decision-making, with divisions of responsibility diminished, editorial employees can be compelled to exercise some of the duties formerly reserved to senior (and highly paid) exempted personnel but not occupy a visibly senior managerial position or receive the higher wages that were uniformly paid to pre-2000 exempted persons.
- 181.** Compared to when the last significant exemption case was determined (1984), there are fewer discrete jobs and tasks requiring coordination and decision-making at a high level. Content is now produced by multi-skilled editorial employees who in many

instances now undertake story identification, writing, editing, generating headlines and who then directly publish through the relevant software program.

**182. Monetary Threshold**

With respect to the monetary requirement, the MEAA has taken account of the current JPMA salary table (at March 2019) and proposed that an editorial employee exempted from award coverage be provided a salary no lower than Band Three (or Level 11) of the Award.

**183. Clause 14.1 of the JPMA provides:**

***14.1 Employees engaged in the classifications set out in clause 13—Classifications are entitled to the following minimum wages:***

| <i><b>Band</b></i> | <i><b>Level</b></i> | <i><b>Minimum weekly rate of pay \$</b></i> | <i><b>Annual salary</b></i> |
|--------------------|---------------------|---|-----------------------------|
| <i>One</i>         | 1                   | 913.70                                      | 47,491.60                   |
|                    | 2                   | 939.30                                      | 48,843.60                   |
|                    | 3                   | 979.60                                      | 50,939.20                   |
|                    | 4                   | 1005.90                                     | 52,306.80                   |
|                    | 5                   | 1032.10                                     | 53,669.20                   |
|                    | 6                   | 1085.00                                     | 56,420.00                   |
|                    | 7                   | 1132.40                                     | 58,884.80                   |
| <i>Two</i>         | 8                   | 1185.20                                     | 61,630.40                   |
|                    | 9                   | 1264.00                                     | 65,728.00                   |
|                    | 10                  | 1343.00                                     | 69,836.00                   |
| <b>Three</b>       | <b>11</b>           | <b>1382.70</b>                              | <b>71,900.40</b>            |
|                    | 12                  | 1553.70                                     | 80,792.40                   |
|                    | 13                  | 1737.80                                     | 90,365.60                   |

**184. MEAA propose level 11 as the lowest of the three grades in Band Three of award classifications.**

*Clause 13.5 of the JPMA now states:*

**13.5 Editorial employees**

*Editorial employees, other than cadets, will be classified by their employer in the following three bands:*

**(a) Band one**

*Editorial employees classified in band one have completed the training requirements of a cadetship or its equivalent and are gaining experience in a wide range of practical areas and/or undertaking additional training. They normally perform journalistic and photographic duties under broad supervision. As they undertake additional training and/or gain experience, they are assigned to duties requiring the exercise of independent initiative and judgment and/or the exercise of more advanced skills. Beginning as a Level 1 artist or photographer, they require decreasing supervision and exercise greater professional judgment and skills to Level 7.*

**(b) Band two**

*Editorial employees classified in band two have obtained wide practical experience and are exercising advanced skills. They are capable of working independently and of exercising initiative and judgment on difficult and responsible assignments. They may work either individually or as part of a team without direct supervision.*

**(c) Band three**

*Editorial employees classified in band three exercise the highest level of skills and responsibility. Their duties require the exercise of sustained high levels of professional, technical and creative skills of mature and experienced judgment and outstanding levels of individual accomplishment.*

- 185.** With respect to **(c)** above, MEAA contend that exemptions should be confined to ‘*Editorial employees classified in band three*’, who ‘*exercise the highest level of skills and responsibility*’ and whose duties ‘*require the exercise of sustained high levels of*

*professional, technical and creative skills of mature and experienced judgment and outstanding levels of individual accomplishment’.*

**186.** MEAA note that the salary threshold in the other modern award governing the rights of journalists – the Broadcasting, Recorded Entertainment and Cinemas Award 2010 - that an exempted employee at a metropolitan television station may not earn less than \$93,198.

**187. Specialist Publications**

MEAA question the ongoing relevance and necessity of the JPMA’s discrete Specialist Publication provisions. MEAA submit that the provision of separate provisions for specialist publications should be removed because the term is confusing and has no agreed industry usage.

**188.** The JPMA defines a specialist publication in clause 3 as:

***specialist publication** means a publication published by an employer that employs 20 or fewer editorial employees but excludes a regional daily newspaper, country non-daily newspaper, suburban newspaper or metropolitan daily newspaper*

**189.** Other than imposing a cap on employee numbers, it is noted that this is a definition more or less by omission – it is a publication defined by things that it is not. The definition is however less than helpful in making a distinction between a specialist publication and a magazine.

**190.** The term ‘specialist publication’ seems is both hybridized and amorphous. From MEAA’s review of respondents to the pre-reform award appears to span content marketing and custom publishing. It is not a term in wide or common published media industry usage. Anecdotally, MEAA has been advised by persons within the (presumed)

specialist publication industry that it is an anachronistic term that they do not identify with.

**191.** MEAA submit that the term 'specialist publication' overlaps with that of 'magazines' in such a way as to provide scope for exploitation of employees.

**192.** An example is where editorial staff determined to be employees of a specialist publication instead of a magazine would lead to these employees not having access to Part 3 and Part 5 of the JPMA, which include protections for ordinary hours of work, breaks, shiftwork and weekend penalties and overtime and penalty rates. These employees would instead be covered by the lesser provisions of clause 21 – Specialist Publications. This clause currently states:

***21. Specialist publications***

***21.1*** *The ordinary hours of duty for employees employed on specialist publications will be 38 hours a week which may be worked on any day of the week determined by the employer.*

***21.2 Work in excess of 38 hours***

***(a)*** *Where an employee, other than a casual employee, is required to work in excess of 38 hours in any week, the employee will be entitled to time off for a period which is the same as the periods of overtime worked.*

***(b)*** *This will be taken within six weeks of the end of the week in which the overtime was worked. The employer may determine when this time is taken off.*

***(c)*** *If for any reason, this time off is not taken, the employee will be paid for such overtime at the rate of **150%** of the ordinary hourly rate for the first eight hours*

*overtime and 200% of the ordinary hourly rate for all overtime in excess of eight hours in any week.*

*NOTE: This clause does not apply to specialist online publications. These are exempted from Part 3—Hours of Work and Part 5—Overtime and Penalty Rates of the award by virtue of clause 4.9(a)(i).*

- 193.** It can be seen from the note at the end of JPMA clause 21 that editorial employees at *online* specialist publications are not only denied access to: clauses 12 (ordinary hours of work), 13 (breaks), 19 (shiftwork and weekend penalties) and 20 (overtime and penalty rates), they are also excluded from the alternate protections in clause 21.
- 194.** For the reasons set out elsewhere in this submission, MEAA believe that the divide between print and digital publications is no longer plausible given the ascent, if not dominance, of digital modes of work and distribution across all publication types. The award should adopt a neutral position with respect to the production and distribution of published media. Notwithstanding MEAA’s other submissions with respect to specialist publications, the removal of this single restriction from the JPMA is sought.
- 195.** Overall, MEAA challenge whether separate provisions for editorial employees at specialist publications should be preserved in any form.
- 196.** The pre-reform award, the *Journalists (Specialist Publications) Award 1997*, from which relevant JPMA provisions were derived, stated, at clause 5.2, that:
- 5.2** *No employer who employs more than twenty full-time employees bound by this award shall be subject to this award and this award shall not apply to the employees of any such employer. If an employer covered by this*



*award commences to employ more than twenty full-time employees covered by this award, that employer shall as soon as is reasonably practicable and at least within one month, notify in writing its employees and the Federal Secretary of the Alliance that the number of its employees covered by the award has exceeded twenty. The employer and its employees shall, from the beginning of the first pay period commencing on or after 26 weeks after the date on which the employer commenced to employ more than twenty full-time employees covered by this award, cease to be covered by this award unless the employer has before that date ceased to be a respondent to this award by reason of an award or order made by the Australian Industrial Relations Commission. Where an employer in the above circumstances fails to notify the Alliance the award shall continue in force.*

**197.** The MEAA has no record of a relevant publisher advising the union that they employ more than twenty full-time employees. The MEAA are also unaware of the consequences, if any, of a publisher exceeding this cap.

**198.** In Britain, the publishing trade magazine *InPublishing* observed:

*'It is actually very difficult to define what a "specialist magazine" is. Traditionally, there are two definitions. The first is based on editorial focus: magazines which zoom in on a "single subject or specific interest category". ... The other definition is based purely on size [with a circulation under 100,000 copies] ...' .<sup>127</sup>*

**199.** *InPublishing* further noted that specialist magazines were 'vulnerable'. The commentary continued:

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<sup>127</sup> Specialist magazines: do they have a newstrade future?, Jim Bilton, *InPublishing*, 1 March, 2005

*'This is because so many of them are published by small independent companies who, while they may be fast-moving and creative can also be under-funded and often lack the full range of business skills required to survive in the modern publishing environment'.<sup>128</sup>*

**200.** MEAA's review of the 412 listed (former) respondents to *the Journalists (Specialist Publications) Award 1997*<sup>129</sup> suggests a very broad range of titles *and* publishing entities. Some titles are trade specific, some of popular appeal (e.g. Australian Geographic), while in many instances only the publisher's name is listed.

**201.** Examples of **titles** included:

- *Instyle Magazine Australia*
- *Modern Optics Pty Ltd*
- *Nine to Five Magazine*
- *Pastrycooks & Bakers News Monthly*
- *Weight Watchers*
- *Asia Pacific Journal of Human Resources*
- *Australian Clay Target Shooting Association*
- *Australian Shooters' Journal*

**202.** Examples of publication **entities** (i.e. publishers) included:

- *Motor Trade Association*
- *Australian Dental Association*
- *Australian Horticultural Corporation*
- *Impact Publications*
- *Master Painters, Decorators & Signwriters Association*

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<sup>128</sup> *ibid*

<sup>129</sup> Award **attached**

- *SA Canine Association Inc*
- *Queensland Law Society Inc*
- *Horse World Publications*

**203.** MEAA’s assessment of the pre-reform award’s respondents indicate that 236 (58%) no longer have an active Australian Business Number (ABN). In addition, some of the 176 titles and entities that retained an ABN no longer produce publications.

**204.** A further 45 respondents could not be identified through a conventional web search; numerous continuing titles are now produced not by small-scale publishers (or in-house), but by medium-to-large publishing enterprises. This includes Australian Geographic, which was produced by Bauer Media (a major magazine publishing house) until 2018. (The *Weight Watchers* Magazine was also produced by Bauer Media before moving to Edge in 2018. This title is considered to be one of the Australia’s largest custom publishing accounts.<sup>130</sup>)<sup>131</sup>

**205.** The (presumed) specialist publication sector seems to be dominated by companies of scale, which employ more than twenty editorial employees. Two such companies are Medium Rare Content Agency and Yaffa Media.

**206.** Medium Rare produces the Coles Magazine. Medium Rare’s website says of the Coles magazine that it is: Australia’s most read magazine: 4.8+ million monthly readers<sup>132</sup>, which was 2.5 million+ more people than the total of all other newsstand magazines in the food and wine category combined.<sup>133</sup>

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<sup>130</sup> See *Weight Watchers Magazine* to be published by Edge following Bauer axe, Josephine Tutty, Mumbrella, 24 January 2018

<sup>131</sup> A completed analysis of the award’s respondents will be provided to the Commission

<sup>132</sup> According to Roy Morgan in September 2018)

<sup>133</sup> *ibid*

**207.** Medium Rare also produces the *Qantas Magazine*, together with publications for Foxtel, Bunnings, David Jones and NSW Farmers. These magazines generally do not have a point-of-sale cost; they are generated to appeal to advertisers and customers alike.

**208.** Yaffa Media titles include: *Mountain Biking Australia*, *Guns Australia* and *Packaging News*. Yaffa Media's company profile says:

*' ... consists of 27 consumer and business-to-business media brands, that are each fully integrated and collectively provide access to more than 3,000,000 obsessed readers.*

*These brands are made up of 27 specialist magazines spanning a dynamic and broad range of industries including fashion, advertising, healthcare, photography and natural health, market-leading websites and e-newsletters, interactive digital apps and highly engaged social media outlets. Many brands also extend to a range of industry and consumer events and exhibitions.*

*Each title at Yaffa Media is led by a team of experts in their respective field that are dedicated to providing quality products designed to inform, entertain and inspire.*

**209.** Significantly, all of the content produced by Medium Rare and Yaffa is available online and is supported by well-structured promotion through social media, which is key to reaching audiences and tracking their engagement. Employees are digitally trained and required to interpret and use audience data to identify and promote content that works.

**210.** MEAA submit that the retention of separate regulation of a sector that cannot be reliably defined – and which is likely to have changed in character and come to be dominated by publishing entities of scale - is no longer justified.

**211. Classification Restrictions**

MEAA seek the removal of the prohibition in clause 11.7 of the JPMA ED on classifying editorial employees working at country non-daily news publications (level 9), regional daily news publications, suburban news publications and specialist publications (level 10).

**212.** MEAA submit this provision unreasonably curtails an employer and employee's ability to appoint editorial employees at higher award levels.

**213. *Shiftwork and Weekend Penalties***

MEAA seek to amend Part 5 of the award to provide equality of access to shift and weekend penalties for all award-covered employees, other than those presently set out at clause 4.10(b), (i), (ii) and (iii), which states that Part 5—Hours of Work and Related Matters will not have any application to the following employees:

*(b) an employee classified as:*

*(i) Levels 12 or 13;*

*(ii) Level 10 by a suburban newspaper; or*

*(iii) Level 9 by a country non-daily newspaper.*

**214.** MEAA submit with regard to the three discrete penalty payments that access to the penalty should be determined by three elements:

1. that the employer requires work to be performed at the nominated times;
2. that the work is carried out at those times; and
3. the penalty should apply to publications irrespective of platform-type or frequency

**215.** Current JPMA clause 21 entitles employees - instructed (or required) by their employer to perform work on a shift - to a range of penalties for working: **(a)** between 6am and 7am or 6pm and 8.30pm; **(b)** working *night shifts* from 8.30pm to 6am; and **(c)** on *weekends*. The penalties payable however differ between types of publication.

**216.** With respect to **(a)**, an employee is entitled to 110% of the ordinary hourly rate if the shift they are required to work intersects with the early morning or early evening. This penalty applies to all employees except those engaged by specialist publications or online publications that are not associated with an established print newspaper, by virtue of clause 21 (Specialist Publications) and clause 4.9 (Exemptions from award provisions).

**217.** For the reasons set out elsewhere in this submission regarding the dominance of online publication methods and the questionable relevance of separate specialist publication provisions, MEAA seek the application of this penalty to all editorial employees.

**218.** With respect to night-time shift work in **(b)**, both penalty rates (117.5% and 115% of ordinary hourly rates) penalties apply only to news publications and wire services. For the reasons set out above, MEAA seek to have the 115% penalty provision apply to all award-covered employees other than those eligible to receive the 117.5% penalty, irrespective of the type of publication they are engaged to work for (i.e. including those engaged by specialist publications or online publications that are not associated with an established print newspaper).

**219.** With respect to weekend penalties at **(c)**, the 10% penalty appears to apply to newspaper and magazine employees other than those employed by a country non-daily newspaper.<sup>134</sup> This was the position in the pre-reform Journalists Country Non-Daily Award.

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<sup>134</sup> As discussed elsewhere, certain online employees and specialist publication employees are also ineligible to receive this penalty payment.

**220.** The JPMA currently defines a country non-daily newspaper as ‘a newspaper published on less than five days a week and which is principally distributed within a regional area, other than a metropolitan area of a capital city’.

**221.** By virtue of their non-daily publication, country non-daily newspapers employ fewer editorial staff than their daily newspaper counterparts. They have however endured workforce rationalizations at least the equivalent of those at metropolitan publishers over the course of the past five years. The corresponding intensity of work that has emerged over this period has caused the remaining (i.e. fewer) editorial employees to undertake weekend work in order to maintain fresh and up-to-date content.

**222.** Accordingly, the MEAA seek the uniform application of shift and weekend penalties to all award-covered employees required to work unsociable hours at country non-daily newspapers and those engaged by specialist publications or online publications that are not associated with an established print newspaper.

**223.** MEAA consider this request consistent with the modern awards objective at section 134 of the *Fair Work Act 2009*, with regard to sub-section (1) and sub-section (1)(da):

*(1) The FWC must ensure that modern awards, together with the National Employment Standards, provide a **fair and relevant minimum safety net of terms and conditions**, taking into account:*

*(da) the need to provide additional remuneration for:*

*(i) employees working overtime; or*

*(ii) employees working unsocial, irregular or unpredictable hours; or*

*(iii) employees working on weekends or public holidays; or*

*(iv) employees working shifts; ...*

## **AM2018/24 – Variation of Modern Award**

### **Journalists Published Media Award 2010**

#### **STATEMENT OF PETER FRAY**

1. My name is Peter Fray. I live at [REDACTED], [REDACTED], NSW [REDACTED].
  
2. I am a professor of journalism practice and co-director, Centre for Media Transition, Faculty of Arts and Social Sciences, based at the University of Technology, Sydney. I have held the professorial position since late 2015; I co-founded the centre in mid-2017.
  
3. I have held or received the following appointments:
  - Global advisory committee News Integrity Initiative (based at City University New York);
  - Member Sydney Initiative For Truth (based at Sydney University);



- Advisor (and former board member) to the Australian Science Media Centre;
- Member of Federal government's regional and small publishers grants assessment panel;
- Consultant to the ACCC digital platforms inquiry (via the CMT);
- Advisor to Crinkling News, a teen-focused website/newspaper;
- Host/advisor for First Draft News (APAC) bureau;
- Tow-Knight Fellow (2016) in entrepreneurial journalism City University New York;
- First Decade Fellow Department of Media Studies Sydney University (2012);
- Adjunct Professor Sydney University media and politics (2013);
- Advisory board to the Australian Literacy and Numeracy Foundation;
- Australian Press Council (Fairfax representative) 2011-2012;
- Advisory board to the Faculty of Arts and Social Sciences (ex officio);

- Non-executive director of the Australian Consumers Association (Choice magazine).

4. Between 1987 and 2012 I was mainly employed by Fairfax Media (the company). (My service was broken by stints at The Bulletin magazine and a Rural Press start-up, the Australian Rural Times.) At Fairfax, I held the following positions at the company:

- Publisher Fairfax NSW Metro (SMH, Sun-Herald, community newspapers) 2011-2012;
- Editor-in-chief Sydney Morning Herald, Sun-Herald (2010-2012)
- Editor SMH (2009-2010)
- Editor Canberra Times (2008)
- Editor Sunday Age (2006-2008)
- Europe correspondent (SMH, Age) (2002-2005)
- Various reporting and editing roles including news editor, deputy editor and Spectrum editor.

5. I founded Australia's first stand-alone fact-checking website, PolitiFact Australia, in 2013. When that ran out of

funds, I was the deputy editor of The Australian, between late 2013 to late 2015.

6. During my employment at the Herald, I was responsible for implementing changes to the duties and functions of the masthead's editorial workforce to ensure the publication's future viability. I was also part of the company's EBA negotiating team.

7. Changes included the introduction of digital products, most notably the iPad version of the SMH, the outsourcing of most sub-editing functions (resulting in several redundancies) of the paper, numerous other cost-cutting exercise and developing the model of a tabloid SMH.

8. These actions, and many more, were made necessary by the twin disruptive forces of the internet (which has created an on-demand, digital-first culture in the news media industry) and the profound shift of revenues from the print product to online. The business model which sustained the newspaper industry for a century has all but

disappeared, bringing forth a fundamental change in how money is made and work is organised.

9. My job at editor-in-chief and then in the dual role of EiC and publisher was consumed by requirement to cut costs and to create a digital-first culture. Over the period, I cut many millions of costs from the SMH in an effort to equip the newspaper to the demands of the digital world. In early 2012, with other senior managers, I developed and implemented what was hoped to be the coup de grace of cost-cutting: the outsourcing of sub-editing functions and enhanced sharing of both back and front-end editorial tasks between Melbourne (the Age) and Sydney (SMH).
  
10. The Herald's 'digital-first' publication strategy has evolved over the past decade, speeding up in 2011-12 and reaching its full bloom over the past two years. This has been necessary to enable reporters and editors to do two things at the same time: service readers who expect journalism where, when and on what device they choose (most often, their mobile); and to capture subscriptions

and revenues which now largely reside in a digital form. It must be noted that much of this digital revenue first migrated to disaggregated 'classified' websites servicing key categories (jobs, homes and cars) and more recently, to digital platforms, such as Facebook and Google. A further note: while many of these key category specific sites are majority owned by major publishers (i.e. Domain or REA), the advertising revenues generated by them tends to be quarantined from the journalism. In short, the famed rivers of gold, which underwrote journalism, first dried up and then were diverted.

11. Prior to digital-first, the SMH was organised in an attempt to juggle the evolution from print to digital. This included attempts to upskills sub-editors and reporters to file or work for both print and online. There was, up until, say, three to five years ago, a largely unspoken, often lumpy and painful struggle to give the digital products the priority they needed. This 'struggle' is now over, not only at the SMH, but in most leading metropolitan news media.

12. Workstreams are integrated rather than separated: all reporters now face the digital world first (and often exclusively); production staff, those not outsourced, will give priority to servicing readers with online or mobile offerings and turn their attention to print as a secondary or tertiary concern, if at all. Across the industry most production staff – and virtually all reporting – are required to publish for both print and online, with the latter taking precedence. Even in publications which may make reasonable sums from print advertising, the culture and skill base is now very much digital in focus. It not often acknowledged that the news media industry has made great strides – and sacrifices — to reach this position.

13. Variations of this digital-first, integrated newsroom strategy is found in most news publications I have experienced in this country and around the world. The New York Times, retains a print-only rump of production staff to produce the newspaper. This reflects the relatively high demand for the NYT in print. But the NYT is an outlier: it has a large addressable, daily, national market (in theory,

some 330 million people) and a high proportion of its readers are of a certain age and may yet still prefer print.

14. To be clear, it is my belief that all news publications of note have integrated (digital/print) editorial processes. The NYT, again, may still have a print rump, but as its CEO Mark Thompson recently outlined on a visit to Australia, the focus of the NYT is, like all other news media companies, very much upon growing revenues from digital subscriptions. Its work practices and newsroom are designed with this in mind.

15. As a result of revenue declines across the Australian published media industry, newsrooms are now significantly smaller, with journalists now responsible for more parts of the editorial process, including publishing their own material and servicing multiple platforms. We all live a converged world, where a piece of news content may be produced and published in video or audio format as much by a 'legacy' print publisher as a traditional radio or TV station. The ABC, on the flipside, now produces vast

hectares of text-based stories to satisfy its news customers.

16. Newsrooms are now less hierarchical than when I commenced journalistic work. This flatness starts at editorial level, where the notion of an all-powerful, hands-on editor-in-chief (let alone EiC/publisher) is all but dead. Yes, there is an editorial director at the ex-Fairfax/now Nine Entertainment sites, but his/her control of what happens on the newsroom floor has been delegated wide and thin. This is in no way to diminish that position or the roles of senior editorial management. Rather, it is to acknowledge that functions and power have been changed to cope with the demands of servicing digital audiences. Editors have control of certain functions of the news outlet. The editor of the SMH, for instance, has less say on national affairs than she/he used to. That is largely driven by the national editor who works across both SMH and the Age. This flattening of roles has spread to the newsroom floor, where there are far fewer specialist reporters and far fewer senior reporters than there were in, say, 2012. The



reporting staff is now generally younger, lower paid and more flexible in terms of their skill base. It is also far smaller, with over 3500 FT jobs cut from the news media industry since 2012.

17. I should note that not all newsrooms are organised the same. Smaller, more niche newspapers, such as the Australian Financial Review, retain a more top-down approach as does the Australian newspaper. News Ltd tabloid editors are also very much kings (or queens) of their domains. But it should also be noted that the online efforts of the News Ltd mastheads sit behind a hard paywall – leaving the company’s digital-only, masthead-agnostic news.com.au free to generate massive traffic in front of the paywall. My point here is that News Ltd have organised its hierarchy in a different fashion, but is propelled by the same digital dynamics.

18. New entrants to the news media market (*Buzzfeed, The Guardian, the New Daily, Crikey, Junkee*) generally, if not wholly, have digital-only publishing practices. They would

not be able to afford the associated costs of printing and distribution that goes with a newspaper; nor would such an activity be rewarded by audiences. There are a few exceptions to the digital-only rule for new entrants, most notably the Saturday Paper. Its relative success has been crafted on the back of some careful marketing and strategy which recognised and cultivated a weekend print market. There are some smaller, localised or niche markets where print has managed to capture sufficient advertising and audience to make the venture profitable. But these are exceptions: the age of print dominance is well and truly over. Audience across all content areas — think Netflix, think podcasting — require on-demand services.

19. A final point: the NYT's Mark Thompson argues we are living in a golden age of journalism. But at the same time notes that it probably doesn't feel so to most journalists. He is correct. There is a paradox a-foot: news consumers now have greater choice of news media and journalists now have many more ways of reaching those consumers. There are many more ways (more tools, more platforms)



## **AP785898CR - Journalists (Specialist Publications) Award 1999**

This AIR consolidated award incorporates all amendments up to and including 22 July 2005 (variation [PR960554](#)).

Clauses affected by the most recent amendment(s) are:

[14. Minimum rates of payment](#)

[15. Allowances](#)

### **About this Award:**

Printed by authority of the Commonwealth Government Printer.

### **Disclaimer:**

Please note that this consolidated award is prepared by the Australian Industrial Registry and is believed to be accurate but no warranty of accuracy or reliability is given and no liability is accepted for errors or omissions or loss or damage suffered as a result of a person acting in reliance thereon.

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AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

*Workplace Relations Act 1996*

Review of award pursuant to Item 51 of Part 2 of Schedule 5 of the  
*Workplace Relations and Other Legislation Amendment Act 1996*  
(C No. 00598 of 1998)

**JOURNALISTS (SPECIALIST PUBLICATIONS) AWARD 1997**  
(ODN C No. 20154 of 1996)  
[Print P4088 [J0396]]

Journalists

Journalism

SENIOR DEPUTY PRESIDENT MARSH

SYDNEY, 8 NOVEMBER 1999

*Award simplification.*

**ORDER**

A. The above award is varied as follows:

By deleting all clauses, alphabetical index and schedule of respondents and inserting the following:

## **PART 1 - APPLICATION AND OPERATION OF AWARD**

### **1. AWARD TITLE**

This award shall be known as the Journalists (Specialist Publications) Award 1999.

## **2. ARRANGEMENT**

This award is arranged as follows:

### **Part 1 - Application and operation of award**

1. Award title
2. Arrangement
3. Definitions
4. Date of operation and term of award
5. Scope and parties bound
6. Relationship to other awards

### **Part 2 - Award flexibility**

7. Enterprise flexibility

### **Part 3 - Communication, consultation and dispute resolution**

8. Disputes settlement

### **Part 4 - Employer and employees' duties, employment relationship and related matters**

9. Classification structure
10. Regular part time employees
11. Casual employees
12. Notice of termination [PR950181]
13. Redundancy [PR950181]

### **Part 5 - Wages and related matters**

14. Minimum rates of payment [PR960554]
15. Allowances [PR960554]
16. Superannuation

### **Part 6 - Hours of work, breaks, overtime and weekend work**

17. Hours of employment, overtime and breaks

### **Part 7 - Leave of absence and public holidays**

18. Annual leave and annual leave loading
19. Parental leave [PR920570]
20. Personal leave
21. Public holidays

**Part 8 - Transfers, travelling and working away from usual place of work**

22. Distant engagements

**Part 9 - Award compliance and union related matters**

23. Award for reference

24. Anti-discrimination

**Alphabetical Index**

**Schedule A - List of Respondents**



### **3. DEFINITIONS**

- 3.1 Member** means a member of the Media, Entertainment and Arts Alliance.
- 3.2 Employer** means a firm, company or individual as set out in Schedule A of this award.
- 3.3 Employee** means a member or a person eligible to be a member of the Alliance employed by an employer.
- 3.4 Alliance** means the Media, Entertainment and Arts Alliance.

#### **4. DATE OF OPERATION AND TERM OF AWARD**

This award shall operate from 8 November 1999. This award shall remain in force for a period of twelve months.

## **5. SCOPE AND PARTIES BOUND**

**5.1** Subject to 5.2, this award shall be binding upon the companies and organisations set out in Schedule A of this award and the Media, Entertainment and Arts Alliance and its officers and members in respect of all work to be done by employees, whether members of the Media, Entertainment and Arts Alliance or not, for the said companies and organisations in any branch of writing or drawing or photographic work for the press, except:

**5.1.1** employees employed on newspapers; and

**5.1.2** employees covered by any other award or by any certified or enterprise flexibility agreement in force from time to time.

**5.2** No employer who employs more than twenty full-time employees bound by this award shall be subject to this award and this award shall not apply to the employees of any such employer. If an employer covered by this award commences to employ more than twenty full-time employees covered by this award, that employer shall as soon as is reasonably practicable and at least within one month, notify in writing its employees and the Federal Secretary of the Alliance that the number of its employees covered by the award has exceeded twenty. The employer and its employees shall, from the beginning of the first pay period commencing on or after 26 weeks after the date on which the employer commenced to employ more than twenty full-time employees covered by this award, cease to be covered by this award unless the employer has before that date ceased to be a respondent to this award by reason of an award or order made by the Australian Industrial Relations Commission. Where an employer in the above circumstances fails to notify the Alliance the award shall continue in force.

## **6. RELATIONSHIP TO OTHER AWARDS**

This award supersedes the Journalists (Specialist Publications) Award 1997 [Print P4088] and all variations thereto but no right, obligation or liability accrued or incurred under any such previous award or order shall be affected hereby.

## **PART 2 - AWARD FLEXIBILITY**

### **7. ENTERPRISE FLEXIBILITY**

(See ss.113A and 113B of the Act)

Where an employer or employees wish to pursue an agreement at the enterprise or workplace about how the award should be varied so as to make the enterprise or workplace operate more efficiently according to its particular needs the following process shall apply:

- 7.1** A consultative mechanism and procedures appropriate to the size, structure and needs of the enterprise or workplace shall be established.
- 7.2** For the purpose of the consultative process employees may nominate the Alliance or another to represent them.
- 7.3** Where agreement is reached an application shall be made to the Commission.

## **PART 3 - COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION**

### **8. DISPUTES SETTLEMENT**

In the event of a dispute arising in the workplace the procedure to be followed to resolve the matter will be as follows:

- 8.1** The employee and their supervisor meet and confer on the matter;
- 8.2** If the matter is not resolved at such meeting, the parties shall arrange for further discussions between the employee and his or her nominated representative, if any, and more senior levels of management.
- 8.3** If the matter is still not resolved a discussion shall be held between the employer and its representative, if any, and the Alliance or other employee representative.
- 8.4** If there is still no resolution, the matter may be submitted to the Australian Industrial Relations Commission.
- 8.5** While the parties attempt to resolve the matter, work will continue as normal, unless an employee has a reasonable concern about an imminent risk to his or her health or safety.

## **PART 4 - EMPLOYER AND EMPLOYEES' DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED MATTERS**

### **9. CLASSIFICATION STRUCTURE**

#### **9.1** Employees shall be defined as follows:

- 9.1.1** **Editor** - an employee with responsibility to the publisher or his/her nominee for the content and/or appearance and/or quality of a publication, who writes or initiates and edits copy, pictures and drawings; supervises and disciplines staff, if any, and generally represents his or her publisher for the Publisher's publication internally and externally.
- 9.1.2** **Senior Sub-editor** - an employee who is directly responsible to the Editor or his or her nominee for the accuracy and style of material in the form of words, photographs or artwork submitted for publication by employees of the staff or contributors, and his or her work may include some writing or re-writing and supervision of other sub-editors, if any. He or she would normally supervise technical, legal, layout and customer relations requirements of the Editor and Publisher.
- 9.1.3** **Sub-Editor** - an employee normally responsible to the Senior Sub-Editor (or Senior Sub-Editors) for the preparation of copy.
- 9.1.4** **Senior Writer** - an employee who, with minimum, if any, supervision, organises and prepares contributed material for submission to sub-editors or to printers and who initiates and writes original reports and features for publication.
- 9.1.5** **Writer** - an employee engaged in writing, organising and/or preparing contributed material under the supervision of the Editor.
- 9.1.6** **Trainee** - without limiting the scope for gaining experience, a trainee shall mean an employee who is not experienced in the work covered by this award and who normally works under the direct supervision of a Publisher, Editor, Senior Writer or Writer. The Trainee normally will remain a trainee for a period not exceeding two years during which time appropriate training will be made available. Following the period of traineeship, the employer shall grade the employee.
- 9.1.6(a)** A Trainee who has or obtains a degree or diploma from an Australian University shall be paid the minimum rate of pay prescribed for a Year 2 Trainee.

**9.2** Employees defined in 9.1 shall be graded in one of the following grades considered most appropriate by the employer:

**Grade**

6

5

4

3

2

1

Trainee Year 2

Trainee Year 1

**9.3** Normally employees classified as editors, senior sub-editors or senior writers will commence at not less than the Grade 2 rate of pay.



## **10. REGULAR PART TIME EMPLOYEES**

**10.1** An employer may employ an employee as a regular part-time employee.

**10.2** The following terms and conditions of employment shall apply to any employee employed as a regular part-time employee:

**10.2.1** Work must be performed in blocks of not less than four hours on any day;

**10.2.2** Subject to 10.2.1, the ordinary hours of work and days on which such work is to be performed shall be specified in writing by the employer to the regular part-time employee before the employee begins employment. Such agreed hours and days may be changed only by:

**10.2.2(a)** agreement (in writing) between the regular part-time employee and the employer; or

**10.2.2(b)** seven days notice (in writing) by the employer, provided that there is no diminution of the total agreed number of ordinary weekly hours of work.

**10.3** The rate of pay of each regular part-time employee, which shall not be less than Grade 1, shall be agreed to in writing between the regular part-time employee and the employer before the employee commences employment.

**10.4** The minimum weekly rate of pay for a regular part-time employee shall be the rate which is that proportion of the weekly rate for an employee of the same grade as the regular part-time employee which the ordinary weekly hours of work of that employee bear to 38.

**10.5** Application of award provisions not referred to above for regular part-time employees:

**10.5.1** For the purposes of this clause, **pro-rata** means in the case of each regular part-time employee, the proportion which the ordinary weekly hours of work of the employee bear to 38;

**10.5.2** Annual leave entitlements shall accrue for regular part-time employees in the same manner as for full-time employees. Payment for any period of, or entitlement to, annual leave for regular part-time employees shall be calculated pro-rata for the period of leave or entitlement;

**10.5.3** Sick leave shall accrue for regular part-time employees in the same manner as for full-time employees, and payment for absences shall be in respect of the hours each week that would have been worked by the employee concerned had that employee been working;

**10.5.4** All other provisions of this award applicable to full-time employees which are capable of having application to regular part-time employees shall apply to regular part-time employees provided that where such provisions specify the payment to be made to an employee which is calculated on the basis of or by reference to weekly hours of work of a full-time employee, the payment shall be made pro-rata to the regular part-time employee.

## **11. CASUAL EMPLOYEES**

**11.1** A person may be employed as a casual employee in any of the classifications and grades of employee referred to in clauses 9 - Classification structure and 14 - Minimum rate of payment on the following terms and conditions:

**11.1.1** The person shall be engaged either by the day, of seven and one half hours, or half day, of three and three quarter hours;

**11.1.2** The minimum rate of pay for a person employed as a casual employee shall be:

- for a casual engaged by the day – one fifth, and
- for a casual engaged by the half day – one tenth, of the minimum weekly award rate of pay prescribed for the definition and grading of employee in which the person is employed as a casual employee plus twenty per cent;

**11.1.3** All time worked by a casual employee in excess of seven and a half hours in any day shall be overtime and shall be paid at the rate of time and one half for the first three hours and double time thereafter;

**11.1.4** The following provisions of this award and no other shall apply to the employment of casual employees:

|                       |                          |
|-----------------------|--------------------------|
| Clause 9              | Classification structure |
| Clause 11             | Casual employees         |
| Clause 14.1, 4, 5 & 6 | Minimum rates of pay     |
| Clause 15             | Allowances               |
| Clause 16             | Superannuation           |
| Clause 17.4           | VDT rest breaks          |
| Clause 21.5           | Public holidays          |

**11.1.5** The provisions of clause 18 - Annual leave and leave loading, do not apply to casual employees. The rate of pay in this award for casual employees includes compensation for these elements.

## 12. NOTICE OF TERMINATION

[12 Termination of employment title changed and substituted by [PR950181](#) ppc 26Jul04]

### 12.1 Notice of termination by employer

**12.1.1** In order to terminate the employment of an employee the employer must give to the employee the period of notice specified in the table below:

| <b>Period of continuous service</b>              | <b>Period of notice</b> |
|--|-------------------------|
| 1 year or less                                   | 1 week                  |
| Over 1 year and up to the completion of 3 years  | 2 weeks                 |
| Over 3 years and up to the completion of 5 years | 3 weeks                 |
| Over 5 years of completed service                | 4 weeks                 |

**12.1.2.** In addition to the notice in 12.1.1, employees over 45 years of age at the time of the giving of the notice with not less than two years continuous service, are entitled to an additional week's notice.

**12.1.3** Payment in lieu of the prescribed notice in 12.1.1 and 12.1.2 must be made if the appropriate notice period is not required to be worked. Provided that employment may be terminated by the employee working part of the required period of notice and by the employer making payment for the remainder of the period of notice.

**12.1.4** The required amount of payment in lieu of notice must equal or exceed the total of all amounts that, if the employee's employment had continued until the end of the required period of notice, the employer would have become liable to pay to the employee because of the employment continuing during that period. That total must be calculated on the basis of:

**12.1.4(a)** the employee's ordinary hours of work (even if not standard hours); and

**12.1.4(b)** the amounts ordinarily payable to the employee in respect of those hours, including (for example) allowances, loading and penalties; and

**12.1.4(c)** any other amounts payable under the employee's contract of employment.

**12.1.5** The period of notice in this clause does not apply:

**12.1.5(a)** in the case of dismissal for serious misconduct;

**12.1.5(b)** to apprentices;

**12.1.5(c)** to employees engaged for a specific period of time or for a specific task or tasks;

**12.1.5(d)** to trainees whose employment under a traineeship agreement or an approved traineeship is for a specified period or is, for any other reason, limited to the duration of the agreement; or

12.1.5(e) to casual employees.

**12.1.6 Continuous service** is defined below:

For the purpose of this clause service shall be deemed to be continuous notwithstanding:

- 12.1.6(a) any interruption or termination of the employment by the employer if such interruption or termination has been made merely with the intention of avoiding obligations hereunder in respect of leave of absence;
- 12.1.6(b) any absence from work for which an employee is entitled to claim annual leave as prescribed by this award;
- 12.1.6(c) any absence from work for which an employee is entitled to claim long service leave in accordance with relevant legislation;
- 12.1.6(d) any absence from work on account of personal sickness or accident up to a maximum of fifteen working days in any year of employment or on account of leave lawfully granted by the employer; or
- 12.1.6(e) any absence with reasonable cause, proof whereof shall be upon the employee.

Provided that in the calculation of continuous service under this subclause any time in respect of which an employee is absent from work except time for which an employee is entitled to claim annual leave, paid personal leave, public holidays and long service leave shall not count as time worked.

**12.2 Notice of termination by an employee**

- 12.2.1 The notice of termination required to be given by an employee is the same as that required of an employer, save and except that there is no requirement on the employee to give additional notice based on the age of the employee concerned.
- 12.2.2 If an employee fails to give the notice specified in 12.1.1 the employer has the right to withhold monies due to the employee to a maximum amount equal to the amount the employee would have received under 12.1.4.

**12.3 Job search entitlement**

Where an employer has given notice of termination to an employee, an employee shall be allowed up to one day's time off without loss of pay for the purpose of seeking other employment. The time off shall be taken at times that are convenient to the employee after consultation with the employer.

## **12.4 Transmission of business**

Where a business is transmitted from one employer to another, as set out in clause 13 - Redundancy, the period of continuous service that the employee had with the transmittor or any prior transmittor is deemed to be service with the transmittee and taken into account when calculating notice of termination. However, an employee shall not be entitled to notice of termination or payment in lieu of notice for any period of continuous service in respect of which notice has already been given or paid for.

## 13. REDUNDANCY

[13 substituted by [PR950181](#) ppc 26Jul04]

### 13.1 Definitions

**13.1.1 Business** includes trade, process, business or occupation and includes part of any such business.

**13.1.2 Redundancy** occurs where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing done by anyone and that decision leads to the termination of employment of the employee, except where this is due to the ordinary and customary turnover of labour.

**13.1.3 Small employer** means an employer who employs fewer than 15 employees.

**13.1.4 Transmission** includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and **transmitted** has a corresponding meaning.

**13.1.5 Week's pay** means the ordinary time rate of pay for the employee concerned. Provided that such rate shall exclude:

- overtime;
- penalty rates;
- disability allowances;
- shift allowances;
- special rates;
- fares and travelling time allowances;
- bonuses; and
- any other ancillary payments of a like nature.

### 13.2 Transfer to lower paid duties

Where an employee is transferred to lower paid duties by reason of redundancy the same period of notice must be given as the employee would have been entitled to if the employment had been terminated and the employer may at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former ordinary rate of pay and the new ordinary time rate for the number of weeks of notice still owing.

### 13.3 Severance pay

#### 13.3.1 Severance pay - other than employees of a small employer

An employee, other than an employee of a small employer as defined in 13.1.3, whose employment is terminated by reason of redundancy is entitled to the following amount of severance pay in respect of a period of continuous service:

| <b>Period of continuous service</b> | <b>Severance pay</b> |
|-------------------------------------|----------------------|
| Less than 1 year                    | Nil                  |
| 1 year and less than 2 years        | 4 weeks' pay*        |
| 2 years and less than 3 years       | 6 weeks' pay         |
| 3 years and less than 4 years       | 7 weeks' pay         |
| 4 years and less than 5 years       | 8 weeks' pay         |
| 5 years and less than 6 years       | 10 weeks' pay        |
| 6 years and less than 7 years       | 11 weeks' pay        |
| 7 years and less than 8 years       | 13 weeks' pay        |
| 8 years and less than 9 years       | 14 weeks' pay        |
| 9 years and less than 10 years      | 16 weeks' pay        |
| 10 years and over                   | 12 weeks' pay        |

\* **Week's pay** is defined in 13.1.5

### **13.3.2 Severance pay - employees of a small employer**

An employee of a small employer as defined in 13.13 whose employment is terminated by reason of redundancy is entitled to the following amount of severance pay in respect of a period of continuous service:

| <b>Period of continuous service</b> | <b>Severance pay</b> |
|-------------------------------------|----------------------|
| Less than 1 year                    | Nil                  |
| 1 year and less than 2 years        | 4 weeks' pay*        |
| 2 years and less than 3 years       | 6 weeks' pay         |
| 3 years and less than 4 years       | 7 weeks' pay         |
| 4 years and over                    | 8 weeks' pay         |

\* **Week's pay** is defined in 13.1.5

**13.3.3** Provided that the severance payments shall not exceed the amount which the employee would have earned if employment with the employer had proceeded to the employee's normal retirement date.

**13.3.4** Continuity of service shall be calculated in the manner prescribed by clause 12.1.6. Provided that service prior to 26 July 2004 shall not be taken into account in calculating an entitlement to severance pay for an employee of a small employer pursuant to 13.3.2.

**13.3.5** Application may be made for variation of the severance pay provided for in this clause in a particular redundancy situation in accordance with the *redundancy Case Decision* [[PR032004](#), 26 March 2004] and the *Redundancy Case Supplementary Decision* [[PR062004](#), 8 June 2004].

#### **13.4 Employee leaving during notice period**

An employee given notice of termination in circumstances of redundancy may terminate his/her employment during the period of notice set out in clause 12 - Notice of Termination. In this circumstance the employee will be entitled to receive the benefits and payments they would have received under this clause had they remained with the employer until the expiry of the notice, but will not be entitled to payment in lieu of notice.

#### **13.5 Alternative employment**

**13.5.1** An employer, in a particular redundancy case, may make application to the Commission to have the general severance pay prescription varied if the employer obtains acceptable alternative employment for an employee.

**13.5.2** This provision does not apply in circumstances involving transmission of business as set in 13.7.

#### **13.6 Job search entitlement**

**13.6.1** During the period of notice of termination given by the employer in accordance with 12.1, an employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.

**13.6.2** If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or he or she shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

**13.6.3** The job search entitlements under this subclause apply in lieu of the provisions of 12.3.

#### **13.7 Transmission of business**

**13.7.1** The provisions of this clause are not applicable where a business is before or after the date of this award, transmitted from an employer (in this subclause called the **transmittor**) to another employer (in this subclause called the **transmittee**), in any of the following circumstances:

**13.7.1(a)** Where the employee accepts employment with the transmittee which recognises the period of continuous service which the employee had with the transmittor and any prior transmittor to be continuous service of the employee with the transmittee; or



**13.7.1(b)** Where the employee rejects an offer of employment with the transmittee:

- in which the terms and conditions are substantially similar and no less favourable, considered on an overall basis, than the terms and conditions applicable to the employee at the time of ceasing employment with the transmitter; and
- which recognises the period of continuous service which the employee had with the transmitter and any prior transmitter to be continuous service of the employee with the transmittee.

**13.7.2** The Commission may vary 13.7.1(b) if it is satisfied that this provision would operate unfairly in a particular case.

### **13.8 Employees exempted**

This clause does not apply to:

- employees terminated as a consequence of serious misconduct that justifies dismissal without notice;
- probationary employees;
- apprentices;
- trainees;
- employees engaged for a specific period of time or for a specified task or tasks; or
- casual employees.

### **13.9 Incapacity to pay**

The Commission may vary the severance pay prescription on the basis of an employer's incapacity to pay. An application for variation may be made by an employer or a group of employers.

**PART 5 - WAGES AND RELATED MATTERS**

**14. MINIMUM RATES OF PAYMENT**

[14.1 substituted by [PR903166](#) [PR906070](#) [PR920570](#) [PR935084](#); [PR950181](#) ppc 02Apr05]

**14.1.** Minimum rates of pay shall be:

[14.1 inserted by [PR935084](#); substituted by [PR950181](#) ppc 02Apr05]

| <b>Grade</b>   | <b>Non-VDT<br/>Per week<br/>\$</b> | <b>VDT<br/>Per week<br/>\$</b> |
|----------------|------------------------------------|--------------------------------|
| 1              | 613.80                             | 650.60                         |
| 2              | 701.00                             | 743.10                         |
| 3              | 786.20                             | 833.40                         |
| 4              | 827.90                             | 877.60                         |
| 5              | 884.50                             | 937.60                         |
| 6              | 936.90                             | 993.10                         |
| Trainee Year 1 | 429.70                             | 455.50                         |
| Trainee Year 2 | 552.40                             | 585.55                         |

[14.1 inserted by [PR935084](#); substituted by [PR950181](#); [PR960554](#) ppc 02Apr06]

| <b>Grade</b> | <b>Non-VDT<br/>per week<br/>\$</b> | <b>VDT<br/>per week<br/>\$</b> |
|--------------|------------------------------------|--------------------------------|
| 1            | 630.80                             | 668.60                         |
| 2            | 718.00                             | 761.00                         |
| 3            | 803.20                             | 851.40                         |
| 4            | 844.90                             | 895.60                         |
| 5            | 901.50                             | 955.60                         |
| 6            | 953.90                             | 1011.10                        |
| Trainee Yr 1 | 441.60                             | 468.10                         |
| Trainee Yr 2 | 567.70                             | 601.80                         |

**14.1.1** Rates of pay for the above grades have been set at the percentages listed below of the classification C10 in the Metal, Engineering and Associated Industries Award 1998 (\$417.20 per week) for the non-VDT rate of pay:

| <b>Grade</b> | <b>Percentage</b> |
|--------------|-------------------|
| 1            | 115               |
| 2            | 135               |
| 3            | 160               |
| 4            | 170               |
| 5            | 185               |
| 6            | 200               |

Provided further that a Trainee Year 1 shall be paid at 70 per cent of the Grade 1 rate and a Trainee Year 2 at 90 per cent of the Grade 1 rate.

## **14.2 Arbitrated safety net adjustment**

[14.2 substituted by [PR903166](#) [PR906070](#) [PR920570](#) [PR935084](#) [PR950181](#); [PR960554](#) ppc 02Apr06]

**14.2.1** The rates of pay in this award include the arbitrated safety net adjustment payable under the *Safety Net Review - Wages June 2005 decision* [[PR002005](#)]. This arbitrated safety net adjustment may be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to certified agreements, currently operating enterprise flexibility agreements, Australian workplace agreements, award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

**14.2.2** Increases made under previous National Wage Case principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

## **14.3 Limited exemption from Clause 17**

An employee whose weekly rate of pay is at least ten per cent higher than the minimum weekly award rate of pay prescribed for a Grade 6 employee shall be exempted from the operation of clause 17 - Hours of employment and overtime and breaks, provided, however, that such an employee shall normally receive at least two clear days off per week.

**14.4** In view of the nature of the specialist publications within the scope of this award, employees may, subject to the provisions of this subclause, from time to time be involved in a variety of aspects of their employer's publication or publications which do not fall within the scope of the definitions contained in clause 9 - Classification structure. Without limiting the generality of the foregoing, such aspects include taking photographs, writing captions for photographs, preparing drawings, graphs, art work and layout, and may include, by agreement, duties associated with the commercial, business and promotional activities of the publisher.

**14.5** The minimum weekly award rates of pay herein prescribed have been fixed on the basis that, except as provided for in 14.7 (visual display terminal allowance), 17.3 (overtime), 21.6 (payment on public holidays), clause 15 - Allowances, and 18.2 (annual leave loading), they take into account all aspects and conditions of employment of the type referred to in the industry and an employee shall not be entitled to any additional or other payment in respect of overtime or any other penalty, disability or similar payment not provided for in the clauses and subclauses specified above. Nothing in this subclause shall prevent conditions being agreed to in individual negotiations between employer and employee in excess of minimum award conditions.

#### **14.6 Higher duties**

An employee shall at the request of his or her employer perform the work of any other employee to whom the provisions of this award apply and which the employee is competent to perform. Where an employee performs the work of another employee for more than six consecutive weeks or for more than a total of twelve weeks in any one calendar year, and the latter employee receives a rate of pay higher than the former employee, the former employee shall, for the whole of the period he or she performs such work, be paid at the higher rate of pay.

#### **14.7 Visual display terminal allowance**

**14.7.1** For the purposes of this award:

**14.7.1(a) Visual display terminal** means a computer operated keyboard and screen which produces camera-ready copy from a typesetter by direct or indirect interface with that typesetter.

**14.7.1(b) Camera-ready copy** means editorial copy for use in production and for which all typesetting commands (other than typesetter conversion commands) required by the employer to be made have been inserted by one or more employees to whom this award applies.

**14.7.2** An employee required by his or her employer to use a Visual Display Terminal to create camera-ready copy shall be paid as per the minimum weekly award rate of pay set out in the VDT column of the salary table in 14.1. This rate of pay is six per cent greater than the non-VDT rate of pay set out in 14.1.

**14.8** An employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training.

**14.9** Wages shall be paid by cash, cheque or electronic funds transfer as determined by the employer.

**14.10** Employees may be required to work on and between different publications published by the employer.

**14.11** Where an employer undertakes editorial staff performance reviews:

**14.11.1** amounts paid to an employee above the minimum weekly award rate for the employee (margins) may be absorbed in increases to the minimum weekly award rate as and when the increases occur; and

**14.11.2** in determining any increase in wage rates for an employee which result from any performance review, the employer must have regard to any increases in the rates of pay which have occurred in this award in the period covered by the review.

## **15. ALLOWANCES**

**15.1** All employees shall be reimbursed for out of pocket expenses reasonably incurred in the employer's service and authorised by the employer, normally in advance.

**15.2** If an employee's hours on duty compel him or her to take more than one meal a day away from home, any excess of one meal a day, at reasonable cost shall be paid by the employer.

### **15.3 Eye tests**

[15.3 varied by [PR960554](#) ppc 26Jul05]

**15.3.1** Where an optometrist prescribes spectacles or a lens change specifically for Visual Display Terminal operation, the employer will pay for the cost of the lens and up to \$97.80 towards the cost of the frames.

**15.3.2** Where the employee receives a health fund or other benefit towards the cost of spectacles, the employer will reimburse the difference between the cost of the spectacles and the benefit, with a maximum of \$97.80 on the frames.

**15.3.3** The amount referred to in 15.3.1 and 15.3.2, shall be adjusted every six months in line with movements in the CPI (all groups) for Sydney.

## 16. SUPERANNUATION

Note: The *Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2005* provides that individual employees generally have the opportunity to choose their own superannuation funds. For further information see the AIRC guidance note – [Choice of Superannuation Funds and Award Provisions](#)

**16.1** For the purposes of this clause:

**16.1.1** **Fund** means a superannuation fund which is a regulated fund for the purposes of the Superannuation Industry (Supervision) Award 1993 and which is either:

**16.1.1(a)** JUST SUPER; or

**16.1.1(b)** a Fund nominated by the employer.

**16.1.2** **Ordinary time earnings** means:

**16.1.2(a)** in a case of a full-time employee, the appropriate minimum weekly award rate of pay prescribed in 14.1.

**16.1.2(b)** in the case of a part-time employee, the minimum weekly award rate of pay prescribed in clause 10 - Regular part-time employees; and

**16.1.2(c)** in the case of a casual employee, the minimum weekly award rate of pay prescribed by clause 11 - Casual employees.

plus any over-award payments made in respect of ordinary time worked by the employee.

**16.2** The subject of superannuation is dealt with extensively by legislation including the *Superannuation Guarantee (Administration) Act 1992*, the *Superannuation Guarantee Charge Act 1992*, the *Superannuation Industry (Supervision) Act 1993* and the *Superannuation (Resolution of Complaints) Act 1992*. This legislation, as varied from time to time, governs the superannuation rights and obligations of the parties to this award subject only to the requirement that the definitions referred to in 16.1.1 and 16.1.2 must be given effect to when applying the legislation.

## **PART 6 - HOURS OF WORK, BREAKS, OVERTIME AND WEEKEND WORK**

### **17. HOURS OF EMPLOYMENT, OVERTIME AND BREAKS**

**17.1** The ordinary hours of duty shall be 38 per week which may be worked on any day of the week determined by the employer. It is usual for employees employed by Specialist Publishers to work seven hours a day worked Monday to Friday (ie 9.00 a.m. to 5.00 p.m.) with a lunch break of one hour which is not counted as time worked - a total of 35 hours. The employer may require an employee to work three additional hours of work in a week to accommodate editorial production needs and to achieve suitable arrangements for employees.

#### **17.2 Overtime**

Where an employee, other than a Casual Employee, is required to work in excess of 38 hours in any week, the employee shall be entitled to time off for a period which is the same as the period of overtime worked to be taken within six weeks of the end of the week in which the overtime was worked. The period in which time off can be taken in that six week period is to be agreed between the employer and the employee, or if no agreement is reached, at a time determined by the employer. If, for any reason, such time off in lieu has not been so given and taken the employee shall be paid for such overtime at the rate of time and one half for the first eight hours overtime in any week and at the rate of double time for all overtime in excess of eight hours in any week.

**17.3** Employees may be required to work occasionally at exhibitions or conventions or the like at weekends in which case such work will be overtime and 17.2 will apply.

#### **17.4 VDT rest breaks**

**17.4.1** No employee shall be required to work on a Visual Display Terminal for more than two hours straight without a break.

**17.4.2** Where an employee on any shift works on a Visual Display Terminal for two hours straight, that employee shall be entitled to a 10 minute break in respect of each such two hour period.

**17.4.3** A break of the type referred to in 17.4.2 shall be counted as time worked.

**17.4.4** An employee who qualifies for a Visual Display Terminal break under this subclause will normally be entitled to two such breaks. However, on extended shifts or parts of shifts, an employee may be entitled to more than two such breaks.

**17.4.5** In an emergency, an employer may require an employee to work on a Visual Display Terminal for a maximum of two hours and 30 minutes straight.



## **PART 7 - LEAVE OF ABSENCE AND PUBLIC HOLIDAYS**

### **18. ANNUAL LEAVE AND ANNUAL LEAVE LOADING**

**18.1** Employees, other than casual employees, shall be entitled to four weeks annual leave on each anniversary of the commencement of their employment to be taken and paid as follows:

**18.1.1** Annual leave must be taken in full within 26 weeks of the date it falls due, unless otherwise agreed between the employer and the employee.

**18.1.2** Annual leave may be taken in any period or periods agreed by the employer and the employee or in the absence of agreement as directed by the employer, provided at least 28 days notice is given to the employee of the date on which annual leave is to commence.

**18.1.3** Annual leave shall be paid in advance of it being taken.

**18.1.4** Payment must be made by the employer to the employee for any untaken annual leave (including leave not taken as provided for in 18.1.1 on termination of employment of an employee).

#### **18.2 Annual leave loading**

**18.2.1** Employees, other than casual employees, shall be paid a loading of 17.5 per cent of the minimum rate of pay prescribed in 14.1 for the employee's classification for the period of annual leave prescribed by this clause.

**18.2.2** The loading prescribed by this subclause shall apply to proportionate leave on termination, except where summary dismissal for refusal or neglect of duty or misconduct takes place in accordance with clause 12 - Termination of employment.

**18.2.3** Because of the cyclic nature of some of the publications published in the industry of Specialist Publications, some annual leave may be taken by employees during production 'downtime' during the Christmas-New Year holiday period. At least 28 days notice will be given to the employee to take leave as envisaged in this paragraph.

## 19. PARENTAL LEAVE

[19 preamble substituted by [PR920570](#) ppc 19Jul02]

Subject to the terms of this clause Employees are entitled to maternity, paternity and adoption leave and to work part time with the birth or adoption of a child.

The provisions of this clause apply to full-time, part-time and eligible casual employees but do not apply to other casual employees.

An eligible casual employee means a casual employee:

(a) employed by an employer on a regular and systematic basis for several periods of employment or on a regular and systematic basis for an ongoing period of employment during a period of at least 12 months; and

(b) who has, but for the pregnancy or the decision to adopt, a reasonable expectation of ongoing employment.

For the purposes of this clause continuous service is work for an employer on a regular and systematic basis (including any period of authorised leave or absence).

An employer must not fail to re-engage a casual employee because:

(a) the employee or employee's spouse is pregnant; or

(b) the employee is or has been immediately absent on parental leave.

The rights of an employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

### 19.1 Definitions

**19.1.1** For the purpose of this clause **child** means a child of the employee under the age of one year except for adoption of a child where **child** means a person under the age of five years who is placed with the employee for the purposes of adoption, other than a child or stepchild of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee for a period of six months or more.

**19.1.2** Subject to 19.1.3, in this clause, **spouse** includes a de facto or former spouse.

**19.1.3** In relation to 19.5, **spouse** includes a de facto spouse but does not include a former spouse.

## **19.2 Basic entitlement**

**19.2.1** After twelve months continuous service, parents are entitled to a combined total of 52 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of their child. For females, maternity leave may be taken and for males, paternity leave may be taken. Adoption leave may be taken in the case of adoption.

**19.2.2** Subject to 19.3.6, parental leave is to be available to only one parent at a time, in a single unbroken period, except that both parents may simultaneously take:

**19.2.2(a)** for maternity and paternity leave, an unbroken period of up to one week at the time of the birth of the child;

**19.2.2(b)** for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.

## **19.3 Maternity leave**

**19.3.1** An employee must provide notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:

**19.3.1(a)** of the expected date of confinement (included in a certificate from a registered medical practitioner stating that the employee is pregnant) - at least 10 weeks;

**19.3.1(b)** of the date on which the employee proposes to commence maternity leave and the period of leave to be taken - at least 4 weeks.

**19.3.2** When the employee gives notice under 19.3.1(a) the employee must also provide a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.

**19.3.3** An employee will not be in breach of this clause if failure to give the stipulated notice is occasioned by confinement occurring earlier than the presumed date.

**19.3.4** Subject to 19.2.1 and unless agreed otherwise between the employer and employee, an employee may commence parental leave at any time within six weeks immediately prior to the expected date of the birth.

**19.3.5** Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.

### **19.3.6 Special maternity leave**

**19.3.6(a)** Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child, then the employee may take unpaid special maternity leave, of such periods as a registered medical practitioner certifies as necessary.

**19.3.6(b)** Where an employee is suffering from an illness not related to the direct consequences of the confinement, an employee may take any paid sick leave to which she is entitled in lieu of, or in addition to, special maternity leave.

**19.3.6(c)** Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take any paid sick leave to which she is entitled and such further unpaid special maternity leave as a registered medical practitioner certifies as necessary before her return to work. The aggregate of paid sick leave, special maternity leave and parental leave, including parental leave taken by a spouse, may not exceed 52 weeks.

**19.3.7** Where leave is granted under 19.3.4, during the period of leave an employee may return to work at any time, as agreed between the employer and the employee provided that time does not exceed four weeks from the recommencement date desired by the employee.

### **19.4 Paternity leave**

**19.4.1** An employee will provide to the employer at least ten weeks prior to each proposed period of paternity leave, with:

**19.4.1(a)** a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place; and

**19.4.1(b)** written notification of the dates on which he proposes to start and finish the period of paternity leave; and

**19.4.1(c)** a statutory declaration stating:

**19.4.1(c)(i)** he will take that period of paternity leave to become the primary care-giver of a child;

**19.4.1(c)(ii)** particulars of maternity leave sought or taken by his spouse; and

**19.4.1(c)(iii)** that for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

**19.4.2** An employee will not be in breach of 19.4.1 if the failure to give the required period of notice is because of the birth occurring earlier than expected, the death of the mother of the child, or other compelling circumstances.

## **19.5 Adoption leave**

- 19.5.1** The employee will notify the employer at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice, where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.
- 19.5.2** Before commencing adoption leave, an employee will provide the employer with a statutory declaration stating:
- 19.5.2(a)** the employee is seeking adoption leave to become the primary care-giver of the child;
  - 19.5.2(b)** particulars of any period of adoption leave sought or taken by the employee's spouse; and
  - 19.5.2(c)** that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.
- 19.5.3** An employer may require an employee to provide confirmation from the appropriate government authority of the placement.
- 19.5.4** Where the placement of a child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from receipt of notification for the employee's return to work.
- 19.5.5** An employee will not be in breach of this clause as a consequence of failure to give the stipulated periods of notice if such failure results from a requirement of an adoption agency to accept earlier or later placement of a child, the death of a spouse, or other compelling circumstances.
- 19.5.6** An employee seeking to adopt a child is entitled to unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure. The employee and the employer should agree on the length of the unpaid leave. Where agreement cannot be reached, the employee is entitled to take up to two days unpaid leave. Where paid leave is available to the employee, the employer may require the employee to take such leave instead.

## **19.6 Variation of period of parental leave**

Unless agreed otherwise between the employer and employee, an employee may apply to their employer to change the period of parental leave on one occasion. Any such change to be notified at least four weeks prior to the commencement of the changed arrangements.

## **19.7 Parental leave and other entitlements**

A employee may in lieu of or in conjunction with parental leave, access any annual leave or long service leave entitlements which they have accrued, subject to the total amount of leave not exceeding 52 weeks.

## **19.8 Transfer to a safe job**

**19.8.1** Where an employee is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee will, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

**19.8.2** If the transfer to a safe job is not practicable, the employee may elect, or the employer may require the employee, to commence parental leave for such period as is certified necessary by a registered medical practitioner.

## **19.9 Returning to work after a period of parental leave**

**19.9.1** A employee will notify of their intention to return to work after a period of parental leave at least four weeks prior to the expiration of the leave.

**19.9.2** A employee will be entitled to the position which they held immediately before proceeding on parental leave. In the case of an employee transferred to a safe job pursuant to subclause 19.8, the employee will be entitled to return to the position they held immediately before such transfer.

**19.9.3** Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee will be entitled to a position as nearly comparable in status and pay to that of their former position.

## **19.10 Replacement employees**

**19.10.1** A replacement employee is an employee specifically engaged or temporarily promoted or transferred, as a result of an employee proceeding on parental leave.

**19.10.2** A replacement employee will be informed of the temporary nature of the employment and of the rights of the employee who is being replaced.

## 20. PERSONAL LEAVE

### 20.1 Amount of paid personal leave

**20.1.1** Paid personal leave is available to an employee, other than a casual, when he or she is absent due:

**20.1.1(a)** to personal illness or injury (sick leave); or

**20.1.1(b)** for the purposes of caring for an immediate family or household member who is sick and requires the employee's care and support (carer's leave); or

**20.1.1(c)** because of bereavement on the death of an immediate family or household member (bereavement leave).

**20.1.2** The amount of personal leave to which an employee is entitled depends on how long he or she has worked for the employer and accrues as follows:

| <b>Length of time worked for the employer</b> | <b>Personal leave</b> |
|---|-----------------------|
| Less than 3 months                            | 3 days full pay       |
| More than 3 months and up to 12 months        | 11 days full pay      |
| Each year thereafter                          | 13 days full pay      |

### 20.2 Immediate family or household

**20.2.1** The entitlement to carer's leave or bereavement leave is subject to the person in respect of whom the leave is taken being either:

**20.2.1(a)** a member of the employee's immediate family; or

**20.2.1(b)** a member of the employee's household.

**20.2.2** The term **immediate family** includes:

**20.2.2(a)** spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A **de facto spouse** means a person of the opposite sex to the employee who lives with the employee as his or her husband or wife on a bona fide domestic basis; and

**20.2.2(b)** child or an adult child (including an adopted child, a step child or an ex-nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.

## **20.3 Sick leave**

### **20.3.1 Definition**

Sick leave is leave to which an employee, other than a casual, is entitled without loss of pay because of his or her personal illness or injury.

### **20.3.2 Entitlement**

The amount of sick leave an employee is entitled depends on how long he or she has worked for the employer and accrues as follows:

| <b>Length of time worked for the employer</b> | <b>Personal leave</b> |
|---|-----------------------|
| Less than 3 months                            | Nil                   |
| More than 3 months and up to 12 months        | 8 days full pay       |
| Each year thereafter                          | 10 days full pay      |

Any sick leave as prescribed not taken in any year of service may, provided the employee remains in the service of the same employer, be accumulated up to a maximum of ten years service.

**20.3.3** The right to sick pay shall be subject to the employer being satisfied that the employee's absence is due to sickness or incapacity. The employer shall be entitled to require the production of a medical certificate. An employee who refuses to supply a medical certificate shall not be entitled to the benefits of this clause.

**20.3.4** Sickness or incapacity arising from misbehaviour, wilful contribution or lack of reasonable care, shall not entitle an employee to the benefits of this clause.

**20.3.5** An employer shall not be liable for payment under the provisions of this clause to any employee absent from duty as a result of an injury received from specific form of recreation, hobby or exercise, if the employer has given specific individual notification in writing to the employee that, if the employee further indulges in that particular form of recreation, hobby or exercise, no liability in the case of injury arising therefrom shall attach to the employer. A general notification by circular or otherwise shall not exempt an employer from liability under this subclause.

## **20.4 Bereavement leave**

### **20.4.1 Paid leave entitlement**

Subject to prompt notice being given to the employer and proof of death being provided, an employee shall be entitled to a maximum of three days leave on the death of a spouse, child, stepchild, father, mother, brother, sister, grandparent, mother-in-law, father-in-law.



#### **20.4.2 Unpaid leave entitlement**

Where an employee has exhausted all personal leave entitlements, including accumulated entitlements, he or she is entitled to up to two days unpaid bereavement leave.

### **20.5 Carer's leave**

#### **20.5.1 Paid leave entitlement**

An employee is entitled to use up to five days personal leave each year to care for members of his or her immediate family or household who are sick and require care and support. This entitlement is subject to the employee being responsible for the care and support of the person concerned. In normal circumstances an employee is not entitled to take carer's leave where another person has taken leave to care for the same person.

#### **20.5.2 Notice required**

The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

#### **20.5.3 Evidence supporting claim**

The employee must, if required by the employer, establish by production of a medical certificate or statutory declaration, the illness of the person concerned and that illness is such as to require care by another.

#### **20.5.4 Unpaid leave**

A employee may take unpaid carer's leave by agreement with the employer.

## **21. PUBLIC HOLIDAYS**

**21.1** An employee shall be entitled to holidays on the following days:

**21.1.1** New Year's Day, Good Friday, Easter Saturday, Easter Monday, Christmas Day and Boxing Day; and

**21.1.2** The following days, as prescribed: Australia Day, Anzac Day, Queen's Birthday and Labour Day; and

- in the Australian Capital Territory - Canberra Day;
- in New South Wales - the first Monday in August;
- in Victoria - Melbourne Cup Day;
- in Queensland - Show Day;
- in South Australia - the third Monday in May;
- in Western Australia - Foundation Day;
- in the Northern Territory - Picnic Day;
- in southern Tasmania - Regatta Day; and
- in northern Tasmania - Recreation Day.

**21.2.1** When Christmas Day is a Saturday or a Sunday, a holiday in lieu thereof shall be observed on 27 December.

**21.2.2** When Boxing Day is a Saturday or a Sunday, a holiday in lieu thereof shall be observed on 28 December.

**21.2.3** When New Year's Day or Australia Day is a Saturday or Sunday, a holiday in lieu thereof shall be observed on the next Monday.

**21.3** Where in the State or locality, public holidays are declared or prescribed on days other than those set out in 21.1 and 21.2, those days shall constitute additional holidays for the purpose of this award.

**21.4** An employer, with the agreement of an employee may substitute another day for any prescribed in this clause.

**21.4.1** An employer and his or her employees may agree to substitute another day for any holiday prescribed in this clause. For this purpose, the consent of the majority of affected employees shall constitute agreement.

**21.4.2** An agreement pursuant to 21.4.1 shall be recorded in writing and be available to every affected employee.

**21.5** An employer and an individual employee may agree for the employee to work on a public holiday and have an extra day added to their annual leave entitlement.

**21.6** Where an employee is required by the employer to work on a public holiday the employee shall be paid at the rate of double time and one-half for all such time worked with a minimum payment for four hours work.

**21.7** Where an employee is not required by the employer to work on a public holiday the employee shall be entitled to receive the public holiday without deduction from pay.

## **PART 8 - TRANSFERS, TRAVELLING AND WORKING AWAY FROM USUAL PLACE OF WORK**

### **22. DISTANT ENGAGEMENTS**

**22.1** For the purposes of this clause, a **distant engagement** is an assignment which requires an employee to be away from his or her work at the employer's premises at the direction of the employer for one or more nights.

**22.2** Where an employee agrees to undertake a distant engagement, the following provisions will apply:

**22.2.1** Practices existing at 13 August 1997 in relation to employees working on distant engagements, including practices in relation to travel and accommodation on such an engagement shall continue.

**22.2.2** Employees working on distant engagements shall be paid expenses as provided for in this award.

**22.2.3** An employer shall allow an employee time off within eight weeks of the completion of a distant engagement equal to that time taken by the employee in travelling to and from the assignment which falls outside the employee's normal hours of work. The time when time off can be taken in the eight week period is to be agreed between the employer and the employee, or if no agreement is reached, at a time determined by the employer. If, for any reason, such time off in lieu has not been so given and taken within the eight week period, the employee will be paid for such time at the rate of time and one half for the first eight hours in any week rate of double time for all time in excess of eight hours in any week.

## **PART 9 - AWARD COMPLIANCE AND UNION RELATED MATTERS**

### **23. AWARD FOR REFERENCE**

A copy of this award, with all variations thereof, shall be supplied by each employer and shall be placed in a convenient position in each office for reference. The employer shall be responsible for supplying and replacing copies of the award.

## **24. ANTI-DISCRIMINATION**

**24.1** It is the intention of the respondents to this award to achieve the principle object in section 3(j) of the *Workplace Relations Act 1996* through respecting and valuing the diversity of the work force by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

**24.2** Accordingly, in fulfilling their obligations under the disputes settling procedure clause, the respondents must make every endeavour to ensure that neither the award provisions nor their operation are directly or indirectly discriminatory in their effects.

**24.3** Nothing in this clause is to be taken to affect:

**24.3.1** any different treatment (or treatment having different effects) which is specifically exempted under the Commonwealth anti-discrimination legislation.

**24.3.2** junior rates of pay, until 22 June 2000 or later date determined by the Commission in accordance with s.143(1E) of the Act;

**24.3.3** an employee, an employer or the Alliance, pursuing matters of discrimination in any state or federal jurisdiction, including by application to the Human Rights and Equal Opportunity Commission;

**24.3.4** the exemptions in sections 170CK(3) and (4) of the Act.

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## **SCHEDULE A - LIST OF RESPONDENTS**

### **New South Wales**

ADB Holding Pty Ltd, PO Box 515, NARRABEEN 2101  
Advanced Association of Beauty Therapists, CIDESCO Section Australia, Level 3, 5 Northcliff Street, MILSONS POINT 2061  
Aerospace Publications Pty Ltd, PO Box 3105, WESTERN CREEK 2611  
Afloat Publications Pty Ltd, PO Box 709, WILLOUGHBY 2068  
Alan Davis Publishing Group, 5th floor, 541 George Street, SYDNEY 2000  
Asean Proprint Pty Ltd, PO Box 662, 15 Prince William, SEVEN HILLS 2147  
Association of Superannuation Funds of Australia, 37 York Street, SYDNEY 2000  
Australasian Medical Publishing Co Ltd, Level 1, 76 Berry Street, NORTH SYDNEY 2060  
Australian Classic Motoring Press Pty Ltd, PO Box 250, BONDI JUNCTION 2022  
Australian Dental Association Inc, PO Box 520, ST LEONARDS 2065  
Australian Financial Press, 179 Harris Street, PYRMONT 2009  
Australian Horticultural Corporation, Level 14, 100 William Street, POTTS POINT 2011  
Australian Institute of Credit Management, PO Box 558, ARTARMON 2064  
Australian Pharmaceutical Publishing Co Ltd, Suite 5 Ground Floor, 174-180 Pacific Highway, NORTH SYDNEY 2060  
Australian Veterinary Practitioner, PO Box 203, BONDI 2026

Beaconsfield Press Pty Ltd, PO Box 65, NEWTOWN 2042  
Bicycle Federation of Australia, PO Box 869, ARTARMON 2064  
Braynart Group, PO Box 1703, MACQUARIE CENTRE 2113  
Building Owners & Managers Association (BOMA), Level 26 Australia Square, 264 George Street, SYDNEY 2000

CAFT Assoc Inc & AIF Science & Tech Ltd, PO Box 1493, NORTH SYDNEY 2059  
Calmor & Associates Pty Ltd, PO Box 1316, NORTH SYDNEY 2061  
Campaign Brief Pty Ltd, 259 Miller Street, NORTH SYDNEY 2060  
Carrington Publishing Group, 75 Mullens Street, BALMAIN 2041  
Carroll J & Co Pty Ltd, Level 4, Suites 6-10 Macarthur Shopping Square, CAMPBELLTOWN 2560  
Connections Publishing Pty Ltd, PO Box 439, EPPING 2121  
Copeland Publishing Co Pty Ltd, PO Box 171, BEECROFT 2119  
Dawson Magazines Pty Ltd, Tramore House, Tramore Place, KILLARNEY HEIGHTS 2087  
Direction Publishing, PO Box 551, ARTARMON 2064  
DWR Publishing, a Division of DWR Communications, PO Box 85, CREMORNE 2090  
Dynamic Small Business Magazine Pty Ltd, PO Box 77, CREMORNE 2090

Educare International, Level 5, 2 Help Street, CHATSWOOD 2067  
Engine Press Pty Ltd, PO Box 164, MILSONS POINT 2061  
Engineers Australia Pty Ltd, 58 Battlement Crescent, CASTLE HILL 2154  
EPS Press Pty Ltd, 200 Australia Street, NEWTOWN 2042  
Express Publications Pty Ltd, 2 Stanley Street, SILVERWATER 2128

Focus Direct Publications, PO Box 190, GLADESVILLE 2111  
Front Publishing Pty Ltd, 78 Renwick Street, REDFERN 2016



Gareth Powell Publishing, 21 Darley Road, RANDWICK 2031  
Global Trade Connections Pty Ltd, 8/14 Rangers Road, NEUTRAL BAY 2089

Hardcastle Media, PO Box 180, THIRROUL 2515  
Homes Pictorial Publications Pty Ltd, PO Box 3936, PARRAMATTA 2120  
Hotel Publications Pty Ltd, PO Box 351, STRATHFIELD 2135  
Housing Industry Association, 10 Pitt Street, PARRAMATTA 2150  
HWW Pty Ltd, PO Box 8, SURRY HILLS 2010

Instyle Magazine Australia Pty Ltd, PO Box 304, MOSMAN 2088

Jewellery World, PO Box 63, EASTWOOD 2122

Laurel Enterprises, PO Box 194, DEE WHY 2099

Magazine House Pty Ltd, PO Box 1067, CROWS NEST 2065  
Market Link Publications, PO Box 1256, CASTLE HILL 2152  
Medical Observer Pty Ltd, Level 1, 100 Bay Road, WAVERTON 2060  
Millbank Publications, 862 Elizabeth Street, WATERLOO 2017  
MIMS Australia (Medi Media Australia), 48 Albany Street, CROWS NEST 2065  
Modern Medicine of Australia Pty Ltd, Suite 3, 15 Grosvenor Street, NEUTRAL BAY 2089  
Modern Optics Pty Ltd (Insight), 68 Blues Point Road, McMAHONS POINT 2060

National Business Magazines, PO Box 687, DARLINGHURST 2010  
Newsletter Information Services Pty Ltd, PO Box 693, MANLY 2095  
Nine to Five Magazine Pty Ltd, Level 5, 222 Clarence Street, SYDNEY 2000  
No Fibs Publishing Pty Ltd, 36-38 Malsbury Road, NORMANHURST 2076

On the Street Pty Ltd, GPO Box 122, SYDNEY 2001  
Osborne Publications Pty Ltd, PO Box 196, ROSEBERY 2018  
Otter Publications Pty Ltd, 78 Renwick Street, REDFERN 2016

Pastrycooks & Bakers News Monthly, 68 Blues Point Road, MCMAHONS POINT 2060  
Pellinor Pty Ltd, Box 4-361, Royal Exchange, SYDNEY 2000  
Permaculture International Ltd, 47 Caldwell Avenue, EAST LISMORE 2080  
POL Publications, Level 3, 71 York Street, SYDNEY 2000  
Practical Hydroponics International Magazine, PO Box 225, NARRABEEN 2101  
Practical Marketing Group Pty Ltd, PO Box 105, WILLOUGHBY 2041  
Project Publications Pty Ltd, 5 Sunnyridge Place, BAYVIEW 2104  
Projects & Systems Pty Ltd, PO Box 559, BROADWAY 2007  
Pro PR Publications Pty Ltd, PO Box 575, MILSONS POINT 2061

RACCA Australia Incorporated, 485 Princes Highway, ST PETERS 2044  
Rala Information Services Pty Ltd, 203-205 Darling Street, BALMAIN 2041  
Rank Publishing Pty Ltd, 66 Chandos Street, ST LEONARDS 2065  
Registered Clubs Association of NSW, 499 Kent Street, SYDNEY 2000  
Retail World Pty Ltd, 114 Terry Street, ROZELLE 2039  
Richard Milne Pty Ltd, 409 Henry Lawson Business Centre, BIRKENHEAD POINT 2047  
Ric Williams & Associates Pty Ltd, 25 Valley Park Crescent, TURRAMURRA 2074

Richard Milne Pty Ltd, 409 Henry Lawson Business Centre, BIRKENHEAD POINT 2047  
Rillage Publishing, PO Box 363, ROZELLE 2039  
Rotary Down Under Inc, PO Box 779, PARRAMATTA 2120

SBIC Australia Pty Ltd, 525 Elizabeth Street, SURRY HILLS 2012  
Shennen Publishing & Publicity Pty Ltd, GPO Box 526, SYDNEY 2001  
Silicon Chip Publications Pty Ltd, PO Box 139, COLLAROY BEACH 2097  
Skills Book Publishing Pty Ltd, Private Mail Bag 7, ROZELLE 2039  
South Pacific Science Press, 8 Maddox Street, ALEXANDRIA 2015  
Sterling Media Pty Ltd, PO Box 670, SEVEN HILLS 2147  
Strategic Publishing Group, Level 4, 204 Clarence Street, SYDNEY 2000  
Studio Magazines, Level 3, 111 William Street, SYDNEY 2011  
Sydney Building Information Centre, PO Box 33, STRAWBERRY HILLS 2012  
Sydney Weekend, 18 Albert Road, STRATHFIELD 2135

The Employers Federation of NSW, 313 Sussex Street, SYDNEY 2000  
The Food Retailers' Association of NSW, 356 Liverpool Road, ASHFIELD 2131  
The Frontline Agency, 94-96 Pacific Highway, ST LEONARDS 2065  
The Intermedia Group Pty Ltd, 747 Darling Street, ROZELLE 2039  
The Law Society of NSW, 170 Phillip Street, SYDNEY 2000  
The Planet Newspaper, 58 Sophia Street, SURRY HILLS 2010  
The Royal Australian College of General Practitioners, 39 Terry Street, ROZELLE 2039  
The Sydney Review, 199 Crown Street, DARLINGHURST 2010  
The Wellspring Publishers Pty Ltd, 1/187A Avenue Road, MOSMAN 2088  
Tilmond Pty Ltd, 78 Renwick Street, REDFERN 2016  
Trade Press Australia Pty Ltd, 54 Kellett Street, KINGS CROSS 2011  
Trielle Corporation, PO Box A305, SYDNEY SOUTH 2000  
Trimedia Holdings Pty Ltd, 219 High Street, PENRITH 2750  
Time Inc Magazine Co Pty Ltd, 61 Lavender Street, MILSONS POINT 2061  
Turf Monthly Pty Ltd, PO Box 426, ROUND CORNER NSW 2158  
Tybowl Publications, 19 Fletcher Street, BONDI SOUTH 2026

Universal Magazines Pty Ltd, Unit 5, 6-8 Byfield Street, NORTH RYDE 2113

Wallacia (Sales) Pty Ltd, PO Box 81, DURAL 2158  
Weight Watchers, PO Box 1961, NORTH SYDNEY 2059  
Wellbeing Magazine, PO Box 209, MOSMAN 2088  
Westwick Farrow Pty Ltd, Cr Fox Valley Road and Kiogle Street, WAHROONGA 2076  
Where in the World Publishing Pty Ltd, PO Box 1109, NEUTRAL BAY 2089

## **Victoria**

AD 2000 Pty Ltd, 582 Queensberry Street, NORTH MELBOURNE 3051  
Ad-cell Media Pty Ltd, 205 Ryrie Street, GEELONG 3220  
AJM Resources Publishing, 394A Victoria Street, RICHMOND NORTH 3121  
Alternate Law Journal, Wellington Road, CLAYTON 3168  
Anglican Media, 1st Flr Cathedral Bldgs, 209 Flinders Lane, MELBOURNE 3000  
Animals Today, PO Box 221, MITCHAM 3132  
Appita Journal, Suite 47, Level 1 CCT, 207-255 Drummond Street, CARLTON 3053  
Architecture Media Australia Pty Ltd, 4 Princes Street, PORT MELBOURNE 3207

Arena Printing & Publishing Pty Ltd, 35 Argyle Street, FITZROY 3065  
 Arrow Plus, 628 Nepean Hwy, CARRUM 3197  
 Asia Pacific Journal of Human Resources, PO Box 461, MULGRAVE 3170  
 Associated Communication Enterprises Pty Ltd, 272 Rosslyn Street, WEST MELBOURNE 3003  
 Assoc of Professional Engineers, Scientists & Managers Australia, 163 Eastern Road, SOUTH MELBOURNE 3205  
 Australasian Institute of Mining and Metallurgy, Level 3, 15-31 Pelham Street, CARLTON 3053  
 Australasian Textiles Publishers, 11 Woodlands Drive, OCEAN GROVE 3226  
 Australian Better Gardens & Home Ideas, 58 John Street, LILYDALE 3140  
 Australian Biotechnology Association, Suite 2, 112A Martin Street, GARDENVALE 3185  
 Australian Book Review, 21 Drummond Place, CARLTON 3053  
 Australian Catalogue Publishing, Unit 5, 17A/19 Fitzroy Street, ST KILDA 3182  
 Australian Chamber of Manufactures, 380 St Kilda Road, MELBOURNE 3004  
 Australian Clay Target Shooting Association, 3 Essex Road, MT WAVERLEY 3149  
 Australian Dairy Corporation, 1601 Malvern Road, GLEN IRIS 3146  
 Australiana Book & Map Shop, 27 Elizabeth Street, MELBOURNE 3000  
 Australian Fire Protection Association, 1st Floor, 689 Burke Road, HAWTHORN EAST 3119  
 Australian Football League, Brunton Avenue, JOLIMONT 3002  
 Australian Institute of Bankers, 19th Floor, 385 Bourke Street, MELBOURNE 3000  
 Australian Institute of Jewish Affairs, 6th Flr, 5 Queens Road, MELBOURNE 3000  
 Australian Institute of Training & Development, PO Box 1011, LALOR 3075  
 Australian Medical Association, 293 Royal Parade, PARKVILLE 3052  
 Australian Journal of Mining, 394A Victoria Road, RICHMOND NORTH 3121  
 Australian Motorsports News Pty Ltd, 87 Orrong Crescent, CAULFIELD NORTH 3161  
 Australian & New Zealand Solar Energy Society, PO Box 120, CAULFIELD EAST 3145  
 Australian Packaging, 18 Salmon St, PORT MELBOURNE 3207  
 Australian Physiotherapy Association, Level 3, 201 Fitzroy Street, ST KILDA 3182  
 Australian Presbyterian Living Today, 1st Flr 156 Collins Street, MELBOURNE 3000  
 Australian Runner Magazine, 84 Burwood Road, HAWTHORN 3122  
 Australian Society for Microbiology Inc, Unit 19, 20 Commercial Road, MELBOURNE 3004  
 Australian Teachers of Media, Flat 5/17A-19 Fitzroy Street, ST KILDA 3182  
 Australian Water & Waste Water Association Inc, 4 Pleasant View Crescent, GLEN WAVERLEY 3150

Be-All Media (BAM) Pty Ltd, 144 Alexandra Street, EAST ST KILDA 3182  
 Beat Magazine Pty Ltd, 3-5 Jessie Street, RICHMOND 3121  
 Blackwell Science, 54 University Street, CARLTON 3053  
 Broadcast Engineering News, 18 Salmon Street, PORT MELBOURNE 3207  
 Building & Construction & Cazaly's Contract Reporter, 484 Station Street, BOX HILL 3128  
 Building Construction Material & Equipment Magazine, 504 Princes Hwy, NOBLE PARK 3174  
 Burwood Association of Students Incorporated, Deakin University, 221 Burwood Highway, BURWOOD 3125  
 Burwood Publishing Pty Ltd, 21 Burwood Road, HAWTHORN 3122  
 Bushi Pty Ltd, 789 Springvale Road, MULGRAVE 3170

Business & Technical Comm Pty Ltd, 283 Auburn Road, HAWTHORN 3122  
Business Council of Australia, 15th Flr, 10 Queens Road, MELBOURNE 3004  
Business Opportunities Magazine, Lvl 3 141 Osborne Street, SOUTH YARRA 3141

Centre for Design at RMIT, GPO Box 2076V, MELBOURNE 3001  
Church Press Ltd, St Agnes Parish Centre, 112 Booran Road, GLENHUNTLY 3163  
Claredale Distributors, 274 Lonsdale Street, MELBOURNE 3000  
Commodore Press Pty Ltd, 58 John Street, LILYDALE 3140  
Communications Engineer, 18 Salmon St, PORT MELBOURNE 3207  
Contract Advertising Sales, 628 Nepean Hwy, CARRUM 3197  
Corporate Adviser Pty Ltd, 12th Floor, 227 Collins Street, MELBOURNE 3000  
Corporate Kudos Pty Ltd, 44 Burwood Road, HAWTHORN 3122  
Counterpoint, 18 Salmon Street, PORT MELBOURNE 3207  
Craftsman Publishing, 125 Highbury Road, BURWOOD 3125  
Craft Update Promotions, 6 Laurel Court, OLINDA 3788

DBG Group, 3 Plane-Tree Drive, Redwood Garden, DINGLEY 3172  
DDM Media Group, 117 Church Street, HAWTHORN 3122  
Design Editorial Pty Ltd, 11 School Road, FERNY CREEK 3786  
Designer Publications Pty Ltd, 85 King William Street, FITZROY 3065  
Diverse Media Group, 511 Queensberry Street, NORTH MELBOURNE 3051  
Doxa, 2nd Flr, 62-64 Little La Trobe Street, MELBOURNE 3000  
Dymocks Prahran, Prahran Central Shopping Centre, PRAHRAN 3181

Earth Garden, RMB 427, TRENTHAM 3458  
Editions Review, PO Box 274, FITZROY 3065  
Editors Desk Pty Ltd, 1st Floor, 100 Mt Eliza Way, MT ELIZA 3930  
Education Alternatives, PO Box 365, CAULFIELD EAST 3145  
Education Australia Magazine, 117 Church Street, HAWTHORN 3122  
Ellikon Printers, 316-328 Napier Street, FITZROY 3065  
Employ Working Effectively (Inc), 1st Flr, 67 Inkerman Street, ST KILDA 3182  
Eryl Morgan Publications Pty Ltd, 302 High Street, NORTHCOTE 3070  
Express Media Power Workshops Inc, 1st Floor, 156 George Street, FITZROY 3065

Fatal Visions Pty Ltd, PO Box 133, NORTHCOTE 3070  
Feathers & Fur, 105 Aquarius Drive, FRANKSTON 3199  
Fitchmere Pty Ltd, PO Box 286, BELMONT 3216  
Footwear News Australia Pty Ltd, Suite 7, 70 Kingsway, GLEN WAVERLEY 3150  
Forte Publishing Pty Ltd, 105 Skene Street Newtown, GEELONG 3220  
Franc Aust Media Services Pty Ltd, 20 Ashburton Drive, MITCHAM 3132  
Freedom Publishing Co, 582 Queensberry Street, NORTH MELBOURNE 3051  
Free Surf Publishing Pty Ltd, 28c The Esplanade, TORQUAY 3228  
Furnishing Publications Pty Ltd, 5 Faigh Street, MULGRAVE 3170

Geoff Phillips & Associates Pty Ltd, 67-69 Zig Zag Road, ELTHAM 3095  
Gippsland FM, 27 Ann Street, MORWELL 3840  
Glenvale Publications, 4 Palmer Court, MT WAVERLEY 3149  
Gold Group Asia/Pacific Pty Ltd, 394A Victoria Street, RICHMOND NORTH 3121  
Graffiti Publications Pty Ltd, 69 Forest Street, CASTLEMAINE 3450

Grow, c/- 1/307 Wattletree Road, MALVERN 3144  
 GUI Computing Pty Ltd, 26 Cato Street, EAST HAWTHORN 3119  
 Guntar Graphics, 79 Curzon Street, NORTH MELBOURNE 3051

Hallmark Editions, Suite 1, 350 Hampton Street, HAMPTON 3188  
 Hardware Publications, 4 Palmer Court, MOUNT WAVERLEY 3150  
 Holstein Friesian Assoc of Australia, Private Bag 14, FLEMINGTON 3031

Indigo Arch Pty Ltd, 1/307 Wattletree Road, EAST MALVERN 3145  
 Information Australia Group, 45 Flinders Lane, MELBOURNE 3000  
 Institute of Public Affairs Ltd, Ground Flr, 128-136 Jolimont Road, JOLIMONT 3002  
 Institution of Engineering & Mining Surveyors Australia, 725 South Road, MOORABBIN 3189

JW & BJ Whitten, 11 Chisholm Street, WANGARATTA 3677  
 Jesuit Publications, 300 Victoria Street, RICHMOND 3121  
 Jetsetters of Australia Pty Ltd, 465 Balcombe Road, BEAUMARIS 3193  
 Jolbar Pty Ltd, 16-18 Napier Street, ST ARNAUD 3478

Kairos, 18 Brunswick Street, FITZROY 3065  
 Katarakis Pty Ltd, 4 Brinsley Road, CAMBERWELL 3120

Law Institute of Victoria, 470 Bourke Street, MELBOURNE 3000  
 Lexisaurus Productions, PO Box 6227, ST KILDA 3004

Mansfield Newspapers Pty Ltd, 96 High Street, MANSFIELD 3722  
 Master Builders Association of Victoria, 332 Albert Street, EAST MELBOURNE 3002  
 Mastermind Media Pty Ltd, 1st Floor, 6-10 Chapel Street, PRAHRAN 3181  
 Media Asia Pacific Ltd, Suite 202 Block Arcade, Collins Street, MELBOURNE 3000  
 Melbourne Publishing Co Pty Ltd, Suite 112, 282-284 Collins Street, MELBOURNE 3000  
 Montesano, Level 1, 113A High Street, PRESTON 3072  
 Mount Eagle Publications, 9 Albert Jones Court, EAGLEMONT 3084  
 Mount Glenvale Pty Ltd, 4 Palmer Court, MT WAVERLEY 3149  
 MTV Publishing Ltd, 116 Argyle Street, FITZROY 3065  
 Museum Australia, 20 Queens Parade, NORTH FITZROY 3068

National Book Council, Suite 3/21 Drummond Place, CARLTON 3053  
 National Geographic Society, c/- Brown Orr Fletcher Burrows, 419 Malvern Road, SOUTH YARRA 3141  
 National Insurance Brokers Association, 2 Jocelyn Court, DONCASTER EAST 3109  
 National Trust of Australia (Victoria), Tasma Terrace, 4 Parliament Place, EAST MELBOURNE 3002  
 Newsline, Level 5 Mercantile Mutual Bldg, 486 Albert Street, EAST MELBOURNE 3002  
 Niche Media Pty Ltd, 165 Fitzroy Street, ST KILDA 3182  
 Nicholson Media Group Pty Ltd, Level 1, 457 Malvern Road, SOUTH YARRA 3141  
 Norley Pty Ltd, 3 Lygon Street, SOUTH CAULFIELD 3162  
 Nursery Industry Association of Australia Ltd, 4 Palmer Court, MOUNT WAVERLEY 3149

Office of Training & Further Education, Rialto Sth Tower, 525 Collins Street, MELBOURNE 3000  
One on One Pty Ltd, Level 3, 15-31 Pelham Street, CARLTON 3053  
Oz Media Pty Ltd, 85 King William Street, FITZROY 3065

Pascoe Publishing Pty Ltd, PO Box 53, APPOLLO BAY 3193  
Patchell Publishing Pty Ltd, 69-71 Rosstown Road, CARNEGIE 3163  
People's Equality Network, PO Box 777, KEW 3101  
Phoenix Magazines Pty Ltd, Level 1, 34 Eastern Rd, SOUTH MELBOURNE 3205  
Powson Pty Ltd, Suite 1, 254 Dandenong Road, EAST ST KILDA 3182  
Premonitions Pty Ltd, 18-20 Main Street, MONBULK 3793  
Prime Advertising Developments, 81-87 King William Street, FITZROY 3065  
Print Matters, 50 Hanmer Street, WILLIAMSTOWN 3016  
Pro-Fam Australia Inc, 60 Carroll Road, SOUTH OAKLEIGH 3167  
Professional Information Pty Ltd, 196 Drummond Street, CARLTON 3053

Quadrant Magazine Co Ltd, 46 George Street, FITZROY 3065

Real Estate Institute of Victoria Ltd, PO Box 443, CAMBERWELL 3120  
Red Rocks Publications Pty Ltd, 220 Clarendon Street, SOUTH MELBOURNE 3205  
Rental Industry Publications Pty Ltd, 10 Manningham Road, BULLEEN 3105  
Research Publications Pty Ltd, 27A Boronia Road, VERMONT 3133  
RMIT Student Union Council, 360 Swanston Street, MELBOURNE 3000  
Rob Furst Promotion Pty Ltd, 3-5 Jessie Street, RICHMOND 3121  
Ropomond Productions Pty Ltd, Unit 11/67-75 Garden Drive, TULLAMARINE 3043  
Royal Australian Planning Institute, Rapi House, 615 Burwood Road, HAWTHORN 3122  
Royal Historical Society of Victoria Inc, Royal Mint, 280 William Street, MELBOURNE 3000  
Russell Andrews & Associates Pty Ltd, Faderson Lane, MANDURANG 3551

Sakila Pty Ltd, PO Box 274, ST KILDA 3181  
Scota Pty Ltd, Ste 509/510 Flinders House, 198 Flinders Lane, MELBOURNE 3000  
Shepparton Printing Service, PO Box 1884, SHEPPARTON 3630  
Science Teachers' Association of Victoria, 217 Church Street, RICHMOND 3121  
Signs Publishing Co, 125-141 Main Street, WARBURTON 3799  
Sisters in Crime, GPO Box 5319BB, MELBOURNE 3011  
Skyline Press Pty Ltd, 59 Skyline Road, KANGAROO GOUND 3097  
Society of Automotive Engineers Australasia, 55 Flemington Road, NORTH MELBOURNE 3051  
Something of Value Pty Ltd, 15 Landau Drive, WARRANWOOD 3134  
Square One Publications Ltd, 300 Albert Street, EAST MELBOURNE 3002

Tattoos DownUnder, PO Box 59, PAKENHAM 3810  
Technosocial Research Services, GPO Box 1200L, MELBOURNE 3001  
Telling Words Co Pty Ltd, 161 Barkly Avenue, RICHMOND 3121  
The Australian Chamber of Manufactures, 380 St Kilda Road, MELBOURNE 3004  
The Australian Human Resources Institute, PO Box 114, MALVERN 3144  
The Dingoes Refrain Pty Ltd, 84 Burwood Road, HAWTHORN 3122  
The Editors Desk Pty Ltd, PO Box 546, MT ELIZA 3930

The Horse Magazine Pty Ltd, Old Gembrook Road, UPPER PAKENHAM 3810  
The Professional Reading Guide, "The Lagoon", 395 Shell Road, POINT LONSDALE 3225  
The Real Estate Institute of Victoria Ltd, PO Box 443, CAMBERWELL 3120  
The Royal Australian Planning Institute Inc, Rapi House, 615 Burwood Road, HAWTHORN 3122  
The Society of Automotive Engineers-A'asia, 55 Flemington Road, NORTH MELBOURNE 3051  
The Technical Assn of the Aust & NZ Pulp & Paper, Suite 47, Level 1 Carlton Clocktower 255 Drummond Street, CARLTON 3053  
The Twenty-First Century Publishing Co, PO Box 1025, IVANHOE 3079  
The Whole Person, 27a Kardinia Crescent, WARRANWOOD 3134  
Thorburn Independent News, Lot 15 Byrne Court, MILDURA 3500  
Timbertrader News Pty Ltd, 4 Brinsley Road, CAMBERWELL 3120  
TMP Group Australia Pty Ltd, 3 Plane-Tree Drive Redtree Garden, DINGLEY 3172  
Trade Promotions, 42 Grenfell Road, MT WAVERLEY 3149

Vanguard, PO Box 196, FITZROY 3065  
Victorian Automobile Chamber of Commerce, 464 St Kilda Road, MELBOURNE 3004  
Victorian Council of School Organisations Inc, Cnr Buckingham & Davison Streets, RICHMOND 3121  
Victorian Golf Association, 15 Bardolph Street, BURWOOD 3125  
Victorian National Parks Association Inc, 10 Parliament Place, EAST MELBOURNE 3002

Wilderness Society, 59 Hardware Street, MELBOURNE 3000  
Wild Publications Pty Ltd, 389 Malvern Road, SOUTH YARRA 3141  
Wireless Institute of Australia, 3/105 Hawthorn Road, CAULFIELD 3161  
Word Warehouse, PO Box 170, FLINDERS 3929  
World Vision, 6th Flr, 1 Vision Drive, BURWOOD EAST 3151

### **Australian Capital Territory**

Australian Hospital Association, 42 Thesiger Court, DEAKIN 2600  
Australian Medical Association, 42 Macquarie Street, BARTON 2600

Grains Research & Development Corporation, 14-16 Brisbane Avenue, CANBERRA 2600

Institute of Industrial Engineers, 1E Australia, 11 National Circuit, BARTON 2600

Law Council of Australia, GPO 1989, CANBERRA 2601

Pharmacy Guild of Australia, 14 Thesiger Court, DEAKIN 2600  
Pharmaceutical Society of Australia, 44 Thesiger Court, CURTIN ACT 2605

Raider Magazine, 10/3 Barrier Street, FYSHWICK 2609  
Real Estate Institute of Australia, 16 Thesiger Court, DEAKIN 2600  
Royal Australian Institute of Parks and Recreation, Buildidng 3, Exhibition Park, Flemington Road, MITCHELL 2911  
Royal College of Nursing Australia, 1 Napier Close, DEAKIN 2600  
Royal Federation of Aero Clubs, Unit 33 Fyshwick Plaza, 59 Wollongong Street, FYSHWICK 2609

Steelflex Pty Ltd, PO Box E160, QUEEN VICTORIA TERRACE 2600

The Pharmacy Guild of Australia, PO Box 9036, DEAKIN 2600

## **Queensland**

Alpha Connectin, 14 Jilloong Street, MANSFIELD 4122

Australian Inst of Medical Scientists, Level 2/31 Sherwood Road, TOOWONG 4066

Australian Medical Association, Qld Branch, 88 L'Strange Terrace, KELVIN GROVE 4059

Australian Sun & Health, 14 Oberon Way, OXENFORD 4210

Berekua Pty Ltd, PO Box 766, TOOWOOMBA 4350

Brother Sister Enterprises Pty Ltd, 210 Constance Street, FORTITUDE VALLEY 4006

Business Newspapers Australia Ltd, Level 2, 139 Leichhardt Street, SPRING HILL 4000

Canegrowers, 6th floor Canegrowers Building, 190 Edward Street, BRISBANE 4000

Coastline Newspapers Pty Ltd, 32 Takalvan Street, BUNDABERG 4670

Coasters Publications, PO Box 1, MIAMI 4220

Collins Speciality Media, 38/1st floor Cleveland House, 120 Bloomfield Street, CLEVELAND 4163

Daryl J Kinloch, Cnr Ocean St & Duporth Ave, MAROOCHYDORE 4558

Direct Specialist Publishing, 3 Scheske Street, TOOWOOMBA 4350

Donnelly Money Management Pty Ltd, Level 1, 49 Sherwood Road, TOOWONG 4066

Dove Rural Media Pty Ltd, 33 Duggett Street, NEWSTEAD 4006

Downs Media Services, 16 Clifford Street, TOOWOOMBA 4350

Driving Force Media, PO Box 1328, FORTITUDE VALLEY 4006

Echo Magazines, 47 Jasmine Crescent, SHAILER PARK 4128

Fernfawn Publications Pty Ltd, PO Box 1010, KENMORE 4069

Fisherman Publications, 61 Worongary Road, MUDGEERABA 4213

Fitlink, PO Box 1134, COORPAROO 4151

Forest Products Promotions, PO Box 552, FORTITUDE VALLEY 4006

Free Press Pty Ltd, 46 Florence Street, CAIRNS 4870

Graphic Publishing, Graphics House, Sesame Street, SLACKS CREEK 4127

Great Barrier Reef Newspaper Group, 122 Wood Street, MACKAY 4740

Hamer Industrial Pty Ltd, 5/35 Moorak Street, TARINGA 4068

Hardware Publications, Level 1/512 South Pine Road, EVERTON PARK 4053

Horse World Publications, 44 Balaclava Street, WOOLLONGABBA 4102

Johnson Robert Publishing, 5 Luroine Drive, PROSERPINE 4800

Kemphurst Pty Ltd, 34 Cleveland Street, STONES CORNER 4120

Magazine Publishing Co, 4 Wandoo Street, FORTITUDE VALLEY 4006

Magpies Information Services, 10 Racecourse Road, ASCOTT 4007

Marabridge Pty Ltd, 50 Commercial Road, NEWSTEAD 4006



Media Link International, 349 Coronation Drive, MILTON 4064  
Morrison Media Services, Cnr Gardenia Grove & Lemana Lane, NORTH BURLEIGH 4220  
Motor Trades Association of Queensland, 11-15 Buchanan Street, WEST END 4101

Noosa Blue Publishing Corp, 12 Thomas Street, NOOSAVILLE 4566  
North Australian Publishing Co Pty Ltd, Rm 212 Trustee House, 440 Flinders Street,  
TOWNSVILLE 4810  
North Queensland Tourist Publications Pty Ltd, 446 Flinders Street, TOWNSVILLE 4810

Ocean Sky Publishing, Ste 13 Tedder Terraces, 26-30 Tedder Avenue, MAIN BEACH 4215

Pegasus Networks, 1st Flr Oxley House, Donkin Street, WEST END 4101  
Peter Buffey Media, PO Box 6337, TOOWOOMBA WEST 4350  
Prestige Publications, 44 Balaclava Street, WOOLLOONGABBA 4102  
Publishing Services Australia Pty Ltd, 204 St Paul's Terrace, SPRING HILL 4000  
Pyoquip Pty Ltd, PO Box 30, MAPLETON 4560

Queensland Chamber of Commerce & Industry, 375 Wickham Terrace, BRISBANE 4000  
Queensland Dairyfarmers Organisation, 183 North Quay, BRISBANE 4003  
Queensland Fruit & Vegetable Growers, Brisbane Market , Sherwood Road, ROCKLEA  
4106  
Queensland Law Society Inc., 179 Ann Street, BRISBANE 4001  
Queensland Master Builders Association, 417 Wickham Terrace, BRISBANE 4000  
Queensland Media Consultants, PO Box 6822, GOLD COAST MAIL CENTRE 4217  
Queensland Property Report, PO Box 6660, BUNDALL  
GOLD COAST MAIL CENTRE 4217

Real Estate Insitute of Queensland, Cnr Deshon Street & Turbo Drive, COORPAROO 4151

Social Alternatives Collective, Government Department, University of Queensland,  
Queensland 4072

Talkedge Pty Ltd t/a Hervey Bay Newspapers, 29 Main Street, Pialba, HERVEY BAY 4655  
The Christian News, 210 Queen Street, BRISBANE 4000  
The Communications Organisation Pty Ltd, Weka Weka Lot 1 Springbrook Road,  
MUDGEERABA 4213  
The Gemmological Association of Australia, PO Box 477, ALBANY CREEK 4035  
The Retailer's Digest Pty Ltd, 4 Norwich Centre, Crigo Court, BUNDALL 4217  
Timber Research & Development Advisory Council, PO Box 2014, FORTITUDE VALLEY  
4006  
Town & Country Property Sales Pty Ltd, 344 Melton Road, NORTHGATE 4013  
Tyman & Associates Pty Ltd, 17 Denham Terrace, WELLERS HILL 4121

United Graziers Association of Queensland, PO Box 167, BRISBANE ROMA STREET  
4003

## **South Australia**

Ability Network, GPO Box 909, ADELAIDE 5001

Adelaide Gay Times, 55 Halifax Street, ADELAIDE 5000  
Adelaide Review P/L, 1 Dequette Terrace, KENT TOWN 5067  
Australian Shooters' Journal, PO Box 2066, KENT TOWN 5071

Boylen Publishing & Public Relations, 75 Fullarton Road, KENT TOWN 5067

Combined Industry P/L, 432 Churchill Road, KILBURN 5084

House of Tabor, 7 Lynton Avenue, PLYMPTON 5038

Motor Trade Association, 50-51 Greenhill Road, WAYVILLE 5034

Rip It Up, 265 Angas Street, ADELAIDE 5000  
Ryan Publications, 95 Currie Street, ADELAIDE 5000

SA Breeders, Owners, Trainers and Reinspersons Assoc Inc, 10 Banksia Crescent,  
PARAFIELD GARDENS 5107  
SA Canine Associatin Inc, Cromwell Rd, KELBURN 5084  
SA Real Estate Press Pty Ltd, 3326 The Parade, KENSINGTON 5065  
Sporting Shooters Association of Australia Inc, 128 Glen Osmond Road, PARKSIDE 5063

The Golden Age (Aust) Pty Ltd, PO Box 146, HIGHBURY 5089

Winetitles, 2 Wilford Avenue, UNDERDALE 5032  
Workers Weekly Herald P/L, 11-16 South Terrace, ADELAIDE 5000

### **West Australia**

Campaign Brief Pty Ltd, 99 Outram Street, WEST PERTH 6005  
Columbia Press Pty Ltd, 1 Walters Drive, Herdsman Business Park, OSBORNE PARK 6017

Enterprise Market Media, PO Box 363, APPECROSS 6153

Impact Publications, PO Box 1035, WEST PERTH 6005

Master Painters, Decorators & Signwriters Ass, PO Box 126, MARYLANDS 6051

News Illustrated Pty Ltd, 26 John Street, NORTHBRIDGE 6003

The Record, PO Box 50, NORTHBRIDGE 6865  
The Royal Automobile Club of WA (Inc), GPO Box C140, PERTH 6000

Victory Press Pty Ltd, PO Box 565, VICTORIA PARK 6100

### **Tasmania**

Island Magazine, PO Box 207, SANDY BAY 7005

Leatherwood Publishing Pty Ltd, Summerhill Farm, NUBEENA 7184

Public Relations Institute of Aust (Tasmania), GPO Box 163, HOBART 7001

RE Limb & Associates, PO Box 18, ROSNY PARK 7018

Royal Automobile Club of Tasmania Pty Ltd, Cnr Patrick & Murray Streets, HOBART 7000

The Royal Automobile Club of Tasmania Pty Ltd, GPO Box 1292N, HOBART 7000

Turtle Press Pty Ltd, PO Box 279, SANDY BAY 7005

Water Polo Publications, 4 Paroa Court, SANDFORD 7020

**DECLARATION - AUSTRALIAN CAPITAL TERRITORY AND NORTHERN TERRITORY**

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

*Workplace Relations Act 1996*  
s.141 application for common rule declaration

**Media, Entertainment and Arts Alliance**  
(C No. 90310 of 1997)

**JOURNALISTS (SPECIALIST PUBLICATIONS) AWARD 1997**  
(ODN C No. 20154 of 1996)  
[Print P4088 [J0396]]

Various employees

Commonwealth employment

COMMISSIONER CARGILL

SYDNEY 3 NOVEMBER 1997

*Award declared common rule in the Australian Capital Territory and the Northern Territory*

**DECLARATION**

[Common rule declared by Print P6418 from 28Oct97]

1. That the whole of the terms of the Journalists (Specialist Publications) Award 1997, including variations thereto, for the employment of staff in the newspaper and journal industry of journalism in its literary, artistic and photographic branches and/or the gathering, writing or preparation of news matter or news commentaries, gathered, written or prepared. This common rule shall be binding on all employers in the said industry in respect of the employment by them of employees in the classifications for which this provision is made in the said Award and shall be binding on all such employees.
2. That this declaration shall not apply to the Australian Government in respect of employees under the Public Service Act 1922 or the Australian Capital Territory Government in respect of staff covered by the Journalists (Australian Capital Territory Government Departments and Instrumentalities) Award 1996. [J0345].
3. That this declaration shall not apply to any employee employed under the Northern Territory Public Sector Employment and Management Act 1993.
4. That the foregoing declaration shall operate from 28 October 1997.

## DECLARATION - VICTORIA

[Common rule declared by [PR953790](#) from 01Jan05]

Further to the decision issued by the Commission on 29 November 2004 [[PR953787](#)] and pursuant to ss. 141 and 493A of the *Workplace Relations Act 1996* (the Act), the Commission makes the following declaration for a common rule award:

1. In this Declaration:
  - 1.1 **the award** means the Journalists (Specialist Publications) Award 1999, as varied from time to time;
  - 1.2 **employees** means employees in the industry who perform work of a kind that is covered by the award;
  - 1.3 **employers** means employers who employ employees;
  - 1.4 **the industry** means the industries and callings of all work to be done by employees in any branch of writing or drawing or photographic work for the press.
2. That save for and subject to the matters referred to in clauses 4 to 10 below, the whole of the terms of the award, as varied from time to time, except those specified in clause 3 below, shall be:
  - 2.1 a common rule for the industry in Victoria and known as the Journalists (Specialist Publications) Victorian Common Rule Declaration 2005;
  - 2.2 binding on all employers in respect of the employment by them of employees;
  - 2.3 binding on all employees; and
  - 2.4 binding on the Media, Entertainment and Arts Alliance and the registered organisations respondent to the award.
3. The following clauses of the award are not included in the Journalists (Specialist Publications) Victorian Common Rule Declaration 2005:
  - 3.1 clause 4 - Date of operation and term of award; and
  - 3.2 clause 5 - Scope and parties bound.
4. Subject to 4.1 to 4.5 below, all provisions in the Journalists (Specialist Publications) Victorian Common Rule Declaration 2005 are to operate from 1 January 2005.
  - 4.1 With respect to annual leave, only periods of annual leave commencing on or after 31 January 2005 attract leave loading.
  - 4.2 With respect to redundancy payments for employees of employers who have fewer than 15 employees, only service on or after 1 January 2005 is to be taken into account for the purpose of calculating **service**.

- 4.3** With respect to redundancy payments for employees of employers who have 15 employees or more, only service on or after 1 January 2004 is to be taken into account for the purpose of calculating **service**. [Note: the agreement in respect of this issue is without prejudice to the position a party may put in roping-in proceedings.]
- 4.4** Any accident make-up pay clause is to apply in relation to any injury on or after 3 August 2004.
- 4.5** The wages clauses (including all allowances and penalty payments) are to commence operation from the first pay period on or after Monday, 3 January 2005 provided that in all cases the wages clauses commence operation no later than 5 January 2005.
- 5.** The Journalists (Specialist Publications) Common Rule Declaration 2005 shall not apply to:
- 5.1** employees employed on newspapers; and
- 5.2** employees covered by any other award or certified or enterprise flexibility agreement in force from time to time; and
- 5.3** no employer who employs more than twenty full-time employees bound by this award shall be subject to this award and this award shall not apply to the employees of any such employer.
- 6.** This declaration shall not apply to a person with a disability who is eligible for a Disability Support Pension and who is employed by a supported employment service that receives funding under the *Disability Services Act 1986* to provide support for that person. [See Note 1 below].
- 7.** An employer who is making superannuation contributions into a complying superannuation fund, within the meaning of the *Superannuation Industry (Supervision) Act 1993* (Cth), on behalf of an employee covered by this declaration, prior to the date of effect of this declaration is exempt from any provision in the award which specifies the fund or funds into which superannuation contributions are to be paid. [See Note 2 below].
- 8.** In the event of a dispute about the entitlement of an employer to set-off entitlements and benefits provided under a contract of employment made prior to the date of this declaration against entitlements and benefits required to be provided under the Journalists (Specialist Publications) Victorian Common Rule Declaration 2005, the matter may be referred to a Board of Reference, consisting of a member of the Commission, which shall determine whether or not such a set-off should be permitted having regard to what is fair and equitable in all the circumstances of the case, without regard to technicalities and legal forms.
- 8.1** An appeal lies from a decision of a Board of Reference to a Full Bench of the Commission.
- 8.2** This clause shall apply for a period of twelve months from the commencement date of the Journalists (Specialist Publications) Victorian Common Rule Declaration 2005.

- 8.3** Any registered organisation bound by the terms of the Journalists (Specialist Publications) Victorian Common Rule Declaration 2005 shall be notified of the time and date of hearing in relation to any application made pursuant to this provision.
- 9.** Nothing in this declaration reduces or in any way detracts from any accrued rights to any forms of leave including sick leave, annual leave, long service leave or parental leave to which employees or any of them have become entitled by accrual or otherwise prior to the commencement date in clause 10 below.
- 10.** This declaration shall be an award of the Commission, shall come into force on 1 January 2005 and shall remain in force for a period of three months and thereafter in accordance with the Act. [See Note 3 below].

Note 1

1. Disability Support Pension means the Commonwealth pension scheme to provide income security for persons with a disability as provided for under the Social Security Act 1991 (Cth), as amended from time to time, or any successor to that scheme.
2. The intention of this provision is limited to preventing the award from applying to sheltered workshops (i.e. supported employment services) - it does not prevent the award from applying to employees with disabilities in open employment.
3. Leave is reserved for any party to have this issue reconsidered in the light of any developments in the national process which is currently considering workplace relations issues for sheltered workshops. This national process includes the Disability Sector National Industry Consultative Council and any related applications that seek award coverage for sheltered workshops.

Note 2

1. The purpose of the exception above is to maintain the status quo in respect of employers who, as at the date of effect of the common rule declaration, are making superannuation contributions into a complying superannuation fund. These employers will not be required to change their existing arrangements. Nor will there be any requirement for the existing arrangements to be the subject of an agreement between the employer and employees. For the avoidance of doubt, the exception continues to apply to employers who are making superannuation contributions to complying superannuation funds which are successor funds (as defined in Regulation 1.03 of the *Superannuation Industry (Supervision) Regulations 1994* (Cth), or as amended or replaced by other legislation) into which benefits are transferred, after the date of effect of the common rule declaration, in accordance with the *Superannuation Industry (Supervision) Act 1993* (Cth) and the Regulations thereunder. Further, "existing arrangements" includes the making of contributions to such funds.
2. The exception is in respect of current and future employees of the employers who are entitled to the benefit of the exemption.
3. The exception does not apply to new businesses which are established after the date on which the award is declared to have effect as a common rule.

4. The exception only applies to employers who are required to apply the terms of the award by virtue of the Common Rule declaration. It does not apply to employers who are named respondents to the award or who are parties bound by virtue of the membership of an employer organisation.
5. The exception applies subject to any Commonwealth legislation to the contrary.

Note 3

Subject to s.113 of the *Workplace Relations Act 1996* and any order of the Commission, an award dealing with particular matters continues in force until a new award is made dealing with the same matters (see s.148 of the *Workplace Relations Act 1996*).

\*\* end of text \*\*



IN THE AUSTRALIAN CONCILIATION AND ARBITRATION COMMISSION

*Conciliation and Arbitration Act 1904*

In the matter of an application by The Australian Journalists Association to vary the

**Journalists' (Metropolitan Daily Newspapers) Award 1982<sup>1</sup>**

in relation to exemptions from the award

(C No. 3292 of 1983)

And in the matter of a direction by the President pursuant to section 34 of the Act that the matter be dealt with by a Full Bench

MR JUSTICE ALLEY  
MR DEPUTY PRESIDENT KEOGH  
MR COMMISSIONER BAIN

MELBOURNE, 9 APRIL 1984

**DECISION**

This is an application by The Australian Journalists Association (the AJA) to vary the Journalists' (Metropolitan Daily Newspapers) Award 1982 (the award) by deleting therefrom the provisions for total exemption from the award. The grounds upon which the application is made are as follows:

- e*
1. To conform with Section 2 of the Conciliation and Arbitration Act 1904.
  2. To conform with Section 40(1)(c) of the Conciliation and Arbitration Act 1904.
  3. Any other grounds the Commission may deem proper."

*f* *The Award*

For the purposes of this application the relevant provisions of the award are clauses 3 — Scope and Parties Bound, and 4 — Exemptions from the Award. Clause 3 is in the following terms:

- g* "(a) Subject to the provisions of clause 4 hereof, this award shall be binding upon the employers named in the Schedule hereto and upon The Australian Journalists Association and its officers and members in the Commonwealth of Australia in respect of all work to be done by members of the said association (hereinafter called 'members') for the said employers (hereinafter called 'employers') in the various engagements in the industry of journalism in its literary, artistic, and photographic branches and in the gathering of writing or preparing news matters or news commentaries.
- h* (b) This award does not apply to the Editor-in-Chief, Editor, or the Chief of Staff of a daily newspaper."

It is apparent from this clause that the award applies only to members of the AJA engaged on journalistic work. It has no application to non-members or to persons engaged on work other than journalism such as administration.

- j* Clause 4 is an elaborate clause. It commences with the following words:  
"This award shall not apply to the undermentioned."

- k* Following this are a series of subclauses (a) to (n). Subclauses (a) to (m) inclusive set out the name of the respondent, its publications and the titles of the exempt positions. An example is subclause (b) which reads as follows:

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<sup>1</sup> Print F2514 [J009]; (1982) 283 CAR 231

“(b) John Fairfax & Sons Limited. a

- (i) Sydney Morning Herald: Photographic Manager, Associate Editor, News Editor, Deputy News Editor, Night News Editor, Chief Sub-Editor.
- (ii) The Financial Review: Associate Editor.
- (iii) The Sun: Assistant Editor — Production; Assistant Editor — News and Sport; Assistant Editor — Features; Chief Sub-Editor. b
- (iv) The Sun Herald: Editor, Assistant Editor.
- (v) The National Times: Editor.
- (vi) Any other associated publication: Editor.”

The total number of exemptions listed in these paragraphs is 97.

The final subclause (n) is in a different category. It reads as follows: c

“(n) A member whose minimum rate of payment per week is 15% or more in excess of the appropriate minimum rate of payment prescribed for Special A Grade by clause 8 — Minimum Rates of Payment, shall be exempted from the provisions of clause 24 — Calculation of Time Worked; clause 25 — Hours of Employment; clause 26 — Distant Engagements; clause 27 — Rosters; clause 28 — Overtime; clause 29 — Time Book; clause 30 — Duty Book and subclauses (d), (e) and (h) of clause 35 - Employment at Canberra; provided always that the member shall be given two clear days off duty or two clear nights off duty in each week in accordance with the provisions of subclauses (d) and (i) of clause 25 — Hours of Employment.” d

The AJA seeks the deletion of subclauses (a) to (m) inclusive, whilst retaining subclause (n) without any alteration. e

#### *History of Exemptions*

Exemptions from the operation of the award have a long history which was referred to in some detail by counsel for the AJA and also by counsel for the proprietors. In order to understand the present situation some reference to this history is necessary. f

The AJA was registered as an organization under the Act in 1911. At that time the Industrial Registrar with the consent of the parties inserted an exclusion from eligibility for membership of the positions of Editor-in-Chief and Chief of the general reporting staff permanently employed on each daily newspaper in capital cities. On 11 May 1917 Isaacs J gave a decision and made an award on a claim by the AJA.<sup>2</sup> At page 84 of his judgment his Honour referred to the exemptions in the AJA's rules as follows: g

“The claim itself excludes among others the editors-in-chief, and chiefs of staff of daily papers. The rules of the claimant organization exclude these officers from its membership and consequently no award can embrace them. The award can relate only to such journalists as are members of the organization, and the editor-in-chief, and the chief of staff are therefore necessarily excluded. It ought to be stated why they are excluded from membership of the organization. The first organized attempt to regulate conditions in this industry was in 1911, when an agreement was arrived at. . . But I may say that it was conceded by the employees from the first that the two officers mentioned namely the editor-in-chief, and the chief of staff, should be regarded as representing rather the interests of the employers than those of the employees, and so they were omitted from the agreements. This arrangement was preserved when the organization was formed and they remain outside now.” h

<sup>2</sup> (1917) 11 CAR 67 j

*a* His Honour dealt with a submission of the employer that leader writers, editors of weekly papers and sub-editors should be entirely excluded from the award. He refused this submission and commented as follows:

*b* "... Various reasons were advanced — such as confidence of the proprietors, independence of advice, and freedom in expressing as strongly as possible the views desired by the proprietors. I have weighed those reasons, and during the argument tentatively expressed my views with regard to them. Full consideration after carefully reading the contentions in type leaves my former impressions unaltered. Leader writers — the stronger case of the two taking editors of weekly papers and sub-editors as one for this purpose — are free to join the organization or not as they please. If they do not, the objections do not apply; if they do, it is because they feel no embarrassment in availing themselves of the right which the law gives them. Some are members now, and yet apparently perform their duty to the satisfaction of their employers without any strain upon their own conscience or any diminution of their efficiency; others prefer to remain outside the organization. Those who are in the claimant organization have joined in the claim.

*c* I see no valid ground for excluding them if I find their demands just. Weekly editors and sub-editors are an *a fortiori* case. I think they also should not be excluded."

*d* On 3 April 1925 the Industrial Registrar granted an application by the AJA to change its constitution by including within the class of eligibility for membership editors-in-chief and chiefs of staff of metropolitan daily newspapers. The matter was heard by Quick DP who upheld the appeal<sup>3</sup> thus continuing the exclusion of editors-in-chief and chiefs of staff. His Honour commented on the situation of leader writers, editors of weekly newspapers and sub-editors in the following passage at page 597:

*e* "In my opinion, however, the cases of leader writers, editors of weekly newspapers and sub-editors referred to by Mr Justice Isaacs cannot be placed on the same footing as editors-in-chief and chiefs of staff. True, they occupy confidential positions in the office, but they exercise no control over the appointment, promotion or dismissal of the staff as such as that exercised by editors-in-chief and chiefs of staff. So that the reasons for the inclusion of one group in the ranks of membership do not necessarily justify the inclusion of the other group."

*f* At page 603 his Honour comments on the employers' grounds of objection and observed as follows:

*g* "... probably the strongest are those based on the fact that the editors-in-chief and chiefs of staff occupy the position of direct representatives of the employers in the management of great literary undertakings; that they are superintendents, managers, overseers, administrators and officers having the power of appointment, promotion or dismissal of any member of the literary staff, and that men in that capacity and vested with such tremendous responsibilities should not be qualified to become members of a trade union which includes the employees over whom they have to exercise managerial supervision. It may be said that if qualified to join they would not be bound to join the association, but if they are qualified by law and refuse to join it would only lead to industrial suspicion and trouble."

*h* In expressing his conclusions his Honour made the following observations:

*j* "As it was conceded by the association in 1911 and not denied in 1917 that editors-in-chief and chiefs of staff should be regarded as representing the interests of the employers rather than the interests of employees, I see no change of circumstances altering that relationship of employer and employed at the present time justifying any change in the constitution. I cannot find any proof of any desire on the part of the present editors-in-chief and chiefs of staff to support the proposed amendment of the constitution. The application is absolutely promoted by the organization on behalf of journalists who may have some hopes or expectations of attaining these high positions

<sup>3</sup> (1925) 21 CAR 595

and who desire, should they succeed in their aspirations, to be allowed to continue as members of the association. They no doubt are quite confident that in such new capacities they would be quite able to do their duties satisfactorily uninfluenced by their membership or unbiased by feelings of comradeship. Many men of strength of mind and character would of course be able to stand the test. But that is not the question. The issue cannot be decided by the desires of employees apart from the interests and views of the employers. There is no force in the suggestion that future occupants of these high positions might want to continue their industrial association with their fellow journalists. It is not a question of what these gentlemen desire. It is what the situation of responsibility demands.”

Consent awards were made in 1929<sup>4</sup>, 1938<sup>5</sup>, 1945<sup>6</sup> and 1951.<sup>7</sup> Each of those awards provided for all employees to be classified into grades subject to certain specified exceptions. The exceptions had been gradually extended over the years until in the 1951 award there were fairly elaborate provisions which differed between some of the States. In respect of Victoria and New South Wales those exceptions were as follows:

- (1) On a morning or an evening paper: Editor-in-chief, assistant or deputy editor-in-chief, editor, chief of the general reporting staff, news editor carrying out the duties of the chief of the general reporting staff, and if an employer so desires, the news editor not carrying out the duties of chief of the general reporting staff, chief sub-editor: And on any associated paper published by the same employer: The editor.
- (2) Any other member the greater part of whose regular duties can be demonstrated to a Conciliation Commissioner to place him in a position in which he exercises executive and disciplinary authority substantially similar or superior to any person exempted under paragraph (1) hereof.”

In 1954 a dispute arising from logs served by the AJA and also by the proprietors came before Mr Commissioner Blackburn. In his decision<sup>8</sup> the Commissioner deals with exemptions from the award in a section commencing on page 704 and continuing until page 706. After referring to the fact that Editors-in-Chief and Chiefs of Staff have been excluded from the award ever since the first Isaacs award in 1917 the Commissioner made the following statement:

“The employers now seek exemption from the award of a number of other executive officers on the ground that they exercise such managerial functions as make it just that they should be excluded. Some argument took place before me as to who are at present excluded from the operation of the award. Without going at this stage at length into the reasons for the opinion which I have formed, I shall record that, in my opinion, the persons referred to and set out in sub-clause (d) of clause 6 of Division A. of the existing award were originally meant to be entirely excluded from the operation of the award. However, even if upon the strict interpretation of the award, I am wrong in this opinion, I shall exclude them expressly from the operation of the award for the future.”

Thus the Commissioner altered the form of the exclusion from an exception to the classification structure to a complete exemption from all portions of the award.

He then made some general observations including:

“... it is not customary in the same award to make provision for persons in the position of heads of departments or managers or controllers of business, or employees who in the full sense of the term have to represent the proprietor in disciplinary matters in a general way apart from an entirely sectional way and also the persons over whom such first-mentioned persons have control.”

<sup>4</sup> (1929) 27 CAR 1174

<sup>6</sup> No. 6090; (1945) 55 CAR 566

<sup>8</sup> Print A4390; (1955) 81 CAR 699

<sup>5</sup> (1938) 39 CAR 1068

<sup>7</sup> Print A2009; (1951) 70 CAR 778

a Then after quoting from several authorities he stated as follows:

“Whilst many of the cases dealt with by the Courts have been primarily concerned with the question of whether a person, such as is referred to in those cases, should belong to, or be compelled to belong to the same organisation as the persons over whom he exercises control, the underlying principle of those cases is that the Court has always been reluctant to include under the provisions of the same award the general employees and the employer’s representative such as the manager of his business or such other representative as really represents the employer and exercises disciplinary control on behalf of the employer over the general employees.”

b

He then dealt with the actual claim as to exemptions which were before him in the following manner:

c “I have not at the moment sufficient evidence before me to decide on each individual case in the list supplied by the proprietors. I will express the view that any employee to whom has been delegated as a regular part of his duties, responsibilities and duties substantially the same as were exercised by the Editor-in-Chief and/or Chief of Staff when the Association conceded that they should be excluded, should now be excluded. In expressing this view, I am influenced by the fact that the growth of journalism in the last 35 to 40 years has been such that I am convinced that many of the responsibilities and managerial duties formerly carried out by the Editor-in-Chief and Chief of Staff are now delegated to other employees. At the same time I am not necessarily prepared to exclude from the award on this ground an employee who may be placed in charge of a few employees in some particular department, but who is himself substantially under other control, nor a person who so acts occasionally, or even regularly for short periods, such as week-end, or once a year whilst relieving another employee on leave.”

d

In 1966 a Full Bench constituted pursuant to section 34 of the Act dealt with various portions of disputes between the AJA and the proprietors including claims as to exemptions. The proprietors sought an extension of the list of exempt provisions whilst the AJA sought to curtail it. The proprietors also sought an alteration to the general provision set out as paragraph 2 of the 1951 award in respect of the “greater part of whose regular duties”, whilst the AJA sought the deletion of such provision. In commenting on the situation in its decision<sup>9</sup> the Full Bench stated:

f

“For years certain executives have been exempted from awards and agreements and neither party seeks to change that general approach. The disagreement is only who should be exempted.

g

A complicating feature of the present situation is the relationship between award coverage and A.J.A. membership. Speaking generally an employee whose work is covered by this agreement is required to be a member of the A.J.A. but if he is exempt he is not so required. We recognise the significance of A.J.A. membership both to the A.J.A. and to the industry generally but we must balance this against the long recognised principle that some executives should not be covered by award.”

h

With one minor exception the Full Bench refused to extend the then present exemptions. However they adopted the present format of setting out in detail, newspaper by newspaper, the exempt positions. The “greater part of whose regular duties” provision was altered to read as follows:

j

“By agreement or order of the Commission, any other member the greater part of whose regular duties place him in a position in which he exercises executive and disciplinary authority substantially similar or superior to any person exempted in paragraph (i) hereof.”

k On 15 August 1974 Mr Commissioner Heagney gave a decision and made an order varying the award as to exemptions.<sup>10</sup> The proprietors claimed additional

<sup>9</sup> Print B3900; (1967) 120 CAR 177 at 179

<sup>10</sup> Print C3896; (1975) 170 CAR 165

exemptions and the AJA sought substantial deletions from the exemptions and also the deletion of “the greater part of whose regular duties” provision. It is apparent from the Commissioner’s decision that the AJA had announced its policy of resisting all exemptions and expressed its view that too many people had been exempted. After commenting on the evidence the Commissioner made the following statement at page 169:

“What the current application of the A.J.A. seeks to do is to virtually return to the situation that existed in 1911, at about the time it became a federally registered organisation. This, of course, completely disregards both agreements that have been entered into between the A.J.A. and the Proprietors over the years and also decisions of the Commission which include Full Bench decisions and it also disregards the changed character of the industry, particularly in relation to the growth of the Industry and the necessary changes in both production techniques and administration control, to meet the needs of both this growth and change, as well as the overall competition that the industry is subjected to and; in the light of all these circumstances, the general claim of the A.J.A. is refused and consideration will thus be given to each classification separately. To do otherwise, in my view, would require an overall review of the whole aspect of the award structure that currently regulates the industrial relations within the industry.”

The Commissioner expressed his conclusion in the following paragraph:

“Having considered the evidence and the submissions of the parties and also having regard for the history of this award and the general principles that have been applied in relation to exemptions, I take the view that the only proper approach is to look at the nature of the duties that are being performed, the size of the department or section over which control is administered, the number of staff over which control is exercised and the general nature of the overall authority that is vested in the position or positions that are sought to be exempted, together with the significance of the section or department to the organization concerned. Having regard to these factors I have decided to allow a number of exemptions that will be set out later in this decision.”

The Commissioner acceded to the AJA claim that subclause (n) — “the greater part of whose regular duties” provision should be deleted, and he made a number of alterations to the list of exemptions.

On 19 February 1976 Nationwide News Pty. Ltd. sought a variation of the award to add to the list of the exemptions the Associate Editor (Finance) of the Australian. On 26 July 1976 Staples J issued a decision<sup>11</sup> dismissing the application. By decision of 13 November 1976<sup>12</sup> a Full Bench consisting of Ludeke J, Gaudron J and Mr Commissioner Paine quashed the decision of Staples J and directed Ludeke J to hear and determine the application. On 7 March 1977 Ludeke J issued a decision<sup>13</sup> expressing the view that the employer had established that the position of Associate Editor (Finance) should be exempted from the award and granting the application.

In 1977 and 1982 a number of applications for exemptions have come before members of the Commission, and in each case the matter has been determined after a consideration of the evidence and the facts of each particular case. Examples of these matters may be found in decisions issued by Alley J<sup>14</sup> and Coleman C.<sup>15</sup>

<sup>11</sup> Print D347; (1976) 178 CAR 571

<sup>13</sup> Print D2326; (1977) 185 CAR 558

<sup>15</sup> Print E9225; (1982) 273 CAR 193

<sup>12</sup> Print D1785; (1976) 182 CAR 555

<sup>14</sup> Print D3660; (1977) 190 CAR 293 and  
Print D5836; (1978) 200 CAR 446

*The Evidence*

*a* The evidence on behalf of the AJA was given by its Federal President Mr J.L. Lawrence. In his evidence Mr Lawrence dealt at some length with the history of exemptions and the interpretations he claimed that employers have placed on exemptions. He also submitted reports from the various branches as to work  
*b* carried out by exempt officers. Mr Lawrence was subject to extensive cross-examination.

On behalf of the employers evidence was given by the following witnesses. Mr W. Hoey, Group Manager, Industrial (Personnel) and Editorial Manager of The Herald & Weekly Times Limited, Mr R.S.M. MacGeorge, Industrial Manager for  
*c* David Syme & Co. Ltd., Mr G.F. Ford, Editor-in-Chief of the Sydney Sun, Mr V.J. Carroll, Editor-in-Chief of the Sydney Morning Herald, Mr M.V. Suich, Chief Editorial Executive of John Fairfax & Sons Limited, and Mr B.M.J. Hogben, Group General Manager (Editorial) of News Limited. This evidence presented a full picture of work performed in daily newspaper offices in Melbourne and Sydney  
*d* with particular reference to the duties for exempt officers. Each of these witnesses was extensively cross-examined.

A number of exhibits were tendered, and special emphasis was laid by the AJA on exhibit S9 which reads as follows:

*"AJA UNDERTAKINGS*

- e* On the basis that exemptions (or some of them) are removed from the award:
1. The AJA would not *require* any person in a presently exempt position to join or remain in the AJA. However, present policies as to what work non-members should do will remain.
  2. The AJA would not discipline or direct persons in presently exempt positions  
*f* (who are AJA members) in matters concerning the engagement, disciplining or dismissal of other AJA members."

Against the strong objection of counsel for the proprietors we granted an application by the AJA that information as to the salaries of exempt personnel should be furnished to the Commission. This information was tendered in written  
*g* form by confidential memorandum C15. The basis on which this material was accepted is recorded at page 178 of the transcript as follows:

"We take the view that the actual salaries for the 97 exempt persons may be relevant in these proceedings. Accordingly we uphold Mr Shaw's request that details of those salaries be made available by the publishers. The AJA does not object to an order pursuant to section 186 of sub-section (3) that the evidence as to such salaries shall not be published. We make such an order forbidding publication of this evidence and in  
*h* addition we direct that the evidence be submitted in written form and be made available only to members of the bench and to those formally appearing for the parties, including Mr Shaw and Mr Swancott.

It is inherent in this direction that the material be restricted to the official representatives acting for the parties in these proceedings and must not be published to  
*j* any other person."

*The AJA's Case*

*k* The AJA presented three broad submissions as follows:

1. There is no warrant for any exemptions from awards for employees working in the profession of journalism except in relation to those positions which are expressly excluded from the AJA's eligibility rule, namely Editor-in-Chief, Chief of the general reporting staff, and Editor. a
2. The secondary and alternative submission was that the only exemptions which should be granted should be in respect of journalists who are truly part of management in the sense that, firstly they perform substantially the functions of the three positions excluded from the AJA rule, secondly such journalists should be those who exercise actual discipline, direction and control over other journalists including the right to make ultimate decisions to hire and fire, and thirdly it would not allow exemption for journalists who have as part of their total role merely administrative functions such as rostering, allocation of work, approval of expenses or the oversight of work of other journalists. b  
c
3. In addition to these two propositions the AJA seeks a declaration and decision that exemptions from awards if granted do not preclude membership in the AJA of those so exempted and that a decision of the Commission would not and could not discourage membership of the AJA on the part of senior or supervisory journalists. d

In dealing with the history of exemptions Mr Shaw for the AJA claimed that such history is patchy and displays a distinct absence of any real consideration of the appropriate principles. He claimed that the AJA's position is consistent with the approach of the Industrial Registrar in 1911 upon registration and with the judgment of Isaacs J in the first award for metropolitan daily journalists in 1917. He also submitted that it is in harmony with the observations of Sir John Quick in 1925 and that it is fully in line with the reasoning of Staples J in his decision in 1976. He submitted that the decisions of Commissioner Blackburn in 1955 and Commissioner Heagney in 1974 contain errors and departures from the pre-existent history and should not be followed. In Mr Shaw's submission the history shows that the whole matter calls for revision and reassessment by a Full Bench of the Commission. e  
f

In developing the first ground of the application Mr Shaw claimed that the employers' motive in seeking exemptions has been to positively discourage a defined class of employees that is senior journalists from joining an organization registered under the *Conciliation and Arbitration Act 1904* which they are lawfully entitled to join. In his submission this is contrary to the objects of the Act as set out in section 2(e) and runs counter to the policy of the Commission as expressed in preference cases pursuant to section 47 of the Act. In his submission it is not proper under the guise of variation to an award made pursuant to section 59 to exclude eligible people from union membership. As he put it "in other words the proprietors seek to achieve indirectly through the award what they were unable to achieve directly in 1911 by circumscribing the eligibility or constitutional rule of the AJA". He submitted that the traditional conflict of loyalties argument propounded by the employers and set forth in the evidence of the proprietors' witnesses fully indicates that the purpose of extending exemptions under the award is directed towards the question of union membership rather than award coverage. He submitted that the Commission should not and indeed jurisdictionally could not act so as to discourage people at any level from joining their relevant organisation. Furthermore, so he contended, to misapply or misunderstand the intention of the legislation is to fall into judicial error because a misinterpretation of a statute or a misunderstanding of statutory character would be an error of that kind. g  
h  
j  
k



*a* A further jurisdictional argument advanced by Mr Shaw revolved around the duty of the Commission to resolve disputes. Mr Shaw pointed out that the log giving rise to the disputes in respect of the current award made claims in respect of the journalists currently occupying exempt positions. Accordingly there is in existence an industrial dispute and the Commission has a mandatory duty to settle that dispute unless grounds for refraining from doing so are made out pursuant to *b* the provisions of section 41 of the Act. In his submission "to decline to include a person in an award is not in any meaningful sense or any legal sense to resolve the industrial dispute". The present proceedings amount to an industrial dispute as to award coverage of a class of person and there is a jurisdictional requirement to resolve the dispute rather than simply leaving intact the exemptions as they *c* presently exist. Mr Shaw also submitted that observations in some authorities that certain senior or supervisory people should not be covered by awards of the Commission are manifestly inadequate as statements of principle. In that regard the whole pattern of exemptions in journalists' awards has become anachronistic particularly in the light of increased trade union activity and coverage of white collar professional and supervisory employees. Mr Shaw then dealt with the *d* employer's evidence and submitted that it disclosed no cogent reason why any of the exempt positions should be excluded from the award and/or why the occupants of those positions should be discouraged by the Commission from being members of the AJA. In developing this he made a number of general points as follows:

- e* 1. There are examples of people who have stayed in the AJA after becoming exempt without the slightest suggestion of any difficulty or problem.
2. Industrial negotiations with the AJA are conducted on behalf of the proprietors at a level quite different from that of the exempt journalists.
- f* 3. Finance and Sporting Editors have administrative and other executive duties yet have never been considered appropriate for exemption.
4. The exempted journalist does not make ultimate decisions about hiring and firing. He may make recommendations but he is not the real decision maker. In any event the evidence discloses that dismissals are relatively rare and the *g* undertaking given in exhibit S9 of the freedom of AJA members to exercise disciplinary functions without apprehension about disciplinary proceedings within the AJA minimizes the force of the proprietors' arguments in relation to disciplinary matters.
5. Non exempt Sub-Editors and experienced reporters perform a managerial *h* function similar to those in the exempt categories in relation to tuition, guidance and direction of cadets or other junior journalists.
6. Generally speaking leaders or editorials are written by award covered AJA members and not by exempt personnel.
- j* 7. Non exempt journalists covered by the award and members of the AJA relieve in exempt positions.
8. Journalists move from exempt positions to non exempt positions.
9. AJA members are now involved and have been for many years in disciplinary relationships with other AJA members.

*k* Mr Shaw then submitted that an organisation with constitutional coverage of employees is entitled to an award for them prescribing terms and conditions of employment. Such an award provides positive protection for those employees in a

number of respects not only in relation to salaries. It was in this context that Mr Shaw sought and obtained the approval of the Commission to obtain details of salaries paid to the exempt officers. A number of points were also made in support of the submission that exemptions which have been granted have been too widespread to be justified on any principle. If exemptions are to be granted then the position which is excluded must be truly part of management and the occupant should effectively perform the functions of those positions which are excluded from the AJA eligibility rule. Mr Shaw submitted that many of the exempt posts even conceding much of the employer's case could not as a correct use of language be characterized as managerial. He criticised in particular positions which are classified as Deputy or Assistant positions. He also drew attention to what he claimed were a number of anomalies in the existing exemptions. If exemptions are to be retained then he submitted that strict guidelines should be formulated to curtail the existing extent of exemptions which could then be examined by a single member of the Commission in the light of those guidelines.

Mr Cullen QC who appeared for the proprietors submitted that no jurisdictional questions arise in relation to this matter. It is on its face an application to vary the award as to exemptions. Those opposing it are not asking that the Commission should refrain from proceeding with the matter and are not arguing the question of jurisdiction. Accordingly, so he submitted, section 41(1)(d) of the Act has no application to the present proceedings.

Mr Cullen stated that the application is "a fairly finely defined" one dealing with the deletion of clauses as to exemption from the award. It is not an application as to union coverage or union membership and the jurisdictional argument based on the objects and policy of the Act put by Mr Shaw cannot be sustained.

In Mr Cullen's submission the history of exemptions demonstrates a consistent and developing pattern whereby the Commission and its predecessor the Court has examined individual positions and determined whether the person in question really represented or was more representative of management than the union because of the possibility of conflict. Each case has been determined on the basis of whether the duties of the officer were primarily and substantially managerial rather than those of employees. In this regard he criticised the evidence of Mr Lawrence who in his submission adopted the simplistic approach that journalism is separate from management. He claimed that the evidence shows that newspapers would be unable to function if the senior editorial staff were unable to perform any journalistic duties. He relied heavily upon the evidence of the proprietors' witnesses as demonstrating the duties and problems of senior management and the difficulties involved if such management were required to perform their managerial duties and at the same time demonstrate their loyalty to the employee's organization the AJA.

In Mr Cullen's submission the union is motivated by its clear resistance to any journalistic work being carried out by anybody who is not a union member. Accordingly the actions and motives of the union in the present application support what amounts to compulsory unionism.

Mr Cullen claimed that the case has been brought by the AJA in a misdirected way as dealing with a question which is not before the Commission namely that of the closed shop situation for journalists. He stated that the simple issue is whether each of the exempt positions is properly executive management. He pointed out that no evidence was adduced by the AJA in respect of any of the exempt positions,

- a that there is no suggestion of any misuse or complaint or dispute between any of the exempt persons and the proprietors, and accordingly there should be no variation to the existing provisions. He stated that the type of senior editorial function which was carried out by a few people at the start of the century has grown to embrace a bigger executive group and they generally run as small groups with leaders in them to make the papers work in the peculiar way in which they operate. Accordingly it is
- b necessary to delegate to relatively junior people the full executive function of the company to ensure that there is no bottleneck or holdup that stops the papers getting on the street.

c *Conclusions*

- c By this application the AJA seeks a substantial alteration to the award by the removal of all exempt positions which have been inserted under a gradual process extending over a great number of years. In a number of cases these exemptions have been inserted by consent, and although the AJA has resisted the spread of
- d exemptions it has not until the present application asked the Commission to remove them *in toto*. Accordingly what the AJA seeks is a radical step which can only be taken on clear and convincing evidence.

- e We observe also that the application is with respect to award exemption. It is not, on its face, an application with respect to union membership or union preference. Accordingly many of the arguments and assertions made on behalf of the AJA and of the employers as to discouragement of unionism or compulsory unionism were misdirected.

- f However it is important for us to understand the underlying reasons for the conflict between the AJA and the proprietors in respect of this vexed question of award exemptions. From the evidence of Mr Lawrence it would appear that the fundamental objections of the AJA are firstly that exemptions almost inevitably result in resignations from the AJA and secondly that the proliferation of exemptions leads to more and more cases of exempt non-unionists doing journalistic work which is properly the province of AJA members.

- g The fundamental position of the proprietors is shortly set out in the statement which forms part of the evidence of Mr W. Hoey, Editorial Manager of The Herald and Weekly Times:

- h "I said in July 1974 that those occupying exempt positions in the company had supervisory functions and other responsibilities which required them to put first the interests of the company rather than the interests of The Australian Journalists Association.

To me, they clearly represented management in the detailed direction of journalists and need to be exempt from the positions of the award — and entitled to remain outside The Australian Journalists Association — if they were to be effective executives."

- i Further on Mr Hoey also stated:

"Increasingly, authority for control, discipline, assessment, promotion, appointment or termination of employment is in the hands of individual editors and their exempt fellow executives."

- k The interplay between managerial and journalistic functions was also illustrated by employer witnesses and this is typified by the following extract from the statement of Mr B. M. Hogben, Group General Manager Editorial News Limited:

- “4.4 Persons holding exempt positions have two interwoven roles — journalistic and managerial. *a*
- 4.5 In exercising their managerial function they use journalistic judgment and draw on their journalistic experience in assigning work to journalists under their control and in assessing the work produced by those journalists. As and when required they must use their journalistic skill to edit, to write headings and other material, to select pictures for publication, to draw layouts and to write articles.” *b*

Thus the fundamental conflict comes down, from the point of view of the proprietors, to the need for managerial and executive personnel to act independently in the interests of management and a clearly perceived freedom from interference or direction by the AJA. From the point of view of the AJA the problem is discouragement from membership of a class of employee that is eligible to belong to the union, and the increasing incidence of the performance of journalistic work by persons who are not members of the AJA. *c*

There is a substantial amount of emotion apparent in both attitudes. Carried to their extremes by either party that can only exacerbate an already delicate yet complex situation. *d*

The history of the exemptions establishes that the validity of the exclusion of Editors-in-Chief and Chiefs of Staff as representing the interests of the employers rather than the interests of the employees was recognised by Isaacs J in 1917 and confirmed by Quick DP in 1925. The parties, including the AJA, at least tacitly recognised, by the consent extension of the list of exempt officers between 1925 and 1950, that the managerial and executive class representing the interests of employers rather than those of employees extended beyond Editors-in-Chief and Chiefs of Staff. In 1967 a Full Bench of this Commission recognised that exemptions of certain executives had existed for years and that neither party then sought to change that approach. Even in the proceedings before Mr Commissioner Heagney in 1974 when exemptions was a bitterly contested issue, the AJA did not seek complete abandonment of the exemptions of all officers other than those excluded from the AJA's eligibility rule. *e*

In the light of this long history, there can be no justification for the total exclusion of exemptions unless there has been a significant change in circumstances or the basis on which exemptions have been determined has been conclusively proved to be wrong. *f*

We recognise the genuine concern of the AJA for preserving and protecting its membership and for ensuring, so far as possible, that journalistic work is performed by its members. However, its case has fallen short of establishing that the basis on which the Commission and its predecessor the Court has determined exemptions over the years is conclusively incorrect or that circumstances have so changed as to warrant the abolition of exemptions. *g*

No attempt was made by the AJA during the case to examine the validity of any of the individual 97 exemptions which now exist. In respect of its primary argument the AJA adopted an all or nothing approach. Accordingly there is no scope in these proceedings for this Bench to remove or otherwise alter any of the existing exemptions. The application must either be granted or refused in full. For the reasons which we have already advanced the application cannot succeed and accordingly it is refused. *h*

*i*

*k*

*The Alternative Submission*

- a* We now turn to consideration of the alternative submission by the AJA that we should formulate principles to direct and govern applications for exemptions, so that the only exemptions which should be granted from the award should be in respect of journalists who are truly part of management.
- b* The approach of the AJA in respect of this submission is that, in order to be truly part of management a person should be required to perform substantially the functions of one or more of the three positions excluded from the AJA eligibility rule and should also be required to exercise actual discipline, direction and control over journalists including the right to hire and fire.
- c* We consider this approach to be too narrow in that it assumes that a person can only be regarded as part of management if he exercises discipline, direction and control over the staff. Whether a position should be exempted could depend ultimately upon its occupant having the unfettered right to hire and fire. This runs counter to the modern organisation where delegation of authority in both a major and minor degree is generally accepted as a maxim of proper and efficient management. Such a test could for example, override the very real managerial importance of major responsibilities in areas of policy and administration.
- d* On the other hand, it can be argued that the absence of a hard and fast test such as the ultimate right to hire and fire may result in a situation where the proprietors could design their organisational structures and their delegations of authority so as to enhance their claims for additional exemptions. Whether this has ever occurred or could occur is a matter for examination in particular cases and would depend on the judgment of persons undertaking the examination and their perception of the nature of the delegated authority and whether or not the authority had been diluted by the extent of its fragmentation.
- e* We consider that there are dangers in attempting to lay down definitive rules against which every application for exemption should be judged. The most that can be done is the formulation of general guidelines as an aid to determining the fundamental question of whether the responsibilities of a position are of such a nature that the occupant is truly a direct and major part of management. With this in mind the following matters should be taken into account:
- f*
- g*
1. The status of the position, including:
    - (a) its place in the senior hierarchy of the organisation; and
    - (b) the significance of the sections or departments within which the position is situated.
  2. The nature of the position, including:
    - (a) the duties attached to the position;
    - (b) policy and/or administrative responsibilities;
    - (c) the extent of authority for control, direction and discipline of staff;
    - (d) the number of staff over whom authority is exercised; and
    - (e) the extent of ultimate decision-making.
  3. The incidence of the functions attached to the position, including:
    - (a) the degree to which policy and administrative matters and control and direction of staff predominate over any other functions;
- h*
- i*
- j*
- k*

- (b) the extent of journalistic functions involved in the position; and a
- (c) whether journalistic functions are substantially subordinate to managerial functions. b

It is well accepted that management responsibilities can range from the smallest to the largest and, in our view, a position should only qualify for exemption if it is shown conclusively that its occupant is substantially occupied on a day to day basis with top level management functions and consequently is severely limited in any writing for publication. As a general rule we consider it undesirable that positions where the occupants regularly perform journalistic assignments such as feature articles should be exempted from the operation of the award. We recognise also that the AJA has a genuine and legitimate concern in avoiding the widespread performance of journalistic work by non members of the AJA, and that this is a factor which should be taken into account in determining whether a position should be exempt. c

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*Membership of the AJA* d

We are also asked to make a declaration and decision that exemptions from awards do not preclude membership in the AJA of those so exempted. As we have previously stated this application is concerned with exemptions from the award and much of the argument by both the AJA and the proprietors on the issue of union membership was misdirected. Clearly every person who performs journalistic work is eligible for membership of the AJA unless he falls within the category of those excluded by reason of clause 2(c) of the AJA's constitution. For the purposes of these proceedings those exclusions are limited to the Editor-in-Chief and the Editor of a metropolitan daily newspaper, and the Chief of the General Reporting Staff permanently employed as such. The question of whether an officer who becomes exempted should continue his membership of the AJA is a matter for the officer himself. In making his decision the officer should not be subjected to any pressure or control from his employer or his employer's representatives. As we understand the evidence as submitted on behalf of the proprietors it is not the policy of any of those proprietors to require an exempted officer to resign his AJA membership. e

Our decision is that the application is dismissed. The proceedings before us are terminated, and any application the AJA may wish to make for removal or alteration of existing exemptions should be by way of separate proceedings. f