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Dear Associate

Casual terms award review 2021 Broadcasting, Recorded Entertainment and Cinemas Award 2020 AM2021/54

We act for Birch Carroll and Coyle and the other cinema industry employers named in the Submission dated 24 May 2021 and filed in these proceedings (**Cinema Employers**). Relevant employees are covered by the Broadcasting, Recorded Entertainment and Cinemas Award 2020 (**BREC Award**). The BREC Award is being considered in Stage 2 Group 1 of these proceedings.

The Commission's Directions dated 23 April 2021 required all interested parties to file submissions by 24 May 2021. While not affected by any of the Stage 1 awards, the Cinema Employers were concerned that the Discussion Paper dated 19 April 2021 stated that the BREC Award contains the "model" casual conversion clause. To draw attention to this inaccuracy, the Cinema Employers filed their Submission dated 24 May 2021.

In the Statement of 3 August 2021 it is stated that the Full Bench has formed provisional views in relation to Group 1 awards, including the BREC Award. These views are set out in Attachment B to the Statement. Interested parties are required to file any submissions in relation to the provisional views by Tuesday 10 August 2021.

The Cinema Employers do not wish to make any submission on the provisional views in respect of the BREC Award. The Cinema Employers do, however, refer to their Submission dated 24 May 2021. Mr J Murdoch QC appeared in these proceedings on 24 June 2021 on behalf of the Cinema Employers. In these proceedings, at [PN32] the President stated:

Well, then I suggest you have discussions with them (Media Entertainment and Arts Alliance) as a matter of priority. If you can reach an agreed position then advise my chambers and I'll refer that to the Bench that is dealing with the second stage proceedings. At that time (Stage 2) you can advance your argument as to why the award that you have an interest in should be given priority.

Subsequently, in the Statement dated 9 June 2021, it is stated at paragraph 87:

We also note that the Cinema Employers have made submissions concerning the classification of the Broadcasting Award as one of the modern awards containing the model casual conversion clause, and the effect of existing cl.11.6(k)(ii) of the Award. Those submissions will be considered when the Broadcasting Award is reviewed in Stage 2 of the Casual terms review.

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As suggested by the Full Bench, the Cinema Employers have been in communication with MEAA but there is no consent arrangement. Accordingly, as noted in the Discussion Paper dated 9 June 2021:

**332** The Cinema Employers submit that the Broadcasting Award has been incorrectly classified as one of the modern awards containing the model casual conversion clause. Clause 11.6 of the Broadcasting Award differs from the model clause in that, at cl 11.6(k)(ii), it specifically addresses employees in cinemas and provides that, upon conversion to part time, employees will be covered by the same Award conditions as all other part time employees in cinemas.

**333** Clause 11.6 contains similar reductions in employee benefits as the model casual conversion clause, when compared to the NES. However, the additional benefit for employees in cinemas who wish to convert to part time is in cl 11.6(k)(ii). There is greater opportunity for the employer to offer part time employment if the part time employment is to be on the same terms as for all other Award covered part time employees of the employer. If the offer cannot be on the terms of part time employment in Part 10 – Cinemas of the Broadcasting Award, then it is much more likely that s.66C of the Act will apply as there will, most likely, be reasonable grounds not to make an offer.

In its decision of 6 October 2020 ([2020]FWCFB5307) as part of the Commission's 4 Yearly Review of Modern Awards, the Full Bench decided that, for employees in cinemas, the model clause in the BREC Award would be amended to avoid the creation of two categories of part time employees working alongside one another, i.e. employees engaged as part time and employees converted from casual to part time. The Cinema Employers seek to preserve the status quo and ask the Full Bench to permit Mr Murdoch to put this submission, as contemplated at paragraph 87 of the Statement dated 9 June 2021 and to respond to any queries that the Full Bench may have.

Yours faithfully

Michael Serong Senior Consultant Norton Rose Fulbright Australia