

MinterEllison

26 February 2018

AMOD
Fair Work Commission
Level 10
Terrace Tower
80 William Street
EAST SYDNEY NSW 2000

By email

Dear AMOD

AM2014/300: Four Yearly Review of Modern Awards – Award Flexibility

We write on behalf of Nationwide News Pty Ltd, Bauer Media Pty Limited and Pacific Magazines Pty Limited (**Media Organisations**) and we refer to:

1. the Statement and Directions issued by the Fair Work Commission (**Commission**) on 6 February 2018 (**Statement**); and
2. the draft determination (**Draft Determination**) varying the *Journalists Published Media Award 2010* (**JPM Award**) published by the Commission on 15 February 2018.

We are operating on the assumption that, subject to any issues arising from any submissions filed in response to the Statement, it is only necessary for these submissions to address any changes sought to the Draft Determination and it is unnecessary to make submissions in support of the terms of the Draft Determination.

If this is wrong, the Media Organisations would seek leave to make short submissions in support of the terms of the Draft Determination. Those submissions would rely on the unique nature of journalism (which is a profession *sue generis* – in a class by itself) and the history of the award regulation for the profession: see the Media Organisations [comprehensive submissions dated 26 October 2016](#).

The Draft Determination largely reflects a consent position reached by the Media Organisations and the Media, Entertainment and Arts Alliance (**MEAA**) regarding the issue of time off instead of payment for overtime (**TOIL**) in the JPM Award. This consent position is also supported by Fairfax Media.

Subject to one correction, the Media Organisations support the variation of the JPM Award in the terms proposed.

The correction relates to order 4 of the Draft Determination. If the JPM Award is varied in the terms currently proposed, clause 22.3(c) would become:

'time off instead of overtime not taken within 12 months of the overtime being worked must be paid out ~~at overtime rates~~ in the next pay period following those four months, at the overtime rate applicable to the overtime when worked;'

'12 months' in clause 22.3(c) should be replaced by the word 'four months' so that the clause reads:

'time off instead of overtime not taken within ~~12~~ four months of the overtime being worked must be paid out ~~at overtime rates~~ in the next pay period following those four months, at the overtime rate applicable to the overtime when worked;'



This would mean that order 4 of the Draft Determination be amended as follows:

'Further to the Full Bench Statement issued by the Fair Work Commission on 6 February 2018 the above award is varied as follows:

...

4. *By deleting the existing clause 22.3(c) and replacing it with:*

'time off instead of overtime not taken within four months of the overtime being worked must be paid out in the next pay period following those four months, at the overtime rate applicable to the overtime when worked;'

The other matter the Media Organisations wish to raise concerns the operative date of the variation.

As the Commission would be aware, the consent position reached by the Media Organisations and MEAA, which is supported by Fairfax, included that any order would not commence for a period of three months following the date of the order.

The deferred commencement date is a transitional period, so as to allow employers to put in place arrangements to give effect to the orders for employees to whom the award applies, which do represent a substantial change to the way TOIL has operated in the industry for a number of years. It was agreed by the MEAA on this basis.

We assume from the structure of proposed order B of the Draft Determination that the Commission is intending to adopt this deferred commencement date. However, we raise this issue for the sake of completeness.

If you have any questions about this submission, please do not hesitate to contact us.

Yours faithfully
MinterEllison



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