

**FAIR WORK COMMISSION**

**Four Yearly Review of Modern Awards - Group 4 Awards**

**Matter No AM 2018/17**

**Applicant: Media Entertainment and Arts Alliance**

**Respondent: Australian Entertainment Industry Association**

1. The Media Entertainment and Arts Alliance [MEAA] makes these submissions in response to the submission of Birch Carroll Coyle & others [BCC].
2. That submission relies upon an analysis of the wording of the Award clause and an inherent assumption that the 8% component allowance is an allowance and not part of the minimum rate of pay.
3. The crucial question is not whether the penalty is described as an allowance, loading or penalty (as it has been variously described) but whether the payment is part of the minimum rate of pay<sup>1</sup>.
4. Textually, the Award makes clear that the minimum wage rate is subject to the penalty average component. Contextually, the clause is set out in the wages clause and not in the allowance clause. Historically, the pre reform Award folded the *Penalty averaging* into the minimum rate per week.
5. The crux of the BCC submission is set out at paragraph 19. BCC further submit that

“It was and is intended to average out penalties otherwise forgone for work on specific days by providing the component for work actually performed on all days. It would completely pervert the intention of the penalty averaging provision if it were to apply to arrange of other entitlements for which no work is performed such as:

- Annual Leave;
- Personal leave;
- Long Service leave;

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<sup>1</sup> The meaning of allowance is inherently contextual: *Mutual Acceptance Co v Federal Commissioner of Taxation* 69 CLR 389 402

- Payment in lieu of notice;
  - Redundancy pay. “
6. The meaning of the first sentence is unclear. The reference to the payment being applying indiscriminately to a range of other entitlements such as annual leave is mistaken. Those other entitlements have specific statutory regimes for determining payment.
- (i) Annual leave is paid at the base rate of pay: s 90;
  - (ii) Personal leave is paid at the base rate of pay: s 99;
  - (iii) Long service leave is paid (in NSW) at the ordinary rate of pay: s 4  
*Long Service Leave Act NSW*;
  - (iv) Notice is paid at the full rate of pay: s 117 (2)(b);
  - (v) Redundancy is paid out at the base rate of pay: s 119(2)
  - (vi) A casual employee is paid under the Award at the relevant minimum hourly wage plus a loading of 25%: Clause 54.4(b).
7. Finally, BCC submit that the Commission should have regard to the interpretation of the clause by the BCC parties to determine its meaning. That reasoning is entirely circular and should be rejected.
8. Contrary to the submissions of BCC, its interpretation is not long standing. Its foundation appears to arise from *the taking of advice*. BCC have not provided that advice to the Commission. Without producing that advice, the BCC can hardly assert that the interpretation is well founded.



**Ian Latham**

**28 June 2019**

## Statement by Matthew Chesher

1. My name is Matthew Chesher, [REDACTED].
2. I have held the position of Director, Legal and Policy for the Media, Entertainment and Arts Alliance (MEAA) since 2015. Between 2012 and 2015, I held the position of National Industrial Officer for MEAA.
3. In these roles, I have participated in negotiations and Fair Work Commission appearances concerning the Broadcasting, Recorded Entertainment and Cinema Award 2010 (BRECA), particularly through the 2012 and current modern award review(s).

### Profile of Cinema Sector

4. Representatives of the major cinema operators filed cinema employment data in the Commission in March, 2015 (the March 2015 Data) – see **page 1 of the MEAA Attachment**.
5. This data stated that there were 6422 employees across the cinema industry. (The combined total of employees across the major cinema operators was 6,393 in early 2019).<sup>1</sup>
6. Casual employees numbered 4993 (77.7%) of all employees: 74.5% of adult employees and 80.5% of junior employees.
7. Junior employment represented 54.5% of cinema employment, with young employees aged 16, 17, 18, 19 and 20 each comprising about 20% of junior employees.

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<sup>1</sup> Based on the total employee numbers cited in the statements by representatives of the major cinema companies as submitted to the Fair Work Commission on 30 April, 2019.

8. 90% of all cinema employees are employed in the CW 1, 2 and 3 positions, the three most junior positions. 67.9% of all employees occupied the CW 2 position.<sup>2</sup>

**Pre-Reform Awards**

9. The Theatrical Employees (Cinema and Drive-In) Industry Award 1983 – pages 2 to 47 of the MEAA Attachment provided:

**15 – CLASSIFICATIONS AND RATES OF PAY**

*The following shall be the weekly Rates of Pay for employees employed in each of the relevant classifications:*

<i>Classification</i>	<i>*Base rate per week</i>	<i>**Penalty averaging* per week</i>	<i>Minimum Rate per week</i>
	\$	\$	\$
<i>Cinema Worker 1</i>	\$386.97	\$30.96	\$417.93
<i>Cinema Worker 2</i>	\$428.68	\$34.30	\$462.98
<i>Cinema Worker 3</i>	\$524.64	\$41.97	\$566.61

*\*Base Rate includes safety net adjustments 1, 2 and 3 and supplementary payments.*

*Note: the above base rates are based on relativities to the metal trade at 87%, 97% and 120%*

<sup>2</sup> Schedule E to the BRECA provides the basis upon which employees in CW 1 positions advance to CW 2 positions. E.1.1.(c) provides, inter alia, that: 'An employee who has completed 100 hours of service at Cinema Worker Level 1 may request cash handling training. The employer will not unreasonably refuse such a request. After 30 hours of such training and upon achieving the required level of competency for a Cinema Worker Level 2, the employee shall be classified at Cinema Worker Level 2.'

**\*\*Penalty averaging component is calculated at 8%.**

*If you are a junior employee, the employer will pay you a percentage of the relevant minimum rate set out in clause 15(a) appropriate to the classification to which you are appointed and rostered. The percentages change according to your age and are set out below:*

*Less than 19 years of age: 65% of ordinary full time rate*

*19 and less than 21 years of age: 90% of ordinary full time rate*

*If you are a casual employee, you will be paid an hourly rate calculated by dividing the relevant minimum rate<sup>3</sup> set out in clause 15(a) and where relevant, 15(b) by 38 and adding an additional 20% loading which is in lieu of annual leave, sick leave, bereavement leave, jury leave and to compensate for the nature of casual employment.*

10. The Entertainment and Broadcasting Industry - Cinema Award – 1998 pages 48 to 89 of the MEAA Attachment identified salary levels and casual loadings in the following manner:

**PART 5 - WAGES AND RELATED MATTERS**

**16. CLASSIFICATIONS AND RATES OF PAY**

**16.1 Wage rates**

*The following will be the minimum weekly rates of pay to operate from the first pay period on and from 1 October 2008:*

<b>Classification</b>	<b>Base Rate</b>	<b>Penalty Averaging*</b>	<b>Minimum Rate</b>
	<b>Per Week</b>	<b>Per Week</b>	<b>Per Week</b>
	\$	\$	\$

<sup>3</sup> Emphasis added

<i>Cinema Worker 1</i>	\$581.24	\$46.50	\$627.74
<i>Cinema Worker 2</i>	\$622.95	\$49.84	\$672.79
<i>Cinema Worker 3</i>	\$718.91	\$57.51	\$776.42

*Note: the above base rates are based on relativities to the metal trade at 87%, 97%, and 120%.*

*Penalty averaging component is calculated at 8%.*

### **16.2 Junior rates**

*Junior employees will be paid a percentage of the relevant minimum rate set out in clause 16.1 appropriate to the employee's classification. The percentages change according to age and are set out below:*

*Less than 19 years of age: 65% of ordinary full time rate*  
*19 and less than 21 years of age: 90% of ordinary full time rate*

### **16.3 Casual employees**

*Casual employees will be paid an hourly rate calculated by dividing the relevant minimum rate<sup>4</sup> set out in clause 16.1 and where relevant 16.2 by a divisor of 38 and adding an additional 20% loading which is in lieu of annual leave, sick leave, bereavement leave, jury leave and to compensate for the nature of casual employment.*

11. The parties to the pre-reform awards – principally MEAA and independent cinema operators had a common understanding of how the 8% penalty averaging component was to be applied. It was part of the minimum wage. The minimum hourly wage was the basis upon which casual loadings were calculated.

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<sup>4</sup> Emphasis added

12. Support for the compound calculation method is independently reflected in the Fair Work Ombudsman's Pay Guide for the BRECA at - **pages 90 to 92 of the MEAA Attachment**

13. The 22 February 2017 submission by the Australian Entertainment Industry Association (AEIA – trading as Live Performance Australia) – **pages 93 to 96 of the MEAA Attachment** - to the review of the BRECA, restated part of the Full Bench's 30 December 2009 decision concerning the 8% penalty averaging component of the (then) Broadcasting and Recorded Entertainment Award:

*'... the AEIA reiterated that the current penalty averaging provision was negotiated between the parties during the minimum rates adjustment process, was included in the award as part of the minimum rate rather than an all-purpose allowance, and was approved as part of the properly fixed minimum rate when the current award was simplified.'*<sup>5</sup>

14. The joint cinema employer submission dated 17 April 2018 – **pages 97 to 101 of the MEAA Attachment** - stated the following at paragraph 25:

*'The Employers submit that the 8% penalty averaging provision is part of properly made minimum rates, has been a feature of the BREC Award and its predecessor the Cinema Award 1998 for more than 20 years, has not been challenged in the Commission by any party as inappropriate and should remain in the BREC Award.'*

### **Cinema Enterprise Agreements**

15. Employees of the major cinema operators' (Hoyts, Village, Birch Carroll and Coyle and Greater Union) did not have their pay and conditions of employment directly

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<sup>5</sup> SEE paragraph 3 of the AEIA's 22 February 2017 submission to the Commission. This passage of the AEIA's submission was partly directed at the classification of the 8% loading as an 'all-purpose allowance' in an exposure draft of the BRECA.

regulated by either by pre-reform awards or by the modern award (BREA) upon its commencement in 2010. Pay and conditions of employment were regulated by the:

*Birch Carroll and Coyle Agreement 2005*

Pre-reform Certified Agreement under Workplace Relations Act 1996

Nominal expiry 19 December 2011

*Greater Union Cinema Agreement 2005*

Pre-reform certified agreement under Workplace Relations Act 1996

Nominal expiry 17 August 2008 and then 31 January 2012 (following renewal)

*Village Cinemas Australia Agreement (Victoria Only)*

Certified Agreement under Workplace Relations Act

*Hoyts Employment Agreement 2001*

Certified Agreement under Workplace Relations Act 1996

Nominal expiry 5 July 2004

16. The agreements that previously determined employee classifications and pay rates had flat hourly and weekly rates of payment, with no distinctions between rates of payment for work performed on a Sunday or during evenings.<sup>6</sup> They did not have 8% penalty averaging components.

17. These agreements, however, uniformly observed public holidays (as gazetted from time to time) and stipulated that where work was required on a public holiday, employees would be paid double-time.<sup>7</sup>

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<sup>6</sup> Several agreements provided for additional payment for work performed after 1am and before 7am.

<sup>7</sup> ***Birch Carroll and Coyle Agreement 2005***: Clause 14 observed Public Holidays for full-time and part-time employees. If work was required on a public holiday, payment at double-time applied for all employees.

***Greater Union Cinema Agreement 2005***: Clause 22 observed Public Holidays for full-time and part-time employees. If work was required on a public holiday, payment at double-time applied for all employees.

***Village Roadshow Agreement 2006***: Clause 12 observed Public Holidays for full-time and part-time employees. If work was required on a public holiday, payment at double-time applied for all employees.



18. The major cinema employers came to use the BREA (now BRECA) after these agreements passed their nominal expiry dates<sup>8</sup> and once the hourly rates of payment prescribed in their enterprise agreements fell below the level articulated in the BRECA, thereby triggering section 206 of the *Fair Work Act* 2009.
19. MEAA contend that it was at this time, and not before, that the longstanding and unified position on characterising the 8% penalty averaging component and calculating loadings against the 'minimum' instead of 'base' rate became unsettled.

### **Major Cinema Company Classification and Payment Information**

20. I have reviewed the statutory declarations of representatives of Hoyts Corporation, Village Cinemas and the Event Group of Companies (owner of the Greater Union and Birch Carroll and Coyle cinema venues) as filed in the Commission on 30 April 2019.

### **HOYTS**

21. I reviewed the statement of Ms Jodi Paton, the Director of People, Performance and Culture at Hoyts Corporation as lodged on 30 April 2019.
22. Hoyts employs approximately 2611 employees whose minimum wage is fixed by the BRECA. 105 persons are available for casual engagements. Wages are set to comply with section 206 of the FW Act since at least 2012. Hoyts use the cumulative method of applying the casual loading.
23. MEAA received information about employee classifications and pay levels throughout March and April 2019. MEAA represents the information provided by

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**Hoyts Employment Agreement 2001:** Clause 23 observed Public Holidays for full-time and part-time employees. If work was required on a public holiday, payment at double-time applied for all employees per clause 11.4.

24. Hoyts and compares it the current (June 2019) BRECA rates with respect to permanent adult rates and casual payment rates calculated in both the cumulative and compound formats.

<b>Position</b>	<b>Hoyts 2019 F/T</b>	<b>Hoyts 2019 casual</b>	<b>2019 BRECA F/T</b>	<b>2019 BRECA casual cumulative</b>	<b>2019 BRECA casual compound</b>
(CW 2) grade 3	21.84	26.90	21.84	26.89	27.30
(CW 3) grade 5	25.76	30.54	23.80	29.31	29.75
(CW 4) grade 7	27.72	32.82	25.29	31.14	31.61

25. Hoyts advises that it does not employ cinema workers in the CW 1, CW 5 or CW 6 classifications.

26. Hoyts pays at or above the BRECA rate for permanent employees.

27. Hoyts pays at or above the BRECA rate for casual employees when the casual loading is calculated using the cumulative method.

28. Applying the compound method of calculating payment, Hoyts pays employees in the CW2, CW 3 and CW 4 less than the amount MEAA say is required under the BRECA.

29. MEAA was advised by cinema employer representatives in September 2018 that Hoyts uses the junior rates of pay percentages set out in the BRECA instead of the percentages in the Hoyts Employment Agreement 2001.

## Greater Union and Birch Carroll and Coyle

30. I reviewed the statement of Ms Kerry Westwood, the person responsible for People and Culture at the Event Group of Companies, of which Greater Union and Birch Carroll and Coyle are subsidiaries.
31. Greater Union has approximately 1444 persons available for casual engagements, with between 600 and 1200 of these engaged on a weekly basis.
32. BCC has approximately 1080 persons available for casual engagements and in a typical week BCC employees between 500 and 1000 people on casual engagements.
33. Both GU and BCC use the cumulative method of applying the casual loading.
34. GU and BCC now have common pay rates. These are reflected here:

<b>Position</b>	<b>GU/BCC 2019 F/T</b>	<b>GU/BCC 2019 casual</b>	<b>2019 BRECA F/T</b>	<b>2019 BRECA casual cumulative</b>	<b>2019 BRECA casual compound</b>
(CW 1) grade 2	21.03	24.92	21.03	25.90	26.29
(CW 2) grade 3	21.83	25.88	21.84	26.89	27.30
(CW 3) grade 5	23.79	28.20	23.80	29.31	29.75
(CW 4) grade 7	25.29	29.98	25.29	31.14	31.61
(CW 5) grade 8	25.97	30.77	25.96	31.97	32.45

35. GU and BCC advise that they employ cinema workers in the CW1, CW2, CW3, CW4 and CW 5 classifications.
36. GU and BCC pay the BRECA minimum rate for permanent employees.

37. GU and BCC pay under the BRECA rate for casual employees when the casual loading is calculated using both the cumulative and compound methods. Upon enquiry of the employer, MEAA was advised that the perceived under-payment is a result of GU and BCC applying the cumulative methodology and applying the 20% casual loading in the nominally expired enterprise agreements instead of the 25% loading set out in clause 10.6 of the BRECA.

### Village Cinemas

38. I have reviewed the statement of Ms Simone Rust, the Human Resources Business Partner of Village Cinemas Australia.

39. Village has approximately 1258 employees including casuals, with a pool of 961 persons available for casual engagements.

40. Village Roadshow use the cumulative method of applying the casual loading.

Position	Village 2019 F/T	Village 2019 casual	2019 BRECA F/T	2019 BRECA casual cumulative	2019 BRECA casual compound
(CW 2) grade 3	21.84	26.90	21.84	26.89	27.30
(CW 3) grade 5	23.80	29.31	23.80	29.31	29.75
(CW 4) grade 7	25.73	31.58	25.29	31.14	32.45

41. Village advises that it employs cinema workers in the CW2, CW3 and CW4 classifications.

42. Village pay the BRECA minimum rate for permanent employees.

43. Village pays at or above the BRECA rate for casual employees when the casual loading is calculated cumulatively, but under the BRECA rate when the compound method is applied.

## Independent Cinema Operators

44. The classification and payment data provided to the Commission by approximately 30 independent cinema operators by cinema representatives showed a uniform approach<sup>9</sup> to calculating the casual loading using the compound methodology. These cinema operators included Palace (twenty-seven sites), Dendy (five sites) and Wallace (six sites), together with longstanding regional theatre operators. This information is at **pages 102 to 130 of the MEAA Attachment**.

## The 8% payment

45. Clause 14.12 of the BRECA presently states:

***14.12 Employees in cinemas***

*All employees in cinemas will receive an 8% penalty averaging component instead of Sunday penalty payments and reduced public holiday penalties.*

46. Unlike employees in what MEAA submit are allied industries (Fast Food, General Retail, Hospitality) and other employees covered by the BRECA, no penalty payment is made to cinema employees for the performance of work on evenings and weekends.

47. MEAA submit that the 8% penalty averaging component in the BRECA for cinema employees compares favourably in terms of the cost to employers whose employees are covered by the Fast Food Award, the General Retail Award or the Hospitality Award. I have **attached** an extract of MEAA's submission outlining the respective penalty provisions of these awards - **pages 131 to 135 of the MEAA Attachment**.

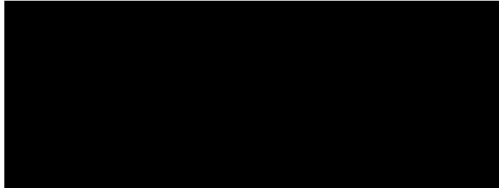
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<sup>9</sup> Incomplete data was provided for Statewide Cinema in South Australia

48. There is no contest between employer and union representatives that the 8% is paid to all cinema employees irrespective of the hours they work and when these hours are worked on any of the seven days of the week.

49. The minimum rate payable under the BRECA is the minimum rate set out at clause 14.3 plus the 8% payment set out in clause 14.12.

SIGNED:



DATE:

28/6/2019

## INDUSTRY EMPLOYEE DATA

30<sup>th</sup> March 2015

TOTAL EMPLOYEES ACROSS INDUSTRY 6422			
ADULTS	2926 (45.5%)	JUNIORS	3496 (54.5%)
Full-Time	197 (6.7%)	Full-Time	4 (0.1%)
Part-Time	551 (18.8%)	Part-Time	679 (19.4%)
Casual	2178 (74.5%)	Casual	2815 (80.5%)

## Overall employee numbers breakdown (6422)

Full-Time	201 (3.1%)
Part-Time	1230 (19.2%)
Casual	4993 (77.7%)

Classification	Adults	Juniors	%
CW1	69	218	4.5%
CW2	1619	2746	67.9%
CW3	628	447	16.7%
CW4	359	81	6.9%
CW5	156	1	2.5%
CW6	95	3	1.5%

Junior Age	#'s	%
16	670	19.1%
17	672	19.2%
18	726	20.7%
19	763	21.9%
20	665	19.1%

Junior Age	CW1	CW2	CW3	CW4	CW5	CW6
16	88	501	81	0	0	0
17	57	521	92	0	0	0
18	26	616	73	12	0	0
19	32	594	102	34	0	1
20	15	514	99	35	1	2
Total Numbers	218	2746	447	81	1	3
%	6.2%	78.5%	12.8%	2.38%	0.02%	0.1%

Yellow<sup>2</sup>  
Award  
Book

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

*Workplace Relations Act 1996*  
s.113 application for variation

**Media, Entertainment and Arts Alliance**  
(C Nos 24318, 34856 and 35044 of 1996)

**THEATRICAL EMPLOYEES (CINEMA AND  
DRIVE-IN INDUSTRY) AWARD 1983**  
(ODN C. No. 01939 of 1979)  
[Print F2407 [T0141]]

Theatrical employees

Entertainment and broadcasting industry

COMMISSIONER MCDONALD

MELBOURNE, 11 APRIL 1997



*Minimum rates adjustment and related matters*

**ORDER**

A. The above award is varied as follows:

1. By deleting from the existing clause 1 - TITLE the words "Theatrical Employees (Cinema and Drive-in Industry) Award 1983" and inserting in their place the words "Entertainment and Broadcasting Industry - Cinema Award - 1997".
2. By deleting the existing clause 2 - ARRANGEMENT and inserting in its place the following:

**2 - ARRANGEMENT**

<u>Subject matter</u>	<u>Clause number</u>
Accommodation for employees	37
Accident pay	Schedule C
Annual leave	17
Anti-discrimination	9
Application and scope of award	3
Arrangement	2
Attendance at association meetings	29
Award title	1
Bereavement leave	19
Break between days of work	11
Classification and rates of pay	15
Definitions	30
Dispute settling procedure	28



VARIATION - THEATRICAL EMPLOYEES (CINEMA AND  
DRIVE-IN INDUSTRY) AWARD 1983

2 - contd

<u>Subject matter</u>	<u>Clause number</u>
Enterprise flexibility provisions	38
First aid kit	20
Higher duties	13
Hours of work	33
Jury leave	25
Locomotion	18
Meal breaks	14
Minimum employment condition	7
No extra claims	35
Operation and duration of award	4
Overtime	34
Parental leave	27
Parental leave	Schedule A
Personal/Carers leave	16
Posting of award and notices	23
Preservation of existing conditions	6
Previous awards superseded	5
Public holidays	10
Respondents	Schedule B
Rosters	12
Special costumes for employees	21
Sub-contracts	31
Superannuation	24
Termination and redundancy	32
Terms of engagement	8
Time and wages records	22
Uniform allowance	36
Workers compensation make-up pay	26

3. By deleting the words "PART I - GENERAL" and the words "This part applies to all respondents to the Award" which appear immediately before clause 3 and by deleting the existing clause 3 - APPLICATION OF AWARD and replacing it with the following:

3 - APPLICATION AND SCOPE OF AWARD

This award shall be binding upon:

(a) The Media Entertainment and Arts Alliance ("the Union") and all persons eligible to be members of the Union, who are employed by respondent employers in classifications set out at clause 15 of this award;

(b) The Entertainment Industry Employers Association and its members;

VARIATION - THEATRICAL EMPLOYEES (CINEMA AND  
DRIVE-IN INDUSTRY) AWARD 1983

3 - contd

- (c) Named employer respondents in Schedule C;

This award shall apply throughout the Commonwealth of Australia

4. By deleting the existing clause 4 - OPERATION AND DURATION and inserting in its place the following:

4 - OPERATION AND DURATION OF AWARD

This Award shall come into operation from the beginning of the first pay period to commence on or after the 17th March 1997 and shall remain in force for a period of twelve months.

5. By deleting the existing clause 6 - PRESERVATION OF EXISTING CONDITIONS and inserting in its place the following:

6 - PRESERVATION OF EXISTING CONDITIONS

No existing employee shall suffer a reduction in:

(a) her or his previously existing actual rate of pay or existing actual level of annual leave/annual leave loading; or

(b) her or his previously existing entitlement to a rate of pay or leave entitlement (including paid paternity leave), as at the time immediately prior to the coming into effect to the variations to this award as set out in the decision of the Commission in C No 24318 of 1996.

6. By deleting the existing clause 7 - ADJUSTMENT OF RATES and inserting in its place the following:

7 - MINIMUM EMPLOYMENT CONDITIONS

This Award specifies minimum wages and minimum employment conditions, but does not limit the right of the employer to provide, at its discretion, wages and conditions which are more beneficial to employees

7. By deleting the existing clause 8 - TERMS OF ENGAGEMENT and inserting in its place the following:

8 - TERMS OF ENGAGEMENT

- (a) Full time employment:

If you are a full time employee, the employer will employ and pay you by the week.

VARIATION - THEATRICAL EMPLOYEES (CINEMA AND  
DRIVE-IN INDUSTRY) AWARD 1983

8 - contd

(b) Part time-employment:

If you are a part time employee, the employer will employ and pay you by the week.

(c) Casual employment:

If you are a casual employee, the employer will employ you by the hour and pay you by the week.

(d) The employer may direct you to carry out the duties which it considers are within the limits of your skill, competence and training.

8. By deleting the existing clause 9 - SUNDAY WORK and inserting in its place the anti-discrimination clause formerly numbered 8A.

9. By deleting the existing clause 10 - HOLIDAYS and inserting in its place the following:

10 - PUBLIC HOLIDAYS

(a) If you are a full time or part time employee, then in addition to any other leave entitlements you have under this Award, you are also entitled to holidays on the following days:

- New Year's Day
- Good Friday
- Easter Saturday
- Easter Monday
- Christmas Day
- Boxing Day

You will also be entitled to holidays on the following days if those days have been declared public holidays in your State or Territory:

- Australia Day
- Anzac Day
- Queen's Birthday
- Eight Hours Day/Labour Day

You will also be entitled to one additional day's holiday on the day appropriate to your State or Territory, as follows:

VARIATION - THEATRICAL EMPLOYEES (CINEMA AND  
DRIVE-IN INDUSTRY) AWARD 1983

10(a) - contd

- August Bank Holiday (New South Wales)
- Melbourne Cup Day, or in your local area a day observed instead of Melbourne Cup Day (Victoria)
- Show Day as observed in your local area, (Queensland)
- Adelaide Cup Day (South Australia)
- Foundation Day (Western Australia)
- Easter Bank Holiday (Tasmania)
- Canberra Day or in lieu by agreement between the parties, Union Picnic Day being the first Monday in March (Australian Capital Territory)
- Picnic Day (Northern Territory)

(b) If your State, Territory or locality declares another day as a public holiday in substitution for one of the days listed in this clause, you will be entitled to a holiday on the substituted day instead of the listed day.

(c) If Christmas Day falls on a Saturday or Sunday, you will be entitled to a holiday in lieu on 27 December. If Boxing Day falls on a Saturday or Sunday, you will be entitled to a holiday in lieu on 28 December. If New Year's Day or Australia Day falls on a Saturday or Sunday, you will be entitled to a holiday in lieu on the next Monday.

(d) If in your State or Territory more days are declared public holidays than those listed in this clause, permanent employees will also be entitled to paid leave for those extra days, casual employees will receive the penalties as outlined in subclause 10(f).

(e) If a permanent employee is required to work on a day to be observed as a public holiday, then, in addition to receiving your normal rate of pay for working ordinary hours, you shall be paid at the rate of single time additional for the hours worked.

(f) Casual employees shall be entitled to receive double the permanent hourly rate for work on a public holiday.

(g) A permanent employee whose rostered time off falls on a public holiday shall be allowed an additional day off at a time to be agreed upon by the employer and the employee or the employee will be paid an additional day's pay in lieu thereof within seven days of the said holiday.

10. By deleting the existing clause 11 - MEAL INTERVALS, other than the existing subclause 11(g) which is to be re-numbered subclause 14(b) and inserted immediately following the new subclause 14(a) as provided for hereunder, and inserting in place of the existing clause 11 - MEAL INTERVALS the following:

11 - BREAK BETWEEN DAYS OF WORK

(a) You must have at least 10 consecutive hours off duty between the end of your ordinary day or shift and starting ordinary work on your next day or shift.

VARIATION - THEATRICAL EMPLOYEES (CINEMA AND  
DRIVE-IN INDUSTRY) AWARD 1983

11 - contd

(b) If the employer requires you to return to work before you have had 10 hours off duty, the employer will pay you double your actual ordinary rate until you are released from duty. You are then entitled to be absent until you have had 10 consecutive hours off duty without loss of pay for ordinary working time during that absence.

(c) You may voluntarily swap work periods with the consent of the employer. If you do, subclause 11(b) will not apply.

11. By deleting the existing clause 12 - ALLOWANCES and inserting in its place the following:

12 - ROSTERS

The employer will post your roster at least 7 days before the start of the week to be worked. The start of the week is a Thursday. If you want to change your rostered ordinary hours, this can be done by agreement between you and the employer. The employer can change the roster at short notice due to unforeseen operational requirements. However, if the employer changes the roster for other reasons, they will pay you at the rate of double your ordinary rate for hours worked outside your original

12. By deleting the existing clause 14 - AGREEMENT AS TO LOWER RATES and inserting in its place the following together with the existing subclause 11(g) which is to be re-numbered 14(b) and inserted immediately after the following:

14 - MEAL BREAKS

(a) The employer must give you a meal break of 30 minutes or, if you agree, up to one hour when you are working a rostered period of work in excess of 5 hours unless that rostered work period would end within that meal break. If you are required to work beyond 5 hours without a meal break, the employer will pay you double your actual ordinary rate for the period of the meal break.

13. By deleting the existing clause 15 - SICK LEAVE and inserting in its place the following:

15 - CLASSIFICATIONS AND RATES OF PAY

(a) The following shall be the weekly Rates of Pay for employees employed in each of the relevant classifications:

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Classification	*Base rate per week	**Penalty averaging per week	Minimum rate per week
	\$	\$	\$
Cinema Worker 1	386.97	30.96	417.93
Cinema Worker 2	428.68	34.30	462.98
Cinema Worker 3	524.64	41.97	566.61

\* Base Rate includes safety net adjustments 1, 2 & 3 and supplementary payments.

Note: the above base rates are based on relativities to the metal trade at 87%, 97%, and 120%

\*\* Penalty averaging component is calculated at 8%.

(b) If you are a junior employee, the employer will pay you a percentage of the relevant minimum rate set out in subclause 15(a) appropriate to the classification to which you are appointed or rostered. The percentages change according to your age and are set out below:

- Less than 19 years of age: 65% of ordinary full time rate
- 19 and less than 21 years of age: 90% of ordinary full time rate

(c) Casual employees

If you are a casual employee, you will be paid an hourly rate calculated by dividing the relevant minimum rate set out in subclause 15(a) and, where relevant, 15(b) by 38 and adding an additional 20% loading which is in lieu of annual leave, sick leave, bereavement leave, jury leave and to compensate for the nature of casual employment.

(d) Part time employees

- (i) Part time employees will be paid on a pro-rata basis calculated on your relevant rate set out in this clause.
- (ii) As a part time employee you are entitled to the leave benefits set out in Clause 17 - ANNUAL LEAVE and Clause 16 - PERSONAL/CARER'S LEAVE of this Award. Your entitlement to these benefits is on a pro-rata basis calculated on your relevant rate referred to in this clause.

(e) The employer will pay your wages direct to your nominated bank account, or by cheque or cash. You will be paid weekly not later than four days following the conclusion of the pay period.

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14. By deleting the existing clause 16 - ANNUAL LEAVE and inserting in its place the following:

16 - PERSONAL/CARER'S LEAVE

1. Amount of Paid Personal/Carer's Leave

An employee, other than a casual employee, is entitled to the following amount of paid personal/carers leave:

- (i) 61 hours of sick leave and 15.2 hours of compassionate leave on each occasion in the first year of service;
- (ii) 76 hours of sick leave and 15.2 hours of compassionate leave on each occasion in the second year and subsequent years of service; and

2. Immediate Family or Household

The entitlement to use bereavement leave/compassionate leave and carer's leave in accordance with this clause is subject to:

2.1 the person being either:

- (i) a member of the employee's immediate family; or
- (ii) a member of the employee's household.

2.2 the term "immediate family" includes;

- (i) a spouse (including a former spouse, a de facto spouse and a former de facto spouse of the employee. A de facto spouse, in relation to a person means a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; and
- (ii) a child or an adult child (including an adopted child, a step child or an ex nuptial child), parent, parent in law, grandparent, grandchild or sibling of the employee or spouse of the employee.

3. Personal Sick Leave

3.1 An employee, other than a casual employee, is entitled to the following amount of paid leave for absence due to personal illness or injury.

- (i) Up to 61 hours in the first year of service;
- (ii) Up to 76 hours in the second and subsequent year of service;

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16(3.) - contd

3.2 Leave taken by an employee under subclause 3.1 is deducted from the amount of personal/carer's leave under subclause 1.

3.3 An employee is entitled to use accumulated sick leave for personal sickness if the employee has already used:

- (i) the current year's sick leave component of the personal/carer's leave entitlement as personal sick leave' or
- (ii) the current year's aggregated personal/carer's leave entitlement.

3.4 Sick leave entitlements which are untaken at the completion of this year shall accumulate on the following scale:

3.4.1 The balance of personal/carer's leave provided that such remaining leave does not exceed the quantum of sick leave specified below less any personal sick leave or carer's leave taken by the employee during the year:

- (i) 61 hours in the first year of service;
- (ii) 76 hours in the second or subsequent year of service;

3.5 (i) An employee who is absent from duty as a result of personal ill health or accident shall, where practicable, notify the employer of such absence and, if possible, the expected duration of the absence, within two hours of the employees normal time of commencing work.

- (ii) Provided that an employee to be eligible for payment shall produce or forward within 24 hours of the commencement of the absence evidence satisfactory to the employer that the absence was due to personal ill health or accident necessitating such absence. In the case of single day absences a statutory declaration shall be accepted by an employer as satisfactory evidence of illness or accident.

Provided further than an employer, at his or her discretion, may withhold payment where, in respect of single day absences only, an employee has failed to notify the employer of the absence in accordance with subclause (a) of this clause.

- (iii) If the full period of sick leave as prescribed above is not taken in any year such portion as is not taken shall, provided an employee remains in the service of the one employer or any successor of such employer, be cumulative from year to year.

4. Bereavement/Compassionate Leave

4.1 An employee, other than a casual employee, is entitled to two ordinary days paid leave on each occasion if a member of the employee's immediate family or household in Australia dies.



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16(4.) - contd

4.2 Each day or part of a day used under subclause 4.1 is deducted from the amount of personal/carer's leave under subclause 1.

4.3 An employee is entitled to use accumulated sick leave as paid bereavement leave/compassionate leave up to and including the day of the funeral of up to two ordinary days on each occasion when a member of the employee's immediate family or household in Australia dies and the employee has already used the current year's personal/carer's leave entitlement under subclause 1.

4.4 An employee is entitled to use unpaid leave up to and including the day of the funeral of up to two days on each occasion when a member of the employee's immediate family or household in Australia dies if the employee has already used the current years personal/carer's leave entitlement under subclause 1 and no accumulated sick leave is available.

4.5 Proof of death must be provided to the satisfaction of the employer if requested.

5. Carer's Leave

5.1 An employee, other than a casual employee, with responsibilities in relation to either members of their immediate family or household who need their care and support is entitled to use up to 5 days per annum of their personal/carer's leave entitlement to provide care and support for such persons when they are ill. Leave maybe taken for part of a single day.

5.2 The entitlement to use personal/carer's leave is subject to the employee being responsible for the care of the person concerned.

5.3 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 the illness is such as to require care by another.

5.4 In normal circumstances an employee must not take carer's leave under this clause where another person has taken leave to care for the same person.

5.5 The employee must where 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 must notify the employer by telephone of such absence at the first opportunity on the day of absence.

5.6 Each day or part of a day of carer's leave taken in accordance with subclause 5.1 is to be deducted from the amount of personal/carer's leave provided in subclause 1 of this clause up to a maximum of 5 days per annum

5.7 An employee is entitled to use accumulated sick leave as paid carer's leave if the employee has used the current year's personal/carer's leave entitlement. An exception to this is where an employee has already taken 5 days carer's leave in the current year.

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16 - contd

6. Unpaid Carer's Leave

An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care to a family member who is ill.

7. Annual Leave

Notwithstanding provisions elsewhere in the award the employer and the majority of employees at an enterprise may agree to establish a system of single day annual leave absences, provided that:

7.1 An employee may elect with the consent of the employer to take annual leave in single day periods or part of a single day not exceeding a total of five days in any calendar year at a time or times agreed between them.

7.2 Access to annual leave, as prescribed in subclause 1 above, shall be exclusive of any shutdown period provided for elsewhere under this award.

7.3 An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least 5 consecutive annual leave days are taken.

7.4 Paragraph 1 is subject to the employer informing the MEAA which is both party to the Award and which has members employed at the particular enterprise of its intention to introduce an enterprise system of annual leave flexibility, and providing a reasonable opportunity for the union to participate in negotiations.

7.5 Once a decision has been taken to introduce an enterprise system of single day annual leave, in accordance with this clause, its terms must be set out in the time and wages record kept pursuant to regulations 131A - 131R of the Industrial relations Regulations.

7.6 An employer shall record these short term annual leave arrangements in the time and wages book.

8. Time Off in Lieu of Payment

Notwithstanding provisions elsewhere in the award, the employer and the majority of employees at an enterprise may agree to establish system of time off in lieu of overtime provided that:

8.1 An employee may elect, with the consent of the employer, to take time off in lieu of payment for overtime at a time or times agreed with the employer.

8.2 Overtime taken as time off during ordinary time hours shall be taken at this ordinary time rate, that is an hour for each hour worked. (unless otherwise provided elsewhere in the award)

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16(8.) - contd

8.3 An employer shall if requested by an employee, provide payment at the rate provided for the payment of overtime as prescribed in clause 34 of this award, for any overtime worked under this subclause where such time has not been taken within four weeks of accrual.

8.4 Paragraph 1 is subject to the employer informing the MEAA which is both party to the Award and which has members employed at the particular enterprise of its intention to introduce an enterprise system of time off in lieu of overtime flexibility, and providing a reasonable opportunity for the union to participate in negotiations.

8.5 Once a decision has been taken to introduce an enterprise system of time off in lieu, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to regulations 131A - 131R of the Industrial Relations Regulations.

8.6 An employer shall record time off in lieu arrangements in the time and wages book, each time this provision is used.

9. Make Up Time

Notwithstanding provisions elsewhere in the award, the employer and the majority of employees at an enterprise may agree to establish a system of make up time provided that.

9.1 An employee may elect, with the consent of the employer to work make up time under which the employee takes time off during ordinary hours and works those hours at a later time, during the spread of ordinary hours provided in the award.

9.2 An employee on shift work may elect, with the consent of their employer, to work 'make up time' under which the employee takes time off ordinary hours and works those hours at a later time at the shift work rate which would have been applicable to the hours taken off.

9.3 Paragraph 1 is subject to the employer informing the MEAA which is both party to the Award and which has members employed at the particular enterprise of its intention to introduce an enterprise system of make up time flexibility, and providing a reasonable opportunity for the union to participate in negotiations.

9.4 Once a decision has been taken to introduce an enterprise system of make up time, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to regulations 131A - 131R of the Industrial Relations Regulations.

9.5 An employer shall record make up time arrangements in the time and wages book, each time this provision is used.

10. Rostered Days Off

Notwithstanding provisions elsewhere in the award, the employer and the majority of employees at an enterprise may agree to establish a system of RDO to provide that;

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10.1 An employee may elect, with the consent of the employer, to take a rostered day off at any time.

10.2 An employee may elect, with the consent of the employer, to take rostered days off in part day amounts.

10.3 An employee may elect, with the consent of the employer, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon by the employee at time mutually agreed by the employer, or subject to reasonable notice by the employee or the employer.

10.4 Paragraph 1 is subject to the employer informing the MEAA which is both party to the Award and which has members employed at the particular enterprise of its intention to introduce an enterprise system of RDO Flexibility, and providing a reasonable opportunity for the union to participate in negotiations.

10.5 Once a decision has been taken to introduce an enterprise system of RDO flexibility, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to regulations 131A - 131R of the Industrial Relations Regulations.

10.6 An employer shall record RDO arrangements in the time and wages book, each time this provision is used.

11. Grievance Process

In the event of any dispute arising in connection with any part of this clause, such a dispute shall be processed in accordance with the dispute settling provisions of this award.

15. By deleting the existing clause 17 - ANNUAL LEAVE LOADING and inserting in its place the following:

17 - ANNUAL LEAVE

(a) You are only entitled to annual leave if you are a full time or part time employee.

(b) After you have completed 12 months service with the employer, you are entitled to 20 days annual leave. Part time employees receive a pro-rata entitlement based on their actual hours of work. The employer will not count public holidays as annual leave.

(c) If you are a full time or part time employee, when you take annual leave the employer will pay you in accordance with the average of your ordinary hours rate of pay received by you over the most recent 48 week period.

In addition, you will receive an annual leave loading of 17½% calculated on the average ordinary hours rate referred to above.

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(d) You can take annual leave which has not yet accrued in advance if your employer agrees to this.

(e) If your employment with your employer ends, you must pay the employer an amount equal to any leave that you have taken in advance but not earned. The employer can deduct that amount from any money that it owes you.

(f) If you end your employment with the employer by giving the proper amount of notice or if the Employer ends your employment then it will pay you a pro-rata payment based on the rate in subclause 17(b) for the period in respect of which annual leave has not been taken. This payment will be paid into your bank account or, where possible by cheque within 3 working days of your last day of work, subject to all employer property being returned to the employer.

(g) You may if the employer agrees, take up to 5 days of your annual leave in each year of employment to care for a member of your immediate family as defined in subclause 16(c). These 5 days can be taken as 5 single days in a calendar year.

16. By inserting the existing subclause 39(g) into the existing clause 18 - LOCOMOTION immediately following the existing subclause 18(c), and re-numbering it as subclause 18(d)

17. By deleting the existing clause 19 - COMPASSIONATE LEAVE and inserting in its place the following:

19 - BEREAVEMENT LEAVE

Refer to clause 16 - Personal/Carer's leave.

18. By deleting the existing clause 24 - EMPLOYMENT BUREAU AND PREFERENCE and inserting in its place the following:

24 - SUPERANNUATION

The employer will pay your superannuation contributions in accordance with the Federal Superannuation Guarantee legislation, into an approved industry fund or complying fund as agreed between the parties from time to time.

19. By renumbering Schedule "A"- ACCIDENT PAY as Schedule "C" - ACCIDENT PAY.

20. By deleting the existing clause 27 - MATERNITY LEAVE and inserting in its place the following:

27 - PARENTAL LEAVE

If you are a full time or part time employee then you are entitled to unpaid parental leave. Full details of this entitlement are set out in Schedule A to this Award. Schedule A forms part of this Award.

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21. By deleting the existing clause 28 - PATERNITY LEAVE and inserting in its place the following:

28 - DISPUTE SETTLING PROCEDURE

Subject to the rights of the parties to notify any dispute to the Australian Industrial Relations Commission at any time, any dispute arising from work performed under this award shall be dealt with as follows:

- (a) In the case of a dispute involving a single employee:
  - (i) As soon as practicable after the dispute or claim has arisen, the employee concerned shall take up the matter with their immediate supervisor affording them the opportunity to remedy the cause of the dispute;
  - (ii) Where any such attempt at settlement has failed to achieve a satisfactory resolution, or where the matter in dispute is of such a nature that direct discussions between the employee and their immediate supervisor are inappropriate, the employee will notify a duly authorised representative of MEAA who will take up the matter with the employer or their representative;
  - (iii) If the matter is not then satisfactorily resolved the matter will be submitted to the Australian Industrial Relations Commission for settlement; and
  - (iv) Without prejudice to any party, normal work must continue in accordance with the award while the matters in dispute are being dealt with in accordance with this clause. Where the matter in dispute relates to the introduction of a new or changed work practice, the previously existing work practice shall continue pending the resolution of the matter.
- (b) In the case of a dispute involving a number of employees:
  - (i) When MEAA becomes aware of the existence of the matter in dispute, an authorised representative of MEAA will take up the matter with the employer or their representative;
  - (ii) If the matter is not then satisfactorily resolved the matter will be submitted to the Australian Industrial Relations Commission for settlement; and
  - (iii) Without prejudice to any party, normal work must continue in accordance with the award while the matters in dispute are being dealt with in accordance with this clause. Where the matter in dispute relates to the introduction of a new or changed work practice, the previously existing work practice shall continue pending the resolution of the matter.

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22. By deleting the existing clause 30 - DEFINITIONS and inserting in its place the following:

30 - DEFINITIONS

Cinema Worker Level 1

A Cinema Worker Level 1 is an employee who has completed necessary induction and training or is under taking such training or who possesses equivalent experience or expertise required to perform work within the scope of this level.

Consistent with the employee's training an employee at this level:

1. Is responsible for the quality of work allocated to the employee, subject to routine supervision;
2. Works under routine supervision either individually or in a team environment on a range of tasks;
3. Exercises discretion within the employee's level of skill and training; and
4. Makes decisions in relation to routine matters within her or his area of work.

Indicative of the tasks which an employee at this level may perform are the following:

- subject to the award and these definitions, operates flexibly as required between work areas;
- basis keyboard duties;
- telephonist, receptionist, selling tickets, cashier and information services, provided that no employee required to handle cash shall be held responsible for a correct balance of that cash if another employee, supervisor or manager has access to it;
- provision of customer service;
- ushering;
- preparing for sale and selling food and drink, and other products, provided that employees shall not be required to cook foodstuffs other than light snacks;
- light incidental cleaning;
- assisting other workers in any of these tasks;
- training as a bio-box operator subject to routine supervision. An employee undertaking training in the bio-box will undergo a performance appraisal at 6 months, and subject to fulfilling the employer requirements for level 2, be promoted to that level;
- cleaning, when specifically engaged as such;

Cinema Worker Level 2

A Cinema Worker Level 2 is an employee who performs work within the scope of this level using applied knowledge and necessary skills.

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Consistent with her or his training and in addition to the competencies and tasks performed by an employee at Level 1, an employee at Level 2.

1. Solves straightforward problems using readily available information.
2. Works to complex instructions and procedures.
3. Provides supervision and assists with training Level 1 employees.
4. Organises and allocates work, materials, and equipment in an efficient and effective manner; and
5. Is responsible for work undertaken.

Indicative of the tasks which an employee at this level may perform are:

- indicative tasks for Level 1 employees;
- supervision of Level 1 employees;
- assisting in training of Level 1 employees;
- undertakes bio-box duties consistent with level 2 competencies subject to direction by a level 3 employee or a cinema operator who possesses level 3 competencies. Such direction may not necessarily involve constant supervision in the bio-box.

Cinema Worker Level 3

A Cinema Worker Level 3 is an employee who applies knowledge and skills to enable the employee to perform work at this level.

In addition to competencies and tasks performed by Level 2 employees, and consistent with the employees training, an employee at Level 3:

1. Is responsible for the projection area;
2. Supervises work of employees at Level 1 and 2;
3. Understands and applies quality control techniques;
4. Performs work under limited supervision either individually or in a team environment;
5. Exercises discretion within the scope of this level; and
6. May be responsible as required for the administration of the Cinema.

Indicative of the tasks which an employee at Level 3 may perform are:



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- indicative tasks for Level 2 employees;
- machine setting, loading and preparation within the employee's levels of skill and training;
- supervision of Level 1 and 2 employees;
- programming preparation and programming;
- bio-box administration and report preparation;
- identifying technical problems;
- training Level 1 and 2 employees;
- maintenance of technical equipment.

CINEMA

"Cinema" means any building or structure used for the purpose of exhibiting films commercially and includes a drive-in.

UNION

"Union" means the Media, Entertainment and Arts Alliance.

23. By deleting the existing clause 32 -LEAVE RESERVED and inserting in its place the following:

32 - TERMINATION AND REDUNDANCY

PART A - TERMINATION OF EMPLOYMENT

Notice of termination by employer

- (a) (i) In order to terminate the employment of an employee the employer shall give to the employee the following notice:

<u>Period of continuous service</u>	<u>Period of notice</u>
Less than 1 year	1 week
1 year and less than 3 years	2 weeks
3 years and less than 5 years	3 weeks
5 years and over	4 weeks

- (ii) In addition to the notice in paragraph (a) (i) hereof, employees over 45 years of age at the time of the giving of the notice with not less than two years continuous service, shall be entitled to an additional week's notice
- (iii) Payment in lieu of the notice prescribed in paragraphs (i) and/or (ii) hereof shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

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32:Pt A(a) - contd

- (iv) In calculating any payment in lieu of notice the wages an employee would have received in respect of the ordinary time he or she would have worked during the period of notice had his or her employment not been terminated shall be used.
- (v) The period of notice in this clause shall not apply in the case of dismissal for conduct that justifies instant dismissal, including malingering, inefficiency or neglect of duty, or in the case of casual employees, apprentices, or employees engaged for a specific period of time or for a specific task or tasks.

Notice of termination by employee.

(b) The notice of termination required to be given by an employee shall be the same as that required of an employer, save and except that there shall be no additional notice based on the age of the employee concerned.

If an employee fails to give notice the employer shall have the right to withhold monies due to the employee with a maximum amount equal to the ordinary time rate of pay for the period of notice

Time off during notice period.

(c) Where the employer has given notice of termination to an employee, the employee shall be allowed up to one day's time-off without loss of pay for the purpose of seeking other employment provided that the employer may at its discretion allow additional time-off. Time-off shall be taken at times that are convenient to the employee after consultation with the employer.

Statement of employment.

(d) The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee a written statement specifying the period of his or her employment and the classification of or the type of work performed by the employee.

Summary dismissal.

(e) Notwithstanding the provisions of paragraph (a) (i) hereof the employer shall have the right to dismiss any employee without notice for conduct that justifies instant dismissal including malingering, inefficiency or neglect of duty and in such cases the wages shall be paid up to the time of dismissal only.

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32:Pt A - contd

Unfair dismissals.

(f) Termination of employment by an employer shall not be harsh, unjust or unreasonable.

For the purposes of this clause, termination of employment shall include terminations with or without notice.

Without limiting the above, except where a distinction, exclusion or preference is based on the inherent requirements of a particular position, termination on the ground of race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction and social origin shall constitute a harsh, unjust or unreasonable termination of employment.

Disputes settlement procedures - unfair dismissals.

(g) Subject to the provisions of the *Workplace Relations Act 1996*, any dispute or claim arising under subclause (f) hereof should be dealt with in the following manner:

- (i) As soon as is practicable after the dispute or claim has arisen, the employee concerned will take the matter up with his or her immediate supervisor affording him or her the opportunity to remedy the cause of the dispute or claim.
- (ii) Where any such attempt at settlement has failed, or where the dispute or claim is of such a nature that a direct discussion between the employee and his or her immediate supervisor would be inappropriate, the employee shall notify a duly authorised representative of the Alliance who, if he or she considers that there is some substance in the dispute or claim, shall forthwith take the matter up with the employer or his or her representative.
- (iii) If the matter is not settled it shall be submitted to the Australian Industrial Relations Commission which shall endeavour to resolve the issue between the parties by conciliation.
- (iv) Without prejudice to either party, work should continue in accordance with this award while the matters in dispute are being dealt with in accordance with this paragraph.

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PART B - REDUNDANCY

Discussions before terminations

- (a) (i) 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 this is not due to the ordinary and customary turnover of labour and that decision may lead to termination of employment, the employer shall hold discussions with the employees directly affected and with the Alliance.
- (ii) The discussions shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provisions of paragraph (i) hereof and shall cover, inter alia, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any terminations on the employees concerned.
- (iii) For the purposes of the discussion the employer shall, as soon as practicable, provide in writing to the employees concerned and the Alliance, all relevant information about the proposed terminations including the reasons for the proposed termination, the numbers and categories of employees likely to be affected, and the number of workers normally employed and the period over which the terminations are likely to be carried out. Provided that any employer shall not be required to disclose confidential information the disclosure of which would be inimical to the employer's interests.

Transfer to lower paid duties.

(b) Where an employee is transferred to lower paid duties for reasons set out in paragraph (a) (i) hereof the employee shall be entitled to the same period of notice of transfer as he or she would have been entitled to if his or her 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 time rate of pay and the new lower ordinary time rates for the number of weeks of notice still owing.

(c) In addition to the period of notice prescribed for ordinary termination in Part A paragraph (a) of this clause, and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in paragraph (a) (i) hereof shall be entitled to the following amount of severance pay in respect of a continuous period of service.

<u>Period of continuous service</u>	<u>Severance pay</u>
1 year or less	nil
1 year and up to the completion of 2 years	4 weeks pay
2 years and up to the completion of 3 years	6 weeks pay
3 years and up to the completion of 4 years	7 weeks pay
4 years and over	8 weeks pay

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"Week's pay" means the ordinary time rate of pay for the employee concerned.

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.

Employee leaving during notice

(d) An employee whose employment is terminated for reasons set out in paragraph (a) (i) hereof may terminate his or her employment during the period of notice and, if so, shall be entitled to the same benefits and payments under this clause had he or she remained with the employer until the expiry of such notice. Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.

Alternative employment

(e) 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

Time-off during notice period

- (f) (i) During the period of notice of termination given by the employer 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.
- (ii) 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.

Notice to Commonwealth Employment Service

(g) Where a decision has been made to terminate employment in the circumstances outlined in paragraph (a) (i) hereof, the employer shall notify the Commonwealth Employment Service thereof as soon as possible giving relevant information including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.

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Superannuation benefits

(h) Subject to further order of the Commission where an employee whose employment is terminated receives a benefit from a superannuation scheme, he or she shall only receive under subclause (c) hereof the difference between the severance pay specified in that subclause and the amount of the Superannuation benefit he or she receives which is attributable to employer contributions only. If this Superannuation benefit is greater than the amount due under subclause (c) hereof then he or she shall receive no payment under that clause.

Transmissions of business

- (i) (i) 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") and an employee who at the time of such transmission was an employee of the transmittor in that business becomes an employee of the transmittee:
- (1) the continuity of employment of the employee shall be deemed not to have been broken by reason of such transmission; and
  - (2) the period of employment which the employee has had with the transmittor or any prior transmittor shall be deemed to be service of the employee with the transmittee.
- (ii) In this subclause "business" includes trade, process, business or occupation and includes part of any such business and "transmission" includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and "transmitted" has a corresponding meaning.

Employees with less than one year's service

(j) This clause shall not apply to employees with less than one year's continuous service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.

Employee exempted

(k) This clause shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, including malingering, inefficiency or neglect of duty, or in the case of casual employees, apprentices, or employees engaged for a specific period of time or for a specified task or tasks.

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Employers exempted

(l) Subject to an order of the Commission, in a particular redundancy case, this clause shall not apply to employers who employ less than fifteen employees.

Incapacity to pay

(m) An employer, in a particular redundancy case, may make application to the Commission to have the general severance pay prescription varied on the basis of the employer's incapacity to pay.

24. By deleting the existing words "PART II - CINEMAS (OTHER THAN DRIVE-INS)" and the words "This part has application to those respondents engaged in the operation of cinemas other than drive-ins." which occur immediately before the existing clause 33 - HOURS OF WORK (CINEMAS); and by deleting clause 33 - HOURS OF WORK (CINEMAS) and inserting in its place the following:

33 - HOURS OF WORK

(a) Your ordinary hours of work can be any hours worked on any of the days Monday through to and including Sunday provided that if you work ordinary hours between 1:00 am and 8:00 am on any day the employer will pay you at the rate of double time. (Provided that a CW1 or CW2 employee engaged as a cleaner will be paid a 15% loading between 1 am and 8 am).

(b) If you are a full time employee, you must work 76 ordinary hours in a 14 day cycle. These ordinary hours must be worked in periods of rostered ordinary hours of not more than 8 hours (Up to 10 hours by consent) and not less than 4 hours which must be consecutive other than for meal breaks.

(c) If you are a part time employee, you will be required to work an agreed number of ordinary hours in a 14 day cycle, ordinary hours must be worked in periods of not more than 8 hours (or 10 hours by consent) and not less than 3 hours which must be consecutive other than for meal breaks, except during school holidays when you can work as a full time employee in accordance with subclause 33(b) above.

(d) If you are a casual employee, you will be asked to work a minimum of 3 hours and a maximum of 8 hours (or 10 hours by consent) on each engagement which must be consecutive other than for meal breaks.

(e) The employer does not count any time off you have on meal breaks when adding up your ordinary hours.

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25. By deleting the existing clause 34 - OVERTIME (CINEMAS) and inserting in its place the following:

34 - OVERTIME

(a) Overtime is available to be worked by all employees. If you are a full time or part time employee, the employer may require you to work reasonable overtime.

(b) The employer will pay you for any authorised overtime you work as follows:

(i) More than 76 hours or 10 days in any 14 day cycle

If you work for more than 76 ordinary hours, or on more than 10 days, in any 14 day cycle, then you are working overtime and the employer will pay you for your overtime at the rate of time and one half for the first two hours of overtime. After the first two hours of overtime the employer will pay you at the rate of double time.

(ii) More than 8 hours on any day (or 10 hours by consent)

If you work for more than 8 ordinary hours (or 10 hours by consent) on any day, then you are working overtime and the employer will pay you for your overtime at the rate of time and one half for the first two hours of overtime. After the first two hours of overtime the employer will pay you at the rate of double time.

(c) Each day's work will be considered separately for the purposes of overtime. The employer will not count your meal breaks when adding up hours of overtime.

26. By deleting the existing clause 35 - RATES OF PAY (CINEMAS).

27. By renumbering the existing clause 35A - NO EXTRA CLAIMS as clause 35 - NO EXTRA CLAIMS; and by deleting the existing clause 35B - AWARD MODERNISATION

28. By deleting the existing clause 36 - PROTECTIVE CLOTHING, UNIFORMS, EQUIPMENT AND LAUNDRY ALLOWANCE and inserting in its place the following:

36 - UNIFORM ALLOWANCE

Where you are responsible for laundering the uniform you will be paid an allowance of \$1.30 per rostered day to a maximum of \$6.30 per week. Where the employer provides a uniform, you must ensure it is worn and presented in accordance with the employer policy as published from time to time. Accidental damage must be notified to your employer who will arrange replacement or repair. Intentional damage will be rectified at your expense.



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29. By deleting the words "PART III - DRIVE-INS" and the words "This part only has application to respondents engaged in the operation of drive-ins." which occur immediately before the existing clause 38 - DAYLIGHT SAVING; and by deleting the existing clauses 38 - DAYLIGHT SAVING, 39 - OVERTIME (DRIVE-INS) (other than subclause 39(g) which is to be re-numbered as subclause 14(d) as set out above), 40 - RATES OF PAY AND HOURS OF WORK (DRIVE-INS) and 41 - PROTECTIVE CLOTHING, UNIFORMS.

30. By re-numbering the existing clause 42 - ENTERPRISE FLEXIBILITY PROVISIONS as clause 38 - ENTERPRISE FLEXIBILITY PROVISIONS

31. By deleting the existing clause 43 - FLEXIBILITY OF LABOUR

32. By inserting a new Schedule "A" - PARENTAL LEAVE.

**SCHEDULE A**

**1. PARENTAL LEAVE**

Subject to the terms of this clause employees are entitled to maternity, paternity and adoption leave and to work part-time in connection with the birth or adoption of a child.

**1.1 Maternity leave**

**1.1.1 Nature of leave**

Maternity leave is unpaid leave.

**1.1.2 Definitions**

For the purposes of this clause:

**1.1.2(a) Employee** includes a part-time employee but does not include an employee engaged upon casual or seasonal work.

**1.1.2(b) Paternity leave** means leave of the type provided for in 1.2 whether prescribed in an award or otherwise.

**1.1.2(c) Child** means a child of the employee under the age of one year.

**1.1.2(d) Spouse** includes a de facto or a former spouse.

**1.1.2(e) Continuous service** means service under an unbroken contract of employment and includes:

**1.1.2(e)(i)** Any period of leave taken in accordance with this clause;

**1.1.2(e)(ii)** Any period of part-time employment worked in accordance with this clause; or

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**1.1.2(e)(iii)** Any period of leave or absence authorised by the employer or by the award.

**1.1.3 Eligibility for maternity leave**

**1.1.3(a)** An employee who becomes pregnant, upon production to her employer of the certificate required by 1.1.4 hereof, shall be entitled to a period of up to 52 weeks maternity leave provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of paternity leave taken by the employee's spouse in relation to the same child and apart from paternity leave of up to one week at the time of confinement shall not be taken concurrently with paternity leave.

**1.1.3(b)** Subject to 1.1.6 and 1.1.9 hereof, the period of maternity leave shall be unbroken and shall, immediately following confinement, include a period of six weeks compulsory leave.

**1.1.3(c)** The employee must have had at least twelve months continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

**1.1.4 Certification**

At the time specified in clause 1.1.5 hereof, the employee must produce to her employer:

**1.1.4(a)** A certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement;

**1.1.4(b)** 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.

**1.1.5 Notice requirements**

**1.1.5(a)** An employee shall, not less than ten weeks prior to the presumed date of confinement, produce to her employer the certificate referred to in clause 1.1.4(a) hereof.

**1.1.5(b)** An employee shall give not less than four weeks notice in writing to her employer of the date upon which she proposes to commence maternity leave stating the period of leave to be taken and shall, at the same time, produce to her employer the statutory declaration referred to in clause 1.1.4(b) hereof.

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**1.1.5(c)** An employer by not less than fourteen days notice in writing to the employee may require her to commence maternity leave at any time within the six weeks immediately prior to her presumed date of confinement.

**1.1.5(d)** An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with 1.1.5(b) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.

**1.1.6 Transfer to a safe job**

**1.1.6(a)** Where, 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 shall, 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.

**1.1.6(b)** If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified necessary by a registered medical practitioner. Such leave shall be treated as maternity leave for the purposes of clauses 1.1.10 to 1.1.13 hereof.

**1.1.7 Variation of period of maternity leave**

**1.1.7(a)** Provided the maximum period of maternity leave does not exceed the period to which the employee is entitled under clause 1.1.3 hereof:

**1.1.7(a)(i)** The period of maternity leave may be lengthened once only by the employee giving not less than fourteen days notice in writing stating the period by which the leave is to be lengthened;

**1.1.7(a)(ii)** The period may be further lengthened by agreement between the employer and the employee.

**1.1.7(b)** The period of maternity leave may, with the consent of the employer, be shortened by the employee giving not less than fourteen days notice in writing stating the period by which the leave is to be shortened.

**1.1.8 Cancellation of maternity leave**

**1.1.8(a)** Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.

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**1.1.8(b)** Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the employer which shall not exceed four weeks from the date of notice in writing by the employee to the employer that she desires to resume work.

**1.1.9 Special maternity leave and sick leave**

**1.1.9(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:

**1.1.9(a)(i)** She shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work; or

**1.1.9(a)(ii)** For illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a registered medical practitioner certifies as necessary before her return to work.

**1.1.9(b)** Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed the period to which the employee is entitled under clause 1.1.3 hereof.

**1.1.9(c)** For the purposes of clauses 1.1.10, 1.1.11 and 1.1.12 hereof, maternity leave shall include special maternity leave.

**1.1.9(d)** An employee returning to work after the completion of a period of leave taken pursuant to this clause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who was transferred to a safe job pursuant to 1.1.6 hereof, to the position she held immediately before such transfer.

**1.1.9(d)(i)** Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing she shall be entitled to a position as nearly comparable in status and pay to that of her former position.

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**1.1.10 Maternity leave and other leave entitlements**

**1.1.10(a)** Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under clause 1.1.3 hereof, an employee may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part thereof to which she is entitled.

**1.1.10(b)** Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave) shall not be available to an employee during her absence on maternity leave.

**1.1.11 Effect of maternity leave on employment**

Subject to this clause, notwithstanding any award or other provision to the contrary, absence on maternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

**1.1.12 Termination of employment**

**1.1.12(a)** An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this award.

**1.1.12(b)** An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

**1.1.13 Return to work after maternity leave**

**1.1.13(a)** An employee shall confirm her intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.

**1.1.13(b)** An employee, upon returning to work after maternity leave or the expiration of the notice required by clause 1.1.13(a) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to 1.1.6 hereof, to the position which she held immediately before such transfer or in relation to an employee who has worked part-time during the pregnancy, the position she held immediately before commencing such part-time work.

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- 1.1.13(b)(i)** Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, she shall be entitled to a position as nearly comparable in status and pay to that of her former position.

**1.1.14 Replacement employees**

- 1.1.14(a)** A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.
- 1.1.14(b)** Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- 1.1.14(c)** Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- 1.1.14(d)** Nothing in this clause shall be construed as requiring an employer to engage a replacement employee.

**1.2 Paternity leave**

**1.2.1 Nature of leave**

Paternity leave is unpaid leave.

**1.2.2 Definitions**

For the purposes of this clause:

- 1.2.2(a)** **Employee** includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
- 1.2.2(b)** **Maternity leave** means leave of the type provided for in clause 1.1 hereof (and includes special maternity leave), whether prescribed in an award or otherwise.
- 1.2.2(c)** **Child** means a child of the employee or the employee's spouse under the age of one year.
- 1.2.2(d)** **Spouse** includes a de facto or a former spouse.

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**1.2.2(e) Primary care-giver** means a person who assumes the principal role of providing care and attention to a child.

**1.2.2(f) Continuous service** means service under an unbroken contract of employment and includes:

**1.2.2(f)(i)** Any period of leave taken in accordance with this clause;

**1.2.2(f)(ii)** Any period of part-time employment worked in accordance with this clause; or

**1.2.2(f)(iii)** Any period of leave or absence authorised by the employer or by the award.

**1.2.3 Eligibility for paternity leave**

**1.2.3(a)** A male employee, upon production to his employer of the certificate required by clause 1.2.4 hereof, shall be entitled to one or two periods of paternity leave, the total of which shall not exceed 52 weeks, in the following circumstances:

**1.2.3(a)(i)** An unbroken period of up to one week at the time of confinement of his spouse;

**1.2.3(a)(ii)** A further unbroken period of up to 51 weeks in order to be the primary care-giver of a child provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of maternity leave taken by the employee's spouse in relation to the same child and shall not be taken concurrently with that maternity leave.

**1.2.3(b)** The employee must have had at least twelve months continuous service with that employer immediately preceding the date upon which he proceeds upon either period of leave.

**1.2.4 Certification**

At the time specified in clause 1.2.5 hereof the employee must produce to his employer:

**1.2.4(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;

**1.2.4(b)** In relation to any period to be taken under clause 1.2.3(a) hereof, a statutory declaration stating:

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- 1.2.4(b)(i) He will take that period of paternity leave to become the primary care-giver of a child;
- 1.2.4(b)(ii) Particulars of any period of maternity leave sought or taken by his spouse; and
- 1.2.4(b)(iii) For the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

**1.2.5 Notice requirements**

- 1.2.5(a) The employee shall, not less than ten weeks prior to each proposed period of leave, give the employer notice in writing stating the dates on which he proposes to start and finish the period or periods of leave and produce the certificate and statutory declaration required in clause 1.2.4 hereof.
- 1.2.5(b) The employee shall not be in breach of this clause as a consequence of failure to give the notice required in clause 1.2.5(a) hereof if such failure is due to:
  - 1.2.5(b)(i) The birth occurring earlier than the expected date;
  - 1.2.5(b)(ii) The death of the mother of the child; or
  - 1.2.5(b)(iii) Other compelling circumstances.
- 1.2.5(c) The employee shall immediately notify his employer of any change in the information provided pursuant to clause 1.2.4 hereof.

**1.2.6 Variation of period of paternity leave**

- 1.2.6(a) Provided the maximum period of paternity leave does not exceed the period to which the employee is entitled under clause 1.2.3 hereof:
  - 1.2.6(a)(i) The period of paternity leave provided by clause 1.2.3(b) may be lengthened once only by the employee giving not less than fourteen days notice in writing stating the period by which the leave is to be lengthened;
  - 1.2.6(a)(ii) The period may be further lengthened by agreement between the employer and the employee.
- 1.2.6(b) The period of paternity leave taken under clause 1.2.3(b) may, with the consent of the employer, be shortened by the employee giving not less than fourteen days notice in writing stating the period by which the leave is to be shortened.



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**1.2.7 Cancellation of paternity leave**

Paternity leave, applied for under clause 1.2.3(b) hereof but not commenced, shall be cancelled when the pregnancy of the employee's spouse terminates other than by the birth of a living child.

**1.2.8 Paternity leave and other leave entitlements**

**1.2.8(a)** Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under clause 1.2.3 hereof, an employee may, in lieu of or in conjunction with paternity leave, take any annual leave or long service leave or any part thereof to which he is entitled.

**1.2.8(b)** Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave) shall not be available to an employee during his absence on paternity leave.

**1.2.9 Effect of paternity leave on employment**

Subject to this clause, notwithstanding any award or other provision to the contrary absence on paternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

**1.2.10 Termination of employment**

**1.2.10(a)** An employee on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with this award.

**1.2.10(b)** An employer shall not terminate the employment of an employee on the ground of his absence on paternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

**1.2.11 Return to work after paternity leave**

**1.2.11(a)** An employee shall confirm his intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of paternity leave provided by clause 1.2.3(b) hereof.

**1.2.11(b)** An employee, upon returning to work after paternity leave or the expiration of the notice required by 1.2.11(a) hereof, shall be entitled to the position which he held immediately before proceeding on paternity leave, or in relation to an employee who has worked part-time under this clause to the position he held immediately before commencing such part-time work.

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- 1.2.11(b)(i) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, he shall be entitled to a position as nearly comparable in status and pay to that of his former position.

**1.2.12 Replacement employees**

- 1.2.12(a) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.
- 1.2.12(b) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- 1.2.12(c) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- 1.2.12(d) Nothing in this clause shall be construed as requiring an employer to engage a replacement employee.

**1.3 Adoption leave**

**1.3.1 Nature of leave**

Adoption leave is unpaid leave.

**1.3.2 Definitions**

For the purposes of this clause:

- 1.3.2(a) **Employee** includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
- 1.3.2(b) **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 step-child 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.
- 1.3.2(c) **Relative adoption** occurs where a child, as defined, is adopted by a grandparent, brother, sister, aunt or uncle (whether of the whole blood or half blood or by marriage).
- 1.3.2(d) **Primary care-giver** means a person who assumes the principal role of providing care and attention to a child.

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**1.3.2(e) Spouse** includes a de facto spouse.

**1.3.2(f) Continuous service** means service under an unbroken contract of employment and includes:

**1.3.2(f)(i)** Any period of leave taken in accordance with this clause;

**1.3.2(f)(ii)** Any period of part-time employment worked in accordance with this clause, or

**1.3.2(f)(iii)** Any period of leave or absence authorised by the employer or by the award.

**1.3.3 Eligibility**

**1.3.3(a)** An employee, upon production to the employer of the documentation required by clause 1.3.4 hereof shall be entitled to one or two periods of adoption leave, the total of which shall not exceed 52 weeks, in the following circumstances:

**1.3.3(a)(i)** An unbroken period of up to three weeks at the time of the placement of the child;

**1.3.3(a)(ii)** An unbroken period of up to 52 weeks from the time of its placement in order to be the primary care-giver of the child. This leave shall not extend beyond one year after the placement of the child and shall not be taken concurrently with adoption leave taken by the employee's spouse in relation to the same child. This entitlement of up to 52 weeks shall be reduced by:

**1.3.3(a)(ii)(1)** Any period of leave taken pursuant to 1.3.3(a) hereof; and

**1.3.3(a)(ii)(2)** The aggregate of any periods of adoption leave taken or to be taken by the employee's spouse;

**1.3.3(b)** The employee must have had at least twelve months continuous service with that employer immediately preceding the date upon which he or she proceeds upon such leave in either case.

**1.3.4 Certification**

**1.3.4(a)** Before taking adoption leave the employee must produce to the employer:

**1.3.4(a)(i)** A statement from an adoption agency or other appropriate body of the presumed date of placement of the child with the employee for adoption purposes; or

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**1.3.4(a)(ii)** A statement from the appropriate government authority confirming that the employee is to have custody of the child pending application for an adoption order.

**1.3.4(b)** In relation to any period to be taken under clause 1.3.3(b) hereof, a statutory declaration stating:

**1.3.4(b)(i)** The employee is seeking adoption leave to become the primary care-giver of the child;

**1.3.4(b)(ii)** Particulars of any period of adoption leave sought or taken by the employee's spouse; and

**1.3.4(b)(iii)** For the period of adoption leave the employee will not engage in any conduct inconsistent with his or her contract of employment.

**1.3.5 Notice requirements**

**1.3.5(a)** Upon receiving notice of approval for adoption purposes, an employee shall notify the employer of such approval and within two months of such approval shall further notify the employer of the period or periods of adoption leave the employee proposes to take. In the case of a relative adoption the employee shall notify as aforesaid upon deciding to take a child into custody pending an application for an adoption order.

**1.3.5(b)** An employee who commences employment with an employer after the date of approval for adoption purposes shall notify the employer thereof upon commencing employment and of the period or periods of adoption leave which the employee proposes to take. Provided that such employee shall not be entitled to adoption leave unless the employee has not less than twelve months continuous service with that employer immediately preceding the date upon which he or she proceeds upon such leave.

**1.3.5(c)** An employee shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but no later than fourteen days before such placement, give notice in writing to the employer of such date, and of the date of the commencement of any period of leave to be taken under clause 1.3.3(a) hereof.

**1.3.5(d)** An employee shall, ten weeks before the proposed date of commencing any leave to be taken under clause 1.3.3(b) hereof, give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.

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- 1.3.5(e)** An employee shall not be in breach of this clause, as a consequence of failure to give the stipulated period of notice in accordance with clauses 1.3.5(c) and 1.3.5(d) hereof if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.

**1.3.6 Variation of period of adoption leave**

- 1.3.6(a)** Provided the maximum period of adoption leave does not exceed the period to which the employee is entitled under clause 1.3.3 hereof:

**1.3.6(a)(i)** The period of leave taken under clause 1.3.3(b) hereof may be lengthened once only by the employee giving not less than fourteen days notice in writing stating the period by which the leave is to be lengthened;

**1.3.6(a)(ii)** The period may be further lengthened by agreement between the employer and employee.

- 1.3.6(b)** The period of adoption leave taken under clause 1.3.3(b) hereof may, with the consent of the employer, be shortened by the employee giving not less than fourteen days notice in writing stating the period by which the leave is to be shortened.

**1.3.7 Cancellation of adoption leave**

- 1.3.7(a)** Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.

- 1.3.7(b)** Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the employer forthwith and the employer shall nominate a time not exceeding four weeks from receipt of notification for the employee's resumption of work.

**1.3.8 Special leave**

The employer shall grant to any employee who is seeking to adopt a child, such unpaid leave not exceeding two days, as is required by the employee to attend any compulsory interviews or examinations as are necessary as part of the adoption procedure. Where paid leave is available to the employee the employer may require the employee to take such leave in lieu of special leave.

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**1.3.9 Adoption leave and other entitlements**

- 1.3.9(a)** Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under clause 1.3.3 hereof, an employee may, in lieu of or in conjunction with adoption leave, take any annual leave or long service leave or any part thereof to which he or she is entitled.
- 1.3.9(b)** Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during the employee's absence on adoption leave.

**1.3.10 Effect of adoption leave on employment**

Subject to this clause, notwithstanding any award or other provision to the contrary, absence on adoption leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

**1.3.11 Termination of employment**

- 1.3.11(a)** An employee on adoption leave may terminate the employment at any time during the period of leave by notice given in accordance with this award.
- 1.3.11(b)** An employer shall not terminate the employment of an employee on the ground of the employee's application to adopt a child or absence on adoption leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

**1.3.12 Return to work after adoption leave**

- 1.3.12(a)** An employee shall confirm the intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of adoption leave provided by clause 1.3.3(b) hereof.
- 1.3.12(b)** An employee, upon returning to work after adoption leave shall be entitled to the position held immediately before proceeding on such leave or in relation to an employee who has worked part-time under this clause the position held immediately before commencing such part-time work.
- 1.3.12(b)(i)** 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 shall be entitled to a position as nearly comparable in status and pay to that of the employee's former position.

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**1.3.13 Replacement employees**

- 1.3.13(a)** A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.
- 1.3.13(b)** Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- 1.3.13(c)** Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- 1.3.13(d)** Nothing in this clause shall be construed as requiring an employer to engage a replacement employee.

**1.4 Part-time work**

**1.4.1 Definitions**

For the purposes of this clause:

- 1.4.1(a) Male employee** means an employed male who is caring for a child born of his spouse or a child placed with the employee for adoption purposes.
- 1.4.1(b) Female employee** means an employed female who is pregnant or is caring for a child she has borne or a child who has been placed with her for adoption purposes.
- 1.4.1(c) Spouse** includes a de facto or a former spouse.
- 1.4.1(d) Former position** means the position held by a female or male employee immediately before proceeding on leave or part-time employment under this clause whichever first occurs or, if such position no longer exists but there are other positions available for which the employee is qualified and the duties of which he or she is capable of performing, a position as nearly comparable in status and pay to that of the position first mentioned in this definition.
- 1.4.1(e) Continuous service** means service under an unbroken contract of employment and includes:
- 1.4.1(e)(i)** Any period of leave taken in accordance with this clause;

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- 1.4.1(e)(ii)** Any period of part-time employment worked in accordance with this clause; or
- 1.4.1(e)(iii)** Any period of leave or absence authorised by the employer or by the award.

**1.4.2 Entitlement**

With the agreement of the employer:

- 1.4.2(a)** A male employee may work part-time in one or more periods at any time from the date of birth of the child until its second birthday or, in relation to adoption, from the date of placement of the child until the second anniversary of the placement.
- 1.4.2(b)** A female employee may work part-time in one or more periods while she is pregnant where part-time employment is, because of the pregnancy, necessary or desirable.
- 1.4.2(c)** A female employee may work part-time in one or more periods at any time from the seventh week after the date of birth of the child until its second birthday.
- 1.4.2(d)** In relation to adoption a female employee may work part-time in one or more periods at any time from the date of the placement of the child until the second anniversary of that date.

**1.4.3 Return to former position**

- 1.4.3(a)** An employee who has had at least twelve months continuous service with an employer immediately before commencing part-time employment after the birth or placement of a child has, at the expiration of the period of such part-time employment or the first period, if there is more than one, the right to return to his or her former position.
- 1.4.3(b)** Nothing in clause 1.4.3(a) hereof shall prevent the employer from permitting the employee to return to his or her former position after a second or subsequent period of part-time employment.

**1.4.4 Effect of part-time employment on continuous service**

Commencement on part-time work under this clause, and return from part-time work to full-time work under this clause, shall not break the continuity of service or employment.



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**1.4.5 Pro rata entitlements**

Subject to the provisions of this clause and the matters agreed to in accordance with clause 1.4.8 hereof, part-time employment shall be in accordance with the provisions of this award which shall apply pro rata.

**1.4.6 Transitional arrangements - annual leave**

**1.4.6(a)** An employee working part-time under this clause shall be paid for and take any leave accrued in respect of a period of full-time employment, in such periods and manner as specified in the annual leave provisions of this award, as if the employee were working full-time in the class of work the employee was performing as a full-time employee immediately before commencing part-time work under this clause.

**1.4.6(b)** A full-time employee shall be paid for and take any annual leave accrued in respect of a period of part-time employment under this clause, in such periods and manner as specified in this award, as if the employee were working part-time in the class of work the employee was performing as a part-time employee immediately before resuming full-time work.

**1.4.6(b)(i)** Provided that, by agreement between the employer and the employee, the period over which the leave is taken may be shortened to the extent necessary for the employee to receive pay at the employee's current full-time rate.

**1.4.7 Transitional arrangements - sick leave**

An employee working part-time under this clause shall have sick leave entitlements which have accrued under this award (including any entitlement accrued in respect of previous full-time employment) converted into hours. When this entitlement is used, whether as a part-time employee or as a full-time employee, it shall be debited for the ordinary hours that the employee would have worked during the period of absence.

**1.4.8 Part-time work agreement**

**1.4.8(a)** Before commencing a period of part-time employment under this clause the employee and the employer shall agree:

**1.4.8(a)(i)** That the employee may work part-time;

**1.4.8(a)(ii)** Upon the hours to be worked by the employee, the days upon which they will be worked and commencing times for the work;

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1.4.8(a)(iii) Upon the classification applying to the work to be performed;  
and

1.4.8(a)(iv) Upon the period of part-time employment.

1.4.8(b) The terms of this agreement may be varied by consent.

1.4.8(c) The terms of this agreement or any variation to it shall be reduced to writing and retained by the employer. A copy of the agreement and any variation to it shall be provided to the employee by the employer.

1.4.8(d) The terms of this agreement shall apply to the part-time employment.

**1.4.9 Termination of employment**

1.4.9(a) The employment of a part-time employee under this clause, may be terminated in accordance with the provisions of this award but may not be terminated by the employer because the employee has exercised or proposes to exercise any rights arising under this clause or has enjoyed or proposes to enjoy any benefits arising under this clause.

1.4.9(b) Any termination entitlements payable to an employee whose employment is terminated while working part-time under this clause, or while working full-time after transferring from part-time work under this clause, shall be calculated by reference to the full-time rate of pay at the time of termination and by regarding all service as a full-time employee as qualifying for a termination entitlement based on the period of full-time employment and all service as a part-time employee on a pro rata basis.

**1.4.10 Extension of hours of work**

An employer may request, but not require, an employee working part-time under this clause to work outside or in excess of the employee's ordinary hours of duty provided for in accordance with 1.4.8 hereof.

**1.4.11 Nature of part-time work**

The work to be performed part-time need not be the work performed by the employee in his or her former position but shall be work otherwise performed under this award.

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**1.4.12 Inconsistent award provisions**

An employee may work part-time under this clause notwithstanding any other provision of this award which limits or restricts the circumstances in which part-time employment may be worked or the terms upon which it may be worked including provisions:

- 1.4.12(a) Limiting the number of employees who may work part-time;
- 1.4.12(b) Establishing quotas as to the ratio of part-time to full-time employees;
- 1.4.12(c) Prescribing a minimum or maximum number of hours a part-time employee may work; or
- 1.4.12(d) Requiring consultation with, consent of or monitoring by a union;

and such provisions do not apply to part-time work under this clause.

**1.4.13 Replacement employees**

- 1.4.13(a) A replacement employee is an employee specifically engaged as a result of an employee working part-time under this clause.
- 1.4.13(b) A replacement employee may be employed part-time. Subject to this clause, 1.4.5 to 1.4.9 and 1.4.12 hereof apply to the part-time employment of replacement employee.
- 1.4.13(c) Before an employer engages a replacement employee under this clause, the employer shall inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- 1.4.13(d) Unbroken service as a replacement employee shall be treated as continuous service for the purposes of clause 1.4.1(e) hereof.
- 1.4.13(e) Nothing in this clause shall be construed as requiring an employer to engage a replacement employee.

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B. This order shall have effect from the first pay period to commence on or after 17 March 1997 and shall remain in effect for a period of twelve months.

BY THE COMMISSION:



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**ENTERTAINMENT AND BROADCASTING INDUSTRY - CINEMA AWARD - 1998****PART 1 - APPLICATION AND OPERATION OF AWARD****1. AWARD TITLE**

This award will be referred to as the Entertainment and Broadcasting Industry - Cinema Award - 1998.

**2. ARRANGEMENT**

This award is arranged as follows:

**Part 1 Application and operation of award**

1. Award Title
2. Arrangement
3. Definitions
4. Date the Award Starts
5. Application of Award
6. Who is Bound by this Award
7. Relationship with other Awards

**Part 2 Award flexibility**

8. Enterprise Flexibility Provisions
9. Index of Facilitative Provisions

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

10. Consultation and communication procedures
11. Dispute settling procedure

**Part 4 Employer and employees duties, employment relationship and related arrangements**

12. Terms of Engagement
  - 12.1 Full-time employment
  - 12.2 Part-time employment
  - 12.3 Casual employment
  - 12.4 Work organisation
13. Notice of Termination
14. Redundancy
15. Anti-Discrimination

**Part 5 Wages and related matters**

- 16. Classifications and Rates of Pay
- 17. Higher Duties
- 18. Payment of wages
- 19. Allowances
  - 19.1 Travel and locomotion allowance
  - 19.2 Special Costumes
  - 19.3 Uniform allowance
- 20. Superannuation

**Part 6 Hours of work, breaks, overtime, shiftwork, weekend work**

- 21. Hours of Work
- 22. Overtime
- 23. Break Between Days of Work
- 24. Rosters
- 25. Meal Breaks

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

- 26. Annual Leave
- 27. Public Holidays
- 28. Personal/Carers leave
  - 28.1 Amount of Paid Personal/Carers leave
  - 28.2 Immediate family or Household
  - 28.3 Personal Sick Leave
  - 28.4 Bereavement/Compassionate Leave
  - 28.5 Carer's leave
  - 28.6 Unpaid Carer's Leave
  - 28.7 Annual leave
  - 28.8 Time off in Lieu of Overtime Payment
  - 28.9 Make Up Time
  - 28.10 Rostered Days Off
  - 28.11 Grievance process
- 29. Jury Leave
- 30. Worker's compensation make up pay
- 31. Parental Leave
- 32. Leave for consultation meetings

**Schedule A Parental Leave****Schedule B Accident Pay - Australian Capital Territory and Victoria****Schedule C Respondents**

### 3. DEFINITIONS

#### 3.1 Cinema Worker Level 1

3.1.1 A Cinema Worker Level 1 is an employee who has completed necessary induction and training or is under taking such training or who possesses equivalent experience or expertise required to perform work within the scope of this level.

3.1.2 Consistent with the employee's training an employee at this level:

- 3.1.2(a) Is responsible for the quality of work allocated to the employee, subject to routine supervision;
- 3.1.2(b) Works under routine supervision either individually or in a team environment on a range of tasks;
- 3.1.2(c) Exercises discretion within the employee's level of skill and training; and
- 3.1.2(d) Makes decisions in relation to routine matters within her or his area of work.

3.1.3 Indicative of the tasks which an employee at this level may perform are the following:

- 3.1.3(a) subject to the award and these definitions, operates flexibly as required between work areas;
- 3.1.3(b) basic keyboard duties;
- 3.1.3(c) provision of customer service;
- 3.1.3(d) ushering;
- 3.1.3(e) telephonist, receptionist, selling tickets, cashier and information services. Provided that no employee required to handle cash will be held responsible for a correct balance of that cash if another employee, supervisor or manager has access to it;
- 3.1.3(f) preparing for sale and selling food and drink, and other products, provided that employees will not be required to cook foodstuffs other than light snacks;
- 3.1.3(g) light incidental cleaning;
- 3.1.3(h) assisting other workers in any of these tasks;
- 3.1.3(i) training as a bio-box operator subject to routine supervision. An employee undertaking training in the bio-box will undergo a performance appraisal at 6 months, and subject to fulfilling the employer requirements for level 2, be promoted to that level;
- 3.1.3(j) cleaning, when specifically engaged as such;



### 3.2 Cinema Worker Level 2

- 3.2.1 A Cinema Worker Level 2 is an employee who performs work within the scope of this level using applied knowledge and necessary skills.
- 3.2.2 Consistent with her or his training and in addition to the competencies and tasks performed by an employee at Level 1, an employee at Level 2.
- 3.2.2(a) Solves straightforward problems using readily available information.
  - 3.2.2(b) Works to complex instructions and procedures.
  - 3.2.2(c) Provides supervision and assists with training Level 1 employees.
  - 3.2.2(d) Organises and allocates work, materials, and equipment in an efficient and effective manner; and
  - 3.2.2(e) Is responsible for work undertaken.
- 3.2.3 Tasks which an employee at this level may perform are:
- 3.2.3(a) indicative tasks for Level 1 employees;
  - 3.2.3(b) supervision of Level 1 employees;
  - 3.2.3(c) assisting in training of Level 1 employees;
  - 3.2.3(d) undertakes bio-box duties consistent with level 2 competencies subject to direction by a level 3 employee or a cinema operator who possesses level 3 competencies. Such direction may not necessarily involve constant supervision in the bio-box.

### 3.3 Cinema Worker Level 3

- 3.3.1 A Cinema Worker Level 3 is an employee who applies knowledge and skills to enable the employee to perform work at this level.
- 3.3.2 In addition to competencies and tasks performed by Level 2 employees, and consistent with the employees training, an employee at Level 3:
- 3.3.2(a) Is responsible for the projection area;
  - 3.3.2(b) Supervises work of employees at Level 1 and 2;
  - 3.3.2(c) Understands and applies quality control techniques;
  - 3.3.2(d) Performs work under limited supervision either individually or in a team environment;
  - 3.3.2(e) Exercises discretion within the scope of this level;
  - 3.3.2(f) May be responsible as required for the administration of the Cinema.

**3.3.3** Tasks which an employee at Level 3 may perform are:

- 3.3.3(a) indicative tasks for Level 2 employees;
- 3.3.3(b) machine setting, loading and preparation within the employee's levels of skill and training;
- 3.3.3(c) supervision of Level 1 and 2 employees;
- 3.3.3(d) programming preparation and programming;
- 3.3.3(e) bio-box administration and report preparation;
- 3.3.3(f) identifying technical problems;
- 3.3.3(g) training Level 1 and 2 employees;
- 3.3.3(h) maintenance of technical equipment.

3.4 **Cinema** means any building or structure used for the purpose of exhibiting films commercially and includes a drive-in.

3.5 **Union** means the Media, Entertainment and Arts Alliance.

3.6 **Act** means the *Workplace Relations Act 1996* as amended from time to time.

3.7 **Commission** means the Australian Industrial Relations Commission.

3.8 **Continuous Service** for the purposes of termination and redundancy will mean:

3.8.1 In calculating the twelve months' continuous service, the only absences counted as time worked are the following:

- 3.8.1(a) long service leave that an employee takes under the relevant State long service leave legislation; and
- 3.8.1(b) annual leave.

3.8.2 Where a period of work is less than twelve months, the absences counted as time worked because of sickness or accident are calculated on a proportionate basis.

3.8.3 The following events do not break an employee's continuous service:

- 3.8.3(a) sick leave;
- 3.8.3(b) leave as the result of an accident;
- 3.8.3(c) leave lawfully granted by the employer; or
- 3.8.3(d) absence for a reasonable cause. (The employee must prove that the leave was reasonable);
- 3.8.3(e) where employees are temporarily stood down through no fault of their own, service is not to be considered to be broken;
- 3.8.3(f) any other absence from work does not break continuity of service unless the employer notifies the employee within fourteen days of the employee returning to work after the absence. The employer must tell the employee in writing.

**3.8.4** If an individual employee is absent, the employer must tell that employee by:

3.8.4(a) giving the notice to him or her personally; or

3.8.4(b) posting the notice to his or her last known address.

**3.8.5** If a number of employees are absent because of collective action, the employer may tell them all by placing a notice in the place where the employer normally places general notices to employees. The employer must also send a copy of the notice to the Union on the same day.

**3.8.6** It will also not break an employee's continuous service if the employer breaks or ends the employee's service in order to avoid the employer's obligations in respect of leave.

#### **4. DATE THE AWARD STARTS**

This Award comes into force on 1 July 1998 and remains in force for a period of 6 months.

#### **5. APPLICATION OF AWARD**

This award will apply throughout the Commonwealth of Australia.

#### **6. WHO IS BOUND BY THIS AWARD?**

**6.1** This award will be binding upon:

**6.1.1** The Media Entertainment and Arts Alliance ("the Union") and all persons eligible to be members of the Union, whether members or not, who are employed by respondent employers in classifications set out at clause 16.1 of this award;

**6.1.2** The Entertainment Industry Employers Association and its members;

**6.1.3** Named employer respondents specified in Schedule C.

#### **7. RELATIONSHIP WITH OTHER AWARDS**

This award supersedes the Entertainment and Broadcasting Industry - Cinema Award 1997 relating to employment in the industry covered by this award, but no right, obligation or liability already accrued or incurred under such previous award will be affected.

## PART 2 AWARD FLEXIBILITY

### 8. ENTERPRISE FLEXIBILITY PROVISIONS

(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 will apply:

- 8.1 A consultative mechanism and procedures appropriate to the size, structure and needs of the enterprise or workplace will be established.
- 8.2 For the purpose of the consultative process the employees may nominate the Union or another to represent them.
- 8.3 Where agreement is reached, an application will be made to the Commission.

### 9. INDEX OF FACILITATIVE PROVISIONS

- 9.1 A facilitative provision is one which provides that the standard approach in an award provision may be departed from by agreement between an individual employer and the Union and/or employee, or the majority of employees, in the enterprise or workplace concerned.
- 9.2 Facilitative provisions in this award are contained in the following clauses:

<u>Clause number</u>	<u>Clause title</u>
21	Hours of work
22	Overtime
24	Rosters
25	Meal breaks
26	Annual leave
28.7	Personal/carers leave (annual leave)
28.8	Personal/carers leave (time off in lieu of overtime)
28.9	Personal/carers leave (make up time)
28.10	Personal/carers leave (rostered days off)

## PART 3 COMMUNICATION, CONSULTATION AND DISPUTE RESOLUTION

### 10. CONSULTATION AND COMMUNICATION PROCEDURES

- 10.1 At each enterprise covered by this award the employer and employees and, if appropriate an appropriate representative including the union bound by this award, may establish a mechanism and procedures which enables them to communicate and consult about matters arising out of this award.
- 10.2 The employer may permit a notice board to be erected in the workshop, theatre, hall or other place of amusement, to facilitate communication between employees and/or their union representatives.

- 10.3 This award will be exhibited by each employer on his/her premises in a place accessible to all employees.

## 11. DISPUTE RESOLUTION

- 11.1 Subject to the rights of the parties to notify any dispute to the Australian Industrial Relations Commission at any time, any dispute arising from work performed under this award will be dealt with as follows:
- 11.2 As soon as practicable after the dispute or claim has arisen, the employee/s concerned will take up the matter with their immediate supervisor affording them the opportunity to remedy the cause of the dispute;
- 11.3 Where any such attempt at settlement has failed to achieve a satisfactory resolution, or where the matter in dispute is of such a nature that direct discussions between the employee/s and their immediate supervisor are inappropriate, the employee/s may notify a duly authorised representative of MEAA or other representative who will take up the matter with the employer or their representative;
- 11.4 If the matter is not then satisfactorily resolved the matter will be submitted to the Australian Industrial Relations Commission for settlement.

## PART 4 EMPLOYER AND EMPLOYEES' DUTIES, EMPLOYMENT RELATIONSHIP AND RELATED ARRANGEMENTS

### 12. TERMS OF ENGAGEMENT

#### 12.1 Full-time employment

Full-time employees will be employed and paid by the week.

#### 12.2 Part-time-employment

Part-time employees will be employed by the week for an agreed number of hours and be paid by the week.

#### 12.3 Casual employment

Casual employees will be employed by the hour and paid by the week.

#### 12.4 Work organisation

The employer may direct an employee to carry out the duties which it considers are within the limits of the employees' skill, competence and training.

## 13. NOTICE OF TERMINATION

### 13.1 Notice of termination by employer

13.1.1 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:

Period of Continuous Service	Period of Notice
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

13.1.2 In addition to the notice in 13.1.1, 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.

13.1.3 Payment in lieu of the prescribed notice in 13.1.1 and 13.1.2 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.

13.1.4 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:

- 13.1.4(a) the employee's ordinary hours of work (even if not standard hours);  
and
- 13.1.4(b) the amounts ordinarily payable to the employee in respect of those hours, including (for example) allowances, loading and penalties;  
and
- 13.1.4(c) any other amounts payable under the employee's contract of employment.

13.1.5 The period of notice in this clause does not apply:

- 13.1.5(a) in the case of dismissal for serious misconduct;
- 13.1.5(b) to apprentices;
- 13.1.5(c) to employees engaged for a specific period of time or for a specific task or tasks;
- 13.1.5(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;
- 13.1.5(e) to casual employees.

13.1.6 Continuous service is defined in clause 3.8.

### 13.2 Notice of termination by an employee

13.2.1 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.

13.2.2 If an employee fails to give the notice specified in 13.1.1 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 13.1.4.

### 13.3 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.

### 13.4 Transmission of business

Where a business is transmitted from one employer to another, as set out in clause 14, Redundancy, the period of continuous service that the employee had with the transmitter or any prior transmitter is deemed to be service with the transferee 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.

## 14. REDUNDANCY

### 14.1 Definitions

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

14.1.2 **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.

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

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

14.1.5 **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;

- o bonuses; and
- o any other ancillary payments of a like nature.

## 14.2 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.

## 14.3 Severance pay

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

An employee, other than an employee of a small employer as defined in 14.1.3, 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:

Period of continuous service	Severance pay
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 14.1.5

### 14.3.2 Severance pay - employees of a small employer

An employee of a small employer as defined in 14.1.3 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 over	8 weeks' pay

\* Week's pay is defined in 14.1.5

**14.3.3** 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.

**14.3.4** Service prior to 4 March 2005 shall not be taken into account in calculating an entitlement to severance pay for an employee of a small employer pursuant to 14.3.2.

**14.3.5** 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].

#### **14.4 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 13 - 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.

#### **14.5 Alternative employment**

**14.5.1** 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.

**14.5.2** This provision does not apply in circumstances involving transmission of business as set in 14.7.

#### **14.6 Job search entitlement**

**14.6.1** During the period of notice of termination given by the employer in accordance with 13.1, 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.

**14.6.2** 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.

**14.6.3** The job search entitlements under this subclause apply in lieu of the provisions of 13.3.

#### **14.7 Transmission of business**

**14.7.1** 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:

**14.7.1(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

**14.7.1(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 transmittor; and
- 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.

**14.7.2** The Commission may vary **14.7.1(b)** if it is satisfied that this provision would operate unfairly in a particular case.

#### **14.8 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.

#### **14.9 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.

## 15. ANTI-DISCRIMINATION

- 15.1 It is the intention of the respondents to this award to achieve the principal object in section 3(j) of the *Workplace Relations Act 1996* through respecting and valuing the diversity of the workforce 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.
- 15.2 Accordingly, in fulfilling their obligations under the disputes avoidance and settling 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.
- 15.3 Nothing in this clause is to be taken to affect:
- 15.3.1 any different treatment (or treatment having different effects) which is specifically exempted under the Commonwealth anti-discrimination legislation;
  - 15.3.2 junior rates of pay, until 22 June 2000 or later date determined by the Commission in accordance with s.143(1E) of the Act;
  - 15.3.3 an employee, employer or registered organisation, pursuing matters of discrimination in any State or federal jurisdiction, including by application to the Human Rights and Equal Opportunity Commission;
  - 15.3.4 the exemptions in s.170CK(3) and (4) of the Act.

## PART 5 - WAGES AND RELATED MATTERS

### 16. CLASSIFICATIONS AND RATES OF PAY

#### 16.1 Wage rates

The following will be the minimum weekly rates of pay to operate from the first pay period on and from 1 October 2008:

Classification	Base Rate	Penalty Averaging*	Minimum Rate
	Per Week \$	Per Week \$	Per Week \$
Cinema Worker 1	\$581.24	\$46.50	\$627.74
Cinema Worker 2	\$622.95	\$49.84	\$672.79
Cinema Worker 3	\$718.91	\$57.51	\$776.42

*Note: the above base rates are based on relativities to the metal trade at 87%, 97%, and 120%.*

Penalty averaging component is calculated at 8%.

## 16.2 Junior rates

Junior employees will be paid a percentage of the relevant minimum rate set out in clause 16.1 appropriate to the employee's classification. The percentages change according to age and are set out below:

Less than 19 years of age:	65% of ordinary full time rate
19 and less than 21 years of age:	90% of ordinary full time rate

## 16.3 Casual employees

Casual employees will be paid an hourly rate calculated by dividing the relevant minimum rate set out in clause 16.1 and where relevant 16.2 by a divisor of 38 and adding an additional 20% loading which is in lieu of annual leave, sick leave, bereavement leave, jury leave and to compensate for the nature of casual employment.

## 16.4 Part-time employees

16.4.1 Part-time employees will be paid on a pro-rata basis calculated on the relevant rate set out in this clause.

16.4.2 Part-time employees are entitled to the leave benefits set out in this Award at Part 8 - Leave of Absence and Public Holidays. Entitlement to these benefits is on a pro-rata basis calculated on the relevant rate referred to in this clause.

## 16.5 Arbitrated safety net adjustment

16.5.1 The rates of pay in this award include the arbitrated safety net adjustment payable under the *Safety Net Review - Wages May 2004* decision [Print PR002004]. 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 overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

16.5.2 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.

## 17. HIGHER DUTIES

An employee transferred to work in a classification to perform work for which a higher rate of pay is prescribed than that at which he or she is ordinarily paid will be paid at the higher rate during the period he or she performs such work, or a minimum of four hours, whichever is the greater.

## 18. PAYMENT OF WAGES

The employer will pay all wages direct to each employee's nominated bank account, or by cheque or cash. Employees will be paid weekly not later than four days following the conclusion of the pay period.

## 19. ALLOWANCES

### 19.1 Travel and locomotion allowance

**19.1.1** An employee, at the request of the employer, will be paid an allowance of 47 cents per kilometre for the use of his/her motor vehicle or motor cycle where:

**19.1.1(a)** An employee attends for duty on more than one occasion on the same day, so that a second journey from the employee's home is required.

**19.1.1(a)(i)** The allowance will be calculated on the basis of the distance of one return journey from the work place to the employee's home or to the GPO or main post office in the nearest adjoining city or town, whichever is the lesser distance.

**19.1.1(b)** An employee (other than an employee regularly engaged on relieving duties) who attends for work at his/her notified place of work and is required to attend elsewhere by the employer.

**19.1.1(b)(i)** The allowance will be paid for any additional distance travelled over and above the usual distance travelled between the employee's place of residence and normal place of employment, and return.

**19.1.1(b)(ii)** Any additional time required over and above the usual travelling time between the employee's place of residence and his or her normal place of employment, and return, will be regarded as time worked.

**19.1.2** Provided that the above allowance is not payable where the employer provides the means of transport for the employee, or reimburses the employee the cost of any excess fares required.

**19.1.3** An employee employed at a drive-in where public transport is not reasonably available will be entitled to reimbursement of the reasonable cost of taxi fares to a reasonably convenient place where public transport is available. Where the employee uses her or his own vehicle, the employee will be entitled to reimbursement of the reasonable cost of parking fees incurred.

19.1.4 Where an employee is detained at work until it is too late to travel home by the last bus, train, tram or other public transport, the employee will be entitled to reimbursement of the reasonable cost of taxi fares to her or his home. Where the employee uses her or his own vehicle, the employee will be entitled to reimbursement of the reasonable cost of parking fees incurred.

## 19.2 Special costumes

19.2.1 The employer will pay an employee who is required to wear a costume or uniform more unusual than is reasonably necessary for the performance of his or her work, an allowance of:

19.2.1(a) if engaged by the week - \$4.78 per week

19.2.1(b) if engaged other than by the week - \$0.96 cents per performance.

19.2.2 If any question arises as to whether such costume or uniform is so more unusual, it will be referred to the Commission.

## 19.3 Uniform allowance

19.3.1 The employer will pay an employee an allowance of \$1.60 per rostered day up to a maximum of \$7.83 per week, where the employee is responsible for the laundering and/or cleaning of a uniform.

19.3.2 Provided that where the employer launders and/or cleans the uniform, such allowance will not be paid.

19.3.3 Where the employer provides a uniform, the employee will ensure it is worn and presented in accordance with the employer policy as published from time to time. Accidental damage must be notified to the employer who will arrange replacement or repair. Intentional damage will be rectified at the employee's expense.

## 20. SUPERANNUATION

The employer will pay an employees' superannuation contributions in accordance with the Federal Superannuation Guarantee legislation, into an approved industry fund or complying fund as agreed between the parties from time to time.

## PART 6 HOURS OF WORK, BREAKS, OVERTIME, SHIFTWORK, WEEKEND WORK

### 21. HOURS OF WORK

21.1 Ordinary hours of work can be any hours worked on any of the days Monday through to and including Sunday provided that ordinary hours worked between 1:00 a.m. and 8:00 a.m. on any day will be paid at the rate of double time. (Provided that a CW1 or CW2 employee engaged as a cleaner will be paid a 15% loading between 1:00 a.m. and 8:00 a.m.).

- 21.2 Full-time employees must work 76 ordinary hours in a 14 day cycle. Ordinary hours must be worked in periods of rostered ordinary hours of not more than 8 consecutive hours or 10 consecutive hours by agreement between the employer and employee, and not less than 4 hours which must be consecutive other than for meal breaks.
- 21.3 Part-time employees, will be required to work an agreed number of ordinary hours in a 14 day cycle. The agreement about ordinary hours to be worked will be in writing and may be changed at any time by agreement between the employer and employee which will also be in writing. Ordinary hours will be the same as for a full-time employee. During school holidays in the State of employment, part-time employees may by agreement be employed as full-time employees in accordance with clause 21.2 above.
- 21.4 Casual employees will work a minimum of 3 consecutive hours other than for meal breaks required by the award, which are not counted in ordinary hours of work.

## 22. OVERTIME

22.1 Overtime is available to be worked by all employees. Full-time or part-time employees, may be required to work reasonable overtime.

22.2 Employees will be paid for any authorised overtime as follows:

### 22.2.1 Full-time and part-time employees

22.2.1(a) Work for more than 76 ordinary hours, or on more than 10 days, in any 14 day cycle, is overtime. The employer will pay for this overtime at the rate of time and one half for the first two hours and double time thereafter.

22.2.1(b) Work for more than 8 hours on any day or 10 hours by agreement between the employer and employee is overtime. The employer will pay for this overtime at the rate of time and one half for the first two hours and double time thereafter.

### 22.2.2 Casual employees

Work for more than 8 consecutive hours on any day or 10 consecutive hours by agreement between the employer and employee is overtime. The employer will pay for this overtime at the rate of time and one half for the first two hours and double time thereafter.

22.3 Each day's work will be considered separately for the purposes of overtime. The employer will not count meal breaks when adding up hours of overtime.

## 23. BREAK BETWEEN DAYS OF WORK

23.1 Employees must have at least 10 consecutive hours off duty between the end of each shift and starting ordinary work on the next day or shift.

- 23.2** If the employer requires an employee to return to work before the employee has had 10 hours off duty, the employer will pay the employee double the actual ordinary rate until the employee is released from duty. Employees are then entitled to be absent until the completion 10 consecutive hours off duty without loss of pay for ordinary working time during that absence.
- 23.3** An employee may voluntarily swap a work period or periods with another employee if the employer agrees. If this occurs, clause 23.2 will not apply.

## **24. ROSTERS**

The employer will post the roster at least 7 days before the start of the week to be worked. The start of the week is a Thursday. Rostered ordinary hours may be changed by agreement between the employee and the employer. The employer can change the roster at short notice due to unforeseen operational requirements. However, if the employer changes the roster for other reasons, employees will be paid double the ordinary rate for hours worked outside the original roster.

## **25. MEAL BREAKS**

The employer must allow a meal break of 30 minutes or, if the employee and the employer agree, up to one hour when employees are working a rostered period of work in excess of 5 hours unless that rostered work period would end within that meal break. Employees required to work beyond 5 hours without a meal break will be paid double the ordinary rate for the period of the meal break.

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

### **26. ANNUAL LEAVE**

- 26.1** Full-time or part-time employees are entitled to annual leave.
- 26.2** Employees who have completed 12 months service with the employer are entitled to 20 days annual leave. Part-time employees receive a pro-rata entitlement based on their actual hours of work. The employer will not count public holidays as annual leave.
- 26.3** Full-time or part-time employees will be paid for annual leave in accordance with the average of the ordinary hours rate of pay received by the employee over the most recent 48 week period.

In addition, employees will receive an annual leave loading of 17½% calculated on the average ordinary hours rate referred to above.

- 26.4** Annual leave which has not accrued may be taken in advance if the employer agrees to this.
- 26.5** If an employee's employment ends, the employee must pay the employer an amount equal to any leave that has been taken in advance but not accrued. The employer can deduct that amount from any money that it owes the employee.



- 26.6** If an employee ends employment with the employer by giving the proper amount of notice, or if the employer ends the employee's employment, then the employer will pay a pro-rata payment based on the rate in clause 26.2 for the period in respect of which annual leave has not been taken. This payment will be paid into the employee's bank account or, where possible by cheque within 3 working days of the employee's last day of work, subject to all employer property being returned to the employer.
- 26.7** If the employer agrees, an employee may take up to 5 days annual leave in each year of employment to care for a member of the employee's immediate family as defined in clause 26.2. These 5 days can be taken as 5 single days in a calendar year.

## **27. PUBLIC HOLIDAYS**

- 27.1** Full-time or part-time employees, in addition to any other leave entitlements, are also entitled to holidays on the following days:
- New Year's Day
  - Good Friday
  - Easter Saturday
  - Easter Monday
  - Christmas Day
  - Boxing Day
- 27.2** Employees will also be entitled to holidays on the following days if those days have been declared public holidays in the State or Territory of employment:
- Australia Day
  - Anzac Day
  - Queen's Birthday
  - Eight Hours Day/Labour Day
- 27.3** Employees will also be entitled to one additional day's holiday on the day appropriate to the State or Territory of employment, as follows:
- August Bank Holiday (New South Wales)
  - Melbourne Cup Day, or in your local area a day observed instead of Melbourne Cup Day (Victoria)
  - Show Day as observed in your local area, (Queensland)
  - Adelaide Cup Day (South Australia)
  - Foundation Day (Western Australia)
  - Easter Bank Holiday (Tasmania)
  - Picnic Day (Northern Territory)
  - In the Australian Capital Territory one other day as follows: Canberra Day.
- 27.4** If in the State, Territory or locality of employment another day is declared as a public holiday in substitution for one of the days listed in this clause, employees will be entitled to a holiday on the substituted day instead of the listed day.

- 27.5** If Christmas Day falls on a Saturday or Sunday, employees will be entitled to a holiday in lieu on 30 December. If Boxing Day falls on a Saturday or Sunday, employees will be entitled to a holiday in lieu on 28 December. If New Year's Day or Australia Day falls on a Saturday or Sunday, employees will be entitled to a holiday in lieu on the next Monday.
- 27.6** If in the State or Territory of employment more days are declared public holidays than those listed in this clause, weekly employees will also be entitled to paid leave for those extra days, and casual employees will receive the penalties as outlined in clause 27.8.
- 27.7** If a weekly employee is required to work on a day to be observed as a public holiday, then, in addition to receiving the normal rate of pay for working ordinary hours, employees will be paid at the rate of single time additional for the hours worked.
- 27.8** Casual employees will be entitled to receive double the permanent hourly rate for work on a public holiday.
- 27.9** A weekly employee whose rostered time off falls on a public holiday will be allowed an additional day off at a time to be agreed upon by the employer and the employee or the employee will be paid an additional day's pay in lieu thereof within seven days of the said holiday.

## **28. PERSONAL/CARER'S LEAVE**

### **28.1 Amount of paid personal/carer's leave**

An employee, other than a casual employee, is entitled to the following amount of paid personal/carer's leave:

- 28.1.1** 61 hours of sick leave and 15.2 hours of compassionate leave on each occasion in the first year of service;
- 28.1.2** 76 hours of sick leave and 15.2 hours of compassionate leave on each occasion in the second year and subsequent years of service; and

### **28.2 Immediate Family or Household**

**28.2.1** The entitlement to use bereavement leave/compassionate leave and carer's leave in accordance with this clause is subject to the person being either:

- 28.2.1(a)** a member of the employee's immediate family; or
- 28.2.1(b)** a member of the employee's household.

**28.2.2** the term "immediate family" includes;

- 28.2.2(a)** a spouse (including a former spouse, a de facto spouse and a former de facto spouse of the employee). A de

facto spouse, in relation to a person means a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; and

- 28.2.2(b)** a child or an adult child (including an adopted child, a step child or an ex nuptial child), parent, parent in law, grandparent, grandchild or sibling of the employee or spouse of the employee.

### **28.3 Personal Sick Leave**

**28.3.1** An employee, other than a casual employee, is entitled to the following amount of paid leave for absence due to personal illness or injury.

- 28.3.1(a)** Up to 61 hours in the first year of service:

- 28.3.1(b)** Up to 76 hours in the second and subsequent year of service;

**28.3.2** Leave taken by an employee under subclause 28.3.1 is deducted from the amount of personal/carer's leave under subclause 28.1.

**28.3.3** An employee is entitled to use accumulated sick leave for personal Sickness if the employee has already used:

- 28.3.3(a)** the current year's sick leave component of the personal/carer's leave entitlement as personal sick leave' or

- 28.3.3(b)** the current year's aggregated personal/carer's leave entitlement.

**28.3.4** Sick leave entitlements which are untaken at the completion of this year will accumulate on the following scale.

**28.3.5** The balance of personal/carer's leave provided that such remaining leave does not exceed the quantum of sick leave specified below less any personal sick leave or carer's leave taken by the employee during the year:

- 28.3.5(a)** 61 hours in the first year of service;

- 28.3.5(b)** 76 hours in the second or subsequent year of service;

- 28.3.6(a)** An employee who is absent from duty as a result of personal ill health or accident will, where practicable, notify the employer of such absence and, if possible, the expected duration of the absence, within two hours of the employees normal time of commencing work.

- 28.3.6(b)** Provided that an employee to be eligible for payment will produce or forward within 24 hours of the commencement of the absence evidence satisfactory to the employer that the absence was due to personal ill health or accident necessitating such absence. In the case of single day absences a statutory declaration will be accepted by an employer as satisfactory evidence of illness or accident.
- 28.3.6(c)** Provided further than an employer, at his or her discretion, may withhold payment where, in respect of single day absences only, an employee has failed to notify the employer of the absence in accordance with clause 28.3.6(a) of this clause.
- 28.3.6(d)** If the full period of sick leave as prescribed above is not taken in any year such portion as is not taken will, provided an employee remains in the service of the one employer or any successor of such employer, be cumulative from year to year.

#### **28.4 Bereavement/Compassionate Leave**

- 28.4.1** An employee, other than a casual employee, is entitled to two ordinary days paid leave on each occasion if a member of the employee's immediate family or household in Australia dies.
- 28.4.2** Each day or part of a day used under clause 28.4.1 is deducted from the amount of personal/carer's leave under clause 28.1.
- 28.4.3** An employee is entitled to use accumulated sick leave as paid bereavement leave/compassionate leave up to and including the day of the funeral of up to two ordinary days on each occasion when a member of the employee's immediate family or household in Australia dies and the employee has already used the current year's personal/carer's leave entitlement under clause 28.1.
- 28.4.4** An employee is entitled to use unpaid leave up to and including the day of the funeral of up to two days on each occasion when a member of the employee's immediate family or household in Australia dies if the employee has already used the current years personal/carer's leave entitlement under clause 28.1 and no accumulated sick leave is available.
- 28.4.5** Proof of death must be provided to the satisfaction of the employer if requested.

#### **28.5 Carer's Leave**

- 28.5.1** An employee, other than a casual employee, with responsibilities in relation to either members of their immediate family or household who need their care and support is entitled to use up to 5 days per annum of

their personal/carer's leave entitlement to provide care and support for such persons when they are ill. Leave may be taken for part of a single day.

**28.5.2** The entitlement to use personal/carer's leave is subject to the employee being responsible for the care of the person concerned.

**28.5.3** 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 the illness is such as to require care by another.

**28.5.4** In normal circumstances an employee must not take carer's leave under this clause where another person has taken leave to care for the same person.

**28.5.5** The employee must where 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 must notify the employer by telephone of such absence at the first opportunity on the day of absence.

**28.5.6** Each day or part of a day of carer's leave taken in accordance with clause 28.5.1 is to be deducted from the amount of personal/carer's leave provided in clause 28.1 of this clause up to a maximum of 5 days per annum.

**28.5.7** An employee is entitled to use accumulated sick leave as paid carer's leave if the employee has used the current year's personal/carer's leave entitlement. An exception to this is where an employee has already taken 5 days carer's leave in the current year.

## **28.6 Unpaid Carer's Leave**

An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care to a family member who is ill.

## **28.7 Annual Leave**

**28.7.1** Notwithstanding provisions elsewhere in the award the employer and the majority of employees at an enterprise may agree to establish a system of single day annual leave absences, provided that:

**28.7.2** An employee may elect with the consent of the employer to take annual leave in single day periods or part of a single day not exceeding a total of five days in any calendar year at a time or times agreed between them.

- 28.7.3** Access to annual leave, as prescribed in clause 28.7.1 above, will be exclusive of any shutdown period provided for elsewhere under this award.
- 28.7.4** An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least 5 consecutive annual leave days are taken.
- 28.7.5** Clause 28.7.1 is subject to the employer informing the MEAA which is both party to the Award and which has members employed at the particular enterprise of its intention to introduce an enterprise system of annual leave flexibility, and providing a reasonable opportunity for the union to participate in negotiations.
- 28.7.6** Once a decision has been taken to introduce an enterprise system of single day annual leave, in accordance with this clause, its terms must be set out in the time and wages record kept pursuant to Division 1 of Part 9A of the *Workplace Relations Regulations*.
- 28.7.7** An employer will record these short term annual leave arrangements in the time and wages book.

## **28.8 Time Off in Lieu of Overtime Payment**

Notwithstanding provisions elsewhere in the award, the employer and the majority of employees at an enterprise may agree to establish system of time off in lieu of overtime provided that:

- 28.8.1** An employee may elect, with the consent of the employer, to take time off in lieu of payment for overtime at a time or times agreed with the employer.
- 28.8.2** Overtime taken as time off during ordinary time hours will be taken at this ordinary time rate, that is an hour for each hour worked. (unless otherwise provided elsewhere in the award).
- 28.8.3** An employer will if requested by an employee, provide payment at the rate provided for the payment of overtime as prescribed in clause 22 of this award, for any overtime worked under this clause where such time has not been taken within four weeks of accrual.
- 28.8.4** Clause 28.8 is subject to the employer informing the MEAA which is both party to the Award and which has members employed at the particular enterprise of its intention to introduce an enterprise system of time off in lieu of overtime flexibility, and providing a reasonable opportunity for the union to participate in negotiations.
- 28.8.5** Once a decision has been taken to introduce an enterprise system of time off in lieu of overtime, in accordance with this clause, its terms must be set out in the time and wages record kept pursuant to Division 1 of Part 9A of the *Workplace Relations Regulations*.

**28.8.6** An employer will record time off in lieu arrangements in the time and wages book, each time this provision is used.

## **28.9 Make Up Time**

Notwithstanding provisions elsewhere in the award, the employer and the majority of employees at an enterprise may agree to establish a system of make up time provided that:

**28.9.1** An employee may elect, with the consent of the employer to work make up time under which the employee takes time off during ordinary hours and works those hours at a later time, during the spread of ordinary hours provided in the award.

**28.9.2** An employee on shift work may elect, with the consent of their employer, to work make up time under which the employee takes time off ordinary hours and works those hours at a later time at the shift work rate which would have been applicable to the hours taken off.

**28.9.3** Clause 28.9 is subject to the employer informing the MEAA which is both party to the Award and which has members employed at the particular enterprise of its intention to introduce an enterprise system of make up time flexibility, and providing a reasonable opportunity for the union to participate in negotiations.

**28.9.4** Once a decision has been taken to introduce an enterprise system of make up time, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to Division 1 of Part 9A of the *Workplace Relations Regulations*.

**28.9.5** An employer will record make up time arrangements in the time and wages book, each time this provision is used.

## **28.10 Rostered Days Off**

Notwithstanding provisions elsewhere in the award the employer and the majority of employees at an enterprise may agree to establish a system of RDO to provide that;

**28.10.1** An employee may elect, with the consent of the employer, to take a rostered day off at any time.

**28.10.2** An employee may elect, with the consent of the employer, to take rostered days off in part day amounts.

**28.10.3** An employee may elect, with the consent of the employer, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon by the employee at time mutually agreed by the employer, or subject to reasonable notice by the employee or the employer.

**28.10.4** Clause 28.10 is subject to the employer informing the MEAA which is both party to the Award and which has members employed at the particular enterprise of its intention to introduce an enterprise system of RDO Flexibility, and providing a reasonable opportunity for the union to participate in negotiations.

**28.10.5** Once a decision has been taken to introduce an enterprise system of RDO flexibility, in accordance with this clause, its terms must be set out in the time and wages records kept pursuant to Division 1 of Part 9A of the *Workplace Relations Regulations*.

**28.10.6** An employer will record RDO arrangements in the time and wages book, each time this provision is used.

### **28.11 Grievance Process**

In the event of any dispute arising in connection with any part of this clause, such a dispute will be processed in accordance with Clause 11 (Dispute Settling Provisions) of this award.

## **29. JURY LEAVE**

**29.1** A weekly employee required to attend for jury service during her or his ordinary working hours will be reimbursed by the employer an amount equal to the difference between the amount paid in respect of her or his attendance for such jury service and the amount of wage she or he would have received in respect of the ordinary time she or he would have worked had she or he not been on jury service.

**29.2** An employee will notify the employer as soon as possible of the date upon which she/he is required to attend for jury service. Further, the employee will give the employer proof of her or his attendance, the duration of such attendance and the amount received in respect of such jury service.

## **30. WORKER'S COMPENSATION MAKE-UP PAY**

A weekly employee employed in Victoria or the Australian Capital Territory, who is absent from work as a result of an injury in respect of which workers' compensation is payable, will be paid accident make up pay in accordance with Schedule B.

## **31. PARENTAL LEAVE**

Full-time or part-time employees are entitled to unpaid parental leave. Full details of this entitlement are set out in Schedule A to this Award. Schedule A forms part of this Award.

## **32. LEAVE FOR CONSULTATION MEETINGS**

Each employer will allow his/her employees to attend meetings to discuss industrial matters without loss of ordinary pay provided the following conditions are observed:

**32.1** At least fourteen days notice of such meeting is given to the employer.



- 32.2 The meetings will be held on Mondays, not public holidays and will conclude by 12.30 p.m.
- 32.3 The employer is only obliged to pay wages for the period that the employee was rostered for duty.
- 32.4 The employer is only obliged to pay wages for the period of the meeting if the employer is in receipt of satisfactory evidence of the employee's attendance at the meeting.
- 32.5 The employer is not obliged to pay wages for more than two such meetings in any calendar year in each State.

## SCHEDULE A - PARENTAL LEAVE

Subject to the terms of this clause employees are entitled to maternity, paternity and adoption leave and to work part-time in connection with the birth or adoption of a child.

### 1. Definitions

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 step-child 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.

1.2 Subject to clause 1.3, in this clause, spouse includes a de facto or former spouse.

1.3 In relation to clause 5, spouse includes a de facto spouse but does not include a former spouse.

The provisions of this clause apply to full-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 twelve 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.

### 2. Basic Entitlement

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.

2.2 Parental leave is to be available to only one parent at a time, except that both parents may simultaneously access the leave in the following circumstances:

2.2.1 for maternity and paternity leave, an unbroken period of one week at the time of the birth of the child;

2.2.2 for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.

### 3. Maternity Leave

3.1 An employee will provide to the employer at least ten weeks in advance of the expected date of commencement of parental leave:

3.1.1 a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement;

3.1.2 written notification of the date on which she proposes to commence maternity leave, and the period of leave to be taken; and

3.1.3 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

3.2 Subject to clause 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.

3.3 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.

3.4 Where the pregnancy of an employee terminates after 28 weeks and the employee has not commenced maternity leave, the employee may take unpaid special maternity leave of such period as a registered medical practitioner certifies as necessary, except that where an employee is suffering from an illness not related to the direct consequences of the birth, an employee may be entitled to paid sick leave in lieu of, or in addition to, special maternity leave.

3.5 Where leave is granted under clause 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.

### 4. Paternity Leave

4.1 An employee will provide to the employer at least ten weeks prior to each proposed period of paternity leave, with:

4.1.1 a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected dated of confinement, or states the date on which the birth took place; and

4.1.2 written notification of the dates on which he proposes to start and finish the period of paternity leave; and

4.1.3 a statutory declaration stating:

- 4.1.3(a) he will take that period of paternity leave to become the primary care-giver of a child;
- 4.1.3(b) particulars of any period of maternity leave sought or taken by his spouse; and
- 4.1.3(c) that for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

## 5. Adoption Leave

- 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.
- 5.2 Before commencing adoption leave, an employee will provide the employer with a statutory declaration stating:
  - 5.2.1 the employee is seeking adoption leave to become the primary care-giver of the child;
  - 5.2.2 particulars of any period of adoption- leave sought or taken by the employee's spouse; and
  - 5.2.3 that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.
- 5.3 An employer may require an employee to provide confirmation from the appropriate government authority of the placement.
- 5.4 Where the placement of 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.

## 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.

## 7. Parental Leave and Other Entitlements

An employee may in lieu of or in conjunction with parental leave, access other paid leave entitlements which they have accrued, such as annual leave or long service leave, subject to the total amount of leave not exceeding 52 weeks.

## **8. Transfer to a Safe Job**

- 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.
- 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.

## **9. Returning to work after a period of parental leave**

- 9.1** An 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.
- 9.2** An 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 clause 8, the employee will be entitled to return to the position they held immediately before such transfer.
- 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.

## **10. Replacement employees**

- 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.
- 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.

## SCHEDULE B

### ACCIDENT PAY - AUSTRALIAN CAPITAL TERRITORY AND VICTORIA

#### 1. ARRANGEMENT

This Appendix is arranged as follows:

<u>Subject matter</u>	<u>Clause Number</u>
Arrangement	1
Area of operation	2
Definitions	3
Qualifications for payment	4
Maximum period of payment	5
Insurance against liability	6
Death of employee	7
Variation in compensation rates	8
Absence on paid leave	9
Notice of injury	10
Furnishing of evidence	11
Medical examination	12
Damages claims	13
Redemption of weekly payments	14
Termination of employment	15
Interruption of work	16
Cessation of business	17
Casual employees	18
Safety regulations	19
Disputes	20
Operation	21

#### 2. AREA OF OPERATION

Notwithstanding clause 3 - Application of award - this schedule will only apply in the State of Victoria and the Australian Capital Territory.

#### 3. DEFINITIONS

For the purpose of this schedule and subject to its terms the following definitions will apply:

##### 3.1 Workers' Compensation Act hereinafter referred to as **The Act** will mean:

in Victoria The Workers' Compensation Act 1958 (as amended);

3.1.2 in the Australian Capital Territory *The Workmen's Compensation Ordinance 1951* (as amended).

**Injury** will be given the same meaning and application as applying under the Act and no injury will result in the application of this appendix unless an entitlement exists under the Act.

### 3.3 Accident Make-Up Pay

#### 3.3.1 Total incapacity

In the case of an employee who is or is deemed to be totally incapacitated within the meaning of the Act and arising from an injury covered by this appendix, accident make-up means a weekly payment of an amount representing the difference between on the one hand, the total amount of compensation including other allowances paid to the employee during incapacity pursuant to the Act for the week in question and on the other hand, the total 40 hour weekly minimum rate of pay prescribed by this award in respect of the classification in which the employee was employed at the date of the injury giving rise to the said payments of the compensation together with or less as the case may be any variation in award rates which would have been applicable to the classification of such employee for the week in question if the employee had been performing their normal duties.

#### 3.3.2 Partial incapacity

In the case of an employee who is or is deemed to be partially incapacitated within the meaning of the Act and arising from an injury covered by this appendix, accident make-up pay means a weekly payment of an amount representing the difference between on the one hand, the total amount of compensation including other allowances paid to the employee during incapacity pursuant to the Act for the week in question together during incapacity pursuant to the Act for the week in question together with the average weekly amount the employee is earning in suitable employment as defined in this appendix and on the other hand the total 40 hour weekly minimum rate of pay prescribed by this award in respect of the classification in which the employee was employed at the date of the injury giving rise to the said payments of compensation together with or less as the case may be, any variation in award rates which would have been applicable to the classification of such employee for the week in question if the employee had been performing their normal duties.

**3.4 Suitable employment** will mean employment with the employer who employed the employee at the time of injury and as determined expressly or by implication by the Workers' Compensation Board or as agreed between the parties or by a legally qualified medical practitioner provided by and paid for by the employer.

**3.5 Normal working days** will mean and refer to those days part of any week, which comprise the ordinary weekly hours of duty as prescribed in clause 21 of the award.

**3.6 Injury or gradual onset** will mean:

**3.6.1** In Victoria an injury within the meaning of subsections (a) and (b) of Section 3(1) of the definition of "injury" contained in the Act.

3.6.2 In the Australian Capital Territory injury within the meaning of subsection (4) of section 9 of the Ordinance.

3.7 **Payment for part of a week** will mean: Where an employee is receiving accident make-up pay and accident make-up pay is payable for incapacity for part of a week the amount so payable will bear the same ratio to accident make-up pay for the full week as to normal working time during such partial period of incapacity bears to the worker's full normal working week.

#### 4. QUALIFICATIONS FOR PAYMENT

4.1 Always subject to the terms of this Schedule an employee covered by this Schedule will, upon receiving payment of compensation and continuing to receive such payment in respect of a weekly incapacity within the meaning of the Act be paid accident pay by the employer who is liable to pay compensation under the Act, (which liability by the employer for accident pay may be discharged by another person on their behalf);

4.2 Provided that:

4.2.1 Accident pay will only be payable to an employee whilst such employee remains in the employment of the employer by whom they were employed at the time of injury giving rise to incapacity and then only for such period as the employee receives a weekly payment under the Act.

4.2.2 Accident pay will not apply in respect of any injury during the first five normal working days of incapacity.

4.2.3 Accident pay will not be payable in respect of an injury sustained in the first two weeks of an employee's employment by an employer.

4.2.4 Accident pay will not be payable in respect of any injury of gradual onset as defined, unless the employee has been employed by the employer at the time of the incapacity for a minimum period of three months.

4.2.5 Accident pay will cease from the date of the refusal or the failure of an employee partially incapacitated to commence and/or perform suitable employment as defined.

4.2.6 An employee on engagement may be required to declare all workers' compensation claims made in the previous five years and in the event of false or inaccurate information being deliberately or knowingly declared, the employee will forfeit their entitlement to accident pay under this schedule.



**5. MAXIMUM PERIOD OF PAYMENT**

Accident pay under this appendix will be payable for a maximum period or aggregate of periods in no case exceeding a total of 26 weeks in respect of incapacity arising from any one injury as defined.

**6. INSURANCE AGAINST LIABILITY**

Nothing in this appendix will require an employee to insure against their liability for accident pay.

**7. DEATH OF EMPLOYEE**

The right to be paid accident pay will terminate on the death of an employee entitled thereto and no sum will be payable to the legal personal representative, next-of-kin, assignee or dependant of the deceased employee, with the exception of accident pay accrued up to the time of death.

**8. VARIATION IN COMPENSATION RATES**

In the event of a change in the rate of compensation payable under the Act to an employee the amount of accident pay payable to that employee may increase or decrease in accordance with the provisions of clause 3(c) hereof.

**9. ABSENCE ON OTHER PAID LEAVE**

9.1 An employee will not be entitled to accident pay in respect of any period of paid annual leave or long service leave or for any public holiday prescribed by the award.

9.2 An employer will not cause an employee to proceed on any paid leave for the sole purpose of avoiding the payment of accident pay.

**10. NOTICE OF INJURY**

An employee on receiving an injury for which the employee claims to be entitled to receive accident pay will give notice in writing of the said injury to their employer and of its manner of happening as soon as practicable after the happening thereof and will provide in writing all other information as the employer may reasonably require.

**11. FURNISHING OF EVIDENCE**

11.1 An employee who has suffered any injury for which the employer is receiving payment or payments for incapacity in accordance with the provisions of the respective Act will furnish evidence to the employer from time to time as required by the employer of such payment and compliance with this obligation will be a condition precedent to any entitlement under this Schedule.

11.2 An employee who is receiving or who has received accident pay in respect of an injury will if required by the employer or other person on their behalf authorise their employer to obtain any information required by such employer concerning such injury or compensation payable in respect thereof from the

insurance company that is liable to pay compensation to such employee pursuant to the respective Act.

## **12. MEDICAL EXAMINATION**

Nothing in this schedule will in any way be taken as restricting or removing the employer's right to require the employee to submit themselves to examination by a legally qualified practitioner chosen by the employer and provided and paid by the employer, and if the employee refuses to submit themselves to such examination or in any way obstructs the same, their right to receive or continue to receive accident pay will be suspended until such examination has taken place.

## **13. DAMAGES CLAIMS**

**13.1** An employee receiving or who has received accident pay will advise their employer of any action they may institute or any claim they may make for damages. Further, the employee will, if required, authorise such employer to obtain information as to the progress of such action or claim from their employee's solicitors and will if required, provide an authority to the employer entitling the employer to a charge on any money payable pursuant to any verdict or settlement on that injury.

**13.2** Where an employee obtains a verdict for damages against their employer or is paid an amount of money in settlement of any claim for damages that the employee has made against their employer in respect of any injury for which the employee has received accident pay, the employer's liability to pay accident pay will cease from the date of such verdict provided that if the verdict for damages is not reduced either in whole or in part by the amount of accident pay made by the employer the employee immediately upon payment of such verdict or amount in settlement will pay to their employer any amount of accident pay already received in respect of that injury by which the verdict has not been so reduced.

**13.3** Where an employee obtains a verdict for damages against a person other than the employer or is paid an amount of money in settlement of any claim for damages that the employee has made against such person in respect of any injury for which they have received accident pay the employer's liability to pay accident pay will cease from the date of such verdict; provided that if the verdict for damages is not reduced in whole or in part by the amount of accident pay made by the employer the employee will pay to their employer any amount of accident pay already received in respect of that injury by which the verdict has not been so reduced.

**13.4** Where an employee has a right to action against a third party in respect of any injury and the employee rejects the employer's legal advice to take such action then the employer's liability under this appendix will cease from the date of such rejection.

#### **14. REDEMPTION OF WEEKLY PAYMENTS**

Where there is a redemption of weekly compensation payments by the payment, under the respective Act, of a lump sum the employer's liability to pay accident pay will cease as from the date of such redemption.

#### **15. TERMINATION OF EMPLOYMENT**

Nothing in this appendix will affect the right of an employer to terminate the employment of an employee in accordance with clause 13 of the award and an employer's liability under this Schedule will cease from the date of such termination.

Provided that no employee will be terminated for the purpose of avoiding payment of accident pay.

#### **16. INTERRUPTION OF WORK**

An employee will not be entitled to the payment of accident make-up pay during the period of any strike which occurs in the section or sections of a plant in which an employee is employed or is normally employed.

#### **17. CESSATION OF BUSINESS**

**17.1** The liability of an employer to pay or make further payment of accident pay, pursuant to this Schedule, will cease immediately upon the employer becoming insolvent or going into liquidation.

**17.2** The liability of an employer to pay or make further payments of accident pay, pursuant to this appendix will cease immediately there is a termination of the contract of employment either as the result of a cessation of business or sale of a business.

#### **18. CASUAL EMPLOYEES**

Accident pay will not be payable to an employee engaged in accordance with the provisions of clause 12.3 of this award.

#### **19. SAFETY REGULATIONS**

Nothing in this appendix will require an employer to pay accident pay pursuant to this appendix when an employee is in breach of a statutory safety regulation or is wilfully or knowingly in breach of a company safety regulation.

#### **20. DISPUTES**

Subject to the *Workplace Relations Act 1996* in the event of any grievance, dispute or claim arising as to the entitlement of an employer to accident pay in accordance with the provisions of this schedule, the matter will be dealt with in accordance with the said Act or any amendment thereof.

**21. OPERATION.**

This Schedule will operate with respect to any injury sustained on or after 2 May 1983.

## SCHEDULE C

### RESPONDENTS

Alexandra Cinema, Acheron Rd, ACHERON, ALEXANDRA, VIC 3714  
 Arclight Pty Ltd, 57 Kent Street, RICHMOND, VIC 3121  
 Ascanbee Pty Ltd, T/A ABJ Encore Cinema, 1<sup>st</sup> Floor, 29 Morwick Street, STRATHFIELD, NSW 2135  
 Astor Cinema, Astor Cinema/Entrevision Cinemas, 659 Beaufort Street, MOUNT LAWLEY, WA 6050  
 Australian Film Institute, 81 Cardigan Street, CARLTON, VIC 3053  
 Avalon Cinema Centre, 39 Old Barrenjoey Rd, AVALON, NSW 2107  
 Axiom Cinemas Pty Ltd, c/- Markham Crane Pty Ltd, Unit 5, 44 St Kilda Rd, ST KILDA, VIC, 3182  
 A.Z. Associated Film Distributors, 233 Whitehorse Rd, BALWYN, VIC 3103  
 Ballarat Cinemas Pty Ltd, 20 Lydiard Street, SOUTH BALLARAT, VIC 3350  
 Balmoral Cinema, 150 Oxford Street, BULIMBA, QLD 4171  
 Balwyn Cinema International P/L, 233 Whitehorse Rd, BALWYN, VIC 3103  
 Bay Street Cinemas Pty Ltd, c/- Markham Crane Pty Ltd, Unit 5, 44 St Kilda Rd, ST KILDA, VIC 3182  
 Bay Street Cinemas Pty Ltd, P.D. Walker & Co., 379 Kent Street, SYDNEY, NSW 2000  
 Beverley Hills Twin Cinema, 449 King Georges Rd, BEVERLEY HILLS, NSW 2209  
 Bixoto Pty Ltd, T/A Mandolin Cinema, 10<sup>th</sup> Floor, 39-41 York Street, SYDNEY 2000  
 Boomerang Picture Palace, 334 Ipswich Rd, ANNERLEY, QLD 4103  
 Box Office Promotions Pty Ltd, c/- Duesbury's Services Pty Ltd, Level 5, 636 St Kilda Rd, MELBOURNE, VIC 3004  
 Capitol Cinema Pty Ltd, c/- Markham Crane Pty Ltd, Unit 5, 44 St Kilda Rd, ST KILDA, VIC 3182  
 Capri Cinema, 963 Stanley Street, EAST BRISBANE, QLD 4169  
 Capri Cinemas Pty Ltd, 1<sup>st</sup> Floor, 410 Lonsdale Street, MELBOURNE, VIC 3000  
 Carlton Movie House (Victoria) P/L, Unit 1, 15 Norwood Crescent, MOONEE PONDS, VIC 3039  
 Castlemaine Royal Cinema, 90 Hargraves Street, CASTLEMAINE, VIC 3450  
 Center Cinema, P.O. Box 1005, CIVIC SQUARE, ACT 2606  
 Challow Pty Ltd, 3<sup>rd</sup> Floor, 13-15 Bridge Street, SYDNEY, NSW 2000  
 Chia, Peng Tin, 19 Barker Street, STRATHFIELD, NSW 2135  
 China Town Cinema, Ground Floor, 108 Lonsdale Street, MELBOURNE, VIC 3000  
 Chinatown Cinema, 175 Wickham Street, FORTITUDE VALLEY, QLD 4006  
 Chinatown Cinema, 220 Brunswick Street, FORTITUDE VALLEY, QLD 4006  
 Cinema Deakin, 133 Langtree Ave, MILDURA, VIC 3500  
 Cinema La Scala, Flat 3, 53 Blessington Street, ST KILDA, VIC 3182  
 Cinema Legends, 547 Baloombe Rd, BLACK ROCK, VIC 3193  
 Cinema North, 7 Green Court, ALTONA, VIC 3018  
 Cinema Pacific Pty Ltd, 34 Velma Grove, RINGWOOD EAST, VIC 3135  
 Cinema Paradise, 233 Whitehorse Rd, BALWYN, VIC 3103  
 Cinema Paradise, P.O. Box 21, LAWLEY, WA 6050  
 City Cinemas Pty Ltd, Offices of Alexander & Spencer, Level 12A, 440 Collins Street, MELBOURNE, VIC 3000  
 Classic Cinema, 963 Stanley Street, EAST BRISBANE, QLD 4169  
 Collaroy Classic Cinema, 1097 Pittwater Rd, COLLAROY, NSW 2097  
 Cosmopolitan Twin Cinemas, P.O. Box 8081, WODEN, ACT 2606  
 Crazy Horse Theatre, 90 Talinga Rd, CHELTENHAM, VIC 3192  
 Croydon Twin Cinemas Pty Ltd, 315 Main Street, MORNINGTON, VIC 3931  
 Crystal Cinema Windsor, le Ceyt Street, WINDSOR, QLD 4030  
 Curzon Cinemas Pty Ltd, c/- Markham Crane Pty Ltd, Unit 5, 44 St Kilda Rd, ST KILDA, VIC 3182  
 Dendy Cinema Pty Ltd, 19 Martin Place, SYDNEY, NSW 2000  
 Duffryn Pty Ltd, 3<sup>rd</sup> Floor, 130 Bourke Street, MELBOURNE, VIC 3000  
 Duffryn Pty Ltd, 90 Talinga Rd, CHELTENHAM, VIC 3197

East Coast Cinemas Pty Ltd, c/- J S Morris, 361 Mitcham Rd, MITCHAM, VIC 3132  
 Eastside 3, Crooks Nominees Pty Ltd, AW & WR Crooks, 14 Hovea Crescent, CITY BEACH, WA 6015  
 Electric Shadows Cinema, P.O. Box 1005, CIVIC SQUARE, ACT 2608  
 Five Star Cinemas, Albany Creek Rd, ASPLEY, QLD 4034  
 Gaythorne Pictures, 464 Samford Rd, GAYTHORN, QLD 4051  
 Gippsland Cinemas Pty Ltd, 20 Fankhauser Drive, VERMONT SOUTH, VIC 3133  
 Golden Twin Cinema Pty Ltd, 61 Mary Street, HAWTHORN, VIC 3122  
 Hawthorne Cinema Complex, P.O. Box 164, BULIMBA, QLD 4171  
 Hayden Theatres Pty Ltd, Hayden Orpheum Picture Palace, 1<sup>st</sup> Floor, 360 Military Street, CREMORNE, NSW 2090  
 Healesville Cinema, 13 Harker Street, HEALESVILLE, VIC 3777  
 Hornsby Family Cinema, 155 Pacific Highway, HORNSBY, NSW 2077  
 Hunter Valley Cinemas Pty Ltd, Maitland Centre, 95 Darby Street, NEWCASTLE, NSW 2300  
 Inala Pty Ltd, 133 Langtree Ave, MILDURA, VIC 3500  
 Inverell Drive In Theatre Pty Ltd, Cl- Inverell Caravan Park, Glenn Innes Road, INVERELL, NSW 2360  
 John Humphrey Associates Pty Ltd, 151 Drummond Street, CARLTON, VIC 3053  
 Liberty Cinema, 81 Barrack Street, PERTH, WA 6000  
 Longford Cinema Pty Ltd, Unit 4 200 Toorak Rd, SOUTH YARRA, VIC 3141  
 Lotus Cinema Corporation Pty Ltd, c/- Zeccola Green & Associates, 1<sup>st</sup> Floor, 49 Douglas Street, NOBLE PARK, VIC 3174  
 Mc Cann Cinemas Pty Ltd, 95 Superior Ave, ROWVILLE, VIC 3178  
 Melbourne Independent Cinemas Pty Ltd, 43 McKenzie Street, MELTON, VIC 3337  
 Merrylands Mall Cinema, Pitt Street, MERRYLANDS, NSW 2160  
 Metro Cinema, 109 Edward Street, BRISBANE, QLD 4000  
 Metro Cinema, 109 Edward Street, EAST BRISBANE, QLD 4169  
 New Oxford Twin Cinemas Leederville, Independent Cinemas Pty Ltd, 1<sup>st</sup> Floor, 630 Murray Street, PERTH, WA 6000  
 North-West Cinemas, 64 Fulham Road, ALPHINGTON, VIC 3078  
 Nova Cinemas Pty Ltd, 60 Toorak Road, SOUTH YARRA, VIC 3141  
 Odeon Star Cinema, 65 Semaphore Road, SEMAPHORE, SA 5019  
 Ozone Cinemas Theatre, Levi Park, Landsdowne Terrace, VALE PARK, SA 5081  
 Pacific 8 Cinemas Logan Hyperdome, Logan Hyperdome, Pacific Highway, LOGANHOLME, QLD 4129  
 Pacific Cinemas, P.O. Box 3018, LOGANHOLME, QLD 4129  
 Pacific Eight Cinemas, Pacific Highway, LOGANHOLME, QLD 4129  
 Piccadilly Cinema, May Street Mall, PERTH, WA 6000  
 Pinewood Cinema Pty Ltd, Waverley Cinema, The Centreway, MOUNT WAVERLEY, VIC 3149  
 Ralamar Nominees Pty Ltd, c/- Tony Corbo & Associates, 137 Lygon Street, BRUNSWICK EAST, VIC 3057  
 Randwick Ritz, 43 St Paul's Road, RANDWICK, NSW 2031  
 Redcliffe Entertainment Centre, P.O. Box 66, REDCLIFFE, QLD 4020  
 Regal Cinema, 381 Honour Ave, GRACEVILLE, QLD 4075  
 Riviera Cinema, 181 Drummond Street, CARLTON, VIC 3053  
 Roadway Cinema, 57 Old Melbourne Road, BALLARAT, VIC 3350  
 Rosebud Cinema Propriety Limited, 30 Rosebud Pde, ROSEBUD, VIC 3939  
 Sale Twin Cinema, 50-52 Cunninghame Street, SALE, VIC 3850  
 Shaft Theatres Pty Limited, 90 Talinga Road, CHELTENHAM, VIC 3192  
 Siaus Pty Ltd, Suite 2, 1<sup>st</sup> Floor, 9 Patrick Street, CAMPBELLTOWN, NSW 2560  
 South Coast Theatres Pty Ltd, Room 1, 37 Erskine Street, SYDNEY, NSW 2000  
 South St Cinema, 9 Gloucester Street, GLENROY, VIC 3046  
 Star Cinema, 2 Milner Street, HINDMARSH, SA 5007  
 Swanpool Cinema, Mansfield Road, SWANPOOL, VIC 3673  
 The Classic Cinema Bistro and Restaurant, 9 Gordon Street, ELSTERNWICK, VIC 3185

Thompson Film Services Pty Ltd, Don Hayes Chartered Accountant, Suite 1 Level 1, 41 Oxford Street, DARLINGHURST, NSW 2010  
Towers Cinema Propriety Limited, Offices of Alexander & Spencer, Level 12A, 440 Collins Street, MELBOURNE, VIC 3000  
Trak Cinema, 375 Greenhill Rd, TOORAK GARDENS, SA 5065  
Valhalla Cinemas Pty Ltd, 1660 Glebe Point Road, GLEBE, NSW 2037  
Valley Twin Cinemas, 216 Brunswick Street, FORTITUDE VALLEY, QLD 4006  
Valley Twin Cinemas, 701 Brunswick Street, NEW FARM, QLD 4005  
Varsity Cinema, 4<sup>th</sup> Floor, Union House, University of Melbourne, PARKVILLE, VIC 3052  
Victorian Independant Cinemas P/L, 6 Nepean Highway, ELSTERNWICK, VIC 3185  
Village Cinema, Festival of Perth, University of WA, Mounts Bay Rd, CRAWLEY, WA 6009  
Village Twin Cinema, Cnr. Brunswick & Baker Streets, NEW FARM, QLD 4005  
Waverley Cinema Pty Ltd, 14 Josephine Ave, MOUNT WAVERLEY, VIC 3149  
Whitearc Pty Ltd, 7 Green Court, ALTONA, VIC 3018  
Whyalla Cinema, Forsythe Street, WHYALLA, SA 5600  
Wanthaggi Cinema Pty Ltd, C/- Woottons, 315 Main Street, MORNINGTON, VIC 3931  
W.G. Twin Cinema, Waverley Gardens Shopping Centre, Police Road, MULGRAVE, VIC 3170

### Cinema - Full-time & part-time

<b>Classification</b>	<b>Hourly pay rate</b>	<b>Public holiday</b>	<b>Overtime - first 2 hours</b>	<b>Overtime - after 2 hours</b>	<b>Break between shifts</b>	<b>Change of roster on short notice</b>	<b>Delayed meal break</b>	<b>Early morning</b>
Cinema worker level 1	\$21.03	\$42.06	\$31.55	\$42.06	\$42.06	\$42.06	\$42.06	\$42.06
Cinema worker level 2	\$21.84	\$43.68	\$32.76	\$43.68	\$43.68	\$43.68	\$43.68	\$43.68
Cinema worker level 3	\$23.80	\$47.60	\$35.70	\$47.60	\$47.60	\$47.60	\$47.60	\$47.60
Cinema worker level 4	\$25.29	\$50.58	\$37.94	\$50.58	\$50.58	\$50.58	\$50.58	\$50.58
Cinema worker level 5	\$25.96	\$51.92	\$38.94	\$51.92	\$51.92	\$51.92	\$51.92	\$51.92
Cinema worker level 6	\$26.70	\$53.40	\$40.05	\$53.40	\$53.40	\$53.40	\$53.40	\$53.40

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**Cinema - Casual**

<b>Classification</b>	<b>Hourly pay rate</b>	<b>Public holiday</b>	<b>Overtime - first 2 hours</b>	<b>Overtime - after 2 hours</b>	<b>Break between shifts</b>	<b>Change of roster on short notice</b>	<b>Delayed meal break</b>	<b>Early morning</b>
Cinema worker level 1	\$26.29	\$42.06	\$36.80	\$47.32	\$47.32	\$47.32	\$47.32	\$47.32
Cinema worker level 2	\$27.30	\$43.68	\$38.22	\$49.14	\$49.14	\$49.14	\$49.14	\$49.14
Cinema worker level 3	\$29.75	\$47.60	\$41.65	\$53.55	\$53.55	\$53.55	\$53.55	\$53.55
Cinema worker level 4	\$31.61	\$50.58	\$44.26	\$56.90	\$56.90	\$56.90	\$56.90	\$56.90
Cinema worker level 5	\$32.45	\$51.92	\$45.43	\$58.41	\$58.41	\$58.41	\$58.41	\$58.41
Cinema worker level 6	\$33.38	\$53.40	\$46.73	\$60.08	\$60.08	\$60.08	\$60.08	\$60.08

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### Junior - Cinema - Full-time & part-time

<b>Classification</b>	<b>Hourly pay rate</b>	<b>Public holiday</b>	<b>Overtime - first 2 hours</b>	<b>Overtime - after 2 hours</b>	<b>Break between shifts</b>	<b>Change of roster on short notice</b>	<b>Delayed meal break</b>	<b>Early morning</b>
16 years and under	\$10.71	\$21.42	\$16.07	\$21.42	\$21.42	\$21.42	\$21.42	\$21.42
17 years	\$13.09	\$26.18	\$19.64	\$26.18	\$26.18	\$26.18	\$26.18	\$26.18
18 years	\$15.47	\$30.94	\$23.21	\$30.94	\$30.94	\$30.94	\$30.94	\$30.94
19 years	\$17.85	\$35.70	\$26.78	\$35.70	\$35.70	\$35.70	\$35.70	\$35.70
20 years	\$20.23	\$40.46	\$30.35	\$40.46	\$40.46	\$40.46	\$40.46	\$40.46

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Level 1, 15-17 Queen Street  
Melbourne Victoria 3000  
T 61 3 8614 2000  
F 61 3 9614 1166  
W [www.liveperformance.com.au](http://www.liveperformance.com.au)  
ABN 43 095 907 857

*Fair Work Act 2009*

FAIR WORK COMMISSION

**IN THE MATTER OF:        4 yearly review of modern Awards**

**AM2014/259 – Broadcasting and Recorded Entertainment Award 2010**

Submissions in reply of the Australian Entertainment Industry Association (trading as Live Performance Australia) on the Exposure Draft Award.

22 February 2017

**Live Performance Australia**

Att: David Hamilton - Director, Workplace Relations

Level 1, 15-17 Queen Street Melbourne 3000

Phone: (03) 86142000

Fax: (03) 96141166

Email: [dhamilton@liveperformance.com.au](mailto:dhamilton@liveperformance.com.au)



Level 1, 15-17 Queen Street  
 Melbourne Victoria 3000  
 T 61 3 8614 2000  
 F 61 3 9614 1166  
 W [www.liveperformance.com.au](http://www.liveperformance.com.au)  
 ABN 43 095 907 857

1. This Submission is filed in response to the Statement and Directions of the President issued on 26 August 2016<sup>1</sup> and the Amended Directions issued on 21 December 2016, with regard to Group 4 awards. Live Performance Australia (LPA) has an interest in the Broadcasting and Recorded Entertainment Award 2010<sup>2</sup> (the Award) and this submission in reply concerns the technical and drafting issues related to the exposure draft of the Award, published on 25 November 2016.
2. This submission addresses the technical and drafting issues raised by the Media Entertainment and Arts Alliance (MEAA), Norton Rose Fulbright on behalf of the major cinema chains (the Majors) and questions raised by the FWC in the Exposure Draft.
3. **Clause 2 Definitions**
  - a) **All purposes.** This is a new definition inserted by the FWC and purports to relate to clause 34.2(a) of the Award.

However, clause 13.4 of the exposure draft provides:

**“13.4 Employees in cinemas**

All employees in cinemas will receive an 8% loading for all hours worked. This averaging component is payable instead of Sunday penalty payments and as compensation for reduced public holiday penalties. This loading is payable for all purposes.”

This clause replaces the current clause 14.12 which provides:

**“14.12 Employees in cinemas**

All employees in cinemas will receive an 8% penalty averaging component instead of Sunday penalty payments and reduced public holiday penalties.”

LPA submits that the nature of the 8% penalty averaging component is being changed with the proposed new clause.

LPA disagrees that the 8% penalty averaging component was inserted into the Award as an “all purpose allowance”. The penalty averaging component was inserted into the pre-reform Award by consent between LPA and MEAA. However, when the current modern award was made, the 8% penalty averaging component was not included. This necessitated LPA to seek a variation to the modern award prior to 1 January 2010 to reinstate this component.

In its Decision ([2009] AIRCFB 998) on 30 December 2009, the Full Bench stated at paragraph 7:

*“The penalty averaging provision will be inserted in the modern award in that part dealing with penalty rates for cinema workers and become a new cl.56.1, with consequent renumbering to the remaining parts of the clause”.*

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<sup>1</sup> [2016] FWC 6062

<sup>2</sup> MA000091



Level 1, 15-17 Queen Street  
 Melbourne Victoria 3000  
 T 61 3 8614 2000  
 F 61 3 9614 1166  
 W [www.liveperformance.com.au](http://www.liveperformance.com.au)  
 ABN 43 095 907 857

Indeed, the Full Bench acknowledged LPA's submission on this issue at paragraph 5 as follows:

*"In response to the MEAA position the AEIA reiterated that the current penalty averaging provision was negotiated between the parties during the minimum rates adjustment process, was included in the award as part of the minimum rate rather than an all-purpose allowance, and was approved as part of the properly fixed minimum rate when the current award was simplified. It also submitted that the penalty averaging component, which is set as a percentage of the base rate, retains the minimum rates relativities. In relation to the SDA submission the AEIA noted that the SDA does not represent cinema employees and had not provided any material to support the claim that the penalty averaging provision does not provide a fair and effective safety net."*

The FWC has not indicated what has prompted the change to the current clause 14.12, and unless there are pressing arguments for change, LPA strongly supports the retaining of the current provision in the Award.

**b) Loaded minimum hourly rate.** This definition is new and there is no explanation from FWC as to how it has been derived and its purpose. LPA submits that such phrase will cause confusion and ambiguity especially when read in conjunction with the definition of minimum hourly rate and should therefore not be included in the Award.

This confusion is highlighted in the proposed clause 57.3(b) where part time employees receive "the minimum hourly rate" and proposed clause 57(4)(b) where casual employees receive "the relevant loaded minimum hourly wage".

The whole issue of the terminology for the payment of wages by the week, hourly and or casual requires to be re-examined. This is especially so when reading **Schedule E – Summary of Hourly Rates of Pay – Cinema workers**, which sets out hourly rates of pay and not weekly for full time and part time employees. Such employees are weekly employees and therefore wage rates should be expressed as weekly rates. Hourly rates of pay are appropriate for casual employees as they are engaged by the hour.

#### 4. **Changes to calculating overtime and penalties.**

MEAA has raised concerns with regard to the way overtime and penalties are expressed as "percentage based" rather than "time based". LPA would support MEAA's position where it could be shown that employees would be disadvantaged by the introduction of percentage based formulas.

#### 5. **Change to Award title to include cinemas.**

MEAA has submitted in its substantial issues claim, that the title of the present Award be changed to include "Cinemas". One of the reasons in support of the claim is that employees or potential employees to the industry would not know where to look in the list of Modern Awards for cinema employment and the wages and conditions of employment associated with the cinema industry.

LPA agrees with MEAA's submission that it is difficult for anyone outside the cinema industry to source the wages and conditions of employment for the industry.



Level 1, 15-17 Queen Street  
Melbourne Victoria 3000  
T 61 3 8614 2000  
F 61 3 9614 1166  
W [www.liveperformance.com.au](http://www.liveperformance.com.au)  
ABN 43 095 907 857

However, it is LPA's submission that the more appropriate course would be to make a new modern award for the cinema industry.

The current award is approximately 180 pages long and covers a diverse range of employees. The main focus of the Award relates to the making of, or recording of films and TV programmes and the employees who work in those particular fields, none of which relates to the showing of films in a cinema. In addition, the process of working out the pay rates for cinema workers is not an easy task, and with the proposed changes to the Award outlined in the exposure draft, would in LPA's submission, make it even more difficult to ascertain the correct rates of pay and conditions of employment for cinema workers.

At the beginning of the award modernisation process in late 2008, it was MEAA's and LPA's argument that cinemas should have its own modern award. The main reason for such a position was that working in a cinema had no relation to those that worked on a set of a film or in a TV studio. Those arguments are still relative today and now, it has come to light that those potential employees who wish to work in cinemas, are not able to locate the wages and/or conditions of work for cinema workers, and more importantly, those employees who work in cinemas find it difficult to ascertain their pay rate and conditions of employment.

Therefore, it is LPA's submission that a new modern award be created for employees engaged in cinemas.

MAY IT PLEASE THE COMMISSION

*Fair Work Act 2009*

FAIR WORK COMMISSION

**IN THE MATTER OF: 4 Yearly Review of Modern Awards – Group 4 Awards**  
**Broadcasting, Recorded Entertainment and Cinemas Award 2010**  
**AM2014/259**

**Submissions of Birch Carroll and Coyle Limited  
and other cinema industry employers and  
Australian Entertainment Industry Association  
(trading as Live Performance Australia)**

April 2018

Norton Rose Fulbright Australia  
ABN 32 720 868 049  
Level 15, RACV Tower  
485 Bourke Street  
MELBOURNE VIC 3000  
AUSTRALIA  
Tel +61 3 8686 6000  
Fax +61 3 8686 6505  
GPO Box 4592, Melbourne VIC 3001  
DX 445 Melbourne  
nortonrosefulbright.com  
**Contact:** Michael Serong  
**Direct line:** +61 8686 6978  
**Email:** [michael.serong@nortonrosefulbright.com](mailto:michael.serong@nortonrosefulbright.com)

Live Performance Australia  
David Hamilton – Director, Workplace Relations  
Level 1, 15-17 Queen Street  
Melbourne Victoria 3000  
Phone: (03) 8614 4200  
Fax: (03) 9614 1166  
Email: [dhamilton@liveperformance.com.au](mailto:dhamilton@liveperformance.com.au)

## 4 Yearly Review of Modern Awards – Group 4 Awards

### Broadcasting, Recorded Entertainment and Cinemas Award 2010

#### Submissions of Birch Carroll Coyle Limited and other cinema industry employers and Live Performance Australia

##### Introduction

- 1 This submission is made on behalf of:
  - (1) Birch Carroll and Coyle Limited
  - (2) The Hoyts Corporation Pty Limited
  - (3) The Greater Union Organisation Pty Ltd
  - (4) Village Cinemas Limited

and Independent Cinemas Association of Australia and its employer members and Live Performance Australia.
- 2 The employers named at paragraph 1 (the **Employers**) together comprise the overwhelming majority of employers in the cinema exhibition industry and employ virtually all the employees in the cinema exhibition industry.
- 3 This submission is made to the Full Bench in respect of the Broadcasting, Recorded Entertainment and Cinemas Award 2010 (**BREC Award**). The Commission's review of the BREC Award is matter AM 2014/259 and that matter is in sub-group 4D. The Employers have made submissions in that proceeding in relation to a number of issues affecting cinemas covered by the BREC Award.
- 4 This submission is made in response to the Full Bench Decision dated 21 March 2018 which requests the filing of submissions by Thursday 19 April 2018 in response to the following:
 

*... we think there is merit in seeking further clarification about how the 8% loading is calculated.*
- 5 This is a reference to clause 13.4 of the Exposure Draft of the BREC Award republished on 23 March 2018 (the **Exposure Draft**) where it is stated:
 

*All employees in cinemas will receive an 8% loading for all hours worked. This averaging component is payable instead of Sunday penalty payments and as compensation for reduced public holiday penalties.*

##### Summary

- 6 The Exposure Draft, at clause 13.4, restates the effect of current clause 14.12 of the BREC Award 2010.
- 7 An 8% penalty averaging provision has been in the predecessor award, the Entertainment and Broadcasting Industry – Cinema Award – 1998 (**Cinema Award 1998**) since the award simplification proceedings which resulted in the making of that Award.
- 8 It is understood that the amount of 8% was arrived at by consent and has not been contested in Commission proceedings since and was reinstated by consent into the



BREC Award by Order of a Full Bench Decision of the Commission on 30 December 2009, i.e. before the modern award took effect and should be retained.

#### Submission – The current BREC Award

9 The current BREC Award at clause 14.12 states:

*All cinema workers will receive an 8% penalty averaging component instead of Sunday penalty payments and reduced public holiday penalties.*

10 The current BREC Award at clause 26.3 states:

#### **Special provision for employees in cinemas**

- (a) *Clause 26.2 will not apply to employees in cinemas.*
- (b) *If a weekly employee is required to work on a day to be observed as a public holiday, then, in addition to receiving the normal rate of pay for working ordinary hours, employees will be paid at the rate of single time additional for the hours worked.*
- (c) *Casual employees will be entitled to receive double the full-time permanent hourly rate for work on a public holiday.*
- (d) *A weekly employee whose rostered time off falls on a public holiday will be allowed an additional day off at a time to be agreed upon by the employer and the employee or the employee will be paid an additional day's pay instead within seven days of the holiday.*

11 When the current award was first made on 4 September 2009 [PR 988989] it did not repeat the provision for an 8% penalty averaging provision which was specifically provided for at clause 16.1 of the predecessor award, the Cinema Award 1998.

12 In 2009, a Full Bench of the Australian Industrial Relations Commission considered an application by the Australian Entertainment Industry Association (**AEIA**) to vary the BREC Award, inter alia, to restore the 8% penalty averaging provision which had not been carried over from the Cinema Award 1998 to the BREC Award. In the Decision of 30 December 2009 ([2009] AIRCFB 998), the Full Bench noted that the Media Entertainment and Arts Alliance (MEAA):

*[3] did not object to the concept of a penalty averaging clause but claimed that it is "incumbent on the AEIA to show how many Sunday and public holiday shifts are compensated for by the 8% penalty."*

13 The Full Bench Decision of 30 December 2009 also noted:

*[5] In response to the MEAA position the AEIA reiterated that the current penalty averaging provision was negotiated between the parties during the minimum rates adjustment process, was included in the award as part of the minimum rate rather than an all-purpose allowance, and was approved as part of the properly fixed minimum rate when the current award was simplified. It also submitted that the penalty averaging component, which is set as a percentage of the base rate, retains the minimum rates relativities.*

14 The Full Bench Decision then stated:

[6] *As the variation is sought to restore a provision of the current award which, if not reinstated could have the effect of disadvantaging some employees and is not opposed by the MEAA, we have decided to grant the application.*

**Submission – Entertainment and Broadcasting Industry – Cinema Award - 1998**

15 A penalty averaging component was originally inserted into the Theatrical Employees (Cinema and Drive-in Industry) Award 1983 by Order of Commissioner McDonald on 11 April 1997 (Print N9936). It is understood that the amount of 8% was arrived at by consent of the parties and there is no formal decision other than the variation to this award noted in Print N9936.

16 The Cinema Award 1998, at clause 16.1, under Wage rates, includes *penalty averaging per week* which, for each classification, provides an additional 8% calculated on the “base rate” for the relevant classification.

17 Section 89A of the *Workplace Relations Act 1996* (Cth) confined new Awards to twenty “allowable matters” and limited the Australian Industrial Relations Commission’s power to make new awards dealing with those allowable matters to the making, inter alia, of “minimum rates” awards.

18 Items 49-51 of the *Workplace Relations and Other Legislation Amendment Act 1996* (Cth)(**WROLA Act**) contained provisions which set out the process by which awards were to be stripped back.

19 In matter C No. 20261 of 1998, by section 33 - action of the Commission’s own motion, the Commission dealt with the Entertainment and Broadcasting Industry – Cinema Award – 1997 under schedule 5 to WROLA Act and made the Entertainment and Broadcasting Industry – Cinema Award – 1998. Representatives of the Media Entertainment and Arts Alliance and employers participated. The Commission will have had regard to allowable award matters including:

*(c). rates of pay generally (such as hourly rates and annual salaries), rates of pay for juniors, trainees or apprentices, and rates of pay for employees under the supported wage systems.*

The Commission will also have had regard to section 89A(6)

*The Commission may include in an award provisions that are incidental to the matters in subsection (2) and necessary for the effective operation of the award.*

20 The result of the award simplification proceeding C No. 34203 of 1998 was the Order by Commissioner Larkin making the Entertainment and Broadcasting Industry – Cinema award – 1998. The Cinema Award 1998 contained properly fixed minimum rates including, at clause 16.1, a penalty averaging provision of 8% of each award base rate.

21 The appropriateness of the 8% penalty averaging provision has not been contested in the Commission by either the union or employers and so has been accepted as fair and reasonable compensation “*instead of Sunday penalty payments and as compensation for reduced public holiday penalties.*”

22 Based on research and on assistance provided by Fair Work Commission library staff, it appears that there is no available record of the relevant Commission proceedings or the Commission decision which resulted in the 8% penalty averaging provision being included in the Cinema Award 1998.

- 23 Based on the best information available, it seems that no precise formula was developed and used to determine the percentage to be applied to base rates instead of Sunday penalty payments and as compensation for reduced public holiday penalties. Rather, the percentage appears to have been arrived at by mutual agreement between union and employer representatives during the Commission proceedings which resulted in the making of the Cinema Award 1998 and the insertion of the reference, at clause 16.1 of that Award of a "penalty averaging" provision of 8%.
- 24 Based on the parties' agreed position in 1998, which was accepted by the Commission and incorporated into the Cinema Award 1998, and as standard federal award Sunday penalty rates have remained relatively unchanged and the standard for federal award public holidays rates has remained at 250% since before 1998, it is submitted that the 8% penalty averaging provision at clause 12.14 of the BREC Award continues to be an appropriate percentage of the relevant award base rate to compensate for Sunday penalties and reduced public holiday penalties.

**No change required**

- 25 The Employers submit that the 8% penalty averaging provision is part of properly made minimum rates, has been a provision of the BREC Award and its predecessor the Cinema Award 1998 for more than 20 years, has not been challenged in the Commission by any party as inappropriate and should remain in the BREC Award.

Michael Serong  
Consultant  
Norton Rose Fulbright Australia

David Hamilton  
Director, Workplace Relations  
Live Performance Australia

17 April 2018

**Employer: EVENT Cinemas (Greater Union)**

<b>Classification</b>	<b>Permanent Rate</b>	<b>Casual Rate</b>
CW1 (GCW)	\$21.03	\$24.92
CW2 (SP1)	\$21.83	\$25.88
CW3 (SP2/3)	\$23.79	\$28.20
CW4 (SP4)	\$25.29	\$29.98
CW5 (SP5)	\$25.97	\$30.77
CW6	Not applicable	Not applicable

**Employer: Village**

<b>Classification</b>	<b>Permanent Rate</b>	<b>Casual Rate</b>
CW1 (G2)	Not applicable	Not applicable
CW2 (G3)	\$21.84	\$26.90
CW3 (G5)	\$23.80	\$29.31
CW4 (G7)	\$25.73	\$31.58
CW5 (G8)	Not applicable	Not applicable
CW6 (G9)	Not applicable	Not applicable

**Employer: Hoyts**

<b>Classification</b>	<b>Permanent Rate</b>	<b>Casual Rate</b>
CW1 (G2)	Not applicable	Not applicable
CW2 (G3)	\$21.84	\$26.90
CW3 (G5)	\$25.76	\$30.54
CW4 (G7)	\$27.72	\$32.82
CW5 (G8)	Not applicable	Not applicable
CW6 (G9)	Not applicable	Not applicable

**Employer: EVENT Cinemas (Birch Carroll & Coyle)**

<b>Classification</b>	<b>Permanent Rate</b>	<b>Casual Rate</b>
CW1 (SP1)	\$21.03	\$24.92
CW2 (SP2)	\$21.83	\$25.88
CW3 (SP3)	\$23.79	\$28.20
CW4 (SP4)	\$25.29	\$29.98
CW5 (SP5)	\$25.97	\$30.77
CW6	Not applicable	Not applicable

**Employer: Wallis**

<b>Classification</b>	<b>Permanent Rate</b>	<b>Casual Rate</b>
CW1	\$21.24	\$26.55
CW2	\$22.05	\$27.57
CW3	\$24.04	\$30.05
CW4	\$25.54	\$31.93
CW5	\$26.23	\$32.79
CW6	\$26.96	\$33.05



**Employer: ICS/ Kino/ Nova**

<b>Classification</b>	<b>Permanent Rate</b>	<b>Casual Rate</b>
CW1	Not applicable	Not applicable
CW2	\$21.84	\$27.30
CW3	\$23.80	\$29.75
CW4	\$25.29	\$31.62
CW5	Not applicable	Not applicable
CW6	Not applicable	Not applicable

**Employer: Kino**

<b>Classification</b>	<b>Permanent Rate</b>	<b>Casual Rate</b>
CW1	\$21.03	\$26.29
CW2	\$21.84	\$27.30
CW3	\$23.80	\$29.75
CW4	\$25.29	\$31.61
CW5	\$25.97	\$32.46
CW6	\$26.70	\$33.38

**Employer: ACE**

<b>Classification</b>	<b>Permanent Rate</b>	<b>Casual Rate</b>
CW1	\$21.03	\$26.29
CW2	\$21.84	\$27.30
CW3	\$23.80	\$29.75
CW4	\$25.29	\$31.61
CW5	\$25.96	\$32.45
CW6	\$26.70	\$33.38

## BREC Award Review – ICA Member Responses

### Victa Cinema – SA

Award Classification	Equivalent Classification if not using Award Classifications	Permanent Hourly Rate	Casual Hourly Rate
C1		\$21.03	\$26.28
C2		\$21.84	\$27.30
C3		\$23.80	\$29.75
C4		\$25.29	\$31.62
C5		\$25.96	\$32.45
C6		\$26.70	\$33.37

### Avoca Beach Picture Theatre – NSW

	Full Time/hour	Casual
Level 1	\$21.03	\$26.29
Level 2	\$21.84	\$27.30
Level 3	\$23.80	\$29.75
Level 4	\$25.29	\$31.61
Level 5	\$25.96	\$32.45
Level 6	\$26.70	\$33.38

**Lunar Drive In – Victoria**

<b>Award Classification</b>	<b>Equivalent Classification if not using Award Classifications</b>	<b>Permanent Hourly Rate</b>	<b>Casual Hourly Rate</b>
C1			
C2			
C3			\$29.75
C4			\$31.62
C5			\$32.45
C6			

**Show Biz Cinemas – Victoria**

Please find below our rates as below, noting of course that these are pertaining to the full adult (21+) rates.

<b>Award Classification</b>	<b>Equivalent Classification if not using Award Classifications</b>	<b>Permanent Hourly Rate</b>	<b>Casual Hourly Rate</b>
C1		\$21.03	\$26.28
C2		\$21.84	\$27.30
C3		\$23.80	\$29.75
C4		\$25.29	\$31.62
C5		\$25.96	\$32.45
C6		\$26.70	\$33.37

**Huskisson Pictures – NSW**

<b>Award Classification</b>	<b>Equivalent Classification if not using Award Classifications</b>	<b>Permanent Hourly Rate</b>	<b>Casual Hourly Rate</b>
<b>C1</b>			
<b>C2</b>			
<b>C3</b>			29.75
<b>C4</b>			31.62
<b>C5</b>			32.45
<b>C6</b>			

**Luna Palace Cinemas – WA**

<b>Award Classification</b>	<b>Equivalent Classification if not using Award Classifications</b>	<b>Permanent Hourly Rate</b>	<b>Casual Hourly Rate</b>
<b>C1</b>	CW1	21.03	26.29
<b>C2</b>	CW2	21.84	27.30
<b>C3</b>	CW3	23.80	29.75
<b>C4</b>	CW4	25.29	31.61
<b>C5</b>	CW5	25.97	32.46
<b>C6</b>	CW6	26.70	33.38

**ACE Cinemas – WA**

<b>Award Classification</b>	<b>Equivalent Classification if not using Award Classifications</b>	<b>Permanent Hourly Rate</b>	<b>Casual Hourly Rate</b>
<b>C1</b>		21.03	26.29
<b>C2</b>		21.84	27.30
<b>C3</b>		23.80	29.75
<b>C4</b>		25.29	31.61
<b>C5</b>		25.96	32.45
<b>C6</b>		26.70	33.38

### Dumaresq Street & Lilac Cinemas

Most staff are on Grade 3 Casual (Cinema Worker 2) and have some on Grade 5 Casual (Cinema Worker 3) and then Cinema Manager (Shift Manager) is Grade 9 Casual (Cinema Worker 6)

### Limelight Cinemas – ACT & QLD

Award Classification	Equivalent Classification if not using Award Classifications	Permanent Hourly Rate	Casual Hourly Rate
C1		\$21.03	\$26.28
C2		\$21.84	\$27.30
C3		\$23.80	\$29.75
C4		\$25.29	\$31.62
C5		\$25.96	\$32.45
C6		\$26.70	\$33.37

### Forum 6 Tamworth – NSW

Award Classification	Equivalent Classification if not using Award Classifications	Permanent Hourly Rate	Casual Hourly Rate
C1		21.03	26.29
C2		21.84	27.30
C3		23.80	29.75
C4		25.29	31.61
C5		25.96	32.45
C6			33.38

**Odeon 5 Orange – NSW**

<b>Award Classification</b>	<b>Equivalent Classification if not using Award Classifications</b>	<b>Permanent Hourly Rate</b>	<b>Casual Hourly Rate</b>
C1		21.03	26.29
C2		21.84	27.30
C3		23.80	29.75
C4		25.29	31.61
C5		25.96	32.45
C6		26.70	33.38

**Dendy Cinemas – NSW, ACT, QLD**

<b>Award Classification</b>	<b>Equivalent Classification if not using Award Classifications</b>	<b>Permanent Hourly Rate</b>	<b>Casual Hourly Rate</b>
C1	C1	\$21.03	\$26.29
C2	C2	\$21.84	\$27.30
C3	C3	\$23.80	\$29.75
C4	C4	\$25.29	\$31.61
C5	C5	\$25.96	\$32.45
C6	C6	\$26.70	\$33.38



**Sun Theatre – VIC**

<b>Award Classification</b>	<b>Equivalent Classification if not using Award Classifications</b>	<b>Permanent Hourly Rate</b>	<b>Casual Hourly Rate</b>
<b>C1</b>	CW1 Brea Gr 2	21.03	26.29
<b>C2</b>	CW2 Brea Gr3	21.84	27.30
<b>C3</b>	CW3 Brea Gr5	23.80	29.75
<b>C4</b>	CW4 Brea Gr7	25.29	31.61
<b>C5</b>	CW5 Brea Gr8	25.97	32.46
<b>C6</b>	CW6 Brea Gr9	26.70	33.38

**Perry Street Cinemas – NSW**

<b>Award Classification</b>	<b>Equivalent Classification if not using Award Classifications</b>	<b>Permanent Hourly Rate</b>	<b>Casual Hourly Rate</b>
<b>C1</b>			
<b>C2</b>			
<b>C3</b>	Adult over 21	\$23.80	\$29.75
<b>C4</b>			
<b>C5</b>			
<b>C6</b>			

## BREC Award Review – ICA Member Responses to 25 March 2019

### New Farm Cinemas - Qld

Award Classification	Equivalent Classification if not using Award Classifications	Permanent Hourly Rate	Casual Hourly Rate
C1 - CWL1		21.03	26.68
C2 - CWL2		21.84	27.30
C3 - CWL3		23.80	29.75
C4 - CWL4		25.29	31.62
C5 - CWL5		25.96	32.45
C6 - CWL6		26.70	33.37

### Gladstone Cinema – QLD

Award Classification	Equivalent Classification if not using Award Classifications	Permanent Hourly Rate	Casual Hourly Rate
C1 - CWL1		21.03	26.68
C2 - CWL2		21.84	27.30
C3 - CWL3		23.80	29.75
C4 - CWL4		25.29	31.62
C5 - CWL5		25.96	32.45
C6 - CWL6		26.70	33.37

**Oatmill Cinema – SA**

<b>Award Classification</b>	<b>Equivalent Classification if not using Award Classifications</b>	<b>Permanent Hourly Rate</b>	<b>Casual Hourly Rate</b>
<b>C1</b>			
<b>C2</b>		\$21.84	\$27.30
<b>C3</b>			
<b>C4</b>			\$31.62
<b>C5</b>		\$25.96	\$32.45
<b>C6</b>		\$26.70	\$33.37

**Scotty's Cinemas – NSW**

<b>Award Classification</b>	<b>Equivalent Classification if not using Award Classifications</b>	<b>Permanent Hourly Rate</b>	<b>Casual Hourly Rate</b>
<b>C1 - CWL1</b>		21.03	26.68
<b>C2 - CWL2</b>		21.84	27.30
<b>C3 - CWL3</b>		23.80	29.75
<b>C4 - CWL4</b>		25.29	31.62
<b>C5 - CWL5</b>		25.96	32.45
<b>C6 - CWL6</b>		26.70	33.37

## BREC Award Review – NACO Request for Pay Rates – 29 March 2019

### Five Star Cinemas - Victoria

Award Classification	Equivalent Classification if not using Award Classifications	Permanent Hourly Rate	Casual Hourly Rate
C1		21.03	26.68
C2		21.84	27.30
C3		23.80	29.75
C4		25.29	31.62
C5		25.96	32.45
C6		26.70	33.37

### MGS Group Sun Theatre – VIC

Award Classification	Equivalent Classification if not using Award Classifications	Permanent Hourly Rate	Casual Hourly Rate
C1	CW1 Brea Gr 2	21.03	26.29
C2	CW2 Brea Gr3	21.84	27.30
C3	CW3 Brea Gr5	23.80	29.75
C4	CW4 Brea Gr7	25.29	31.61
C5	CW5 Brea Gr8	25.97	32.46
C6	CW6 Brea Gr9	26.70	33.38

### Ballina Cinema – NSW

Award Classification	Equivalent Classification if not using Award Classifications	Permanent Hourly Rate	Casual Hourly Rate
C1		21.03	26.68
C2		21.84	27.30
C3		23.80	29.75
C4		25.29	31.62
C5		25.96	32.45
C6		26.70	33.37

### Regal Twin Graceville – Qld

Award Classification	Equivalent Classification if not using Award Classifications	Permanent Hourly Rate	Casual Hourly Rate
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<b>CW1</b>		21.03	26.29
<b>CW2</b>		21.84	27.30
<b>CW3</b>			
<b>CW4</b>			
<b>CW5</b>			
<b>CW6</b>			

## BREC Award Review – ICA Member Responses to 1 April 2019

### Hayden Orpheum

Award Classification	Equivalent Classification if not using Award Classifications	Permanent Hourly Rate	Casual Hourly Rate
C1		\$21.03	\$26.29
C2		\$21.84	\$27.30
C3		\$23.80	\$29.75
C4		\$25.29	\$31.61
C5		\$25.97	\$32.46
C6		\$26.70	\$33.38

### Colac Cinemas

Award Classification	Equivalent Classification if not using Award Classifications	Permanent Hourly Rate	Casual Hourly Rate
CW1		\$21.03	\$26.29
CW2		\$21.84	\$27.30
CW3		\$23.80	\$29.75
CW4		\$25.29	\$31.61
CW5		\$25.97	\$32.46
CW6		\$26.70	\$33.38

**Forum 6 Wagga**

<b>Award Classification</b>	<b>Equivalent Classification if not using Award Classifications</b>	<b>Permanent Hourly Rate</b>	<b>Casual Hourly Rate</b>
<b>C1</b>		\$21.03	\$26.29
<b>C2</b>		\$21.84	\$27.30
<b>C3</b>		\$23.80	\$29.75
<b>C4</b>		\$25.29	\$31.61
<b>C5</b>		\$25.96	\$32.45
<b>C6</b>		\$26.70	\$33.38

**Statewide Cinema – SA**

<b>Award Classification</b>	<b>Equivalent Classification if not using Award Classifications</b>	<b>Permanent Hourly Rate</b>	<b>Casual Hourly Rate</b>
<b>C1 - CWL1</b>		\$25.00	
<b>C2 - CWL2</b>			
<b>C3 – CWL3</b>			
<b>C4 – CWL4</b>			
<b>C5 – CWL5</b>			
<b>C6 – CWL6</b>			



**GYMPIE SOVEREIGN CINEMA**

<b>Award Classification</b>	<b>Equivalent Classification if not using Award Classifications</b>	<b>Permanent Hourly Rate</b>	<b>Casual Hourly Rate</b>
<b>CW1</b>		\$21.03	\$26.29
<b>CW2</b>			
<b>CW3</b>		\$23.80	\$29.75
<b>CW4</b>		\$25.29	\$31.61
<b>CW5</b>			
<b>CW6</b>		\$26.70	\$33.38



MEAA  
MAIL

Matthew Chesher <matthew.chesher@meaa.org>

## BREC Award (2808338)[NRF-APAC.FID1241824]

1 message

Serong, Michael <michael.serong@nortonrosefulbright.com>

2 April 2019 at 12:28

To: "Matthew Chesher (matthew.chesher@meaa.org)" <matthew.chesher@meaa.org>

Hi Matthew

The following has been received from the Lilac City Cinema/ Dumaresq Street Cinema. Have you had any thoughts on any particular cinemas you might still require information from?

Regards

Michael

**Michael Serong** | Consultant  
Norton Rose Fulbright Australia  
Level 15, RACV Tower, 485 Bourke Street, Melbourne, Australia  
Tel +61 3 8686 6978 | Mob +61 417 324 422 | Fax +61 3 8686 6505  
michael.serong@nortonrosefulbright.com

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Award Classification	Equivalent Classification if not using Award Classifications	Permanent Hourly Rate	Casual Hourly Rate
CW1	Grade 2	\$21.03	\$26.29
CW2	Grade 3	\$21.84	\$27.30
CW3	Grade 5	\$23.80	\$29.75
CW4	Grade 7	\$25.29	\$31.61
CW5	Grade 8	\$25.97	\$32.46
CW6	Grade 9	\$26.70	\$33.38

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MEAA  
MAIL

Matthew Chesher <matthew.chesher@meaa.org>

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**BREC Award (2808338)[NRF-APAC.FID1241824]**

1 message

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**Serong, Michael** <michael.serong@nortonrosefulbright.com>

4 April 2019 at 10:06

To: "Matthew Chesher (matthew.chesher@meaa.org)" <matthew.chesher@meaa.org>

Good morning Matthew

More wages information.

Regards

Michael

**Michael Serong** | Consultant  
Norton Rose Fulbright Australia  
Level 15, RACV Tower, 485 Bourke Street, Melbourne, Australia  
Tel +61 3 8686 6978 | Mob +61 417 324 422 | Fax +61 3 8686 6505  
michael.serong@nortonrosefulbright.com

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**Metro Cinemas Boronia**

Award	Equivalent	Permanent	Casual
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Classification	Classification if not using Award Classifications	Hourly Rate	Hourly Rate
CW1		<b>\$21.03</b>	<b>\$26.29</b>
CW2		<b>\$21.84</b>	<b>\$27.30</b>
CW3		<b>\$23.80</b>	<b>\$29.75</b>
CW4		<b>\$25.29</b>	<b>\$31.61</b>
CW5		<b>\$25.97</b>	<b>\$32.46</b>
CW6		<b>\$26.70</b>	<b>\$33.38</b>

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## BREC Award Review – Wages information

### Lake Cinema Boolaroo – NSW

Award Classification	Equivalent Classification if not using Award Classifications	Permanent Hourly Rate	Casual Hourly Rate
CW1			26.68
CW2			27.30
CW3			29.75
CW4			31.62
CW5			32.45
CW6			33.37



Matthew Chesher &lt;matthew.chesher@meaa.org&gt;

**BREC Award (2808338)[NRF-APAC.FID1241824]**

1 message

**Serong, Michael** <michael.serong@nortonrosefulbright.com>

10 April 2019 at 13:17

To: "Matthew Chesher (matthew.chesher@meaa.org)" &lt;matthew.chesher@meaa.org&gt;

Hi Matthew

Sorry. You have received this already. Any thoughts on how much more information you need. Responses appear to have dried up. Let me know if you want me to again follow up any particular employers.

Regards

Michael

**Michael Serong** | Consultant  
Norton Rose Fulbright Australia  
Level 15, RACV Tower, 485 Bourke Street, Melbourne, Australia  
Tel +61 3 8686 6978 | Mob +61 417 324 422 | Fax +61 3 8686 6505  
michael.serong@nortonrosefulbright.com

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**From:** Serong, Michael  
**Sent:** Wednesday, 10 April 2019 1:07 PM  
**To:** Matthew Chesher (matthew.chesher@meaa.org) <matthew.chesher@meaa.org>  
**Subject:** BREC Award (2808338)[NRF-APAC.FID1241824]

Hi Matthew

Wages information from the cinema named below.

Regards

**Michael Serong** | Consultant  
Norton Rose Fulbright Australia  
Level 15, RACV Tower, 485 Bourke Street, Melbourne, Australia  
Tel +61 3 8686 6978 | Mob +61 417 324 422 | Fax +61 3 8686 6505  
michael.serong@nortonrosefulbright.com

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Award Classification	Equivalent Classification if not using Award Classifications	Permanent Hourly Rate	Casual Hourly Rate
CW1		<b>\$21.03</b>	<b>\$26.29</b>
CW2		<b>\$21.84</b>	<b>\$27.30</b>
CW3		<b>\$23.80</b>	<b>\$29.75</b>
CW4		<b>\$25.20</b>	<b>\$31.61</b>
CW5		<b>\$25.97</b>	<b>\$32.46</b>
CW6		<b>\$26.70</b>	<b>\$33.38</b>

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18. *Fast Food Award*

In the **Fast Food Award** [MA000003], the penalty payment provisions are:

**25.5 Penalty rates****(a) Evening work Monday to Friday**

- (i) A loading of **10%** will apply for ordinary hours of work within the span of hours between 10.00 pm and midnight, and for casual employees this loading will apply in addition to their **25%** casual loading.
- (ii) A loading of **15%** will apply for ordinary hours of work between midnight and 6.00 am, and for casual employees this loading will apply in addition to their **25%** casual loading.

**(b) Saturday work**

- (i) A **25%** loading will apply for all hours of work on a Saturday for full-time and part-time employees.

**(ii)** A **50%** loading will apply for all hours of work on a Saturday for casual employees, inclusive of the casual loading.

**(c) Sunday work– Level 1 employees****(i) From 1 July 2017 to 30 June 2018**

A **45%** loading will apply for all hours of work on a Sunday for full-time and part-time Level 1 employees. A **70%** loading will apply for all hours of work on a Sunday for casual Level 1 employees (inclusive of the casual loading).

**(i) From 1 July 2018 to 30 June 2019**

A **35%** loading will apply for all hours of work on a Sunday for full-time and part-time Level 1 employees. A **60%** loading will apply for all hours of work on a Sunday for casual Level 1 employees (inclusive of the casual loading).

**(iii) From 1 July 2019**

- (i) A **25%** loading will apply for all hours of work on a Sunday for full-time and part-time Level 1 employees. A **50%** loading will apply for all hours of work on a Sunday for casual Level 1 employees (inclusive of the casual loading).

**(d) Sunday work – Level 2 and 3 employees**

A **50%** loading will apply for all hours of work on a Sunday for full-time and part-time Level 2 or 3 employees. A **75%** loading will apply for all hours of work on a Sunday for casual Level 2 or 3 employees (inclusive of the casual loading).

19. Public holidays are compensated in the *Fast Food Award* in the following manner:

**30. Public holidays**

**30.1** Public holidays are provided for in the NES.

**30.2** An employer and a majority of employees may agree to substitute another day for a public holiday. If an employee works on either the public holiday or the substitute day public holiday penalties apply. If both days are worked, the public holiday penalties must be paid on one day chosen by the employee.

**30.3** Work on a public holiday must be compensated by payment at the rate of **225%** (**250%** for casual employees, inclusive of the casual loading).

20. *General Retail Award*

In the **General Retail Award 2010** [MA000004], the penalty payment provisions are:

**29.4 Penalty payments**

**(a) Evening work Monday to Friday**

A penalty payment of an additional **25%** will apply for ordinary hours worked after 6.00 pm. This does not apply to casuals.

**(b) Saturday work**

A penalty payment of an additional **25%** will apply for ordinary hours worked on a Saturday for full-time and part-time employees. A casual employee must be paid an additional **10%** for work performed on a Saturday between 7.00 am and 6.00 pm.

**(c) Sunday work**

**(i) From 1 July 2017 to 30 June 2018**

A penalty payment of an additional **95%** loading will apply for all hours worked by a full-time or part-time employee on a Sunday. A penalty payment of an additional **95%** loading will apply for all hours worked by a casual employee on a Sunday (inclusive of the casual loading).

**(ii) From 1 July 2018 to 30 June 2019**

A penalty payment of an additional **80%** loading will apply for all hours worked by a full-time or part-time employee on a Sunday. A penalty payment of an additional **85%** loading will apply for all hours worked by a casual employee on a Sunday (inclusive of the casual loading).

**(iii) From 1 July 2019 to 30 June 2020**

*A penalty payment of an additional 65% loading will apply for all hours worked by a full-time or part-time employee on a Sunday. A penalty payment of an additional 75% loading will apply for all hours worked by a casual employee on a Sunday (inclusive of the casual loading).*

**(iv) From 1 July 2020**

*A penalty payment of an additional 50% loading will apply for all hours worked by a full-time or part-time employee on a Sunday. A penalty payment of an additional 75% loading will apply for all hours worked by a casual employee on a Sunday (inclusive of the casual loading).*

**(d) Public holidays**

*(i) Work on a public holiday must be compensated by payment of an additional 125% for all hours worked by a full-time or part-time employee. A penalty payment of an additional 150% will apply for all hours worked by a casual employee (inclusive of the casual loading).*

*(ii) Provided that by mutual agreement of the employee and the employer, the employee (other than a casual) may be compensated for a particular public holiday by either:*

*(A) An equivalent day or equivalent time off instead without loss of pay. The time off must be taken within four weeks of the public holiday occurring, or it shall be paid out; or*

*1. An additional day or equivalent time as annual leave.*

*(iii) The employee and employer are entitled to a fresh choice of payment or time off by agreement on each occasion work is performed on a public holiday.*

*(iii) If no agreement can be reached on the method of compensation, the default arrangement shall be as per clause 29.4(d)(i).*

21. The *General Retail Award* provides the following with regard to public holidays:

**34. Public holidays**

**34.1** Public holidays are provided for in the NES.

**34.2** An employer and a majority of employees may agree to substitute another day for a public holiday. If either the public holiday or the substitute day is worked, public holiday penalties must be paid. If both days are worked, one day at the election of the employee must be **paid at public holiday rates**.

22. *Hospitality Award*

The penalty payment provisions in the *Hospitality Industry (General Award) 2010 [MA000009]*, state:

**32.1** An employee performing work on the following days will be paid the following percentage of the minimum wage rate in clause 20—Minimum wages for the relevant classification:

	<b>Full-time and part-time employees</b> %	<b>Casual employees (inclusive of 25% loading)</b> %
<b>Monday to Friday</b>	<b>100</b>	<b>125</b>
<b>Saturday</b>	<b>125</b>	<b>150</b>
<b>Sunday</b> 1 July 2017 –30 June 2018	<b>170</b>	<b>175</b>
1 July 2018 –30 June 2019	<b>160</b>	<b>175</b>
From 1 July 2019	<b>150</b>	<b>175</b>
<b>Public holiday</b>	<b>225</b>	<b>250</b>

### **32.2 Public holidays**

- (a) An employee other than a casual working on a public holiday will be paid for a minimum of four hours' work. A casual employee working on a public holiday will be paid for a minimum of two hours' work.
- (b) Employees (other than casuals) who work on a prescribed holiday may, by agreement, perform such work at their applicable ordinary hourly rate plus 25% additional loading rather than the penalty rate prescribed in clause 32.1, provided that equivalent paid time is added to the employee's annual leave or one day instead of such public holiday will be allowed to the employee during the week in which such holiday falls. Provided that such holiday may be allowed to the employee within 28 days of such holiday falling due.
- (c) An employee other than a casual working on Christmas Day when it falls on a weekend, and is not prescribed as a public holiday under the NES will be paid an additional loading of 25% of their applicable ordinary hourly rate for the hours worked on that day and will also be entitled to the benefit of a substitute day.

### **32.3 Other penalty**

Employees will be entitled to the following additional penalty for work performed at the following times:

- (a) Monday–Friday—7.00 pm to midnight: **10%** of the standard hourly rate per hour or any part of an hour for such time worked within the said hours;
- (b) Monday–Friday—midnight to 7.00 am: **15%** of the standard hourly rate per hour or any part of an hour for such time worked within the said hours.

### **32.4 Penalty rates not cumulative**

*Except as provided in clause 31—Breaks, where time worked is required to be paid for at more than the ordinary rate such time will not be subject to more than one penalty, but will be subject to that penalty which is to the employee's greatest advantage.*

23. The *Hospitality Award* provides the following for public holidays:

**37. Public holidays**

**37.1 National Employment Standards**

**(a) Public holidays are provided for in the NES**

*By agreement between the employer and the majority of employees in the relevant enterprise or section of the enterprise, an alternative day may be taken as the public holiday instead of any of the days prescribed in s.115 of the Act.*

**(b) Additional arrangements for full-time employees:**

*(i) A full-time employee whose rostered day off falls on a public holiday must, subject to clause 32.2, either:*

- *be paid an extra day's pay; or*
- *be provided with an alternative day off within 28 days; or*
- *receive an additional day's annual leave.*

*(ii) A full-time employee who works on a public holiday which is subject to substitution as provided for by the NES will be entitled to the benefit of the substitute day.*

**(c) Arrangements for part-time employees**

*Part-time employees are entitled to public holidays prescribed in s.115 of the Act without loss of pay if those public holidays fall on days on which hours of work are rostered under clause 12.5. Part-time employees who work on a public holiday must be paid in accordance with clause 32.*

24. MEAA has not extracted the minimum wages provisions from the above modern awards; however, our examination of current<sup>1</sup> minimum wages in each of the three awards indicates:

- a. *Fast Food Award: Level 1 employee - \$763.20 p/week or \$20.08 p/hour*
- b. *General Retail Award: Retail Employee Level 1 - \$763.20 p/week or \$20.08 p/ hour*
- c. *Hospitality Award: Level 1 Food and Beverage Attendant - \$714.90 p/week or \$18.81 per hour*

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<sup>1</sup> as at April 19, 2018