



REPORT TO FULL BENCH

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards

(AM2019/17)

DEPUTY PRESIDENT CLANCY

MELBOURNE, 1 JUNE 2020

4 yearly review of modern awards – finalisation of Exposure Drafts and draft variation determinations – Tranche 3 awards – Broadcasting, Recorded Entertainment and Cinemas Award 2010.

[1] Arising from the Decision of the Full Bench dated 27 April 2020¹ with respect to finalising the Tranche 3 awards, a conference of parties with an interest in the *Broadcasting, Recorded Entertainment and Cinemas Award 2010* (the Broadcasting Award) was held on Tuesday 26 May 2020 in an effort to resolve the outstanding issues in dispute.

[2] The Full Bench in the Part-time and Casual Employment common issues proceeding has previously determined that a casual conversion clause should be inserted into the Broadcasting Award.² In doing so, the Full Bench had regard to a concern raised by Birch Carroll & Coyle Limited, The Hoyts Corporation Pty Limited, The Greater Union Organisation Pty Ltd, Village Cinemas Limited and Independent Cinemas Association of Australia (cinema industry employers) that the draft determination published in conjunction with the Full Bench decision issued on 9 August 2018³ would result in the establishment of two classes of part-time employees working alongside one another.

[3] The Full Bench formed the view that the concern of the cinema industry employers could be addressed by modifying paragraph j(ii) of the casual conversion clause so that it read:

“(ii) if it is agreed that the employee will become a part-time employee, the matters referred to in clauses 54.3(a), 55.1(c) and 55.2(d) in respect of cinema employees and the matters referred to in clause 10.4(c) in respect of all other employees.”

[4] The cinema industry employers have submitted that there is an anomaly at clauses 8.2 and 11 of the Exposure Draft in respect of casual conversion of casuals in cinemas, in that clause 8.2 states that *clause 11 – Casual employees* does not apply to employees in cinemas, whereas clause 11.5(k)(ii) implies that it does.

¹ [2020] FWCFB 2124.

² [2018] FWCFB 5846 at [11]-[12].

³ [2018] FWCFB 4695.

[5] The cinema industry employers submit that in order to give effect to the Full Bench Decision of 21 September 2018:

- (i) The text of **Clause 8.2 Special provisions for employees in cinemas** in the Exposure Draft be amended to:

“Clauses 9 – Full-time employees to 11.4 will not apply to employees in cinemas (see clause 57 – Types of employment).”

- (ii) Clause 11.5(k)(ii) be expressed as follows:

“if it is agreed that the employee will become a part-time employee, the matters referred to in clauses 57.3, 58.3 and 59.4 in respect of cinema employees and the matters referred to in clause 10.4 in respect of all other employees.”

[6] It is to be noted that the clause references within Clause 11.5(k)(ii) have been updated from those that were included by the Full Bench in its Decision of 21 September 2018 in order to reflect the changes in numbering throughout the Exposure Draft. Those various clauses contain provisions that pertain to part time employees.

[7] The position advanced by the cinema industry employers was supported by Live Performance Australia and ABI. It raised no concerns for either the CPSU or the MEAA.

[8] The cinema industry employers, taking up the invitation in the Decision of the Full Bench dated 27 April 2020 for interested parties to discuss the republished Exposure Draft and draft variation determination,⁴ proffered that as a result of the insertion of a new clause 13.5(b) into the Exposure draft, some consequential amendments to the renumbered clauses 13.5(d) and 13.5(e) are required, as follows:

“~~(e)~~(d) Junior employees in clause 13.5~~(b)~~(c) must be paid the adult minimum rate for the appropriate classification.

~~(d)~~(e) Clauses 13.5(a), 13.5~~(b)~~(c) and 13.5(d) do not apply to juveniles, as defined, in the performer classifications (including extras, double bit players). These performers will be paid at a rate of **50%** of the adult minimum rate of the appropriate classification.”

[9] There was general agreement for these amendments to be made.



DEPUTY PRESIDENT

⁴ [2020] FWCFB 2124 at [61].