

2 March 2015

Screen Producers Australia's preliminary submission to the Fair Work Commission Broadcasting and Recorded Entertainment Award [MA000091] Review (AM2014/259)

Screen Producers Australia was formed by the screen industry to represent large and small employer enterprises across a diverse production slate of feature film, television and interactive content.

As the peak industry and trade body, we consult with a membership of more than 300 production businesses in the preparation of our submissions. This consultation is augmented by ongoing discussions with our elected Council and appointed Policy Working Group representatives. Our members employ hundreds of producers, thousands of related practitioners and drive more than \$1.7 billion worth of annual production activity from the independent sector.

On behalf of these businesses we are focused on delivering a healthy commercial environment through ongoing engagement with elements of the labour force, including directors, writers, actors and crew, as well as with broadcasters, distributors and government in all its various forms. This coordinated dialogue ensures that our industry is successful, employment levels are strong and the community's expectations of access to high quality Australian content have been met.

Screen Producers Australia welcomes this opportunity to make a preliminary submission to the Fair Work Commission on the Broadcasting and Recorded Entertainment Award (BREA). Our comments at this time are limited to key areas of concern:

- 1. Removal of allowances payable for exploitation of rights**
- 2. Better terms for time critical genres of production**
- 3. Other adjustments to conditions**

Contact details

For further information about this submission please contact Mark Donaldson, Manager, Legal and Business Affairs (mark.donaldson@screenproducers.org.au).

1. Removal of allowances payable for exploitation of rights

The purchase of rights should fall outside the scope of allowable Award matters. The BREA sets minimum Award rates for performers work in Australia. While we accept the principle that a minimum Award rate should entitle the employer to a basic use of that performance in the intended medium, the purchase of any further of additional rights should more properly be a matter for negotiation.

We submit that any provision for purchase of 'additional allowances' be removed (clause 62.11) on the basis that such acquisition of rights should be subject to commercial and industrial negotiations between producers and performers.

2. Better terms for time critical genres of production

The BREA is written principally with drama genre in mind and does not effectively address the practicalities of other time critical genres of production, particularly reality, light entertainment, sports and some documentaries that are typically required to shoot outside of the hours of a standard working week. This is of particular importance given the increasing amount of event-style television that often includes prime-time live broadcasts.

We submit that adjustments to shift penalties, delayed meal breaks and breaks between shifts will assist those productions that require work across weekends and evenings to meet network deliverables. These changes include:

- Shift penalties (clause 77.1): review of Zone B, C and D. Prior to the introduction of the BREA, agreements between employers and employees provided for penalties to apply before 6am. This was a standard provision since the inception of the first agreements for the film and television industry. The BREA added one extra hour to this penalty for work commencing before 7am. We submit that the provision be reverted to what previously applied with no penalty payable after 6am. This will not affect the hours of work, but will ensure that daylight - a necessity for filming - is maximized particularly in the winter months. Furthermore, we would like to see Zone D removed.
- Delayed meal breaks (clause 75.1): flexibility to complete a scene without penalty, up to 6 hours from the commencement of the work period or last break.
- Breaks between shifts (clause 74.2): the broken turn around clause should be more in line with other penalties where the penalty applies to the affected hours and not the entire shift. It would also be beneficial to add in a clause to address the case of two consecutive days off (i.e. 54 clear hours between the finish of work prior to the days off and the commencement of work following the days off). This is a provision that most crew are familiar with but on which BREA is silent.

3. Other adjustments to conditions

There are other adjustments to leave loadings that we would like considered.

The additional annual leave loading of 17.5 per cent is currently payable to all employees (clause 23.7(b)). This should only be payable after the employee has completed 12 months' service. Not as pro rata.

The casual leave loading (clause 10.5(b)) should be reduced from 25 per cent. The casual leave loading is paid instead of annual leave and personal/sick leave. If the casual employee works a public holiday they also receive the public holiday penalty. The rate of 25 per cent is not in line with the benefits afforded to contract or full time employees.