



# D. EMPLOYMENT AGREEMENTS

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### 1. INTRODUCTION

There are several collective employment arrangements governing employment in the screen sector. These fall into two categories:

1. **Modern awards** setting out minimum pay rates and conditions; and
2. **Collective Agreements** that set out sector or production specific pay rates and conditions.<sup>1</sup>

While awards and agreements provide for rates of payment, they also contain a range of health and safety (or welfare) measures, including:

- ordinary hours of work and days of work;
- days off duty;
- breaks during and between shifts;
- rest periods and meal breaks;
- accommodation and travel arrangements;
- the state of facilities in which work is carried out;
- a range of procedures for matters as varied as make-up, nudity, audition requirements, and smoking in scenes; and
- making sure the worker employed is engaged according to their skill level.

#### MODERN AWARD

The key modern award for employees in the Australian screen sector is the *Broadcasting, Recorded Entertainment and Cinemas Award 2010*. This award provides common and sector-specific legal minimums on pay rates, conditions of employment and allowances. The BRECA sets out the minimum pay and conditions entitlements for all employees in the screen sector.<sup>2</sup>

You can find the Award here:

[https://www.fwc.gov.au/documents/documents/modern\\_awards/award/ma000091/default.htm](https://www.fwc.gov.au/documents/documents/modern_awards/award/ma000091/default.htm)

The rates of pay and adjustments to allowances are adjusted (generally, increased) annually by the Fair Work Commission.

#### COLLECTIVE AGREEMENTS

The MEAA and SPA have negotiated a number of agreements that contain a range of health and safety (or welfare) measures. These agreements are for the use of MEAA and SPA members. The major collective agreements are:

- Actors Feature Film Collective Agreement;
- Actors Television Programs Agreement; and
- Motion Picture Production Collective Agreement.

These agreements are updated from time to time to reflect alterations to rates of payment and in some instances, conditions of employment. Of course, many workers in the screen industry are self-employed

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<sup>1</sup> Note also that there are Production-specific agreements (principally Offshore production agreements) for situations where international producers undertake productions in Australia.

<sup>2</sup> While the BRECA forms the 'floor' of what pay and conditions are, these terms can be varied in enterprise (or production specific) agreements, so long as the agreement passes the Better Off Overall Test (BOOT).

contractors or engaged under common law individual contracts. Contracts can vary what is in awards or collective agreements. Nonetheless, for the purposes of these guidelines, we recommend that the employment standards in the Award and collective agreements be observed.

Anyone requiring clarification of how these agreements work should contact the MEAA or SPA.

## 2. HOURS OF WORK

### HOURS OF WORK

In the Broadcasting Recorded Entertainment and Cinemas Award (BRECA), separate hours of work provisions are provided for television broadcasting, artists and motion picture technicians and crew.

When reading awards and agreements, it should be borne in mind that standard weekly hours in screen production are 50, or five x 10-hour days. The general make-up of the 50 hours is 38 standard working hours and 12 hours of (normally scheduled) overtime.

The 50-hour working week is quite different to that which applies to most of the Australian workforce.

### BRECA

*TV Broadcasting (technicians crew)*

The ordinary hours of work are 38 hours per week to be worked in shifts of 7.6 continuous hours (exclusive of meal periods).

### ARTISTS

*Content other than feature films*

The ordinary hours of work will be based on an 8-hour day exclusive of meal breaks to be worked continuously between 7.00 am and 8.00 pm, Monday to Friday and will not exceed:

- 38 hours per week; or
- for artists who perform work in a serial drama or serial comedy:
  - 1 or 2 episodes per week—32 hours per week; or
  - 3, 4 or 5 episodes per week—38 hours per week.

### ARTISTS - FEATURE FILMS

The ordinary hours of work will be based on an 8-hour day exclusive of meal breaks to be worked continuously between 6.30 am and 11.00 pm, Monday to Saturday and will not exceed 38 hours.

### MOTION PICTURE PRODUCTION (TECHNICIANS AND CREW)

Ordinary hours of work for full-time motion picture production employees will average 38 hours each week, which will by agreement between the employer and employees be worked on one of the following bases:

- in days of up to 10 hours each over 5 days between Monday to Saturday, such hours to be worked continuously except for meal breaks; or
- by agreement with a majority of employees by any other arrangement to a maximum of 152 hours per 28-day cycle.

More detail is set out in the Award.

Hours of work provisions in the Award are based on legislation covering all industry sectors, which says that the standard working week is 38 hours.

As set out above in screen production, reasonable amounts of overtime are frequently built into a contract of employment and paid for upfront.

In collective agreements, it is generally provided that ordinary hours of work are generally set out to be worked continuously between 7.00 am and 8.00 pm Monday to Friday and shall not exceed: 40 hours per week<sup>3</sup> made up of 38 ordinary hours and two single hours scheduled overtime.

### OVERTIME

The Fair Work Act says that all overtime requests must be 'reasonable'. There is no set figure on how many extra hours can be worked before overtime becomes unreasonable. In determining whether additional hours are reasonable or unreasonable, section 62 of the Fair Work Act sets out the factors to be considered. It is a test that considers all the circumstances, including WHS issues, the employee's personal circumstances and the needs of the production. Further details can be found in the relevant section of the Act:

[http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol\\_act/fwa2009114/s62.html](http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/fwa2009114/s62.html)

You should be aware of the risks of fatigue and related dangers when pushing towards deadlines and performing extra hours of work.

## 3. BREAKS

Although awards and agreements have differing terms about breaks, the following *rules of thumb* should be used as a guide:

- breaks within period of work – breaks required before five hours of work elapses;
- breaks between periods of work – generally at least 10 hours;
- rest breaks for performers fall due after 2 hours' work; and
- meal breaks of not less than 30 minutes fall due when work has been under way for no more than 5 hours.

Where break periods are not observed and/or work continues in the period a break would have been taken, extra payments will often be due to the worker concerned.

## 4. TRANSPORT AND ACCOMMODATION

The producer bears overall responsibility for ensuring that legal and contractual entitlements to travel, transport and accommodation support are observed.

### **BROADCASTING RECORDED ENTERTAINMENT AND CINEMAS AWARD 2010– ARTISTS**

The *Broadcasting Recorded Entertainment and Cinemas Award 2010* sets out requirements for:

- Standards of travel across all conveyance types (i.e., first class train or economy air fares) where the employer has not already paid for transportation; and
- Accommodation allowances where the employer has not provided suitable standard lodgings where travel greater than 1.5 hours away from home is necessary.

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<sup>3</sup> There can be lower weekly hour limits when series (comprising individual episodes) are being produced.

Screen industry collective agreements are more prescriptive with respect to when travel and accommodation support is to be provided. These agreements variously provide for:

- When travel support is required;
- Standards of travel;
- Accommodation standards or allowances in lieu; and
- Luggage assistance.

You must make your own inquiries to ensure you have the most up to date information concerning your production's employees.

## **PERFORMERS 16 YEARS AND UNDER**

There are enhanced transport requirements for performers 16 years of age and younger. Collective agreements applying to performers state that:

*Where the Performer is less than 16 years of age the Producer shall provide the Performer with suitable transport either way between his/her Place of Residence and the place of work.*

## **5. HAZARDOUS ACTION**

Collective employment agreements state that:

*The Producer shall not require an Artist to render service which is hazardous or dangerous involving any degree of risk to him/herself or any other person or to property.*

## **6. SKILL LIMITS**

Collective employment agreements state:

*The Producer may direct an Artist to carry out such duties as are within the limits of the Artist's skill, competence, and training.*

## **7. SMOKING**

### **SMOKING FOR DRAMATIC PURPOSES**

Collective employment agreements state that:

*The Producer or his/her representative may not direct the Artist to smoke or appear to be smoking except where such a request has been previously discussed with the Artist and is expressly stated in the Artist's contract or the separate written consent of the Artist has been obtained.*

*Where the written consent of the Performer has been obtained, the Producer may for publicity purposes use stills of the Artist appearing in such scenes.*

*A Performer's consent to smoke in a scene may only be sought by the Producer where the Producer has specified the following in writing:*

- (i) The Program episode and scene where smoking will be required; and*
- (ii) The extent of the smoking involved.*

It is generally current screen industry practice to avoid the use of tobacco products completely when shooting scenes involving smoking. Where a scene calls for smoking, substitute products are readily available, including herbal cigarettes.

## **SMOKING GENERALLY**

PCBUs and production personnel generally should be aware that employers are required to ensure that smoking does not occur in enclosed work areas. This includes work offices, common work areas, lunchrooms, restrooms, and vehicles. In addition, workers must not smoke within four metres of the entrance to any office, building or walkway.

It is well-documented that smoking products contain chemicals, many of which are toxic. Tobacco smoke is known to be the cause of cardiovascular diseases, cancers, respiratory illnesses, and other adverse health conditions. There is no safe level of exposure to tobacco smoke or to second-hand (passive) tobacco smoke. Inhalation of toxic smoke by workers and others while conducting their work activities is a hazard.

## **8. FACILITIES**

Collective employment agreements require:

### **STUDIO**

*At any place of work that can reasonably be regarded as studio work the Producer shall provide adequate clean, well-lit, and well-ventilated change rooms and separate rooms and facilities for the sexes, mirrors, proper seating, clean towels, and soap, and where necessary, showering conveniences and hot and cold water.*

*In addition, for Performers engaged on any on-going serial or series production, the Producer shall make available a "green room" or like facility for the use of such Performers in accordance with industry practice.*

*Such "green room" or facility shall be well lit and ventilated and contain adequate seating for all Performers on set. Telephone facilities and tea and coffee making facilities shall be provided within a practicable distance from the green room or facility.*

*The Producer shall provide a separate green room for Juvenile Performers where there are Juvenile Performers on set and tutoring is required.*

### **ON LOCATION**

*On location work the Producer shall, except in exceptional circumstances (e.g., when filming at sea), provide adequate shelter from inclement weather, adequate shelter from the sun, change rooms or private enclosed change space, washing conveniences, towels, soaps, hygienic toilet conveniences, and adequate seating on and off set. When on location, the Producer shall use all reasonable endeavours to provide an enclosed area (e.g., room, marquee, tent, or other suitable facility) for the Performers' use in accordance with industry practice.*

## 9. WARDROBE & MAKE-UP

Collective agreements require:

*All wardrobe etc supplied by either the Producer or the Artist shall be maintained in a satisfactory and hygienic condition by the Producer. Any damage to wardrobe etc supplied by an Artist shall be the responsibility of the Producer who shall fully compensate the Artist for such damage.*

*All make-up shall be supplied by the Producer.*

## 10. DANCERS – SPECIAL PROVISIONS

Collective agreements covering dancers state that:

*All footwear for dancers, where such footwear is provided by the Producer, shall be appropriate to the work, clean, properly fitted, braced, and rubbered.*

*The Producer shall ensure that an adequate warm-up space is provided to permit all dancers to "warm-up" thirty minutes prior to the commencement of work. Such warm-up time shall count as time worked.*

*A rest break of no less than ten (10) minutes per hour shall be granted during all rehearsal/filming periods.*

*The Producer shall ensure to the best of its ability that all surfaces on which the dancers are required to perform or rehearse are safe including that they are:*

- (i) resilient; and*
- (ii) clean and free of wax, nails etc.*