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NES Exposure Draft submission  
GC 31  
Workplace Relations Policy Group  
Department of Education, Employment and Workplace Relations  
GPO Box 9879  
CANBERRA ACT 2601

Please find attached the submission of the Media, Entertainment and Arts Alliance on the proposed National Employment Standards.

Yours sincerely

**Mark Ryan**  
**Assistant Federal Secretary**

**SUBMISSION OF**  
**MEDIA, ENTERTAINMENT AND ARTS ALLIANCE**  
**TO**  
**DEPARTMENT OF EDUCATION, EMPLOYMENT AND WORKPLACE**  
**RELATIONS**  
**ON THE**  
**NATIONAL EMPLOYMENT STANDARDS EXPOSURE DRAFT**

**March 2008**

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## 1. Introduction

The Media, Entertainment and Arts Alliance (Alliance) is the industrial and professional organisation representing the people who work in Australia's media and entertainment industries. Our membership includes: journalists, artists, photographers, performers, symphony orchestra musicians, cinema workers, sports professionals and film, television and performing arts technicians.

In the overwhelming majority of cases, our members work in industries where the traditional Monday to Friday eight hour day does not apply.

## 2. Interaction between NECS and Awards/Collective Agreements

The Alliance believes that it is essential that this issue be clear to all concerned. The Alliance believes that the statement in paragraph 34 could sow the seeds for confusion.

*Although the NES cannot be modified or excluded in a workplace agreement, terms and conditions of employment contained in modern awards may be varied or excluded in a workplace agreement subject to the workplace agreement meeting the 'Better Off Overall Test' that will be conducted by the new independent umpire, Fair Work Australia.*

This statement is in the context of modern awards complementing the NES (paragraph 24).

Even worse is the inconsistency of the statements contained in paragraphs 21 and 31:-

21. *The NES will be legislated minimum entitlements that cannot be excluded or modified to the detriment of an employee by a contract of employment or another industrial instrument (such as a modern award or workplace agreement. (emphasis added)*

31. *In addition, in limited circumstances, the proposed NES expressly allow a modern award to deal with a matter that could otherwise be seen as modifying or excluding an employee's NES entitlement.... (emphasis added)*

This issue of confusion is of real practical concern to almost all journalist members of the Alliance.

The vast bulk of awards relating to journalists provide for either six weeks or six weeks and three days annual leave, plus annual leave loading for the full period. This reflects the seven day a week nature of news gathering. On the other hand, only Christmas Day and Good Friday are recognised as public holidays.

In addition, most but not all journalists are covered by collective agreements, either sitting on top of the relevant award or excluding it in its entirety.

What then would happen to the annual leave provisions, which are in excess of the relevant NES and public holidays, which are inferior to the relevant NES?

It would appear that in relation to annual leave, the existing standard can be incorporated in a modern award – see paragraphs 29, 30 and 33.

### **3. Preliminary questions**

#### **3(a) Managerial and “high income” employees**

The Alliance does not accept that managerial employees and high-income employees should be lumped in together.

At paragraph 36 of the Discussion Paper, it says:

*Certain types of employees may not be covered by a modern award on and from 1 January 201. These include:*

*(a) employees, such as managerial employees who because of the nature of their role, have traditionally been award-free*

*(b) high-income employee who negotiate with their employer about their terms and conditions of employment ...*

In our industries, employees with managerial responsibilities, with certain named exceptions, have been covered by awards. The Alliance believes that employees traditionally covered by awards should continue to be so covered.

In point (b) if the emphasis is on the ability of employees to negotiate their own salary to exceed \$100,000 per annum (although not defined there has been media reports that high-income employees are to be those earning in excess of this amount), then again in our industries, many employees are on or above this amount, not by virtue of their ability to do so by one-on-one negotiations with their employer, but by virtue of the terms of a collective agreement, which sets their salary at such a rate.

As part of the Structural Efficiency Principle of various National Wage cases in the late 1980s and early 1990s, awards were simplified and consistent minimum salaries and grading structures were introduced. These grading structures continue to be used in our collective agreements.

To exclude employees from awards would totally undermine the integrity of our structure and the flexibilities contained in our awards and agreements. A simple example will suffice.

Members of the Alliance employed by News limited’s metropolitan daily newspapers are covered by the Journalists (News Limited – Metropolitan Daily Newspapers) Award 2002 [PR924879] and by the News Limited Metropolitan Daily Newspapers – MEAA Enterprise Agreement 2007.

Clauses 5, 10 and 15 of the award are as follows:

### **5. SCOPE AND PARTIES BOUND**

**5.1** Subject to the provisions of **clause 5.2**, this award shall be binding upon the employers named in the Schedule to this award and upon the Alliance, its officers and members in the Commonwealth of Australia in respect of all work to be done by members of the Alliance for the said employers in the various engagements in the industry of journalism in its literary, artistic and photographic branches and in the gathering of writing or preparing news matters or news commentaries.

**5.2** This award does not apply to:

**5.2.1** the Editor-in-Chief, Editor, or the Chief of Staff of a daily newspaper; and

**5.2.2** the members from time to time holding positions as determined by the employer provided that the number of positions does not exceed those specified below.

**Herald and Weekly Times Limited**

(a) The Herald and Weekly Times Limited: 2 positions;

(b) The Herald-Sun: 10 positions;

(c) The Sunday Herald-Sun: 2 positions;

(d) Any other associated publication: 1 position.

**Advertiser Newspapers Limited**

(a) The Advertiser: 4 positions;

(b) Sunday Mail: 2 positions

(c) Any other associated publication: 1 position.

**Queensland Newspapers Pty Limited**

(a) The Courier-Mail: 4 positions;

(b) The Sunday Mail: 2 positions;

**Davies Bros Limited**

(a) The Mercury: 3 positions

**Mirror Australian Telegraph Publications, a division of Nationwide News Pty Limited**

(a) Daily Telegraph: 10 positions

(b) Sunday Telegraph: 2 positions;

(c) The Australian: 6 positions;

(d) Any other associated publication: 1 position

**Western Press, the Perth division of Nationwide News Pty Ltd**

(a) The Sunday Times: 3 positions;

**Northern Territory News, a division of Nationwide News Pty Ltd**

(a) Northern Territory News: 1 position.

Each employer must notify the Alliance within fourteen days of the commencement of this Award of the positions which the employer has determined in accordance with clause 5.2.2 and will notify the Alliance of any change to such positions within fourteen days of a position being changed.

- 5.3** Members classified in Grades 9 or 10 shall be exempted from the provisions of clauses 17 - *Hours of Employment and Rosters of Ordinary Hours of Employment*; 29 - *Distant Engagements*; 18 - *Overtime* and 9 - *Time Book*: provided always that each member shall be given at least two clear days off duty in each week in accordance with the provisions of paragraph 17.3 - *Days Off*. The provisions of sub-clause 18.5 shall apply to a member who is not given clear days off.

**10. CLASSIFICATION OF MEMBERS**

- 10.1** Members, other than cadets and casuals and members employed outside the Commonwealth, shall be classified by their employer in one of ten grades in three bands as defined in sub-clause 10.2. The separate proportions of the respective grades of members and the bands into which each grade shall be allocated shall be:

**BAND 3:**

Not less than 5% in Grades 10, 9 and 8.

**BAND 2:**

Not less than 5% in Grade 7.

Not less than 10% in Grade 6.

Not less than 15% in Grade 5.

**BAND 1:**

Not less than 35% in Grades 4 and 3.

Not less than 15% in Grade 2.

Not more than 15% in Grade 1.

Any excess in any grade may be used to make up the percentage prescribed for any lower grade.

**10.2** The definitions for each of the three bands referred to in sub-clause 10.1 are:

**Band One - Grades 4, 3, 2 and 1**

Journalists, artists and photographers classified in Band One have completed the training requirements of a cadetship or its equivalent and are gaining experience in a wide range of practical areas and/or undertaking additional training. They normally perform journalistic, artistic and photographic duties under broad supervision. As they undertake additional training and/or gain experience, they are assigned to duties requiring the exercise of independent initiative and judgment and/or the exercise of more advanced skills. Beginning as a Grade 1 journalist, artist or photographer, they require decreasing supervision and exercise greater professional judgment and skills to the level of Grade 4.

**Band Two - Grades 7, 6 and 5**

Journalists, artists and photographers classified in Band Two have obtained wide practical experience and are exercising advanced skills. They are capable of working independently and of exercising initiative and judgment on difficult and responsible assignments. They may work either individually or as part of a team without direct supervision.

**Band Three - Grades 10, 9 and 8**

Journalists, artists and photographers classified in Band Three exercise the highest level of skills and responsibility. Their duties require the exercise of sustained high levels of professional, technical and creative skills of mature and experienced judgment and outstanding levels of individual accomplishment.

**10.3** Where the classification proportions specified in subclause 10.1 of this clause are affected by any staff alterations, those proportions must be restored within eight weeks when an appointment is made from outside the office, and within four weeks when an appointment is made within the office.

**10.4** Classification in a grade and the definitions in sub-clause 10.2 are indicators of skills only and for the purpose only of fixing the minimum award rates of payment to which members shall be entitled, and shall not be applied to restrict the range of work that may be required of a member. Members shall undertake duties as directed within the limits of their competence, skills and training.

**10.5** A member who has completed his or her cadetship with an employer shall not be classified as Grade 1 by that employer for longer than two years provided he or she has completed his or her shorthand and other training requirements as a cadet to the satisfaction of his or her employer.

**15. MINIMUM RATES OF PAYMENT**

**15.1** The minimum weekly award rate of payment for a member shall be as follows:

<b>Grade</b>	<b>Rate per week</b> \$
1	638.80
2	701.40
3	784.80
4	824.50
5	864.20
6	926.80
7	989.40
8	1020.70
9	1156.30
10	1302.30

**15.1.1** The rates of pay in this award include the arbitrated safety net adjustment payable under the *Safety Net Review - Wages June 2005 decision* [PR002005]. 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 over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

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.

## **15.2 Relativities**

Rates of pay for the above grades have been set at the percentages listed below of the classification C10 in the Metal, Engineering and Associated Industries Award 1998

<b>Grade</b>	<b>Relativity Percentage</b>
1	115%
2	130%
3	150%
4	160%
5	170%
6	185%
7	200%
8	207.5%

9	240%
10	275%

- 15.3** The minimum weekly award rate of pay and the relativity prescribed in sub-clause 15.1 and 15.2 is inclusive of an allowance of 6 per cent for the use of VDTs in the creation or editing of any editorial matter in production.
- 15.4** A member may be paid by cash, cheque or electronic funds transfer at the election of the employer.
- 15.5** The employer may pay wages weekly or fortnightly.
- 15.6** By agreement between the employer and an individual member, wages may be paid to an individual member on a monthly basis.

The 2007 Enterprise Agreement contains the following provisions:

- 3.1 This Agreement operates to the exclusion of any award that might otherwise apply to members. Any protected award conditions, protected notional conditions or protected preserved conditions (as those terms are defined in the Act) which might otherwise apply to members are expressly excluded from this Agreement, and do not apply to the members employment. This includes (but is not limited to) terms relating to:
- 3.4.1 rest breaks;
  - 3.4.2 incentive based payments and bonus;
  - 3.4.3 annual leave loading;
  - 3.4.4 public holidays;
  - 3.4.5 allowances;
  - 3.4.6 loading for overtime or shift work; and
  - 3.4.7 penalty rates.
- 3.5 This Agreement does not apply to:
- 3.1.1 the Editor-in-Chief, Editor, or the Chief of Staff of a daily newspaper; and
  - 3.1.2 the members from time to time holding positions as determined by the employer provided that the number of positions does not exceed those specified below.

**Herald and Weekly Times Limited**

- (a) The Herald and Weekly Times Limited: 2 positions;
- (b) The Herald-Sun: 10 positions;
- (c) The Sunday Herald-Sun: 2 positions;
- (d) Any other associated publication: 1 position.

**Advertiser Newspapers Limited**

- (a) The Advertiser: 4 positions;
- (b) Sunday Mail: 2 positions

- (c) Any other associated publication: 1 position.

**Queensland Newspapers Pty Limited**

- (a) The Courier-Mail: 4 positions;
- (b) The Sunday Mail: 2 positions;

**Davies Bros Limited**

- (a) The Mercury: 3 positions

**Mirror Australian Telegraph Publications, a division of Nationwide News Pty Limited**

- (a) Daily Telegraph: 10 positions
- (b) Sunday Telegraph: 2 positions;
- (c) The Australian: 6 positions;
- (d) Any other associated publication: 1 position

**Western Press, the Perth division of Nationwide News Pty Ltd**

- (a) The Sunday Times: 3 positions;

**Northern Territory News, a division of Nationwide News Pty Ltd**

- (a) Northern Territory News: 1 position.

3.6 Members classified in Grades 9 or 10 shall be exempted from the provisions of clauses 17 - *Hours of Employment and Rosters of Ordinary Hours of Employment*; 31 - *Distant Engagements*; 19 - *Overtime*; 35 - *Time Book* and 18 - *Shift and Weekend Penalties*: provided always that each member shall be given at least two clear days off duty in each week in accordance with the provisions of paragraph 17.3 - *Days Off*. The provisions of sub-clause 19.7 shall apply to a member who is not given clear days off.

## **5. CLASSIFICATION OF MEMBERS**

5.1 Members, other than cadets and casuals and members employed outside the Commonwealth, shall be classified by their employer in one of ten grades in three bands as defined in sub-clause 5.2.

5.2 The definitions for each of the three band are:

### **Band One - Grades 4, 3, 2 and 1**

Journalists, artists and photographers classified in Band One have completed the training requirements of a cadetship or its equivalent and are gaining experience in a wide range of practical areas and/or undertaking additional training. They normally perform journalistic, artistic and photographic duties under broad supervision. As they undertake additional training and/or gain experience, they are assigned to duties requiring the exercise of independent initiative and judgment and/or the exercise of more advanced skills. Beginning as a Grade 1 journalist, artist or photographer, they require decreasing supervision and exercise greater professional judgment and skills to the level of Grade 4.

## **Band Two - Grades 7, 6 and 5**

Journalists, artists and photographers classified in Band Two have obtained wide practical experience and are exercising advanced skills. They are capable of working independently and of exercising initiative and judgment on difficult and responsible assignments. They may work either individually or as part of a team without direct supervision.

## **Band Three - Grades 10, 9 and 8**

Journalists, artists and photographers classified in Band Three exercise the highest level of skills and responsibility. Their duties require the exercise of sustained high levels of professional, technical and creative skills of mature and experienced judgment and outstanding levels of individual accomplishment.

- 5.3 Classification in a grade and the definitions in clause 4 are indicators of skills only and for the purpose only of fixing the minimum award rates of payment to which members shall be entitled, and shall not be applied to restrict the range of work that may be required of a member. Members shall undertake duties as directed within the limits of their competence, skills and training.
- 5.4 A member who has completed his or her cadetship with an employer shall not be classified as Grade 1 by that employer for longer than two years provided he or she has completed his or her shorthand and other training requirements as a cadet to the satisfaction of his or her employer.

### **9.1 Relativities**

Relativities for the above grades in 5.2 have been set at the percentages listed below of the classification C10 in the Metal, Engineering and Associated Industries Award 1998

<b>Grade</b>	<b>Relativity Percentage</b>
1	115%
2	130%
3	150%
4	160%
5	170%
6	185%
7	200%
8	207.5%
9	240%
10	275%

Pre Press Editorial Assistant Level 1 – 106%

Pre Press Editorial Assistant Level 2 – 125%

The minimum weekly rate of pay and the relativity prescribed in subclause 9.2 is inclusive of an allowance of 6 per cent for the use of VDTs in the creation or editing of any editorial matter in production.

### **SCHEDULE 1 – RATES OF PAY**

	<b>1/07/07</b>	<b>1/07/08</b>	<b>1/07/09</b>
<b>Cadets</b>			
1	615.50	637.10	659.30
2	697.60	722.00	747.20
3	779.70	806.90	835.10
<b>Grade</b>			
1	820.70	849.40	879.10
2	928.50	961.00	994.60
3	1071.30	1108.80	1147.60
4	1142.80	1182.80	1224.20
5	1214.50	1257.00	1301.00
6	1321.30	1367.50	1415.40
7	1428.30	1478.30	1530.00
8	1482.10	1534.00	1587.70
9	1714.20	1774.20	1836.30
10	1964.20	2032.90	2104.10
<b>Editorial Assistants</b>			
Grade 1	816.30	844.90	874.50
Grade 2	891.90	923.10	955.40

The award structure is as follows:

- The Editor-in-Chief, Editor and Chief of staff of daily newspapers are not covered by the award (these positions are exempt from Alliance membership)
- Depending on the size of the newspaper, certain senior editorial positions are also not covered by the award. The number of exemptions range from 10 for the Herald-Sun in Melbourne and the Daily Telegraph in Sydney to one for the NT News, reflecting the size and complexity of staff.
- Members classified in Grades 9 and 10 are exempt from the payment of shift penalties and overtime, with the proviso that they work no more than five days per week, if they work additional days they are entitled to double time. This is because their minimum award rate includes in-built compensation for these factors.

The absurdity of excluding employees from union negotiated awards, because their salaries are set by union-negotiated collective agreements is manifest. In our case, the flexibilities for such employees are award-based. These would be lost if they were excluded from under-pinning awards.

A large number of Alliance members would be classified as so-called “high income employees” (where such a term is defined as someone earning in excess of \$100,000 salary as at today’s date). Such members can be found in a variety of occupations – journalists, performers and film and television technicians. They can be found in both the private and public sectors.

In many cases, minimum salaries in our collective agreements are already in excess of \$100,000 per annum. Examples of where such agreements are: Australian Broadcasting Corporation, Sydney Opera House, News Limited, Fairfax Media and the Seven Network.

Such high-income employees, in most cases, work alongside employees on lesser salaries doing similar work. For example, sub-editors on a daily newspaper will work the same hours and days having regard to the newspaper’s deadline, regardless of salary, similarly with television reporters and performers.

To this end, the Alliance does not believe high-income employees should have watered-down NES. The proposed NES already contain flexibility in areas where it matters, for example, the requirement to work reasonable additional hours in excess of 38. Other NES, such as parental leave, annual leave, personal/carer’s leave, compassionate leave, community service leave, long service leave, public holidays, notice of termination, redundancy pay and the fair work information statement are such basic entitlements that must apply to all employees regardless of the salaries.

The Alliance also does not believe that additional rules of flexibility should apply to award free employees. National standards are just that – national, not – national, except for the bits that do not apply.

In relation to the issue of compliance, the Alliance believes that enforcement for both award breaches and breaches of the NES must be done by the same body. It is highly likely that the breach will involve a breach of award terms and the related NES.

#### **4. Proposed NES**

##### **4(a) Maximum Weekly Hours**

If the intention of this NES is to cement that 38 ordinary hours of work is the Australian norm, but allowing for some flexibility in the working of reasonable additional hours and the ability of employees to refuse to work additional unreasonable hours, then the proposed standard is deficient. The Alliance notes that the standard is headed “Maximum Weekly Hours”, not maximum monthly, quarterly or annual hours.

The question of what is reasonable and unreasonable in the working of additional hours has dogged Australian industrial relations for many years. To date no objective criteria have been developed. When the issue has arisen, industrial tribunals have said what is unreasonable will depend on the individual circumstances of a particular set of facts. The Alliance believes that in the development of minimum standards, objective criteria must be established.

For example, they should set the maximum number of consecutive days an employee could work. They should also set the maximum number of hours that could be worked in a period of time. They should also set the maximum number of ordinary hours that could be worked per day. There should also be legislated the minimum break from work when finishing work on one shift and then starting the next shift.

In addition, while it is noted that the issue of averaging the 38 hour week over periods of longer than a week is to be left to awards, the Alliance believes that the NES must contain a maximum period. If it was possible to average over the course of a whole year, then an employee may have worked a number of very long periods for some time, offset by some weeks of little or no work. It could mean that in the long weeks such a person could suffer health and/or safety issues.

While the Alliance is mindful of the need to balance the needs of employees and those of business and the fact that different industries will have different health and safety issues, with no parameters in place, the likelihood of disputes being commonplace is substantially increased.

It is essential that such minimum objective standards be set, so that in dealing with requests from employees to refuse to work unreasonable hours and from employers for employees to work reasonable additional hours there are some easy to understand basic criteria. It is simplistic in the extreme to have a system based on requests, when in a number of areas the power relationship between the parties is unequal. For example, an employee from a non-English speaking background in a vulnerable job is unlikely to be able to refuse a request from his or her employer to work additional hours.

As a bare minimum, the Alliance believes that the NES should contain the following:

- No more than 10 consecutive days to be worked;
- Maximum averaging period of 13 weeks;
- Minimum 10 hour break between finishing work and recommencing work;
- Maximum 12 ordinary hours per day;
- Maximum of 60 hours to be worked in any period of seven consecutive days.

The above issues are important because of the example and comments thereon set out at the top of page 8 of the Discussion Paper. In that example, Alex the worker has his 38 hour week averaged over a four week period. In week 2 of the cycle he works 60 hours. As the example says, because of the averaging arrangement the additional 22 hours the extent of their reasonableness cannot be considered. In particular, Alex's individual circumstances cannot be raised.

In the Alliance's view there needs clear parameters around what is reasonable. The last thing anybody needs, employees and employers, is endless arguments as to what is or isn't reasonable.

The Alliance does not believe that the NES should deal with the issue of voluntary additional hours.

#### **4(b) Requests for Flexible Working Arrangements**

The Alliance believes that as the proposed NES stands it is not a standard at all. It does nothing more than set out what any sensible employer and employee would attempt to do.

In order for a standard to be established, there must be enforcement on the question of whether an employer's decision to reject a request is based on reasonable business grounds. We believe that Fair Work Australia should have the power to so determine whether an employer's refusal on such grounds has been properly made.

#### **4(c) Parental Leave and Related Entitlements**

The Alliance generally supports the proposed NES, provided that where awards provide superior benefits those superior benefits continue as the minimum standard. In our case, many journalism awards provide for six weeks paid maternity leave.

There are some areas where the proposed NES is inferior to the long-standing AIRC Test Case provisions, for example, the NES only allows for three weeks concurrent parental while the Test Case provides for eight and the NES stipulates that parental leave commence on the date of birth of the child, while the Test Case allows for leave to start before the birth.

The Alliance submits that the NES should not reduce current Test case provisions.

#### **4(d) Annual Leave**

The Alliance accepts that the basic entitlement of 4 weeks annual leave (5 weeks for shiftworkers) should form the basis of this NES. We do have certain problems with some of what is proposed.

For example, in the first example following paragraph 133, this would leave Maria at a disadvantage. Maria's 38 hour week is averaged over 4 weeks. In one week she is rostered to work 3 12 hour shifts (i.e. 36 hours). This means in the other 3 weeks of the roster period she has to work a total of 116 hours. In the example used on the day she takes annual leave she is paid for only 7.6 hours. This means she will have to make up 4.4 hours somewhere in the other weeks of the cycle, otherwise over the cycle, otherwise her total hours will not be 152.

This can be immediately seen if the week in question is the last week in the four week cycle. Maria has obviously already worked 116 ordinary hours and only has to work a further 36 to reach 152. This is to be done by 3 12 hour shifts. If she is only paid 7.6 hours on the Monday, that together with the 24 pay for Tuesday and Wednesday, means the final weeks pay will be 4.4 hours short. If the alternative, is that she works 4.4 hours later in the week this is unacceptable and may also be operationally useless.

In the payment of annual leave, the Alliance believes that employees should be paid at their ordinary rate of pay, not at their base rate. For example, most sub-editors employed on newspapers will be in receipt of shift penalties day-in and day-out because they work afternoon and night shifts to produce a morning newspaper. If they

were to receive annual leave on their base rate, they would receive either 10% or 17.5% less.

While the definition of shiftworker can be included in modern awards, this will be of no benefit for award-free employees, hence the NES should contain a definition.

It should be made clear that modern awards can provide more beneficial provisions.

#### **4(e) Personal/Carers Leave and Compassionate Leave**

The Alliance generally supports this proposed NES, however, there are matters of detail that we believe should be modified.

The example of what constitutes “ordinary hours of work” is addressed at paragraphs 177 and 178 and the example immediately following. It is proposed that the NES contain no such definition, this being left to awards. One problem, is that it is clear a number of employees will not be covered by awards.

Secondly, the purpose of personal/carers leave is that an employee should not suffer a financial loss because of short-term illness or injury to employee or a person for who he/she cares, subject to the limit of total days per year.

In the example used, Jose would have been paid for 12 hours work on the Tuesday if he had attended, however, he will only be paid 7.6 hours, which means that he will have to make up the shortfall of 4.4 hours somewhere in the four week cycle or forego 4.4 hours pay.

Many Alliance awards permit for a daily spread of ordinary hours of between four and eleven. If Alex had been rostered to work 4 hours on the Tuesday and took sick leave he would receive a windfall of 3.6 hours pay.

The Alliance believes that since such leave is unplanned and of usually a period of a few days, that employees should be paid sick leave on the basis of hours rostered on such days.

The Alliance also believes that shiftworkers should be paid such leave at their ordinary rate for the time off rather than at their base rate. Again to do as the proposed NES sets out would mean a loss of pay by the non-payment of shift loadings.

#### **4(f) Community Service Leave**

The Alliance supports this proposed standard, with additional point, that such leave counts as service with the employer. In addition, the Alliance believes casuals, particularly long-term casuals with a regular pattern of work, should be entitled to such leave, on the same conditions as offered to on-going employees.

#### **4(g) Long Service Leave**

The Alliance does not support the proposal that agreements cannot contain long service leave provisions. For example, if an agreement allowed for long service leave

to be taken at half pay for twice the accrued period or double pay for half the accrued period, so long as the accrual was consistent with state legislation, this should be allowed to continue.

#### **4(h) Public Holidays**

Generally, the Alliance supports the proposed NES, however, there are some aspects which we believe need to be altered.

As we have mentioned elsewhere in this submission, employees should be entitled to their ordinary rate of pay, when they are not at work on a public holiday.

Again as mentioned elsewhere mentioned, employees should be paid for the time they were rostered, so that their normal pay is not enhanced or reduced by applying a standard payment for 7.6 hours.

Again, the issue of reasonableness must be able to be tested by an independent body, probably Fair Work Australia.

As mentioned earlier, most journalism awards only specifically recognise Christmas Day and Good Friday as public holidays because of the on-going nature of newsgathering. This is compensated by having either six weeks or six weeks and three days annual leave. It would appear that this inter-relationship can sit with the applicable NES.

#### **4(i) Notice of Termination and Redundancy Pay**

The Alliance supports the proposed clauses 50 and 51.

The Alliance supports proposed section 52, with the exception that “base rate of pay” be replaced by “full rate of pay”. This is important, in that, shiftworkers will be seriously disadvantaged by excluding their shift loadings. One way to protect workers would be if they were entitled to five weeks annual leave because they met the definition of shiftworker, their rate of pay for redundancy pay would include their shift loadings.

The Alliance supports the rest of the proposed NES, except where they are inferior to the provisions of the AIRC’s Redundancy Test cases.

#### **4(j) Fair Work Information Statement**

The Alliance is of the view that it is difficult to comment in any detail on this issue until a draft has been seen. However, for the document to be of practical assistance to new employees it must give easy to understand information. To this end a general statement about awards existing, should that an employer if covered by a modern award and/or collective agreement must make available or supply a copy of such documents to the employee.

Similarly, in relation to freedom of association, it should after explaining the law on the right to join or not join a union, provide contact details for an employee wishing to exercise their right to so join.

## **5. Conclusion**

The Alliance believes that it is essential that the relationship between NES and modern awards and collective agreements is clear and easy to understand. In particular, it should be made quite clear that where appropriate awards and agreements can contain more beneficial provisions than provided for by the NES.

It is also essential that enforcement of both the NES and terms of awards and agreements is dealt with by the one body – at this stage we would suggest Fair Work Australia.

All existing employees covered by awards should remain covered by modern awards.

Modern awards and agreements should be able to pick-up the terms of the NES, so that both employers and employees have an easy to understand document setting out their rights and obligations as to rates of pay and working conditions.

An employee's ordinary rate of pay should be applied rather than his or her base rate in the payment of the various forms of leave and redundancy pay to ensure employees are not disadvantaged in a practical sense when they take leave or receive redundancy pay.

In relation to hours of work, there needs to set out a variety of parameters to reduce disputation and to give real and tangible benefits to employees and certainty to employers.

It should be open to Fair Work Australia to determine the issues which involve decisions being made on the basis of reasonableness.

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