

ASE Rates —&— Conditions

australian [screen] editors

2024 – ASE MEMBER

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ASE EDITORS ENGAGEMENT CHECKLIST

Employee or Independent Contractor?

There are 3 types of employment/contracting arrangements in the industry:

1. PAYG (pay as you go):

You are an employee and your employer withholds tax from your earnings and sends it to the tax office. Your entitlements are set out in the Fair Work Act, the relevant award, any registered agreement, and your employment contract.

2. Sole trader/ABN:

You are responsible for your own tax. Your status as an 'employee' or 'contractor' is a matter of common law and is not necessarily determined by how it is described by you or the producer. People engaged in this way to provide services in connection with film, or television broadcast have additional protections in relation to eligibility for superannuation.

As this kind of arrangement can be a 'grey area' you may want to ensure that you have public liability and other forms of insurance. However you may be eligible to be covered by the employer's workers' compensation insurance.

3. Pty Ltd Company:

Your company is a separate legal entity and there are no employment obligations between you and the producer, however you may be able to negotiate that the contract include normal employment entitlements like overtime, paid leave, etc. You are responsible for paying your own superannuation and other minimum entitlements, as well as the company's and your own individual tax, and GST.

- Just because you have an ABN, or issue invoices, does not automatically make you an independent contractor. Seek advice from your tax accountant/financial advisor before you negotiate.
- For ATO online tools that assist with determining the status of your engagement visit:
Contractors <https://www.fairwork.gov.au/find-help-for/independent-contractors>

Remuneration/fee

The ASE recommends that you negotiate an agreed hourly rate based on the level of your experience. (See ASE Rate Card below)

- **In addition** to a base rate, all Editors who are employees are entitled to compensation for superannuation, leave entitlements, overtime payments, paid public holidays, notice of termination.
- If you're working as a Contractor, (ABN or a PTY Ltd Company) you must factor these entitlements in to your base contractual rate. For Pty Ltd Companies add an additional 17.5% – 30% depending on circumstances. (See ASE Recommended Rates and Conditions)

Weekly working hours

The standard working week is 38 hours. However, the film Industry allows for 50 hour working weeks (comprising 38 ordinary hours and 12 hours scheduled overtime) which are to be worked as 5 consecutive days between Monday and Saturday. All hours worked in excess of ordinary hours are overtime and incur overtime penalty rates unless a 'flat fee' is negotiated (see *below*).

- If you are required to work in excess of 5 consecutive days per week, penalty rates should be charged.
- If you are expected to work in excess of 5 consecutive days throughout your engagement and you are not able to negotiate penalty rates then the ASE recommends that you request a higher upfront fee.

Overtime

Employees are entitled to overtime rates after working 8 hours per day (i.e. time and half for the first 2 hours [8 – 10hrs]; double time up to 12 hours [10 – 12hrs] and triple time thereafter). On Sundays, employees are entitled to double time all day up to 12 hours.

If you are:

- engaged as a genuine independent contractor, you will not be entitled to receive overtime payments, unless specifically negotiated. ASE recommends that you factor this in to your hourly rate.
- engaged on a flat fee that purports to 'buy-out' all overtime and penalties, ASE recommends adding 50% to your hourly rate in consideration of the buy-out.

Superannuation, leave entitlements and insurance

If you are:

- being paid more than \$450 per month by the same employer you are entitled to superannuation.
- **engaged as an employee**, i.e. PAYG you are entitled to Superannuation, leave entitlements and to be covered for worker's compensation. Your tax will be deducted by your employer.
- **engaged as a casual employee**, you are entitled to superannuation, you will not receive paid leave entitlements, or termination notice periods, but you are entitled to receive a casual leave loading of 20 – 25% on top of your minimum hourly wage to compensate. Your tax will be deducted by your employer.
- **engaged as a genuine independent contractor**, (a Sole Trader/ABN) you are likely to be entitled to superannuation, but will need to pay your own leave entitlements, and public liability insurance, or negotiate accordingly. You will also be responsible for paying your own tax and GST.
- **engaged as a genuine independent contractor**, (a Pty Ltd Company) you will need to pay your own superannuation, leave entitlements, workers' compensation and public liability insurances. You will also be responsible for paying your tax and GST.
- The ASE recommends when you provide your services as an Independent contractor that you add an additional loading (as above) to your base contractual rate to cover those entitlements and costs.
- **Superannuation** <http://law.ato.gov.au/atolaw/view.htm?Docid=SGR/SGR20051/NAT/ATO/00001>

Equipment

Your hourly rate does not include the hire of your equipment unless you are engaged as an independent contractor and an extra equipment fee is specifically included as part of the negotiated services fee.

- If you are required to use your own equipment, ASE recommends that you request an equipment fee or allowance in addition to your wages or services fee.

Insurance

If you are engaged as an employee you are required to be covered by the production company's workers' compensation insurance.

- As an independent contractor, (Sole Trader or Pty Ltd Company) it is generally expected that you will provide your own workers' compensation insurance, however, production companies may agree to include you in their own policy.

Termination

If you are engaged as an employee, (unless casual) you are entitled to notice periods or payment in lieu of notice for termination of 1 – 4 weeks depending period of employment.

- As a genuine independent contractor, you will not have the protections of the minimum notice periods. The ASE recommends that you negotiate a minimum notice period (for both parties) with the production company/producer in your agreement.

ASE Recommendation

THE ASE encourages editors and producers alike to read our pre-employment checklist.

http://www.screeneditors.com.au/wp-content/uploads/2011/12/pre-employment_postproduction_checklist1.pdf

RATE CARD

	AUSTRALIAN – 50 HR WEEK – BASE RATE		OFFSHORE – 50 HR WEEK – BASE RATE	
	ENTRY LEVEL	EXPERIENCED	ENTRY LEVEL	EXPERIENCED
FEATURE FILMS (includes Animated Features)				
Editor	3729	4947	4947	8659
VFX Editor	2735	3095	3093	3710
1st Assistant Editor	2238	2846	3087	3463
2nd Assistant Editor/ VFX Assistant Editor	1617	1980	1833	2475
3rd Assistant Editor/Apprentice	1492	–	1609	–

	AUSTRALIAN – 50 HR WEEK – BASE RATE		OFFSHORE – 50 HR WEEK – BASE RATE	
	ENTRY LEVEL	EXPERIENCED	ENTRY LEVEL	EXPERIENCED
TELEVISION DRAMA (includes Animated TV Drama)				
Editor	3093	4329	3710	6184
VFX Editor	2475	3093	3093	3710
1st Assistant Editor	2226	2475	2226	2721
2nd Assistant Editor/ VFX Assistant Editor	1484	1833	1608	1980
3rd Assistant/Apprentice	1237	–	1484	–

	AUSTRALIAN – 50 HR WEEK – BASE RATE		OFFSHORE – 50 HR WEEK – BASE RATE	
	ENTRY LEVEL	EXPERIENCED	ENTRY LEVEL	EXPERIENCED
REALITY				
Supervising/Senior Editor	3600	4000	4200	4800
Offline Editor	3200	3500	3800	4200
Assembly Editor	2600	3000	3050	3416
Supervising Assistant Editor	2200	2500	2500	2800
Assistant Editor	1800	2016	2100	2350

	AUSTRALIAN INDEPENDENT – 50 HR WEEK – BASE RATE		NETWORK/OFFSHORE – 50 HR WEEK – BASE RATE	
	ENTRY LEVEL	EXPERIENCED	ENTRY LEVEL	EXPERIENCED
TV DOCUMENTARY				
Editor	3077	3690	3445	3938
Assistant Editor	1846	2214	2214	2707

	AUSTRALIAN INDEPENDENT – 50 HR WEEK – BASE RATE		NETWORK/OFFSHORE – 50 HR WEEK – BASE RATE	
	ENTRY LEVEL	EXPERIENCED	ENTRY LEVEL	EXPERIENCED
DOCUMENTARY FEATURE				
Editor	3093	3710	3463	4329
Assistant Editor	1856	2226	2226	2721

	AGENCY – PER 10 HR DAY – BASE RATE		DIRECT TO CLIENT – PER 10 HR DAY – BASE RATE	
	ENTRY LEVEL	EXPERIENCED	ENTRY LEVEL	EXPERIENCED
CORPORATE				
Editor	742	989	989	1484
Assistant Editor	388	495	371	742

	AGENCY – PER 10 HR DAY – BASE RATE	
	ENTRY LEVEL	EXPERIENCED
TV COMMERCIALS		
Editor	1484	2721
Editor Online Content Version	619	1237
Assistant Editor	619	989

ASE Recommendation

- These are minimum rates to be negotiated up from.
- A base hourly rate can be calculated by dividing the relevant 50 hour weekly rate by 55, or a 10 hour daily rate by 11. We encourage all individuals to understand and keep track of what their hourly rate actually is.
- ASE Recommend Independent Contractors add additional loadings (Pty Ltd Companies: a minimum of 17.5% – 30%) to your base contractual fee to cover entitlements and costs.
- Note that the recommended rates are subject to inflation.

ASE RECOMMENDED RATES AND CONDITIONS

Background

The ASE believes a collective agreement on pay and conditions, including recognition of the living wage, is in the best interests of all parties. We urge all post-production professionals to consider long term career sustainability when negotiating rates and conditions.

- **The ASE is a guild and not a union.** We can not enforce rates and conditions. Everything is negotiable, and variable, depending on the size, scope and budget of the project.
- Outlined below are the standard Industry Agreements and the ASE's suggested recommendations.

Note that the rate card base rates are minimums. **Many editors are paid far more than this.** We encourage all our members to negotiate upwards from these base rates and to seek taxation, financial and legal advice before negotiating. If you want further industrial advice or support, or someone to negotiate on your behalf, the ASE recommends you consult a lawyer, or an agent, and for MEAA members to contact their union.

- THE ASE encourages editors and producers alike to read our pre-employment checklist.
http://www.screeneditors.com.au/wp-content/uploads/2011/12/pre-employment_postproduction_checklist1.pdf

There are 3 types of employment/contracting arrangements in the industry:

1. **PAYG (pay as you go):** You are an employee and your employer withholds tax from your earnings and sends it to the tax office. Your entitlements are set out in the Fair Work Act, the relevant award, any registered agreement, and your employment contract.
2. **ABN:** You are responsible for your own tax. Your status as an 'employee' or 'contractor' is a matter of common law and is not necessarily determined by how it is described by you or the producer.

<https://www.fairwork.gov.au/find-help-for/independent-contractors>

People engaged under an ABN to provide services in connection with film, or television or radio broadcast have additional protections in relation to eligibility for superannuation.

<http://law.ato.gov.au/atolaw/view.htm?Docid=SGR/SGR20051/NAT/ATO/00001>

As this kind of arrangement can be a 'grey area' you may want to ensure that you have public liability and other forms of insurance. However you may be eligible to be covered by the employer's workers' compensation insurance.

3. **Pty Ltd:** Your company is a separate legal entity and there are no employment obligations between you and the producer, however you may be able to negotiate that the contract include normal employment entitlements like overtime, paid leave, etc. You are responsible for paying your own superannuation and other minimum entitlements, as well as the company's and your own individual tax.

All rates and conditions are negotiable, but if you are engaged as an employee, by law you will have certain minimum entitlements under the Federal Government's *National Employment Standards* (**NES**).

<https://www.fairwork.gov.au/employee-entitlements/national-employment-standards>

and the *Broadcasting and Recorded Entertainment Award 2010* (**BREA**).

https://www.fwc.gov.au/documents/documents/modern_awards/award/MA000091/default.htm

Further, your employment agreement may incorporate the terms of the *Motion Picture Production Certified Agreement 2010* (**MPPCA**)

<https://www.meaa.org/download/mppa-minimum-rates-and-allowances-summary/>

This agreement is between the Screen Producers Association (**SPAA**) and the union, the Media Entertainment and Arts Alliance (**MEAA**). The MPPCA provides more favourable terms than the NES and BREA, and is aligned with the working conditions of **freelance** professionals.

- Alternatively, you may be covered by an existing registered agreement, e.g. with one of the Networks, some feature films and television productions.
- Under the NES, the maximum ordinary weekly hours for an employee is 38 hours per week, plus 'reasonable' additional hours. Notwithstanding this, both the BREA and the MPPCA allow for 50 hour working weeks.
- It is common practice for producers to employ editors on a 50 hour week, but be aware that you can refuse unreasonable overtime, and that you are entitled to be remunerated at overtime rates for any hours beyond 8 hours per day. The ASE encourages all editors to review the circumstances of their engagement to determine what is appropriate for each project .

Note that the ASE base weekly rates **do not** include superannuation, holiday pay and other fringes. These are standard minimum legal entitlements – ensure you include them in your negotiations (see below).

RATES AND CONDITIONS

Some of these conditions vary depending on whether you are engaged as an independent contractor or an employee or because they exceed those set out in other agreements. However the ASE advises you consider all rates and conditions outlined below and follow our suggested recommendations when negotiating with producers.

1. Hours and overtime

BREA

- Ordinary hours of work are 38 hours each week, excluding meal breaks.
- Monday to Saturday – time and half for the first 2 hours and double time after that.
- Sunday – double time.
- Any time worked in excess of 12 hours – triple time.

MPPCA

- Ordinary hours of work are 40 hours each week (38 ordinary hours and 2 hours scheduled overtime), excluding meal breaks, to be worked on 5 consecutive days between Monday and Saturday.
- An employee may be engaged to work 50 hours per week (made up of 38 ordinary hours and 12 hours scheduled overtime) which shall be worked as 5 consecutive days of 10 hours per day, between Monday and Saturday, exclusive of meal breaks.
- All hours worked in excess of 8 hours per day are considered **overtime** and incur an overtime rate.

Monday to Saturday

Time and a half for the first 2 hours (Hours 8 – 10)

Double time up to 12 hours (Hours 10 – 12)

Sunday

Double time all day up to 12 hours

Any day

Exceeding 12 hours: triple time

ASE Recommendation

Request a 38 – 40 hour week with overtime payable in accordance with MPPCA overtime rates.

2. Loading

These loadings are paid **in addition to** all other penalty payments, including overtime as above.

BREA		
7am to 8pm	Monday to Friday	Nil
8pm to Midnight	Monday to Thursday	+25%
12:01am to 7am	Tuesday to Friday	
7am to 8pm*	Saturday	
8pm to Midnight	Friday and Saturday	+50%
12:01am to 7am	Saturday	
12:01am to 7am**	Monday	+100%

* where an employee contracts to work a 6 day week, the penalty will be Nil.

** where no work was performed on either the Saturday or the Sunday preceding, the rate applicable after 6am will be 25%.

MPPCA		
6am to 8pm	Monday to Friday	Nil
8pm to Midnight	Monday to Friday	+25%
12.01am to 6am		
6am to 8pm*	Saturday	+50%
12.01am to 6am		
8pm to Midnight	Saturday*	+100%
12.01am to 6am**	Monday	

* where an employee contracts to work a 6 day week, the penalty will be Nil for work between 6am and 8pm.

** applicable only where work commenced on the Sunday preceding. Where work does not commence on Sunday but commences before 6am on Monday, the loading shall be 25%.

ASE Recommendation

Request loadings based on BREA or MPPCA according to the particular days and hours you are required to work.

3. Turnaround and 6th and consecutive days

BREA

The following breaks between shifts will be given, or penalty provisions are required to be paid In the case of:

- **two consecutive days worked** – 10 clear hours between the finish of 1 day's work and the commencement of the next day's work.
- **a single day off** – 34 hours between the finish of work prior to the day off and the commencement of work following the day off.

MPPCA

- **Normal** working week consists of 5 consecutive days of up to 10 hours between Monday and Saturday inclusive. Working weeks of 6 consecutive days may be scheduled in limited circumstances (e.g. where work is being performed on location away from home or where the total engagement is of a duration of 4 weeks or less etc).
- Whenever practicable, the following breaks shall be given and, if not provided, the appropriate penalties shall be payable:
 - a. In the case of 2 consecutive days worked** – 10 clear hours between the finish of 1 day's work and the commencement of the next day's work.
 - b. In the case of a single day off** – 34 clear hours between the finish of work prior to the day off and the commencement of work following the day off.
 - c. Where a 5 day week is contracted** and subject to paragraph (d) hereof in the case of 2 or more consecutive days off – 34 clear hours for the first day and 24 hours for each subsequent day between the finish of work prior to the day off and the commencement of work following the day off.
 - d. In the case of 2 or more consecutive days off** – a minimum break of no less than 54 clear hours may given where:
 - a majority of employees affected agree; or
 - this occurs not more than once in every 4 weeks.

An employee who breaks turnaround, authorised by the employer, must be paid double time until they receive the appropriate break set out above.

ASE Recommendation

- Request a normal working week of any 5 consecutive days between Monday and Saturday with a turnaround time of 12 hours between consecutive days.
- If you agree to work 6 consecutive days or more, the ASE suggests you negotiate penalty rates of time and a half for the first 2 hours on a Saturday and double time thereafter. Double time on Sundays **and on all consecutive days worked beyond the 6th consecutive day until you have a day off.**
- If you are unable to negotiate as above, request an increased base rate to compensate for being required to work more than 5 consecutive days.
- If you are an independent contractor, you may be requested to work for as many hours on as many days as necessary to complete the service. Consider specifying in your agreement that you will not provide services on weekends or work unreasonable hours.
- In addition, the ASE strongly recommends that you discuss the project's shooting ratio and post production schedule with the producers/production company before you commence editing services to ascertain whether you will be required to work long periods of overtime and/or consecutive days and to agree on how you will be remunerated for this.

4. Public holidays

BREA and MPPCA

- Under both the BREA and MPPCA, employees (other than Casuals) are entitled to be paid for public holidays. Any employee who is required to work on a public holiday, is entitled to a penalty rate of double time and a half (based on the employee's contracted fee) with a minimum payment of 4 hours.
- Casuals required to work on a public holiday are paid pro rata if the public holiday is within their normal working week. If it is not within their normal working week Casuals may be paid overtime.

5. Casual loading

Under the Fair Work Act 'Casual' is defined as an employee who is engaged as such and paid by the hour. A casual employee has no guaranteed hours of work, usually works irregular hours (but not necessarily), and doesn't get paid sick leave or annual leave or other fringes. They can also be dismissed without notice unless notice is required by another agreement, award or contract.

<http://www.fairwork.gov.au/employee-entitlements/types-of-employees/casual-part-time-and-full-time/casual-employees>

BREA

- A casual employee must be paid at the relevant minimum hourly wage with a loading of 25%. Such loading is paid instead of all paid leave prescribed under the NES.
- Casual employees must be paid for a minimum of 4 hours.

MPPCA

- An employee will be deemed casual if they are engaged as such and not engaged by the week.
- Casual employees are entitled to be paid for a minimum of 1 day's work and shall receive a 20% loading on top of the daily or hourly rate.
- For hours worked in excess of 8 hours per day, an overtime rate based on the casual daily rate shall be paid.
- Locals hired as casuals on location have a minimum call of 4 hours.

ASE Recommendation

If you are employed as a casual employee, negotiate a casual loading rate of 25% and ensure that overtime rates apply for any hours worked in excess of 8 hours per day. Minimum call for casuals should be 4 hours.

6. Flat fees

The ASE recommends that regardless of engagement status, if your contract is for a flat fee and no overtime or penalties are included, that you add 50% to your hourly rate.

7. Annual leave, sick leave, bereavement leave

Minimum leave entitlements for employees come from the National Employment Standards (NES).

<http://www.fairwork.gov.au/employee-entitlements/national-employment-standards>

An award, registered agreement or contract of employment can provide for other leave entitlements but they can not be less than what is stipulated in the NES.

Paid leave is calculated on ordinary hours under BREA, or on contracted hours under the MPPCA.

- **Annual Leave:** An employee, (excluding casual employees) is entitled to 4 weeks paid annual leave for every 12 months' service, or pro rata based on the number of weeks worked, with a 17.5% loading on the leave time. Annual leave accrues at the rate of approximately 1 day for every 13 days worked. Annual leave not taken must be paid out at the end of employment.
- **Personal Leave (includes Sick, Carer's and Compassionate Leave):** An employee, (excluding casual employees) is entitled to 10 days of paid Personal/Carer's Leave per year – Paid Sick/Carer's leave accrues approximately 1 day for every 26 days worked. It is an employee's entitlement to use these leave days where appropriate, but you are not entitled to have them paid out once the job is complete. Unpaid sick leave can be taken where you are unable to attend work, regardless of your leave accrual.
- **Unpaid Carer's Leave:** An employee (including casual employees) will be entitled to up to 2 days unpaid Carer's Leave for each occasion when a member of the employee's immediate family, or a member of the employee's household, requires care or support because of a personal illness or injury or unexpected emergency. This can be taken in 2 continuous days, or by agreement with the employer in separate periods for example: 4 x ½ days.
- **Compassionate Leave:** An employee may take up to 2 days compassionate leave when a member of the employee's immediate family, or a member of the employee's household, contracts or develops a personal illness that poses a serious threat to their life, or sustains an injury that poses a serious threat to their life or dies. For a casual employee the leave is unpaid; for all other employees it is paid leave.

ASE Recommendation

- If you are an employee ensure these leave entitlements are included in your contract.
- As a casual employee, to incorporate forgoing paid leave entitlements, add 25% to your hourly rate (*as per BREA above*).
- As a genuine independent contractor (Sole Trader or Pty Ltd Company), it is generally expected that you will be responsible for the payment of holiday loadings. Add an additional loading to your base contractual entitlements to incorporate forgoing these entitlements. Consider adding 25% to your base rate as per casual rates. See *Summary – Employee or Independent Contractor* on page 22 for complete breakdown of contractor's additional costs.

8. Equipment

Unless you are engaged as an independent contractor and the equipment fee is specifically included as part of the services fee, your remuneration does not incorporate the costs for hire of your equipment.

ASE Recommendation

If you are required to use your own equipment, negotiate for an equipment fee in addition to your employment or services fee, or request an allowance for the use of such equipment. Repairs and maintenance are generally not paid for unless negotiated.

9. Meal breaks

BREA and MPPCA

- A working week (i.e. 40 or 50 hours) is generally exclusive of meal breaks. Employees are entitled to the following meal breaks:

BREA

- Meal breaks will not commence later than 5 hours from the start of the work session or the end of the last meal break, whichever is later.
- An employee must take a meal break unless directed otherwise, in which case all work performed from the time the meal period became due until the meal period is allowed must be paid for at the rate of time and a half for week days, double time for Saturday and Sunday and double time and a half for public holidays.
- Where it is necessary for an employee to remain on call during the meal period, that period must be counted as time worked. The following Conditions and Penalties apply –

If the meal break is not allowed, then the normal time of the meal break will be paid at the following rates for:

- a. **week days** – time and a half of the ordinary rate
 - b. **Saturdays** – time and 3 quarters
 - c. **Sundays** – double time
 - d. **public holidays** – double time and a half.
- The employee will be permitted to have their usual meal break without deduction from their ordinary rate of pay as soon as possible after the prescribed meal break.
 - Where an employee is required to work beyond the time of their second meal break, the meal shall be provided to the employee or the appropriate allowance paid. When overtime duty is performed beyond midnight, a supper break of 30 minutes must be allowed to be taken as time on duty. The meal shall be provided by the employer or the employer must reimburse the employee.

MPPCA

- Meal breaks shall commence not later than 5 hours from the start of work or after the last meal break, whichever is later. This may be extended to 6 hours without penalty if employees agree.
- Meal breaks shall be not less than 30 minutes but not more than 1 hour.
- Employees are entitled to 2 paid rest periods of 10 minutes during the morning and afternoon of each day.
- If you do not receive a meal break in accordance with the MPPCA, then you are entitled to a delayed meal break penalty calculated at single time additional for all time worked between when the meal break was due to when you actually commenced the meal break.
- If an employee is required to work beyond the second meal break then such meal shall be provided by the employer or an appropriate allowance paid.
- When overtime duty is performed beyond 12am midnight a supper break of 30 minutes must be allowed and taken as time on duty. The employer must provide the meal or pay the meal allowance.

ASE Recommendation

Monitor your breaks and make sure that you are taking a break of at least 30 minutes each 5 hours and 2 shorter rest periods per day. If you are not provided a meal break or if you are required to work beyond the second meal break or 12am, you should make sure that the employer is providing you with meals or an allowance, and that the appropriate penalty is paid to you.

10. Allowances

BREA and MPPCA

- Both have a list of allowances to compensate employees required to work on location or 50 km or more from their place of residence.

BREA

https://www.fwc.gov.au/documents/documents/modern_awards/award/ma000091/default.htm

MPPCA

<https://www.meaa.org/resource-package/motion-picture-production-agreement-mppa-2010/>

ASE Recommendation

If you are required to work on location ensure accommodation and travel expenses are paid for by the producer/production company and that you receive the appropriate allowances set out in the MPPCA. If your contract does not provide for the payment of allowances while you are on location or required to work away from home, we would recommend that you request a daily per diem to be applied in addition to your fee. There are no set standards for per diem rates, but we would recommend a daily rate of between \$75 – \$100 as appropriate.

11. Cancellation, postponement, unscheduled hiatus

Cancellation fees occur where a production or its post production is cancelled or postponed after your services have already been engaged for a specific period.

BREA

Part 12 of BREA (Motion Picture Production) does not deal with cancellation, postponement or unscheduled hiatus.

MPPCA

The MPPCA deals with cancellation and postponement in relation to casual employees but not part-time or full-time employees. For casual employees if a booking is:

- confirmed 7 days or more prior to the commencement of the engagement and subsequently cancelled or postponed prior to 7 days before the commencement of the engagement then no penalty shall apply.
- confirmed 7 days or more prior to the commencement of the engagement and subsequently cancelled or postponed with less than 7 days before the commencement of the engagement then the employee will be paid a fee equivalent to only one day of the agreed daily rate.
- confirmed less than 7 days prior to the commencement of the engagement and subsequently cancelled or postponed giving the employee less than 24 hours' notice then the employee is to be paid the full daily rate for the days not worked up to a maximum of 3 days.

ASE Recommendation

- Television and film schedules are commonly subject to change, so it is generally expected that editors will adapt and work within schedule changes on a project-by-project basis. As neither BREA or MPPCA have any significant terms and conditions regarding cancellation and postponement for employees or contractors the ASE suggests you negotiate your own.
- As most editors work on a freelance basis, may be booked well in advance or on short notice and the size and scope of projects varies enormously, it is very difficult to recommend any hard and fast rules with regard to cancellations, hiatus and postponements.
- If you're engaged as a casual employee, you should negotiate for the inclusion of the MPPCA entitlements regarding cancellation.
- For editors not engaged as casual employees, it is up to each individual to consider the potential impacts that any of the above mentioned would have on their financial situation and working schedule and negotiate to protect yourself wherever possible from sudden and unforeseen unemployment.

SUGGESTION: Cancellation fees for confirmed bookings

SHORT TERM

On bookings 5 days or under in duration, a cancellation fee of 100% of the value of the booking will apply on notice periods of less than 2 working days (48 hours) before it is due to start. Otherwise a fee of 50% of the value of the booking will apply if cancelled within 5 working days.

MID TERM

On bookings of a duration between 6 – 30 working days a cancellation fee of 50% of the value of the booking will apply on notice periods less than 5 working days before it is due to start. Otherwise a cancellation fee of 25% of the value of the booking will apply if cancelled within 10 working days.

LONG TERM

On bookings over 30 working days in duration a cancellation fee of 50% of the value of the booking will apply on notice periods less than 10 working days before it is due to start, to a maximum of 30 days. Otherwise a cancellation fee of 25% of the value of the booking will apply if cancelled within 20 working days, to a maximum of 30 days.

12. Termination

If you are already employed, your employment may be terminated either by you or the employer.

Termination for employees (other than casual employees) is governed by the NES.

Under the NES, you are entitled to the following notice periods or payment in lieu of notice:

- If you have been employed for 1 year or less, 1 weeks' notice is required.
- If you have been employed for 1 to 3 years, 2 weeks' notice is required.
- If you are employed for 3 to 5 years, 3 weeks' notice is required.
- If you are employed for more than 5 years, 4 weeks' notice is required.

In some circumstances, summary (instant) dismissal may be justified, e.g. serious misconduct.

ASE Recommendation

- NES notice periods only apply to the employer. The ASE recommends that you also agree with your employer on the relevant notice period **that you will be required to provide them** if you wish to terminate the agreement, and that this is set out clearly in your agreement.
- If you are a casual employee factor the lack of termination notice into your base rate. If you are an independent contractor, the termination of your services will be governed by the terms of your agreement.

SUGGESTION: Termination fees

SHORT TERM

On bookings 5 days or under in duration a termination fee of 100% of the value of the booking will apply.

MID TERM

On bookings between 6 – 30 working days in duration a termination fee of 100% of the value of the booking will apply for no less than 5 working days.

LONG TERM

On bookings over 30 working days in duration a termination fee of 100% of the value of the booking will apply for no less than 10 working days.

13. Superannuation

If you are engaged as an employee, a casual employee, or are providing your services as an independent contractor as a 'Sole Trader' and earn more than \$450 per month from the same employer, you are entitled to superannuation in addition to your base hourly rate.

Superannuation is to be paid monthly on ordinary time earnings at the rate set out in the Superannuation Guarantee (Administration) Act 1992. Superannuation contributions must be made on the basis of each employee's gross remuneration regardless of any minimum threshold prescribed by the Act. The current rate is a minimum of 9.5% **and it is paid in addition to your wages.**

Note that under BREA, it is not paid on overtime. Under the MPPCA, it is paid on contracted hours (including contracted overtime).

If you are in doubt about whether you are eligible for superannuation, refer to these links.

<https://www.ato.gov.au/Calculators-and-tools/Super-guarantee-eligibility/>

<https://www.ato.gov.au/Calculators-and-tools/Employee-or-contractor/>

<https://www.ato.gov.au/Calculators-and-tools/Host/?anchor=ECDTSGET&anchor=ECDTSGET/questions/ECDT#ECDTSGET/questions/ECDT>

14. Insurance

Any business that employs or hires workers on a full-time, part-time or casual basis, under an oral or written contract of service, must have workers' compensation insurance that covers all workers. Therefore if you are engaged as an **employee** you are required to be covered by the production company's workers' compensation insurance.

As a genuine independent contractor, (**Sole Trader or Pty Ltd Company**) it is generally expected that you will provide your own workers' compensation insurance and public liability insurance. However, a Sole Trader/ABN contractor may also be 'deemed' an eligible worker for this purpose and some production companies agree to include you in their policies.

ASE Recommendation

- In addition to workers' compensation insurance, The ASE recommends that if you are an employee (including casual) you request to be added as an interested party or an additional insured on the production company/producer's insurance policies for the project (i.e. errors and omissions insurance, film and production package insurance and public liability insurance).
- As a genuine independent contractor, (Sole Trader or Pty Ltd Company) the ASE recommends that you first confirm with the production company whether it is possible to be included on their insurance policy. If not, you should consider asking for an additional loading to cover the cost of getting your own insurance.

15. Indexation

Note that the recommended rates in this document are subject to inflation. Applying a cost-of-living escalation, it will increase according either to the National Consumer Price Index (CPI) each July 1 or The Fair Work Commission Annual Wage Review after July each year.

16. SUMMARY: Employee or Independent Contractor

If you are engaged as:

- **An employee:** i.e. **PAYG**, you are entitled to overtime, loadings, superannuation, paid leave entitlements, termination notice and to be covered for workers' compensation. Your tax will be deducted by your employer.
- **A casual employee:** you are entitled to superannuation, overtime and loadings, but you will not receive guaranteed hours, paid leave entitlements, or termination notice periods. To compensate, you are entitled to receive a casual leave loading of 20% – 25% on top of your minimum hourly wage to compensate. Your tax will be deducted by your employer.
- **An independent contractor: as a Sole Trader (ABN)** and being paid more than \$450 per month you are entitled to superannuation. Overtime and loadings are negotiable, but you will need to pay your own leave entitlements, workers' compensation and public liability insurances, or negotiate accordingly. You will also be responsible for paying your own tax and GST. For guidance on whether your services may be construed as those of an employee or independent contractor, the ATO provides the following online tools which may assist with this determination:
<http://www.fairwork.gov.au/find-help-for/independent-contractors>
- **An independent contractor: as a Pty Ltd Company**, overtime and loadings are negotiable, and you will need to pay your own superannuation, leave entitlements, workers' compensation and public liability insurances. You will also be responsible for paying your own tax and GST.

When you supply your services as a genuine independent contractor – Sole Trader or Pty Ltd Company you increase your base hourly rate to cover the additional costs you will incur:

- **Superannuation:** 9.5%
- **Leave entitlements to cover 4 weeks annual leave:** 8.33%
- **Insurances – Workers' compensation and public liability:** between 1% and 5%
- **Possible loss of a termination notice period (*minimum of 1 week's pay as determined by your contract*):** 2%
- **Less job security and unpaid breaks between periods of employment** (a benefit to the company hiring you, allowing availability and flexibility, but difficult to quantify): Approximately 5%.
- **Additional accounting and legal expenses.**

ASE Recommendation

- If you are engaged as a contractor, factor in the appropriate loadings depending on your negotiations. If you are a Pty Ltd Company add an additional loading of a minimum of 17.5% up to 30% to your base contractual fee (depending on what you negotiate regarding Insurance etc) to cover the above legal entitlements and costs.

DISCLAIMER

The information contained in this document is provided for informational purposes only. The contents of this document do not constitute legal advice and should not be used as such. In addition to your tax accountant/financial advisor – The ASE recommends that you should obtain independent legal advice pertaining to your engagement on any film, television or other projects.

Whilst the information contained in this document has been formulated with due care, the ASE does not accept any liability to any person for the information or for the use of such information which is provided in this document.

The information contained in this document has been taken from third party websites and awards and ASE does not warrant or represent that the information is free from errors or omissions or that this information is exhaustive or applicable to your individual circumstances. ASE does not accept any liability for the accuracy, content, completeness, legality or reliability of the information contained in this document.

The information in this document has been provided on the basis that all persons accessing this document undertake responsibility for assessing the relevance and accuracy of the content contained herein.

REFERENCES AND OTHER LINKS

ASE – Pre-Employment Post Production Checklist

http://www.screeneditors.com.au/wp-content/uploads/2011/12/pre-employment_postproduction_checklist1.pdf

Federal Government – Workplace Relations Amendment (Work Choices) Act 2005

The 'Fair Work Act' was implemented to provide minimum employment entitlements known as The National Employment Standards (NES).

<http://www.fairwork.gov.au>

<https://www.fairwork.gov.au/employee-entitlements/national-employment-standards>

Fair Work Commission's – 'Broadcasting and Recorded Entertainment Award' (BREA)

This is the safety net legal minimum wages and conditions for the industry.

https://www.fwc.gov.au/documents/documents/modern_awards/award/MA000091/default.htm

Motion Picture Production Certified Agreement (MPPCA) (2010 – 2012)

The Rates and Conditions Agreement between the Screen Producers (SPAA) and the Media Entertainment Arts Alliance (Union) – Relevant for freelance film professionals working on a contract basis.

Full <https://www.meaa.org/resource-package/motion-picture-production-agreement-mppa-2010/>

Summary <https://www.meaa.org/download/mppa-minimum-rates-and-allowances-summary/>

Media, Entertainment and Arts Alliance – The ASE is a guild, not a union

The MEAA is the Union. The MEAA negotiates with producers on behalf of crew to lock in industry agreements like the MPPCA, the Seven Network agreement, and offshore film agreements. The MEAA encourages union membership so that people working in post-production have a voice in their union, and can work with crew across the industry to improve and align working conditions.

<https://www.meaa.org>

The ASE have worked in consultation with the MEAA to have our rates aligned with cost of living

<https://www.meaa.org/campaigns/realrates/>

ATO Quick Guide – Employee or Contractor

<https://www.ato.gov.au/Calculators-and-tools/Employee-or-contractor/>

<https://www.ato.gov.au/Calculators-and-tools/Host/?anchor=ECDTSGET&anchor=ECDTSGET/questions/ECDT#ECDTSGET/questions/ECDT>

Independent Contractor Information

<https://www.fairwork.gov.au/find-help-for/independent-contractors>

<http://www.australia.gov.au/information-and-services/business-and-industry/abn-acn-business-management/small-business>

Overtime – Is the overtime request 'reasonable' or not? You have the right to refuse unreasonable overtime

<https://www.fairwork.gov.au/employee-entitlements/hours-of-work-breaks-and-rosters/hours-of-work/when-overtime-applies>

Casual Workers

<https://www.fairwork.gov.au/employee-entitlements/types-of-employees/casual-part-time-and-full-time/casual-employees>

Casual Workers and Overtime

How to calculate overtime for casuals when the Award is 'silent' on the matter. It explains that the Fair Work commission deems that casuals are entitled to overtime when it is not explicitly stated in the award – which is often the case for freelance editors.

<http://workplaceinfo.com.au/payroll/hours-of-work/q-a/when-are-casual-employees-entitled-to-overtime>

Termination/Unfair Dismissal?

<https://www.fairwork.gov.au/ending-employment/notice-and-final-pay/dismissal-how-much-notice>

Who has to provide workers' compensation insurance?

<http://www.legislation.nsw.gov.au/#/view/act/1998/86/sch1>

To GST or not to GST

<https://www.ato.gov.au/Business/GST/>

ATO Quick Guide to qualifying for superannuation

<https://www.ato.gov.au/Calculators-and-tools/Super-guarantee-eligibility/>

Superannuation Information and Entitlements

<http://law.ato.gov.au/atolaw/view.htm?Docid=SGR/SGR20051/NAT/ATO/00001>

<https://www.ato.gov.au/business/super-for-employers/>

Legal Advice – The Arts Law Centre of Australia

<https://www.artslaw.com.au>

Training, business coaching, resources and events for freelancers

<http://www.creativeplusbusiness.com/>

Screen Australia Document Library for A-Z budgets for Feature Films, Documentary (Feature and non-Feature), Digital Media, Animated Films and Short Film. Check the template and info Producers are using to budget their films. Of interest is the INFO tab which gives useful information regarding fringes, and within the budget, fringes calculations.

<https://www.screenaustralia.gov.au/about-us/doing-business-with-us/document-library>