

## Notice from the Media Entertainment and Arts Alliance



### **ACTORS FEATURE FILM AGREEMENT BULLETIN ACTORS TELEVISION PROGRAMS AGREEMENT NEGOTIATION 2003**

#### **INDUSTRIAL ACTION EDITION**

#### **What are these negotiations?**

These negotiations are for the work performers do in all film productions (such as *Ned Kelly*, *Moulin Rouge* and *Lantana*) and all television productions (such as *Home & Away*, *MDA*, *McLeods' Daughters* and *Blue Heelers*).

However, the negotiations will not affect the agreements for offshore productions (such as *Matrix*, *Mission Impossible 2* or *Ponderosa*) which will continue to be governed by Equity's Offshore Agreements.

The agreements negotiated in 1999 came to an end on 31 December 2002 and must be renegotiated.

#### **Who do these agreements cover?**

The agreements cover all performers, stunt performers, bit players, doubles, extras, stand-ins, puppeteers, voice-over performers and anyone else who is engaged to take part either audibly or visually in a film or television production.

#### **Who are these negotiations between?**

The negotiations are between the Equity Section of the Media Entertainment & Arts Alliance (Equity) on behalf of performers and the Screen Producers Association of Australia (SPAA) on behalf of producers. Equity must also negotiate with several producers who are not part of SPAA such as the Seven Network.

#### **What is in these agreements?**

These agreements cover every aspect of your work from rates of pay to hours of work and overtime, superannuation to residuals, revoicing to commercial tie ins

and are crucial to every aspect of your working life in film and television productions.

Copies of the agreements are available on the Alliance web site [www.alliance.org.au](http://www.alliance.org.au)

### **What is being negotiated and what is Equity seeking?**

Everything in the agreements is up for renegotiation. Equity conducted a survey of members to ascertain your views about how the agreements could be changed for the better. As a result of the survey a draft claim was developed which was endorsed by your elected National Performers' Committee.

### **Why industrial action?**

The issues which remain outstanding are significant both from performers perspective but also from the producers perspective.

Eight months of negotiation has been unable to bring these issues to a solution acceptable to both the producers and performers. The likelihood is that further negotiation alone will not achieve an agreed outcome.

Producers do not seem to understand the level of resolve performers have to see these issues rectified in the agreement, nor the strength with which these issues are felt by performers.

Performers need to show producers how they feel.

### **Why now?**

These negotiations have been based on the most extensive survey of performers ever undertaken conducted during late 2002.

The negotiations commenced in November 2002. Since that time Equity negotiators have met with the SPAA negotiators more than one dozen times, SPAA has cancelled several meetings, SPAA threatened to stop negotiating with Equity and SPAA's chief negotiator has not come to the majority of the meetings.

The agreement between Equity and producers under which performers continue to work came to an end on 31 December 2002.

A new agreement is needed.

On 16 May 2003 your elected national performers committee resolved that the negotiations should be finalised by no later than 30 June or industrial action would be recommended to casts.

### **National Performers' Committee has recommended industrial action be taken**

Your elected National Performers Committee comprising:

Patricia Amphlett, Susan Lyons, Simon Burke, Monica Main, Alan Fletcher, Abbe Holmes, Jonathan Mill, Fiona Press, Leo Wockner, Kym Ford, Michael Habib, Rachael Blake, William Zappa, Tina Bursill, Russell Dykstra, Felix Williamson, David Tredinnick, Peter Stratford and Marco Chiappi

has met considered and unanimously endorsed industrial action as the course to be taken to bring these negotiations to a conclusion.

National Performers Committee has been intimately involved in the direction of the negotiations, including responding to producer demands and modifying Equity's claim when it was required during the negotiations. Several members of the Committee have taken part in the negotiation meetings.

### **What sort of industrial action will be taken?**

What sort of industrial action is to be taken is a matter for casts to determine in co-operation with National Performers Committee. Telephone hook-ups of Equity deputies on all casts are being organised. This process will determine what action is taken and when.

### **What is in dispute?**

- **Major role performers**

Equity is seeking a new category of performer called "major role performer" which would include all regular cast in television series and all guest cast whose roles require a significant contribution to the production.

A major role performer would have to be paid a minimum weekly fee.

Equity has sought this change for two reasons. First, increasingly guest cast and even some main cast are being contracted on minimum daily fees with only one day guaranteed. All the work is compacted into one day to minimise the cost to the production. In this case the fee paid does not adequately compensate the

performer for their contribution to the production. Secondly, at the time of the engagement the date is not usually confirmed and the performer is required to remain available for the entire period anyway but is only paid for one day.

In Equity's recent negotiations with the ABC-which were endorsed overwhelmingly by Equity members-the ABC agreed either to specify the dates on which the performer would be required at the time of engagement or to pay the performer for the entire period.

- **Options**

Equity is also seeking more certainty for performers about the duration of each option contract so that the exact length of the option is clear at the time it is agreed to and so that options for "between 13 and 22 episodes" cannot be sought. The producers have said that they will not be able to tell the performer the dates on which the performer will be required even as late as when the performer is advised that an option is being picked up.

In the recent negotiations between Equity and the ABC, the ABC agreed to Equity's claim to increase the level of certainty on options including advising the dates of the option at the time it was picked up.

- **Repeats of television programs**

Currently the producer has seven years to use the repeats it buys in your contract. Equity is seeking a reduction to five years. This would mean that performers would receive repeat fees sooner.

- **Residuals for television programs**

Currently residuals are payable by the producer for sales of television programs overseas and when they are sold to video, inflight, the internet or other ancillary markets. However, these residuals are capped so that once the television program has made a certain amount from overseas sales (in the case of *Home & Away* and other 30 minute programs \$95,000 and in the case of *Secret Life of Us* and other 60 minute programs \$190,000) no further residuals are payable to performers.

This is neither logical or fair. Once you accept the logic of residual payments, performers should continue to share in the success of a program as long as it continues to be successful.

Equity is seeking the removal of all residual caps in television for existing programs and the creation of a new formula for new programs.

- **Residuals for film productions**

The current film agreement is almost a complete pre-purchase of all rights in the film. This must come to an end.

Equity's proposal is very simple and involves three parts:

### **Australian television repeats**

Currently the producer can buy 4 television runs over 5 years or 5 runs over 7 years. Most producers buy 4 runs over 5 years. Either way, unless you are engaged at minimum, it is included in your fee and the additional fee for the fifth run makes no difference to what you are actually paid. Equity has proposed that the only option be 4 runs over 5 years.

### **US Network**

Currently the producer can buy this out. Historically most productions have not sought this right in performers' contracts but it is becoming increasingly demanded. We want to remove this option. Again, where it is bought (e.g. *Moulin Rouge*) it did not operate to increase the actors' fees but was included in the fees the actors were already being paid. We would like to see a guaranteed residual (as exists already for television) if a US Network sale happens.

### **Everything else**

We say the existing percentages should remain as is BUT that these payments will no longer buy all rights in perpetuity. What Equity is saying is that if a film is commercially successful (ie investors have recouped their initial outlay) then performers should share in the success.

### **What has been achieved by Equity in these negotiations so far?**

- **Nudity**

Currently the producer may not require a performer to appear in a nude or sex simulated scene without the performers consent in writing.

The new clause would prevent the producer seeking this consent until the producer can provide the performer with full and complete details of the scene where nudity will be required, the extent of the nudity involved, the nature of any physical contact required with any other performers and the nature of the clothing (if any) which will be worn during the scene.

This will prevent blanket nudity clauses which have appeared in some contracts which indicate the performer may be required to appear nude at some point in the future not specified at the time the performer's consent is sought.

- **Smoking**

The producer will be required to seek the consent of the performer before asking him or her to smoke as part of their role. Again, under Equity's draft clause, the producer will be obliged to give the performer full details before seeking this consent.

- **Options**

Despite the dispute over options mentioned above producers have agreed to a new clause sought by Equity which means that a producer will not be able to seek more than 2 years worth of option in any contract.

In addition the option clause will need to contain the following information: the time limits (including date) within which the Producer may exercise each option and the time limit (including date) by which the option contract will commence.

Options will only be effective if they are exercised by the producer in writing.

In addition, to be able to seek an option the producer must guarantee a minimum increase of 5% to your fee per year. Of course your agent can negotiate a higher increase but this will be the minimum.

- **Superannuation**

The producers have agreed to increase superannuation contributions from 9% of Total Fee to 10% of Total Fee from 31 December 2005.

In addition, producers wanted to cap superannuation contributions-in line with superannuation legislation-to no more than \$2,610.00 per three month period. This would effectively mean all series regulars and leads in feature films would have had their superannuation capped.

Equity fought this proposal and instead a cap of superannuation contributions of \$18,000.00 per year (\$20,000 after super contributions rise to 10%) will apply. This will mean that performers earning in excess of \$200,000.00 per year from one employer will have their superannuation capped as though they are earning \$200,000 unless they negotiate better terms.

If a performer is currently paid superannuation over and above these amounts then the producer has agreed to continue with that payment.

- **Commercial tie-ins**

The Agreement currently requires that the producer seek the performer's consent to use the performer's performance in a commercial tie-in.

A commercial tie-in is when the performer's performance is taken and connected with commercial goods or services for example through advertising.

The producers have agreed that the performer may not be asked for his or her consent to a commercial tie-in unless certain information is specified to the performer for example: the products involved, the number and type of commercials, the length time sought for use of the commercial, the media (eg television, radio) where the commercial may be used, the territories where the commercials will be used.

If that information cannot be provided then the performer's consent may not be sought.

- **Editing and segmentation of the program**

Other than in extremely limited circumstances, the Agreement currently requires that the performer's consent must be sought for the program in which the performer appears to be edited or for sections of the program to be used to make another program.

Again the producers have agreed that a performer's consent may not be sought for editing and segmentation rights unless full details are provided including: the identity of other production in which the footage will be used, the duration of the footage including the performer's performance to be used, the rights sought (for example number of broadcasts etc), the territories in which the other production will be exploited.

Producers have also agreed that the performer may not be required to agree to the producer being able to use of blooper material or outtakes as a condition of the performer getting the job.

- **No request to dub as a condition of engagement**

The Agreement currently requires the producer to seek the performer's consent to the dubbing of the performer's performance

Producers have agreed that they will not be able to request the performer's consent to dub the performers performance in the English language as a condition of the performer getting the job.

### **What about pay rises?**

The producers have offered a 12% pay rise over three years. Allowances, such as per diems, will increase in line with inflation. This is the same outcome as achieved with the ABC and in the Live Theatre Agreement.

However, these monetary increases have not been the big issues in this negotiation.

### **What happens next?**

Negotiations between Equity and the producers have reached a deadlock. Equity however remains ready and willing to meet with producers to progress the outstanding issues if this is possible.

Telephone hook-ups of cast deputies and cast meetings will determine future action and strategies.

### **Questions or Comments?**

For up to date information, please go to:

<http://www.alliance.org.au> or email [mail@alliance.org.au](mailto:mail@alliance.org.au)