



Fair Work
Commission

Modern Awards Review 2023-24 (AM2023/21)

Submission cover sheet

Name

(Please provide the name of the person lodging the submission)

Olivia Lanchester

Organisation

(If this submission is completed on behalf of an organisation or group of individuals, please provide details)

Australian Society of Authors

Contact details:

Street Address 1: Suite C1.06

Street Address 2: 22 - 36 Mountain Street

Suburb/City: Ultimo

Postcode: 2007

Email: olivia@asauthors.org

Telephone: 02 9211 1004

Modern Award Review Stream:

Arts and Culture:

Job Security:

Work and Care:

Usability of awards:

11 Exhibition
Street

Melbourne
Victoria 3000

GPO Box
1994

Melbourne
Victoria 3001

T +61 3
8661 7777

INT (613)
8661 7777

F +61 3 9655
0401

E
awards@fwc.gov.
au



Submission from the **Australian Society of Authors** on Modern Awards - Arts and Culture

The Australian Society of Authors (**ASA**) is grateful for the opportunity to make a submission to the Fair Work Commission on Modern Awards - Arts and Culture.

The ASA is the peak body, professional association, community and voice of Australia's writers and illustrators. Established in 1963, we advocate on behalf of creators for fair contracts, robust copyright protections, and fair remuneration for their work. We have almost 4,000 members drawn from every sector of the writing and illustrating world, including: novelists, non-fiction writers, biographers, illustrators, academics, cartoonists, comic artists, scientists, historians, graphic novelists, educational writers, children's writers, crime writers, science-fiction writers, romance writers, editors, bloggers, journalists, poets and more.

In this submission, we use the term "authors" to encompass both writers and illustrators.

ISSUES

1. Author earnings

- 1.1 Australian authors are among our lowest paid arts professionals. As the *Review of Modern Awards - Arts and Culture Discussion Paper* documents, practising artists and writers are at the lowest tier of earnings in the arts and culture sector. The most recent [Macquarie University Author Income Survey](#) paints a similar picture, finding that most authors are entirely unable to earn a living from their creative practice with an average annual income of only \$18,200.
- 1.2 Royalties and advances make up around half of this figure. Many authors patch together incomes from multiple sources of income to make ends meet. "For the majority of authors, it appears that multiple sources of income from their profession as an author and other sources of income are necessary. Earning a total income comparable to the average annual Australian income remains challenging."¹

¹ Zwar J, Crosby P, and Throsby D. 2022 National Survey of Australian Book Authors. Industry Brief No. 1: Key Findings. Sydney: Macquarie University. <https://doi.org/10.25949/GAJJ-JT47>



1.3 Authors have experienced increasing financial precarity for the last two decades caused by a range of factors, including lower advances, diminishing supplementary sources of income such as freelance writing (due to disruption of print media) and teaching opportunities (due to shedding of casual staff at universities) and a truly global marketplace. Authors are increasingly expected to make time for unpaid labour to build their careers by, for example, having a strong social media following prior to publication, driving the digital marketing for their book through social media, writing articles and blogs for no fee, in return for 'exposure'. They now face a growth in ebook piracy and a new challenge posed by the launch of generative artificial intelligence which not only uses authors' works in training datasets without permission from, or payment to, creators, but also threatens the future sustainability of their careers.

2. Authors are freelancers, not employees

2.1 Most of our members work in a freelance capacity as sole traders. They are small businesses, not employees. The money earned from their writing is derived from entering into contracts, individually negotiated:

- a. Authors enter into contracts with publishers granting the exclusive right to publish their work in return for royalties on sales. These contracts are drafted by publishers and, in the vast majority of cases, authors have low bargaining power to negotiate on terms.
- b. Authors are also engaged as independent contractors by:
 - i. literary festivals, schools, libraries, conference organisers and, occasionally, corporations for public appearances,
 - ii. literary journals, magazines, and media outlets for freelance writing and illustrating,
 - iii. writing organisations for mentoring, workshops and professional development courses.

2.2 As independent contractors, authors are treated by the law as competitive businesses that have the ability to engage in arm's length negotiations. The reality is that highly educated and qualified authors - whose work fuels the creative industries - have little power to negotiate their individual contracts. Authors usually cannot set their own rates of pay. They have no sick leave or annual leave, no minimum payments and they lack access to guaranteed superannuation. They lack the power to bargain collectively with the organisations which engage them. We routinely hear from authors struggling to get paid on time or paid according to our own recommended minimum rates. The



system of working as independent contractors conceals a high degree of precarity and a lack of bargaining power, and is pushing Australia's writers into poverty.

3. Authors are not covered by Awards

Discussion Paper: Are there any other occupations in the arts and culture sector not covered by a modern award?

To what extent are workers in the sector who are not currently covered by an award likely to be employees capable of being covered by modern awards?

- 3.1 Given that authors are not employees, they are not covered by a modern award other than those journalists or comic artists who are **employed** by media outlets.
- 3.2 Authors therefore, like many creatives, fall through the cracks of the modern Awards system. While some artists, including actors, musicians and striptease artists, have set minimum rates and the capacity to appeal to the Fair Work Ombudsman if they are underpaid, authors have no legislated minimums, no capacity for formal collective bargaining, no super guarantee and no access to dispute resolution. If authors are workers, they are among the most precarious and unprotected in our society.
- 3.3 Without protection from Awards, our members are left to implement the voluntary codes and standards the ASA and other organisations set, often doing so as individuals.
- 3.4 *Revive*, the new national cultural policy, acknowledged that artists and writers are workers and stated an intention to address these issues. As part of the third pillar, 'the centrality of the artist,' *Revive* notes that:

'Patterns of work across the cultural and creative sector vary, with a large number of creative practitioners undertaking short-term contracts as employees or independent contractors, or performing ad hoc and seasonal work – artists are the original gig workers. These intermittent and insecure working arrangements often result in a lack of access to minimum employment standards.'
- 3.5 The return to an understanding of the artist as worker has the capacity to transform our creative sector and recognise the work of authors as essential and valued. For this to happen, it is essential that this lack of access to minimum standards be addressed as thoroughly as possible.



4. ASA's recommended rates of pay

- 4.1 As part of our work as the national body representing Australian authors, the ASA sets out minimum recommended rates of pay for freelance writing and illustrating, public appearances, educational appearances, workshops and so on. We've created these benchmarks by consulting with industry organisations, individuals, authors and illustrators. At present, these rates are not enforceable and feedback from our members is that they are often undercut. Our members who are offered lower rates have little capacity to dispute them, and no recourse to the Fair Work Ombudsman if underpaid. The industry relies on goodwill and good faith, but inadequate funding and a lack of clarity often means that creators are paid poorly.
- 4.2 The ASA welcomes the expanded brief of Creative Australia. We look forward to the creation of Writers Australia and the adoption of our recommended rates as a standard for all publicly funded work. The Review of Modern Awards creates an additional opportunity to scrutinise the pay and conditions of working authors and to ensure that standards are more clearly formalised across the industry.

5. Fair Work Legislation Amendment (Closing Loopholes) Bill

Discussion Paper: Do the parties have a view about the potential impact of the Closing Loopholes Bill on the arts and culture sector? Is digital platform work common within the arts and culture sector?

- 5.1 The ASA welcomes the *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023*, which has outlined some of the challenges of the gig economy and recognises that our economy relies increasingly on precarious and insecure forms of work. We welcome moves to extend the powers of the Fair Work Commission to set minimum standards for 'employee-like' workers, looking at the total relationship between employer and employee, and allowing 'employee-like' contractors to negotiate collective agreements via the *Closing Loopholes* bill.
- 5.2 In 'employee-like' arrangements, independent writers and illustrators should be able to bargain collectively and resolve disputes via the Fair Work Ombudsman. They should have access to the superannuation guarantee and the same rights and protections as other workers.



- 5.3 However, the Bill introduces a definition of an ‘employee-like worker’ that requires - as one limb of the definition - ‘the work that the person performs under the services contract **is digital platform work**’.
- 5.4 This definition will preclude most authors being categorised as an ‘employee-like worker’ as authors are directly engaged by festivals, schools, libraries, and writing organisations. While some authors may be signed up to digital freelancer sites, it is more common for authors to be directly approached for public appearances and it is common for authors to either pitch to, or be commissioned by, literary journals and magazines. In the arts and culture sector, employee-like arrangements are common, but digital labour platforms rare. In other words, while the *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023* is welcome, it is unlikely to cover authors as currently drafted.

Proposals

6. Minimum recommended rates of pay

- 6.1 This limited framing of gig work is insufficient to address the needs of the creative sector. We ask that authors and artists be considered as a specific category of worker with specific and complex challenges. If the language of ‘artist as worker’ in *Revive* is to be taken seriously, then addressing the needs of the sector requires a stronger mechanism than the current voluntary codes of practice to ensure that these vulnerable workers’ rights are protected.
- 6.2 The Live Performance Award [MA000081] sets minimum payments per engagement for performers including actors, musicians and striptease artists. A similar ‘per engagement’ minimum model would work well for authors engaged in public speaking, school visits, writing workshops etc. The ASA already publishes recommended rates for these types of work and we seek the formal adoption - and legal enforceability - of these minimum rates of pay.
- 6.3 As we assume that such minimum rates cannot be codified in an Award (due to Awards being applicable only to employees) we believe there needs to be a new solution for professional freelance authors. For example, the Commission could be empowered to set minimum standards for a new category of worker - professional freelance creators - similar to the solution proposed for ‘employee-like’ workers performing digital platform work.
- 6.4 Outlining minimum rates per commissioned article or illustration for freelancers would set a floor for our members and address the complex issues of multiple employers, informal arrangements, chronic underpayment and ‘working for exposure’ that affect them, particularly early in their career.



7. Conclusion

- 7.1 Australia has much to be proud of in our national literature. Our writers continue to craft strong, moving, diverse stories, and to work long hours to hone their craft, often without any formal support. There is less to celebrate in how many of our writers are struggling to make a living wage.
- 7.2 The ASA commends the overdue consideration of all arts and culture workers in the Review of Modern Awards and looks forward to further consultation on these issues.

Thank you for the opportunity to make this submission.

Signature:

Name:

Olivia Lanchester

Date:

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AUSTRALIAN
SOCIETY
of AUTHORS

Gadigal Country,
Suite C1.06 22-36 Mountain St, Ultimo NSW 2007
T 02 9211 1004
www.asauthors.org