

# MODERN AWARDS REVIEW 2023-24 (AM2023/21) SUBMISSION COVER SHEET

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**Modern Award Review Stream:** Arts and Culture

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## 1 About Commercial Radio & Audio Ltd

- (a) Commercial Radio & Audio Ltd (**CRA**) is the peak industry body representing the interests of commercial radio broadcasters throughout Australia.
- (b) CRA promotes the effectiveness of radio and audio to advertisers, manages audio research and insights, metropolitan and regional audience measurement surveys, revenue reporting, industry innovation including RadioApp, the Australian Podcast Ranker, industry codes and standards, and regulatory and legislative matters.
- (c) Membership to CRA is open to Australian companies that hold a commercial radio broadcasting licence issued under the *Broadcasting Services Act 1992* (Cth) which entitles them to provide radio services in the broadcasting services bands.
- (d) CRA has 260 members, representing 100% of commercial radio licensees on air.
- (e) The information included in this submission has been gathered:
  - (i) directly from members of CRA; or
  - (ii) material and records maintained by, or information known to, CRA.

## 2 The Commercial Radio Industry

- (a) The commercial radio industry within Australia is an industry which requires a participant to hold a commercial radio broadcasting licence as set out in paragraph 1(c) above.
- (b) The commercial radio industry is characterised as having:
  - (i) a high concentration of employment in large networks;
  - (ii) extensive employment regulation through both the National Employment Standards (**NES**) and modern award coverage, including under the industry award: *Broadcasting, Recorded Entertainment and Cinemas Award 2020* [MA000091] (**BRE&CA Award**); and

- (iii) a high proportion of permanent employment (i.e. full time or part time), estimated by CRA to account for approximately 80% of the workforce in the commercial radio industry.
- (c) In this submission, a reference to the '**CR Industry**' is to the commercial radio industry as set out above.

### 3 Discussion Paper: Arts and Culture Sector

- (a) CRA has made a number of submissions below in relation to various parts of the *Discussion Paper, Arts and Culture Sector, Modern Awards Review 2023-24*, published by the Fair Work Commission on 6 November 2023 (**Discussion Paper**).
- (b) Table 1 in Part 5 of the Discussion Paper identifies that the occupation of 'journalist' is covered (only) by the *Journalists Published Media Award* [MA00067]. CRA notes that this occupation is also covered by Part 9 of the BRE&CA Award.

## 4 Chapter 2 Discussion Questions

### 4.1 Question 1

- (a) Question 1 in Chapter 2<sup>1</sup> is as follows:

*"Are there particular industries or occupations that should form the focus of the Commission's consideration of the arts and culture sector in this Review? If so, why?"*
- (b) In relation to this question, paragraph [8] of the Discussion Paper relevantly provides as follows:

*"Insofar as Revive concerns the employment of those within the sector, its focus appears to be on artists and arts businesses. Revive is structured around five interconnected pillars — the core chapters of the policy — each outlining a strategic objective for the government and its associated actions. Considering the arts and culture sector in the Review is an action identified in Pillar 3 of the policy. Pillar 3 is entitled Centrality of the Artist and its strategic objective is to support artists as workers and celebrate them as creators. The chapter notes that artists and arts businesses have too often not been considered real workers or real businesses. It emphasises the need to recognise the value of Australia's cultural and creative practitioners and the necessity of fair pay and conditions. The chapter also discusses the intermittent and insecure working arrangements of many creative practitioners, and the need to facilitate continuous career development across the creative sector to equip practitioners of all ages to utilise their skills as both workers and artists."*
- (c) The CR Industry is an established and recognised industry. It is not new, and has been in existence since the commencement of operation of the *Fair Work Act 2009* (Cth) (**FW Act**) on 1 January 2010.
- (d) The workforce characteristics and concerns raised in paragraph 8 are not features of employment in the CR Industry. In particular, within the CR Industry:
  - (i) employees are considered to be 'real' in the sense that they are not part of the 'gig economy'<sup>2</sup>;

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<sup>1</sup> Page 10 of the Discussion Paper

<sup>2</sup> The FWO has defined the 'gig economy' as one which uses mobile apps or websites to connect individuals providing services with consumers (<https://www.fairwork.gov.au/find-help-for/independent-contractors/gig-economy>)

- (ii) all employees are ‘national system employees’, as that term is defined in the FW Act<sup>3</sup>;
  - (iii) all employers are all ‘national system employers’, as that term is defined in the FW Act<sup>4</sup>;
  - (iv) approximately 80% of employees in the CR Industry are employed on a permanent basis (i.e. full-time or part-time), and are therefore not subjected to insecure work, or undervaluing of their work; and
  - (v) nationally have 51% male and 49% female<sup>5</sup>.
- (e) CRA submits that the first discussion question can be answered in the negative as it relates to the CR Industry. That is, it is not necessary for the focus of the Commission to be on the CR Industry, or occupations within the CR Industry, given the matters set out in paragraph 4.1(d) above.

## 4.2 Question 2

- (a) Question 2 in Chapter 2<sup>6</sup> is as follows:
- “Are there any industries or occupations that should be added to or removed from our consideration of the arts and culture sector for the purpose of the Review more broadly?”*
- (b) CRA accepts that the CR Industry is part of the arts and culture sector, as defined in paragraph [11] of the Discussion Paper.
- (c) CRA also accepts that it is appropriate for certain employees within the CR Industry to be covered by modern awards. However, for the reasons above, it should not be a primary focus or concern of the Commission’s review.
- (d) Additionally, in relation to the occupations of:
- (i) Artistic Director;
  - (ii) Media Producer; and
  - (iii) Web Designers,
- CRA submits that none of these occupations should be covered by a modern award.
- (e) In support of CRA’s submission in the paragraph above, CRA notes the following:
- (i) paragraph [76] of the Discussion Paper includes the following statement in relation to an Artistic Director and Media Producer (the underlining is CRA’s emphasis):
- “Further, pursuant to clause 4.2, the Miscellaneous Award does not cover managerial or professional employees. On this basis, it may be possible to conclude that its coverage does not extend to either an Artistic Director or Media Producer, noting the ANZSCO occupation descriptions for these roles indicate a high level of managerial responsibility. For example, an Artistic Director determines and oversees implementation of artistic policies for a performing arts*

<sup>3</sup> Section 13, FW Act

<sup>4</sup> Section 14, FW Act

<sup>5</sup> Deloitte Access Economics report headed *Connecting Communities: The economic and social contribution of commercial radio and audio in Australia Commercial Radio & Audio* dated August 2023

<sup>6</sup> Page 10 of the Discussion Paper

organisation such as a theatre company, dance company, music ensemble, festival or venue. Media Producers plan, administer and review activities concerned with publishing, or the production of films, television or radio programs, theatre, music, festivals or other artistic activities.”

- (ii) paragraph [77] of the Discussion Paper includes the following statement in relation to Web Designers (the underlining is CRA's emphasis):

*“The Act also prohibits the Miscellaneous Award from covering certain classes of employees. As noted in 4.1 above, s 143(7) of the Act prohibits modern awards from covering employees who have not been traditionally covered by awards “because of the nature or seniority of their role” (s 143(7)(a)) or who perform work that is “not of a similar nature” to work traditionally regulated by awards (s 143(7)(b)). In a decision of the Full Bench during the 4 yearly review, the operation of s 143(7) was the subject of consideration insofar as it concerned website designers. To the extent website designers are not covered by the Graphic Arts Award, the Full Bench did not consider that this occupation would necessarily be covered by the Miscellaneous Award “by default”. The Full Bench stated that, if website designers were excluded from the Graphic Arts Award because there were no pre-modern awards covering work of this nature, then website designers would be excluded from modern award coverage by s 143(7) of the Act. Section 143(7) is discussed further in 6.1.4 below.”*

## 5 Chapter 3 Discussion Questions

### 5.1 Question 3

- (a) Question 3 in Chapter 3<sup>7</sup> is as follows:

*“If advocating for a new award to address coverage gaps in the arts and culture sector, how is it proposed that such an award defines its coverage? For example, would the award be expressed to cover employers or employees in an industry or employees in particular occupations and their employers, or both?”*

- (b) In relation to this question, CRA submits that a new modern award is not necessary or required for the CR Industry.
- (c) In this regard, CRA is of the view that:
- (i) the existing award modern coverage applying to the CR Industry as set out in paragraph 2(b)(ii) above is consistent with the achievement of the modern awards objective in section 134(1) of the FW Act; and
  - (ii) the Discussion Paper does not include any compelling case for a new modern award to cover the CR Industry.

### 5.2 Question 4

- (a) Question 4 in Chapter 3<sup>8</sup> is as follows:

*“Are there any responsive views addressing the content in chapter 3?”*

- (b) In relation to this question, CRA repeats its answer in paragraph 5.1 above.

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<sup>7</sup> Page 14 of the Discussion Paper

<sup>8</sup> Page 14 of the Discussion Paper

## 6 Chapter 4 Discussion Questions

### 6.1 Question 5

- (a) Question 5 in Chapter 4<sup>9</sup> is as follows:

*“Are there employees working in the arts and culture sector that may be covered by an award that has not been included in this chapter?”*

- (b) In relation to this question, CRA submits that it is not aware of any employees working in the CR Industry (this being part of the arts and culture sector) that may be covered by a modern award who are not included in chapter 5 of the Discussion Paper.

### 6.2 Question 6

- (a) Question 6 in Chapter 4<sup>10</sup> is as follows:

*“Are there employees performing work of a similar nature to the work performed in the arts and culture sector that are not currently covered by an award but should be?”*

- (b) In relation to this question, CRA has no knowledge of employees performing work of a similar nature to the work performed in the CR Industry (this being part of the arts and culture sector) that are not currently covered by a modern award but should be.

## 7 Chapter 5 Discussion Questions

### 7.1 Question 7

- (a) Question 7 in Chapter 5<sup>11</sup> is as follows:

*“Are there any other occupations in the arts and culture sector not covered by a modern award?”*

- (b) In relation to this question, and noting that the CR Industry is accepted by CRA as being part of the arts and culture sector, CRA submits that:
- (i) whilst there are various occupations, including an Artistic Director, a Media Producer, and a Web Designer, that have been identified in the Discussion Paper; and
  - (ii) these occupations would be excluded from award coverage for the reasons set out in paragraphs 4.2(d) and 4.2(e) above (and repeats those submissions here).

### 7.2 Question 8

- (a) Question 8 in Chapter 5<sup>12</sup> is as follows:

*“Are there any industrial contexts in which occupations, such as a painter, are engaged that fall outside current award coverage?”*

- (b) In relation to this question, CRA is not aware of any industrial contexts in which occupations within the CR Industry, are engaged that fall outside current award coverage.

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<sup>9</sup> Page 26 of the Discussion Paper

<sup>10</sup> Page 26 of the Discussion Paper

<sup>11</sup> Page 35 of the Discussion Paper

<sup>12</sup> Page 35 of the Discussion Paper

### 7.3 Question 9

- (a) Question 9 in Chapter 5<sup>13</sup> is as follows:

*“Do parties agree that the Miscellaneous Award may not cover certain workers, such as artistic directors or media producers?”*

- (b) In relation to this question, CRA:

- (i) agrees with this question; and
- (ii) however, repeats the submissions made in paragraphs 4.2(d) and 4.2(e) above in relation to the positions of Artistic Director, Media Producer and Web Designer.

### 7.4 Question 10

- (a) Question 10 in Chapter 5<sup>14</sup> is as follows:

*“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?”*

- (b) In relation to this question, CRA repeats its submission in paragraphs 4.2(d) and 4.2(e) above.

### 7.5 Question 11

- (a) Question 11 in Chapter 5<sup>15</sup> is as follows:

*“Do the parties have a view about the potential impact of the Closing Loopholes Bill on the arts and culture sector?”*

- (b) In relation to this question, CRA has no position in relation to the Closing Loopholes Bill as it currently stands. When (and if) the Closing Loopholes Bill becomes law, CRA will assist its members in understanding and complying with the law.

### 7.6 Question 12

- (a) Question 12 in Chapter 5<sup>16</sup> is as follows:

*“Is digital platform work common within the arts and culture sector?”*

- (b) In relation to this question, CRA agrees that digital platform work is part of the arts and culture sector.

## 8 Chapter 6 Discussion Questions

### 8.1 Question 13

- (a) Question 13 in Chapter 6<sup>17</sup> is as follows:

*“Are there any relevant occupations that were covered by pre-reform awards that are not currently covered by a modern award?”*

- (b) In relation to this question, CRA is not aware of any such occupations.

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<sup>13</sup> Page 36 of the Discussion Paper

<sup>14</sup> Page 36 of the Discussion Paper

<sup>15</sup> Page 36 of the Discussion Paper

<sup>16</sup> Page 36 of the Discussion Paper

<sup>17</sup> Page 51 of the Discussion Paper

## 8.2 Question 14

- (a) Question 14 in Chapter 6<sup>18</sup> is as follows:

*“Are any of the occupations identified as possible gaps in award coverage in this paper, or by the parties, occupations that could not be covered by awards because of section 143(7)?”*

- (b) In relation to this question, CRA repeats its submissions in relation to:

- (i) question 2: see paragraph 4.2 above; and
- (ii) question 9: see paragraph 7.3 above.

## 8.3 Question 15

- (a) Question 15 in Chapter 6<sup>19</sup> is as follows:

*“For the occupations identified as gaps in award coverage in this paper, or by the parties, which awards could be varied to close the gap?”*

- (b) In relation to this question, CRA has not identified any such positions that relate to the CR Industry.

## 8.4 Question 16

- (a) Question 16 in Chapter 6<sup>20</sup> is as follows:

*“Are there any other legislative provisions or significant decisions pertinent to the Commission’s consideration of the arts and culture sector in this Review?”*

- (b) In relation to this question, CRA submits that other than those mentioned in the Discussion Paper, it is not aware of any such decisions.

# 9 Chapter 7 Discussion Questions

## 9.1 Question 17

- (a) Question 17 in Chapter 7<sup>21</sup> is as follows:

*“Are there any responsive views addressing the content in chapter 7?”*

- (b) In relation to this question, CRA makes the following submissions:

- (i) employees and employers within the arts and culture sector will be engaged and operate in a wide range of industries and occupations that will have wide-ranging and unique operational features and market requirements;
- (ii) in setting minimum conditions under any new award, the Commission will (respectfully) need to ensure they are workable, can be easily understood and reasonably applied to meet a wide range of operational situations;
- (iii) the Commission will also (respectfully) need to ensure that any new award does not unreasonably impede the productivity and workplace flexibility for employers, and also ensures the delivery of the modern awards objectives in subsections 134(f), (g) and (h) of the FW Act; and

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<sup>18</sup> Page 51 of the Discussion Paper

<sup>19</sup> Page 51 of the Discussion Paper

<sup>20</sup> Page 51 of the Discussion Paper

<sup>21</sup> Page 66 of the Discussion Paper

- (iv) in relation to (iii) above, CRA recognises the practical and pragmatic approach adopted by the Commission in creating the *Miscellaneous Award 2020* [MA000104], during which the Commission was acutely aware and cognisant of the depth and breadth of industries and occupations that award sought to cover. A similar approach should be adopted by the Commission here.