

## Modern Awards Review 2023-24

### Submission by TNA

[Theatre Network Australia \(TNA\)](#) is the leading national industry development organisation for the contemporary performing arts, with a particular focus and priority on supporting independent creative practitioners and small to medium companies.

TNA services a wide range of performing arts: performance for, with and by young people; Aboriginal and Torres Strait Islander performance; visual theatre and puppetry; text-based work; music theatre; comedy; performance made by d/Deaf and disabled artists; cabaret; performance made with and by communities; dance; circus; physical theatre; live art, experimental practice and hybrid work.

TNA has a membership based of 588 active members, made up of 212 organisations and 376 individuals, however we are Federally funded to represent the entire national sector, not only our members.

In this submission TNA will be making comments regarding the performing arts industry only.

### The Arts and Culture Sector

TNA agrees with the inclusion of the Performing Arts industry and Creative and Performing Arts Activities for consideration in this review.

TNA agrees with the list of included occupations on pages 9-10 of the discussion paper. However, we highly anticipate that this list will be altered and refined as a part of the current ANZSCO Review, and such alterations should be taken into consideration during this Modern Awards Review.

### Award Coverage

As suggested in section 5.2.1 of the discussion paper, where an occupation appears to fall within the scope of the award in a general sense, the occupation is only covered by that award if the work is performed for an employer in the industry or industries that award is expressed to cover.

The only current industry award that covers employers in TNA's membership (and therefore their employees) is the Live Performance Award. An analysis of relevant occupations covered by other awards indicated that none of those occupations would be covered for employees working in the performing arts industry because their employer is not in that respective industry.

The Live Performance Award provides adequate coverage for many employers and employees in the performing arts industry, and so TNA is not advocating for a new award for this industry.

However, there may be gaps in coverage within this award, primarily in terms of some occupations within the industry not being covered.

Of these occupations not currently covered, TNA believes that none of them are eligible to be covered by the Miscellaneous Award, as they are excluded from this award due to the qualifications/skills required. We agree that this applies to occupations such as Artistic Director and Media Producer, as indicated in the discussion paper.

TNA believes that it is highly likely that *some* workers in these occupations are capable of being covered by modern awards, but some will not be. This is due to the typical working relationship for that occupation in the live performance sector being that of a contractor, rather than an employee.

### **Arts Administrator or Manager**

The Live Performance Award currently covers several operational roles employed within the live performance sector, including Publicity/Marketing Supervisor, Box Office Manager, Front of House Manager, etc. Many organisations within the live performance sector engage Arts Administrators as employees, however they are not covered by the Live Performance Award as far as TNA is aware.

Arts Administrators could potentially be covered by the Clerks – Private Sector Award, however clause 4.3(a) states that it does not cover employers covered by a modern award that contains clerical classifications. The Live Performance Award lists several clerical occupations within its classifications.

This occupation as it is currently aggregated in ANZSCO covers a huge breadth of roles/workers. It is likely that some workers in this occupation, including listed specialisations such as Art Gallery Director cannot be covered by modern awards due to the seniority of their role. However, most Arts Administrators are on par with other occupations covered by the award in terms of required skill level. TNA has also made a recommendation to ANZSCO that Arts Manager and Arts Administrator be disaggregated to reflect this.

- 1. TNA recommends that further consultation be done to determine whether Arts Administrators would be eligible to be included within the Live Performance Award, and whether it would best serve the industry to do so.**

### **Producer**

Within the live performance sector producers are commonly engaged as employees by live performance organisations. Captured within ANZSCO under Media Producer, this occupation plans, administers and reviews activities concerned with performing arts activities, and require

a comparable skill level to senior roles covered by the Live Performance Award such as Technical Manager, Box Office Manager or Head of Department. Producers are not covered by the Live Performance Award as far as TNA is aware.

This occupation as it is currently aggregated in ANZSCO covers a huge breadth of roles/workers. It is likely that some workers in this occupation, including listed specialisations such as Executive Producer cannot be covered by modern awards due to the seniority of their role. However, many Producers are on par with other occupations covered by the award in terms of required skill level. TNA, along with government agencies, have also made a recommendation to ANZSCO that Media Producer be disaggregated into several new occupations to reflect this.

**2. TNA recommends that further consultation be done to determine whether Producers would be eligible to be included within the Live Performance Award, and whether it would best serve the industry to do so.**

### **Other Occupations**

Table 1 in the discussion paper identified occupations that have no specific award coverage, including choreographer, composer, and others. To TNA's knowledge, workers in these occupations are typically engaged as contractors, and so would not be eligible for award coverage in those instances. Where these roles are engaged as an employee, they are typically within senior leadership roles such as Artistic Director, which would also not be eligible for modern awards coverage.

There are some instances where these roles might be engaged as an employee and be eligible for modern awards coverage, such as a resident choreographer. TNA is not confident that adding such occupations to the Live Performance Award will provide any real benefit; occurrences in the sector are minimal, and organisations commonly extend entitlements from the Live Performance Award to these occupations at their own discretion already.

### **The Closing Loopholes Bill**

There are no instances of digital platform work that TNA is aware of within its membership or the broader live performance sector.

Both REVIVE (the National Cultural Policy) and the discussion paper make reference to arts workers being the original gig workers, noting a large cohort of practitioners are on short-term contracts based around project funding. However, the actual legislation to provide the Fair Work Commission with powers to set minimum standards does not apply to arts workers at all, which creates confusion around why it has been included in this discussion paper.

There are many arts workers being engaged in employee-like work for short-term contracts, particularly within arts festivals. TNA supports the statements made by ACTU and NAVA in their submissions to this review and recommends further consultation and inquiry into how



**ADVANCING THE  
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the Fair Work Commission might be given powers to set minimum standards for these workers.

## **Contact**

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