



Modern Awards Review 2023-24 (AM2023/21)

REPLY Submission cover sheet

Name

Shay Minster

Organisation

Live Performance Australia (LPA)

Contact details:

Street Address 1: Level 1, 15-17 Queen Street

Street Address 2:

Suburb/City: Melbourne

Postcode: 3000

Email: sminster@liveperformance.com.au

Telephone: 03 8614 2006

Modern Award Review Stream:

Arts and Culture:

Job Security:

Work and Care:

Usability of award

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



Modern Awards Review 2023-24
Arts and Culture Sector
(AM2023/21)

LIVE PERFORMANCE AUSTRALIA REPLY SUBMISSION
January 2024

A. Introduction

1. This submission replies to submissions made by other parties for the Modern Awards Review 2023-24: Arts and Culture Sector (**Review**) conducted by the Fair Work Commission (**Commission**).
2. This submission should be read in conjunction with Live Performance Australia's (**LPA**) submission made on 4 December 2023, and LPA's oral submissions made in the Commission on 20 December 2023.

B. Combined Union Submission

3. This section responds to the joint submission made by the Australian Council of Trade Unions, the Media, Entertainment and Arts Alliance and Professional Australia (collectively, the **Unions**) in respect of the live performance industry and the *Live Performance Award 2020*.
4. LPA refers to and supports the submissions of the Australian Chamber of Commerce and Industry (**ACCI**) which address Fragmented Coverage and the Miscellaneous Award.¹
5. On page 5, the Unions' submission suggests that the *Live Performance Award 2020* needs to be varied to accommodate some additional roles. However, the Unions' submission does not provide any further details about the:
 - a) duties undertaken;
 - b) nature of the work performed;
 - c) history of regulation or coverage;
 - d) seniority of the role; or
 - e) capacity in which the role will be performed.
6. LPA submits that it is not enough to consider a role in isolation in order to determine whether it should be covered by a modern award. Without any further justification the Unions' submission does not explain:
 - a) why the *Live Performance Award 2020* must be varied; or
 - b) why and how these roles must be covered.

¹ ACCI Reply Submissions, Modern Awards Review, Arts and Culture Sector 4 December 2023, para 8-15

7. LPA notes that at the consultation in the Commission on 20 December 2023, the Unions agreed to provide further detail in respect of the roles they seek to include in the Award. However, at the time of writing this submission, further information has not been submitted.
8. Based on the information provided, LPA provides the following response to the Unions' submission in order to assist the Commission.

DANCE TEACHER

9. On page 4 of their submission the Unions submit that the existing coverage of dance teachers by the *Fitness Industry Award 2020*:
 - ... does not appropriately capture the kind of work that educators in the field of dance perform, and that [their award coverage] would more appropriately be dealt with via the *Live Performance Award*.
10. LPA's reply adds to our initial submissions in response to question (1) of the Discussion Paper. Dance teachers who are not primarily employed as performers or company dancers under the *Live Performance Award 2020* are not employed as "practitioners" and are not directly involved in the creation of artistic work. Therefore, they should not be included in this Review.
11. However, company dancers who also take classes as part of their role are covered by the *Live Performance Award 2020*. Company dancers are classified across 7 levels in the *Live Performance Award 2020*² according to their professional experience, training, dance skills and presentation skills.
12. The *Live Performance Award 2020* also provides allowances for dancers and performers who perform teaching and supervisory roles. Clause 32.2 of the *Live Performance Award 2020* provides:
 - a) **Dance captain allowance** - A member of the ensemble of performers who acts as dance captain or who under the direction of the employer or the employer's representative supervises the work of the ensemble of performers will be paid a minimum of **\$51.54** extra per week in addition to their weekly rate.³
 - b) **Deputy ballet master/mistress (for Company Dancers)** –
 - i. member of the company of dancers who acts on a regular basis as Deputy Ballet Master/Mistress and who, under the direction of the Artistic Director, supervises classes and performs other related additional duties, will be paid a minimum of

² [Live Performance Award 2020](#), Schedule A - Classifications

³ [Live Performance Award 2020](#), cl 32.2(h)(iv)

\$121.29 extra per week in addition to their weekly rate.⁴

LIVE PERFORMANCE ROLES

13. On Page 5 of their submission the Unions also identify several roles working in live performance that “are not covered by a modern award” but in their view should be.
14. LPA submits that the only role listed by the Unions that may be involved in the creation of artistic work is a choreographer. LPA refers to its submissions of 4 December at paragraph [41]-[43].
15. However, LPA addresses modern award coverage for the other identified roles below.

Music teachers/educators

16. LPA adds to our initial submissions in response to question (1) of the Discussion Paper. Music teachers/educators who are not primarily employed in position under the *Live Performance Award 2020* are not “practitioners” and are not directly involved in the creation of artistic work and therefore should not be included in this Review.
17. The Unions’ submission states that “on occasion” music teachers/educators not engaged by a school work in the “live performance area”. However, it does not set out in what capacity music teachers are engaged.
18. LPA agrees that the *Miscellaneous Award 2020* may apply to music teachers/educators. However, the minimum engagement period referred to by the Unions only applies to casual employees. The minimum engagement period of 2 hours for casual employees is appropriate given classes are likely to run for 1 hour.

Clowns and Birthday Party entertainment

19. The Unions’ submission does not define the tasks of a clown or birthday party entertainer. The capacity in which such an employee would be engaged is unclear.
20. Clause 2 of the *Live Performance Award 2020* defines performer to mean an employee who takes part in a performance and includes an actor, singer, dancer, musician, understudy/swing performer, puppeteer, compere, comedian or any other type of performer.
21. This broad definition of performer may include a clown or birthday party entertainer, providing the employee is undertaking work in the live performance industry as defined at clause 4.2.

⁴ [Live Performance Award 2020](#), cl 32.2(i)(i)

22. Therefore, LPA submits that the *Live Performance Award 2020* may cover a clown or birthday party performer depending on the actual tasks and circumstance in which the employee performs those tasks.

Automation, rigging and fly systems technician

23. LPA adds to its initial submissions in response to question (1) of the Discussion Paper. Production and support staff are not practitioners and are not directly involved in the creation of artistic work and therefore should not be included in this the Review.
24. However, the Unions' submission at page 5 states that automation, rigging and fly systems technicians are not covered by a modern award. The Unions' submission is incorrect.
25. Automation, rigging and fly systems technicians are covered by the *Live Performance Award 2020*. Production and support staff are classified across 8 levels in the *Live Performance Award 2020*⁵ according to their professional experience, qualifications and duties. Relevantly, rigging⁶ and fly operator⁷ are listed as indicative duties in Schedule A - classifications.
26. Classifications under the *Live Performance Award 2020* are not solely limited to the indicative positions listed in Schedule A. All production and support levels in Schedule A include a description of competencies, education, training, experience and indicative tasks that are used to classify positions which may not be specifically listed as an "indicative position".
27. Therefore, employees performing work as automation, rigging and fly systems technicians are currently covered by the *Live Performance Award 2020*.

Broadcast specialist

28. The *Live Performance Award 2020* provides allowances for production and support employees who are employed on a production where their skills are required to record or broadcast a performance.⁸
29. Therefore, the duties of "broadcast specialist" are covered by the *Live Performance Award 2020*.

Drone operators (usually lighting and sound)

30. The Unions' submissions at page 5 state that a drone operator (sound/lighting) is not covered by an award. The Unions submission is incorrect.

⁵ [Live Performance Award 2020](#), Schedule A – Classifications

⁶ [Live Performance Award 2020](#), Schedule A – Classifications, Production and Support Staff level 3 and level 4

⁷ [Live Performance Award 2020](#), Schedule A – Classifications, Production and Support Staff level 5

⁸ [Live Performance Award 2020](#), cl 60.2(a)

31. LPA submits that a drone operator (sound and lighting) is covered by the *Live Performance Award 2020*.
32. Any production and support employee who applies knowledge and skill related to sound and lighting is covered by the classifications in Schedule A.
33. Employees performing sound and lighting roles are set out as indicative positions at the following levels:
 - a) Level 4 – Sound and/or Lighting Technician
 - b) Level 5 – Experienced Sound and/or Lighting Technician.
34. As set out at paragraph 26 above, a drone operator (sound and lighting) may be classified at the appropriate production and support staff level based on a description of competencies, education, training and experience.
35. Therefore, employees performing work as a drone operator (sound and lighting) are currently covered by the *Live Performance Award 2020*.

Intimacy coordinator

36. LPA agrees that intimacy coordinators are not covered by a modern award and have not been historically covered by a modern award.
37. Similar to artistic directors and choreographers, intimacy coordinators have a high level of specialised skill and managerial responsibility.
38. Therefore, intimacy coordinators are excluded from award coverage and the *Miscellaneous Award 2020* by ss 143(7)(a) and 143(7)(b) of the *Fair Work Act 2009* (Cth) (**FW Act**) because of the nature and seniority of their role, and the nature and of the work they perform has not been traditionally covered by awards.
39. In addition, intimacy coordinators are not engaged as employees. Modern awards only cover workers who are employees.⁹ Workers who are not employees are therefore excluded from coverage by modern awards and must be disregarded for the purpose of this Review.

Choreographer

40. LPA refers to its submissions of 4 December 2023 at paragraphs [41]-[43].

⁹ *Fair Work Act 2009* (Cth) s 48

41. In addition, choreographers are not engaged as employees. Modern awards only cover workers who are employees.¹⁰ As above, workers who are not employees are therefore excluded from coverage by modern awards and must be disregarded for the purpose of this Review.

Cultural and Safety Consultant

42. LPA agrees that cultural and safety consultants are not covered by a modern award and have not been historically covered by a modern award.
43. Similar to intimacy coordinators, a cultural and safety consultant has a high level of specialised skill and managerial responsibility.
44. Therefore, intimacy coordinators are excluded from award coverage and the *Miscellaneous Award 2020* by ss 143(7)(a) and 143(7)(b) of the FW Act because of the nature and seniority of their role, and the nature and of the work they perform has not been traditionally covered by awards.
45. In addition, cultural and safety coordinators are not engaged as employees. Modern awards only cover workers who are employees.¹¹ Workers who are not employees are therefore excluded from coverage by modern awards and must be disregarded for the purpose of this review.

Chaperones

46. Chaperones are not traditionally covered by awards.
47. Therefore, chaperones are excluded from award coverage and the *Miscellaneous Award 2020* by s143(7)(b) of the FW Act because the nature of the work they perform has not been traditionally covered by awards.

Festival and event staff

48. The Unions' submission states that festival and event staff are not covered by a modern award. This submission is incorrect.
49. The Unions' submission does not define or set out any specific positions or roles for "festival and event staff."

¹⁰ *Fair Work Act 2009 (Cth)* s 48

¹¹ *Fair Work Act 2009 (Cth)* s 48

50. LPA submits that, depending on the role, some festival and event staff who are performing work in the live performance industry as defined at clause 4.2 of the *Live Performance Award 2020* are covered by the *Live Performance Award 2020*.
51. Clause 2 of the *Live Performance Award 2020* defines ‘production and support staff’ to mean employees engaged specifically as production and/or support staff in a live venue or by a live producer. This includes festivals and events that present live performances, such as music festivals.
52. Some examples of positions/tasks that include festival and event staff include, but are not limited to:
- a) Level 2 – basic crowd control, car park attendant, crewing employee, program seller, usher, ticket seller, turnstile attendant, cleaning, cashier, food and beverage sales.
 - b) Level 3 – accounts clerk, booking clerk, dispatch clerk, box office CSR, sound/lighting technician, group party organiser, marketing assistant, publicity assistant, ticketing CSR, stage door duties, sound/lighting technician.
 - c) Level 4 – rigging, welding, pyrotechnics accounts clerks, sound/lighting technician, projectionist, administration, scheduling and rostering clerk.
 - d) Level 5 – trade certificate, assistant stage manager, experienced mechanists, experienced technicians, experienced sound/lighting technician, food and beverage manager, Head fly operator, administration.
 - e) Level 6 – trade certificate and specialist knowledge, front of house manager, deputy stage manager, deputy head of department, publicity/marketing officer.
 - f) Level 8/7 – trade certificate/post trade certificate and specialist knowledge and experience, box office, event and marketing coordinator, technical supervisor, heads of department.
 - g) Level 10/8 - publicity/marketing supervisor, stage manager, higher level administration.
 - h) Level 13 – Technical Manager.
53. Therefore, many employees performing work at festivals and events are currently covered by the *Live Performance Award 2020*.
54. In addition, some festival and events staff are also covered by the *Amusement Events and Recreation Award 2020*.

C. Theatre Network Australia Submissions

55. This section responds to submissions made by the Theatre Network Australia (TNA) on 4 December 2023 (**December Submission**) and 9 January 2024 (**January Submission**).

Arts Administrators

56. As set out at paragraph 26 above, this submission adds to LPA's initial submissions in response to question (1) of the Discussion Paper. Production and support staff are not practitioners and are not directly involved in the creation of artistic work and therefore should not be included in this Review.

57. However, in its December submission TNA submits that arts administrators in the live performance industry are not covered by the *Live Performance Award 2020* and they may be covered by the *Clerks – Private Sector Award 2020*. This submission by TNA is incorrect.

58. In its January Submission, TNA states that “*Arts Administrators are potentially covered by the Live Performance Award.*”¹² TNA also “*submits that the Live Performance Award already covers Arts Administrators but that outdated terminology and outdated/obsolete indicative positions makes it difficult for the sector to determine if the role of Arts Administrator in its modern form is covered.*”¹³

59. LPA submits that administrative employees are covered by the *Live Performance Award 2020*. It seems that TNA now shares this position.

60. Any production and support employee who is employed in the live performance industry that applies knowledge and skill related clerical or administrative work, as described in Schedule A, is covered by the *Live Performance Award 2020*.

61. LPA agrees that it can be difficult for live performance organisations to determine the correct award classification. However, TNA's indicative position of ‘Arts Administrator’ is likely to be too broad to assist appropriate award classification without reference to specific duties or classification descriptions.

62. As set as set out at paragraphs 5, 6 and 26 above classifications under the *Live Performance Award 2020* are not solely limited to the indicative positions listed in Schedule A.

¹² Submission by TNA – Additional Information, paragraph 13

¹³ Submission by TNA – Additional Information, paragraph 18

63. TNA also submits that certain indicative positions are ‘*obsolete with the sector*’.¹⁴ While this may reflect the view of TNA’s membership, this is not reflective of all organisations across the diverse live performance sector.
64. The live performance sector consists of a vast and diverse range of art forms. Small and medium enterprises make up a significant portion of the industry, together with large companies and sole operators and tens of thousands of performers, artists, creatives and technical crew. The industry consists of a range of performing arts companies around Australia and a wide range of workers across venues (i.e. concert halls, theatres, performing arts centres, arenas and stadiums) and commercial businesses (i.e. producers; promoters; ticketing companies; technical suppliers, such as those that provide stage lighting, special effects, staging, audio, audio-visual and other performance technologies; and other service providers, such as crewing companies and security providers). The industry also employs workers in business support roles, such as marketing, PR, finance, accounting, and administration.
65. The *Live Performance Award 2020* is an industry-based award. Therefore, indicative position and classification descriptions must be applicable and relevant to the whole live performance sector as defined by the *Live Performance Award 2020*. Therefore, LPA does not agree that the listed indicative positions set out in TNA’s submission at paragraph 19(b) be removed from the *Live Performance Award 2020*.
66. In addition, this Review is concerned with modern award coverage, including potential coverage gaps, for the arts and culture sector. Therefore, further examination of administrative roles, which are already covered by the *Live Performance Award 2020* is not necessary.

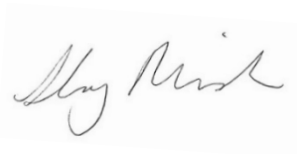
Arts Producer – Producer and Executive Producer

67. A producer in the live performance industry either has a high level of managerial responsibility or is the employer. TNA’s December submission which states that roles such as technical manager, box office manager and heads of department are of similar skill level to a producer is incorrect.
68. LPA agrees with TNA’s January submission that producers and executive producers are excluded from award coverage and the *Miscellaneous Award 2020* due to ss 143(7)(a) and 143(7)(b) of the FW Act, because of the nature and seniority of the role they have not been traditionally covered by awards, and the nature of the work they perform has not been traditionally covered by Awards.

¹⁴ Submission by TNA – Additional Information, paragraph 13-15

Arts Producer/Programmer and Associate Arts Producer/Programmer

69. As set as set out at paragraphs 5, 6 and 26 above classifications under *Live Performance Award 2020* are not solely limited to the indicative positions listed in Schedule A.
70. The indicative positions of arts producer/programmer and associate arts producer/programmer submitted by TNA are not consistently applied across the live performance industry. As set out at paragraph 63 to 64 above, the live performance industry is diverse.
71. LPA submits that TNA's submission at paragraphs 8 to 10, which considers the classification descriptions in Schedule A of the *Live Performance Award 2020*, demonstrates that the roles described by TNA can be classified based on the existing classification descriptions without any amendment to the Award.
72. As the nature and complexity of the work performed and the skills required varies, listing producer/programmer job titles in awards has the potential to lead to misclassification of employees.



Shay Minster

Director, Workplace Relations

Live Performance Australia

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