

Fair Work Act 2009

FAIR WORK COMMISSION

IN THE MATTER OF: 4 yearly review of modern Awards

AM2014/276 – Live Performance Award 2010

Submissions of the Australian Entertainment Industry Association (trading as Live Performance Australia) on the Exposure Draft Award.

29 April 2019

Live Performance Australia

Att: David Hamilton - Director, Workplace Relations

Level 1, 15-17 Queen Street Melbourne 3000

Phone: (03) 8614 2000

Fax: (03) 9614 1166

Email: dhamilton@liveperformance.com.au

1. This Submission is filed in accordance with the Statement of the President issued on 4 April 2019¹. Live Performance Australia (LPA) has an interest in the *Live Performance Award 2010*² (the Award) and this submission is on the technical and drafting issues related to the exposure draft of the Award, published on 5 April 2019.

2. LPA has reviewed the Exposure Draft and provides the following submission:

3. Clause 3 Definitions

- In the definition of **double time** add a new sentence “In the case of a musician, double the call rate”.
- In the definition of **performer** delete “musician”.
- In the definition of **time and a half** add a new sentence “In the case of a musician, time and a half of the call rate”.

4. Clause 7 Facilitative provisions for flexible working practices

In the table in clause 7.2, clause 34.1(a) should be retained and not deleted.

5. Clause 14 Minimum wages

Clause 14.2 repeats the note at the end of the table.

6. Clause 30.4 Casual employment

Parties are asked to comment about the change of reference to clauses 14.1 and 14.2.

The proposed change is agreed by LPA.

7. Clause 34 Breaks

This clause should be deleted and substituted with the provisions provided to the FWC in July 2017 as follows:

34. Breaks

34.1 Whole time performances

- (a) No employee will be required to work continuously in excess of four hours, or by agreement with a majority of the cast involved five hours, without a substantial break for a meal, recuperation and/or refreshment.

¹ [2019] FWC 2271.

² MA000081.

- (b) A break as prescribed in (a) above shall be of a minimum duration of 1 hour if taken before 4pm or 1.5 hours if taken after 4pm, provided that the length of such break may be varied by mutual agreement between the employer and the majority of employees. However, in no case will the break be less than 1 hour.
- (c) Such breaks will be unpaid.
- (d) During rehearsals a reasonable refreshment break will be provided to employees to be counted as time worked.
- (e) There will be a break of not less than 45 minutes clear of dressing, undressing, making up or taking off make-up between the conclusion of one performance and the commencement of another performance on the same day. If there is a break of less than two hours between the conclusion of one performance and the beginning of the next performance the employer will provide an employee with a satisfactory meal, including tea and coffee. Alternatively, the employer may pay to the employee an amount of \$27.36 instead of the said meal.
- (f) There will be a clear break between the conclusion of a full rehearsal and the commencement of another full rehearsal or performance of one and a half hours, provided that the length of such break may be varied by mutual agreement between the employer and the majority of employees. However, in no case will the break be less than 1 hour.

34.2 Performances of up to 1 hour

- (a) No employee will be required to work continuously in excess of four hours, or by agreement with a majority of the cast involved five hours, without a substantial break for a meal, recuperation and/or refreshment.

34.3 Breaks for travel

The minimum breaks for travel will be as set out below, except where the employer and the employee agree otherwise:

- (a) There will be no work done by an employee on a day in which travel to and from the following places occurs:
 - (i) Sydney/Perth;
 - (ii) Brisbane/Perth;
 - (iii) Melbourne/Perth.
- (b) Where an employee is required to travel other than as specified above, a two hour break will be given between arrival at the destination point and any rehearsal call or performance.

8. Clauses 35, 41 and 54 Overtime and penalty rates

The issue of TOIL has not been addressed in this Award as envisaged in paragraph [35] of the Full Bench decision [2016] FWCFB 7737. It may be that the parties have different views on whether TOIL should be included in the Award. As a result, in the first instance, the issue should be discussed in conference with the FWC.

9. Clauses 36 and 37 Musicians

Interested parties have been asked to comment on submissions made by the Queensland Ballet in relation to the engagement of musicians.

LPA requests that this issue be discussed in a conference conducted by the FWC, as it may have implications for several provisions dealing with the employment of musicians.

10. Clause 38.2(a) Doubling allowances

The word “total” should be deleted in both the Musician and Employer tables.

11. Clause 52 Ordinary hours of work and rostering

Parties are asked to comment on the change from “Weekly employees” to “Full time and part-time employees”.

LPA does not support the proposed change from “Weekly employees” to “Full time and part-time employees”.

Throughout the Award, the term “weekly employees” is used for performers and company dancers and musicians and is anchored by the definition of “engaged by the week” in clause 3 Definitions.

In addition, the term “weekly employees” is used in Clauses 53 and 54, which would therefore require redrafting of those clauses. The term “weekly employees” is a term used in the live performance industry, especially when employees are in “show mode” and depicts the employees being engaged for a particular show and therefore not full time or part-time employees.

Full time and part-time employment indicates that there is an expectation of ongoing work, whereas “weekly employees” reflects the way employees are engaged for a particular period which is not ongoing.

12. Clause 54.1 Overtime and penalty rates

The percentage figure of “250%” in clause 54.1(a)(ii) is wrong and should be replaced with “200%”.

13. Clause 54.3(c)

The reference to “clause 48.1(c)” in clause 54.3(c) should be changed to “clause 52.1(c)”.

14. Schedule B – Summary of Monetary Allowances

Part 6 – Musicians

Instrument doubling allowances should be expressed as a percentage of the minimum call rate and not a percentage of the standard rate (see clause 38.2(a)).

The Supply of music table is incorrect. Clause 38.2(b)(i) applies to weekly employees (\$33.50 per week) and clause 38.2(b)(ii) applies to casual employees (\$10.89 per call).

B.3 Expense-related allowances

The amount in clause 11.3(f) Meals while travelling – more than one week

The per week rate should be \$283.33 per week not \$283.83 per week.

MAY IT PLEASE THE COMMISSION



David Hamilton

Director, Workplace Relations



ABOUT LPA

LPA is the peak body for Australia's live performance industry. Established 100 years ago in 1917 and registered as an employers' organisation under the Fair Work (Registered Organisations) Act 2009, LPA has over 400 Members nationally. We represent commercial producers, music promoters, major performing arts companies, small to medium companies, independent producers, major performing arts centres, metropolitan and regional venues, commercial theatres, stadiums and arenas, arts festivals, music festivals, and service providers such as ticketing companies and technical suppliers. Our membership spans from small-medium and not-for-profit organisations to large commercial entities.

LPA has a clear mandate to advocate for and support policy decisions that benefit the sustainability and growth of the live performance industry in Australia.