

FAIR WORK COMMISSION

DRAFT DETERMINATION

Fair Work Act 2009

s.156 - 4 yearly review of modern awards

4 yearly review of modern awards – Group 4 awards
(AM2014/250 and others)

LIVE PERFORMANCE AWARD 2010

Live performance industry

4 yearly review of modern awards – award stage – Group 4 awards

Further to the Full Bench decision issued by the Fair Work Commission on [date] the above award is varied as follows:

1. Definitions – clause 3.1

1a. MEAA seek a **new definition** of musician (not separately defined) in clause 3.1 as follows:

***Musician** means a person who plays a musical instrument or any person who is employed to provide musical services including but not limited to any type of service which is directly concerned with live music or musicians or the production of musical sound, such as arrangers and copyists of music, vocalists, repetiteurs and conductors and others employed as an integral part of a musical group, band or orchestra.*

1b. Deleting the definition of performer and performance and inserting new definitions as follows:

***Performer** is an employee who takes part in a performance and includes an actor, dancer, understudy/swing performer, puppeteer compere, comedian or any other type of performer.*

***Performance** means a performance given by employees in person before an audience for which the employer receives a payment or other benefit. For the purposes of Part 7 of this Award, a performance may also include a performance by persons other than employees such as students or amateur performers and where production and support staff are employed in connection to that performance.*

This claim will be argued on its merits.

2. Rates of pay – Musicians

Musicians are presently captured under the definition of ‘performer’ in the Award.

There is an apparent inconsistency between clause 13, which sets out minimum weekly wages for musicians and clause 30 (in Part 5 – Musicians), which sets out minimum hourly wages *and* refers Award users to clause 13. The differing rates and methodologies is confusing and would benefit from review and revision.

A remedy is to add the following to clause 13.4:

13.4 Further minimum wages for Musicians are set out at clause 30.

3. Allowances – Accommodation, Meals while travelling, incidentals allowance while travelling – clause 14.5(c)(i), (d) and (e)

The current allowances at clauses 14.5(c), (d) provide for maximum weekly allowances based on five (5) days per week. MEAA seek the calculation of these allowances to be based on seven (7) days per week.

MEAA submit this is a more accurate reflection of contemporary work practices and patterns.

This claim will be argued on its merits, with evidence of current touring practices to be provided to the Commission. It is likely witnesses will be called, or in their stead, sworn statements provided.

4. Overtime and penalty rates

MEAA support the Fair Work Ombudsman’s observations that the manner in which overtime is calculated should be clarified and how the casual loading interacts with the overtime and penalty rate provisions.¹

¹ Fair Work Ombudsman Research Paper on the Expression of Rates of Pay, Overtime and Penalty Rates in Modern Awards, 2015