



REPORT

Fair Work Act 2009
s.156—4 yearly review of modern awards

4 yearly review of modern awards—*Live Performance Award 2010* (AM2019/17)

JUSTICE ROSS, PRESIDENT

MELBOURNE, 29 NOVEMBER 2019

[1] An [Exposure Draft](#) for the *Live Performance Award 2010* (the Award) was last published by the Commission on 5 April 2019. Two submissions were received following the publication of the Exposure Draft:

- Live Performance Australia dated 29 April 2019 ([LPA](#))
- Media, Entertainment and Arts Alliance dated 30 May 2019 ([MEAA](#))

[2] A [Background Paper](#) published on 25 November 2019 identified a number of outstanding issues in relation to the Live Performance Exposure Draft. A conference of interested parties was held on 26 November 2019. A transcript of the conference is [here](#).

[3] The following issues were discussed at the conference.

1. ***The Live Performance Exposure Draft***: On 27 June 2019, MEAA submitted the [draft](#) award agreed to by MEAA and LPA (the parties' draft award).¹ The draft award submitted by MEAA does not include:

- all of the common issues determined by the Commission during the course of the Review;
- the plain language restructure of modern awards (see Attachment A); or
- the amendments made to exposure drafts during the exposure draft finalisation process (see [\[2019\] FWCFB 7173](#)).

A revised Live Performance Exposure Draft will be prepared by the Commission taking into account the agreed draft award submitted by MEAA. Interested parties will be afforded an opportunity to comment on the revised exposure draft (and the associated draft variation determination) in accordance with the process determined for the finalisation of all exposure drafts.

2. ***Overtime for casuals***: A Full Bench Statement issued on 4 December 2017 identified the Live Performance Award as ambiguous in relation to whether overtime is payable

¹ MEAA [submission](#), 27 June 2019.

to casuals, when overtime commences and at what rate overtime is payable.² The Commission published an [Issues Paper](#) on 5 February 2019 making several observations on casual overtime provisions in the Live Performance Award.³ A Full Bench Statement [2019] FWC 7087 issued on 14 October 2019 identified the Award as the subject of discussion between the parties.

The parties are to give further consideration to how they wish to proceed in respect of this issue. If any party seeks to vary the award to resolve any ambiguity in relation to the calculation of overtime payments for casuals they must contact Vice President Hatcher's chambers by no later than **4pm on Friday 6 December 2019** and inform the Vice President of the course of action they propose. Any proposed variation will be dealt with by the Casuals and Part Time Full Bench (AM2014/196 and AM2014/197). If no request is made to Vice President Hatcher within the time prescribed the Commission will proceed on the basis that the parties do *not* wish to vary the award to resolve any ambiguity in respect of casual overtime payments, at this time. Further, the revised Exposure Draft to be prepared by the Commission (see Item 1 above) will simply replicate the provisions of the current award which are relevant to this issue.

3. ***Time Off in Lieu of Overtime:*** In its [submission](#) of 29 April 2019 Live Performance Australia submitted that the adaptation of the model TOIL term for the circumstances of the industry covered by the Live Performance Award had not been resolved. The parties are in discussions in respect of this issue and will file a joint report setting out how they propose to deal with the outstanding issue.
4. ***Queensland Ballet objection:*** Queensland Ballet objected to the drafting of the General Employment Conditions in the exposure draft because it removed the option for musicians to be employed on a full-time basis and required that all Musicians are engaged on a casual, weekly or part-time basis only. The parties advised that the issue raised by Queensland Ballet had been resolved by proposed clause 37.6 of the draft award submitted by MEAA.

PRESIDENT

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² 2017] FWCFB 6417 at Attachment A.

³ [Issues paper](#). 5 February 2019, at 22 – 24.