



DECISION

Fair Work Act 2009

s.158 - Application to vary or revoke a modern award

Musicians' Union of Australia

(AM2010/25)

Live performance industry

COMMISSIONER LEWIN

MELBOURNE, 14 JANUARY 2011

Application to vary the Live Performance Award 2010.

[1] This decision concerns an application to vary the *Live Performance Award 2010* (the modern award) under s.158 of the *Fair Work Act 2009* (the Act). The application seeks to vary the provisions of the modern award in relation to the payment of allowances when a musician is broadcast, telecast, filmed or recorded.

[2] Upon receipt of the application, Directions were posted on the Award Modernisation website inviting any interested persons to file submissions in relation to the application by the close of business on 17 March 2010. Any interested persons were also Directed to file any Submissions in response thereto by the close of business on 24 March 2010.

[3] Submissions were filed by Opera Australia (OA), Live Performance Australia (LPA) and the Australian Ballet (AB) on 17 March 2010. The Musicians Union of Australia (MUA) filed Submissions in reply on 24 March 2010.

[4] It became clear upon my reading of the Submissions filed by the interested organisations that the organisations did not agree that the award should be varied in accordance with the MUA's application. However, there was consensus around the need to clarify the operation of certain provisions of the Modern Award the subject of the application.

[5] On 20 April 2010 the application was listed for Hearing on 5 May 2010. At the Hearing Mr Terry Noone Appeared for the MUA. Mr David Hamilton and Ms Soolin Ong Tan appeared for LPA. Ms Bernadette Hayes appeared for Gordon Frost Organisation. Mr Alex Budd Appeared from OA. Ms Helen Williams appeared for the AB.

[6] At the conclusion of the Hearing the parties present agreed to confer for the purpose of dealing with non-contentious aspects of the application. The MUA subsequently submitted a draft variation of the Modern Award to give what they consider to be better effect to relevant

provisions regulating the conditions applicable to the making of archival and reference recordings in particular.

[7] The application was relisted for Conference on 31 May 2010 to deal with points of contention arising out of the abovementioned process. Subsequent to the conference on 31 May 2010, the MUA, the MUAA and LPA all made submissions in relation to the issues of contention.

[8] After the conference, the application was the subject of a Statement of Fair Work Australia dated 2 June 2010 which explained the history of the application, its subject matter and submissions made in relation to a proposed variation of the modern award.

[9] Further Submissions were then received from the MUA, the MEAA and LPA. Those Submissions broadly supported the variation of the modern award as foreshadowed in the Statement of 2 June 2010, with one notable exception which continued to be subject to a level of contention. That concerned the incidence of payments for the circumstances in which allowances would apply to broadcasts, telecasts, filming and recording of musicians' performances. I was subsequently advised that the parties intended to further attempt to reach agreement in relation to the appropriate terms of the award to apply to such circumstances.

[10] On 26 October 2010 the MUA sought leave to amend its application to reflect the outcomes of those deliberations. On 1 November 2010, I issued a Statement and Direction wherein I granted permission for the MUA to amend their application in order to reflect a joint position of the parties developed following the June statement. The MUA was Directed to file an amended application by the close of business on 8 November 2010. Further, any interested persons were directed to file any submissions in opposition to the amended application and the proposed variation by the close of business on 22 November 2010.

[11] The MUA filed an amended application on 3 November 2010. The MEAA and LPA filed Submissions in support of the application to amend and the making of an order varying the award in terms of the amended application, on 8 November 2010 and 22 November 2010 respectively. No submissions in opposition to a variation in accordance with the amended application were made by any person.

[12] I am satisfied the variation to the terms of the award governing the conditions to be prescribed when musicians are broadcast, telecast, filmed or recorded, as sought by the amended application is necessary to meet the Modern Award Objective and the objects of the Act. I have made some textual amendments to the form of the proposed variation in order that the form of the variation falls within the jurisdictional scope of the Act's provisions providing what may be included in Modern Awards.

[13] A Determination will issue accordingly.

COMMISSIONER

Appearances–Hearing:

Mr T Noone appeared for the Musicians' Union of Australia
Mr D Hamilton and Ms S Ong Tan appeared on behalf of Live Performance Australia
Ms B Hayes Appeared for Gordon Frost Organisation
Ms H Williams appeared for the Australian Ballet
Mr A Budd appeared for Opera Australia

Hearing details:

2010
5 May

Appearances–Conference:

Mr T Noone appeared for the Musicians' Union of Australia
Mr D Hamilton and Ms S Ong Tan appeared on behalf of Live Performance Australia

Conference details:

2010
5 May

Final written submissions:

3 November 2010, Musicians' Union of Australia
8 November 2010, Media, Entertainment and Arts Alliance
22 November 2010, Live Performance Australia

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