

MODERN AWARDS REVIEW 2023-24 (AM2023/21)

SUBMISSION COVER SHEET



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Modern Award Review Stream:

Arts and Culture:

Job Security:

Work and Care:

Usability of awards:

How to prepare a submission

Submissions should be emailed to awards@fwc.gov.au. Directions set out the due dates for submissions. Directions are issued by a Member of the Commission and will be published on the [Commission website](#).

Make sure you use numbered paragraphs and sign and date your submission.

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Deputy President Millhouse
Arts and Culture
Modern Awards Review 2023-2024
Fair Work Commission
awards@fwc.gov.au

4 December 2023

Diversity Arts Australia Submission into the Modern Awards Review 2023-2024

BACKGROUND

Diversity Arts Australia welcomes this opportunity to make a submission into the 2023-2024 Modern Awards Review.

Diversity Arts Australia is the peak national organisation promoting racial equity across the arts, cultural and screen sectors within an ethnocultural and migrant context. Diversity Arts works to build a creative sector that reflects Australia's true cultural diversity and believes creative expression is a fundamental human right, which strengthens and connects communities. Our work is underpinned by principles of human rights and the belief that a truly diverse creative sector is fundamental to a democratic, inclusive, sustainable society.

Diversity Arts combines service provision — resources, events, research, training — with creative production. We act as a broker between artists, industry, educators and government, and commission content from artists that articulates key issues and showcases best practice. While our focus is on underrepresented Culturally, Linguistically and Racially Marginalised artists and creatives, we work within an intersectional framework of race, gender diversity, class, disability, sexual orientation and age, recognising that ethnocultural diversity cannot be viewed in isolation from other forms of systemic exclusion and marginalisation.

This submission is informed by our research, advocacy, education and training and work, and work with thousands of culturally and linguistically diverse (CaLD¹), culturally and racially

¹ Our use of the term “culturally and linguistically diverse” is inclusive of people who are first, second or third generation migrants or members of ethnic communities. This includes Australia-born people who may self-identify or engage with the languages, customs or cultural specificities of ancestral heritages that differ from those of Anglo-Celtic Australians. This also includes people from refugee backgrounds and people seeking asylum on temporary visas. However, we recognise the

marginalised (CaRM), migrant and refugee artists, and creative workers via our programs, talks, research, advocacy, and events.

This submission is directly informed by:

- **Our research** - (three) Lost Work Surveys² which show that CaLD employment in the creative sectors had a significant income loss (during Covid 19) and has had far-reaching implications for diverse creatives. Moreover, financial insecurity has been rife amongst underrepresented CaLD creatives and concerningly, around half of the respondents indicated that they had experienced problems paying their rent or mortgage, their bills and medical care.
- **Our collective advocacy** via the Creative Cultural Diversity Network of 60+ arts workers and organisations working together for racial and cultural equity. These routine roundtable sessions offer a dedicated space and opportunity for Network members to engage in discussions about the challenges faced by the communities we serve. Furthermore, these gatherings facilitate collaborative planning to advocate for the fulfilment of our communities' needs.
- **Our 20+ year engagement** with migrant and refugee artists who identify as culturally and racially marginalised (CaRM) and culturally and linguistically diverse (CaLD).
- **Our capacity-building and content production work** with thousands of CaRM artists and creative workers.
- **Our partnerships** with a range of national peak and grass-roots arts, screen and creative sector organisations, ethno-specific groups and communities.
- **Our leadership of sector-wide research and direction-setting publications** such as the 2019 Shifting the Balance report 2³ which shows how creatives are underrepresented as leaders thus evidencing lower levels (including wage-wise) of employment or barriers in the industry.

limitations of this term, including that people tend not to identify as “culturally and linguistically diverse” (CaLD). A new term is “Culturally and Racially Marginalised” (recently used by bodies like Creative Australia; Diversity Council Australia) and “Culturally and Linguistically Marginalised” (coined by Professor Karen Soldatic, Western Sydney University, 2023). While not used in this submission, Diversity Arts has also started using the term “Culturally, Linguistically and Racially Marginalised” (CLaRM).

²

<https://diversityarts.org.au/app/uploads/Executive-Summary-Lost-Work-for-Creatives-of-Colour-Organisations-2.0-Report.pdf>

³ <https://diversityarts.org.au/app/uploads/Shifting-the-Balance-DARTS-small.pdf>

INTRODUCTION

As the key organisation advocating for cultural and racial equity in these domains, we recognise our responsibility to draw attention to the distinctive challenges faced in our industry, by culturally, racially, and linguistically marginalised individuals - particularly newer migrants and people from refugee backgrounds, and the impact this has on the health and wellbeing of the broader industry. Some of this has been documented in our three Lost Work Surveys⁴. We recommend that the issues within the Arts and Culture Sector addressed in this review, are also contextualised within a broader context, with a recognition of these challenges.

While acknowledging the important and necessary focus on gender equality and disability in the Fair Works Commission's Discussion paper, we would like to emphasise the need for explicit attention to culturally and racially marginalised artists, employees, and workers within the arts, creative, and cultural sectors. For example, accessibility includes provision of information on workers rights in languages other than English as well as in plain English.

ISSUES

Chapter 2. The arts and culture sector

1. Are there particular industries or occupations that should form the focus of the Commission's consideration of the arts and culture sector in this Review? If so, why?

1.1 ISSUE: We advocate for the Commission to Consider the whole arts and culture industry holistically, preferably with the intent of designing modern award/s that are consistent and provide equitable support across industries. Additionally, there is significant overlap between professions in the arts and creative sector, with many creatives working multiple jobs or across industries, for example, undertaking set design for both the screen and for theatre industries. Therefore, reviewing the current awards and industries holistically will benefit this work.

1.2 PROPOSAL: Extend award coverage across the arts and culture industries.

1.3 PROPOSAL: Review existing awards and industry recommended rates.

⁴

<https://diversityarts.org.au/app/uploads/Executive-Summary-Lost-Work-for-Creatives-of-Colour-Organisations-2.0-Report.pdf>

2. Are there any industries or occupations that should be added to or removed from our consideration of the arts and culture sector for the purpose of the Review more broadly?

2.1 Many of the following have been recommended by the Australian Writers Guild, NAVA and Kate Larsen in their submissions:

Playwrights, script and screenwriters, showrunners, podcasters, comedians, game narrative designers, dramaturgs, librettists, audio writers, freelance podcast producers, arts and culture sector administrators and managers, arts and culture researchers, arts and culture researchers and policy officers, creative producers, associate producers, musicians, critics/reviewers, the visual arts, craft, and design sector. Additionally creatives working in cultural forms that do not neatly fit into any one arts practice area, should also be accommodated by creating miscellaneous category coverage.

Chapter 3. What is modern award coverage?

3. If advocating for a new award to address coverage gaps in the arts and culture sector, how is it proposed that such an award defines its coverage? For example, would the award be expressed to cover employers or employees in an industry or employees in particular occupations and their employers, or both?

3.1 ISSUE: Currently Modern Award coverage exclusively applies to employees, which is at odds with the reality of the arts and culture sector, which relies heavily on independent contractors and sole traders, potentially without sufficient coverage. There are positions across most arts and culture industries that do not receive award coverage. Furthermore, there is significant crossover between many industries (for example, many artists may identify and work in multiple areas) and which is why we believe that there is a need to establish systems that address this across industries with various awards and also with a Miscellaneous Arts and Culture Award.

3.2 PROPOSALS

(i) That consideration is given to the introduction of a new Miscellaneous Arts and Culture Award that covers work in the arts, screen and creative sectors.

(ii) That consideration should be given to making changes to existing arts and culture related awards to recognise contractors and sole traders, and provide them with greater coverage and industrial rights.

(iii) We concur with the Australian Council of Trade Unions' (ACTU) and the National Association of Visual Artists (NAVA) recommendations that award coverage is extended to both industry employers and specific occupations to ensure the broadest coverage.

(iv) **PORTABLE LONG SERVICE LEAVE** To address the precarity and short-term nature of much work in the industry and to take the onus off employees/contractors, the Award should also address and include Portable Long Service leave and other similar initiatives.

Chapter 4. Modern awards with possible coverage in the arts and culture sector

5. Are there employees working in the arts and culture sector that may be covered by an award that has not been included in this chapter?

5.1 ISSUE: The international qualifications of artists from CaLD backgrounds often go unrecognised, as do many of their arts practice areas, particularly when their work diverges from Euro-American and white-settler Australian arts, screen, and creative practices.

5.2 PROPOSAL: To address this, it is imperative to acknowledge and value the professional experiences and international qualifications of CaLD/ CaRM artists and creative workers.

5.3 PROPOSAL: It is also important to ensure that there are clear categories in the award designed for people who currently are not covered by an award.

Chapter 5. Potential gaps in award coverage of the arts and culture sector

9. Do parties agree that the Miscellaneous Award may not cover certain workers, such as artistic directors or media producers?

9.1 ISSUE: Yes, we strongly agree that the Miscellaneous Award does not cover most workers in our industry. The following case study demonstrates that even for well-known jobs, coverage is nearly impossible for arts and cultural organisations, and that as a result, Union coverage is also difficult to obtain.

CASE STUDY: Diversity Arts Australia operates at the intersection of service provision and creative production, advocating for cultural equity in the creative sectors. Our team comprises various roles crucial to supporting this mission.

Since 2019, we conducted extensive research to identify a suitable Award for our organisation. Seeking guidance from the Fair Work Ombudsman's - Employer Advisory Service Unit, we submitted all paid employee position descriptions for review, evaluating nine Awards. These roles included CEO and Executive Producer, Business Manager, Research and Policy Manager, Website Content Producer and Coordinator for the Creative Equity Toolkit, Communication and Marketing Coordinator, Producer for Creative Campaigns and Projects.

The considered industry awards were:

- The Amusement, Events and Recreation Award 2020 [MA000080]
- The Live Performance Award 2020 [MA000081]
- The Market and Social Research Award 2020 [MA000030]
- The Educational Services (Post-Secondary Education) Award 2020 [MA000075]
- The State Government Agencies Award 2020 [MA000121]
- Occupational awards included:
 - The Clerks Award
 - The Miscellaneous Award
 - The Professional Employees Award
- Additionally, the Social, Community, Home Care, and Disability Services Industry Award 2010 [MA000100] was considered.

The results indicated that most, if not all, positions in our organisation were Award-free, a conclusion supported by a separate review from an Employee/HR company specialising in this area. Previous discussions with the Media Entertainment Arts Alliance (MEAA) also confirmed our Award-free status. MEAA, while open to our staff becoming members, clarified that they couldn't represent our organisational members on industrial issues.

This case study underscores the challenges in securing coverage for commonplace roles. It demonstrates that individuals without Award coverage often encounter obstacles in gaining union representation. Diversity Arts can provide these documented findings to the Commission upon request.

9.3 PROPOSAL: The modern awards address this gap via the introduction of the Miscellaneous Arts Union OR that the Miscellaneous Workers Award is reviewed and revised to be inclusive of these gaps.

9.4 PROPOSAL: That discussions with Unions are undertaken with the aim of ensuring all workers have the right to have the opportunity to belong to, and be supported by a Union that understands the work of their industry.

10. To what extent are workers in the sector who are not currently covered by an award likely to be employees capable of being covered by modern awards?

10.1 ISSUE: Currently there is a strong reliance on peak industry membership bodies to provide support and recommended rates to workers (and organisations) who are not covered by an Award (such as NAVA's Code of Practice). These bodies rely on membership fees to support some of this work. When there is no Award coverage for a specific arts or creative practice, we often look at the industry rates at NAVA or another industry peak to make a comparison. Access to this information needs to be made accessible for artists and creative workers from historically marginalised and/or CaRM backgrounds, including being provided in languages other than English.

10.2 PROPOSAL: Workers who are not currently covered by an Award are capable of being covered by modern awards and must be provided that opportunity. Establishing comprehensive guidelines, such as those developed by NAVA, are essential, and this work should be financially supported by the Federal Government and extended across industries and much of it can form the basis of, or be integrated into the modern awards. The potential guidance of modern awards is particularly crucial for precarious, short-term work, providing a foundation that can be further developed and built upon.

11. Do the parties have a view about the potential impact of the Closing Loopholes Bill on the arts and culture sector?

The Closing the Loopholes Bill has the potential to provide greater support to artists and creatives, but must be developed holistically, taking into account the role of Government in the arts and culture ecology.

11.1 ISSUE: Shrinking Grants and the Pressure for Equity

Grant sizes are decreasing, while the demand for equity and accessibility is rising. Many Government arts grants have reduced their capped rates in recent years, while placing the responsibility solely on organisations to pay workers well. Recognising the difficulties faced

by small to medium arts companies in meeting ethical employment standards is crucial. Funding programs should be designed with an acknowledgment that organisations heavily rely on grants to meet recommended industry pay standards.

11.2 PROPOSAL: Increase Funding for Arts, Screen, and Creative Sectors

To fully realise projects, there is an urgent need to boost funding for the arts, screen, and creative sectors. This increase should encompass targeted support for organisations supporting historically underrepresented communities, including creatives from culturally, linguistically and racially marginalised backgrounds.

12. Is digital platform work common within the arts and culture sector?

12.1 ISSUE: Digital platform work has become increasingly common within the arts and culture sector, as it provides opportunities for creatives to showcase and sell work online, reach global audiences, and make new connections. Social media, online galleries, and crowdfunding sites, have provided platforms for creatives to promote their works and engage with diverse audiences.

However, there are many challenges and dangers that migrant, refugee, and culturally diverse creatives can face in regards to digital platform work. These include:

- **Income Inequality.** While digital platforms can provide a means for artists to earn income, some artists struggle to make a living wage, and migrant or refugee artists face additional financial challenges.
- **Visibility and Representation:** CaRM and migrant creatives often face challenges in gaining visibility and representation on digital platforms. Algorithms on these platforms can sometimes favour mainstream or established artists, making it difficult for emerging or marginalised artists to gain recognition.
- **Discrimination:** Online spaces are not immune to racial discrimination, which can impact opportunities for CaRM and migrant creatives.
- **Access Barriers:** Some artists may face barriers in accessing digital platforms due to issues such as language barriers, lack of technological resources, or limited internet access. This can restrict their ability to participate fully in the digital arts ecosystem.
- **Intellectual Property Concerns:** Migrant and CaRM creatives, who might already face vulnerabilities, may be at risk of having their work misappropriated or exploited without proper attribution.

12.2 PROPOSAL: It's important for government, digital platforms and the arts and culture community to address these challenges through inclusive workplace policies that support

diverse representation, and support systems to ensure that all artists, regardless of background, have equal opportunities and protections in the digital landscape. This work, which is increasing in the arts and culture sector, must be covered in the modern awards.

Chapter 6. Discussion questions

15. For the occupations identified as gaps in award coverage in this paper, or by the parties, which awards could be varied to close the gap?

15.1 PROPOSAL: We believe the CPSU or the SCHADS Award could be modified to cover the work that many small to medium peak advocacy and support services undertake. In the case of Diversity Arts, where our focus is on social justice, equity and inclusion, we align strongly with many workers in the SCHADS sector. There are community arts organisations who are covered by the SCHADS Award. Because so much of our funding is derived from Government, we believe many of our roles might also fit within the Clerks-Private Sector Award 2020. We are aware of nonprofits who seek to pay their staff based on the rates of this Award.

16. Are there any other legislative provisions or significant decisions pertinent to the Commission's consideration of the arts and culture sector in this Review?

16.1 ISSUE: In consideration of the lower wages in the arts and culture sector in the review, and the precarious nature of the work, it is imperative to address the challenges faced by arts organisations in recruiting and retaining staff due to financial constraints.

16.2 PROPOSAL - Provide Public Benevolent Institution Status to small to medium arts and culture organisations. **Making Public Benevolent Institution (PBI) status more easily available** and extending PBI to small to medium non-profit and for-purpose arts organisations will be of great benefit in terms of arts and culture employees remuneration, conditions and and retention.

16.3 ISSUE: LACK OF RECOGNITION OF WORKPLACE BARRIERS TO HISTORICALLY MARGINALISTS CaLD ARTISTS AND CREATIVES

CASE STUDY:

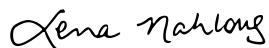
The Anti-Discrimination Act 1977 prohibits certain forms of discrimination, outlining exceptions such as advertising specific gender requirements for essential job roles. The Act permits exemptions and certifications, granted to enhance access to jobs, programs, services, or facilities for specific groups listed in the Act, provided the proposed action promotes equal opportunity or benefits a discriminated group.

However on two occasions and in two different States, these exemptions were not able to be provided for workplace programs targeting underrepresented CaLD and migrant workers, seeking to enter the industry via paid internships. There is an important coordination and harmonisation role that the Fair Work Commission and the Federal Government can play in ensuring greater workplace inclusion and support for historically underrepresented artists and creative workers.

16.4 PROPOSAL: Work with State and Territory Governments to harmonise anti-discrimination exemptions for underrepresented CaLD and migrant people. Review and extend Anti-Discrimination Exemptions to arts and culture organisations seeking to bolster and increase underrepresented culturally and linguistically diverse and migrant people within their companies.

Thank you for this opportunity to provide input and recommendations for this important work. We strongly believe that only by achieving equitable employment conditions can we grow a more vibrant, inclusive, and culturally rich arts sector in Australia.

Yours sincerely,



Lena Nahlous
CEO