



Modern Awards Review 2023-24 (AM2023/21)

SECOND REPLY Submission cover sheet

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Modern Award Review Stream:

Arts and Culture:

Job Security:

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LIVE
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Modern Awards Review 2023-24
Arts and Culture Sector
(AM2023/21)

LIVE PERFORMANCE AUSTRALIA SECOND REPLY SUBMISSION
24 January 2024

A. Introduction

1. This submission replies to the supplementary submission made by the Media, Entertainment and Arts Alliance (**MEAA**) on 22 January 2024 (**MEAA Supplementary Submission**), for the Modern Awards Review 2023-24: Arts and Culture Sector (**Review**) conducted by the Fair Work Commission (**Commission**).
2. This submission should be read in conjunction with Live Performance Australia's (**LPA**) submission made on 4 December 2023, LPA's oral submissions made in the Commission on 20 December 2023, and LPA's reply submission made on 19 January 2024.
3. At the Review consultation held in the Commission on 22 January 2024, LPA agreed to undertake further consultation with the live performance industry, and to provide this response to MEAA's Supplementary Submissions. LPA has consulted with the live performance industry.

B. MEAA Supplementary Submissions

Intimacy coordinator

4. LPA refers to paragraphs [36] to [39] of its reply submission, and maintains its position that intimacy coordinators are not, and should not, be covered by the *Live Performance Award* or any other modern award.

What is an Intimacy Coordinator?

5. Similar to artistic directors and choreographers, intimacy coordinators have a high level of specialised skill and managerial responsibility.
6. Intimacy coordinators are highly trained specialists who work on scenes or moments of intimacy. Their role is to support the production by providing a safe professional environment and clear structure for the choreography of intimate content and scenes.
7. An intimate scene may include intimate physical contact or nudity, such as simulated sex. However, this can be expanded to include familial intimacy, embraces between friends, sexual tension, and chemistry where no touching occurs. It is also an element in scenes of sexual violence.
8. In general, an intimacy coordinator is a movement choreographer, a liaison between cast, director and producers and an advocate for the well-being of performers in regards to intimate scenes. An intimacy coordinator assists a production by:
 - a) conducting training in respect of the fundamentals of intimacy and respect;

- b) consulting and assessing risk in respect of scripts. Including advising on how to re-write and facilitate intimate scenes and develop rapport between performers;
- c) addressing and providing advice in respect of any problematic issues that might arise from intimate content in a production;
- d) recommending and implementing production protocols around intimate scenes including providing specialised movement choreographic direction around intimate scenes;
- e) establishing reporting lines and making sure everyone on stage or in the rehearsal space feels comfortable; and
- f) consulting and advising cast, creatives and crew before, during, and after the creation of intimate scenes, advising in respect of appropriate duty of care and providing reporting/ documentation of work.

How are intimacy coordinators engaged in the live performance industry?

- 9. Intimacy coordinators are engaged as independent contractors or as independent companies on a live production in a consultancy type arrangement.
- 10. MEAA's *Intimacy Guidelines for Stage and Screen (Guidelines)*,¹ referred to in MEEA's Supplementary Submission, were not developed in consultation with LPA or any other live performance industry organisation, nor do these guidelines address how an intimacy coordinator is engaged on a production.
- 11. The Guidelines do not refer to the role of an "*intimacy coordinator*" in respect of live theatre. Instead, the at page 5 the Guidelines refer to an "*intimacy director*" and at page 6 as a "*third party advocate*".
- 12. The role of an intimacy coordinator is beyond the scope and classification levels of the *Live Performance Award 2020*. The role or occupation of an intimacy coordinator or intimacy director does not fall within the generic classification of production and support staff and it is not covered by the *Live Performance Award 2020*.

LPA's Recommendation

- 13. LPA does not agree with MEAA's Supplementary Submission that the Review identify or include the occupation of intimacy coordinator as an 'indicative position' in Schedule A – Classifications in the *Live Performance Award 2020*.

¹ Media Entertainment and Arts Alliance, [Equity Intimacy Guidelines for Stage and Screen](#), (November 2020).

14. LPA reiterates its reply submission made on 19 January 2024 that intimacy coordinators:
- a) are not covered by a modern award and have not historically been covered by a modern award;
 - b) are excluded from award coverage and the *Miscellaneous Award 2020* by ss 143(7)(a) and 143(7)(b) of the *Fair Work Act 2009* (Cth) (**FW Act**) because of the nature and seniority of their role, and that the nature of the work they perform has not been traditionally covered by awards.
 - c) are not employees. As modern awards only cover workers who are employees,² intimacy coordinators are therefore excluded from coverage by modern awards and must be disregarded for the purpose of this Review.

Choreographer

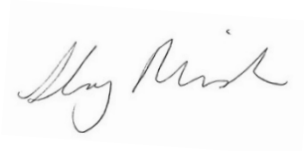
15. LPA refers to its submission of 4 December 2023 at paragraphs [41]-[43] and its reply submissions at paragraph [41].
16. LPA also refers to Joshua Lowe's, Theatre Network Australia, oral submission made in the Commission in this Review on 22 January 2024 in support of LPA's submissions that choreographers are not covered by the *Live Performance Award 2020* or any other award, and are not employees.
17. In the live performance industry, a choreographer can be exclusively engaged in a senior leadership position such as an artistic director or chief executive officer. For example, in a dance company, the artistic director is a senior leadership position which is responsible for the creation and choreography of works.
18. In other cases when a live production or company, such as dance company, engages a choreographer for a major work or commission they are engaged as creative independent contractor. This role by its very nature includes managerial artistic direction functions.
19. Therefore, LPA agrees with the position put forward by Mr Lowe that there is no utility in exploring a classification definition for a choreographer in the *Live Performance Award 2020* as there are no instances where it would apply to work in the live performance industry.

² *Fair Work Act 2009* (Cth) s 48

Chaperones

20. LPA withdraws paragraphs [46]-[47] of its reply submission.
21. LPA agrees that chaperones are covered by the *Live Performance Award 2020*, and that it falls within the classification structure of production and support staff.
22. A chaperone is generally employed for the direct care and supervision of child performers. The chaperone is responsible generally for one or two child performers. They are responsible from the beginning to the end of a show call. A chaperone would stay with the child performer for the duration of the call. Their duties may include:
 - a) meet and collect the child performer from their parents/guardian at the stage door and sign the child in to the theatre;
 - b) together with the child performer, check in with the adult cast;
 - c) take the child performer to their dressing room and ensure the child puts on their costume, has their make-up and hair done and is fitted with a microphone if required;
 - d) stay in the dressing room with the child performer and engage with them. For example. they may play games or do craft activities;
 - e) when the child performer is required on stage the chaperone takes the child to the stage, and the appropriate crew member may then assist the child from that point. The chaperone must continue to observe the child from the wings of the stage and be in the correct position to collect the child from the point they exit the stage. At this point, they take the child performer back to their dressing room.
23. The chaperone is also responsible for the child's welfare at work.
24. On larger productions, where many child performers are employed, there may be a team of chaperones. In such cases a head chaperone may also be engaged. A head chaperone would have responsibility for the chaperone team.
25. LPA submits that appropriate classifications for chaperones under the *Live Performance Award 2020* would depend on the individual chaperone's qualifications, experience and specific duties. Relevant classifications may be:
 - a) Production and Support Employee levels 4, 5 or 6 – for chaperones supervising one or two child performers dependant on level of experience and qualifications.

- b) Production and Support Employee level 8 – for a head chaperone or a very experienced chaperone. Heads of Departments as specifically listed as an indicative position under this level.



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Live Performance Australia

19 January 2024