



# DECISION

*Fair Work Act 2009*

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

## **Application by the Australian Entertainment Industry Association t/a Live Performance Australia**

(AM2024/10)

### **LIVE PERFORMANCE AWARD 2020**

[MA000081]

Live performance industry

JUSTICE HATCHER, PRESIDENT

SYDNEY, 16 JULY 2024

*Application to vary clauses 27, 28, 29, 30 and 31 of the Live Performance Award 2020 in relation to fixed term contracts – modern awards objective – provisional view confirmed – award varied.*

[1] On 9 February 2024, the Australian Entertainment Industry Association trading as Live Performance Australia (LPA) applied under s 158 of the *Fair Work Act 2009* (Cth) (FW Act) to vary the *Live Performance Award 2020*<sup>1</sup> (Award). LPA sought to vary the Award to include terms permitting performers, company dancers and musicians to be employed under fixed term contracts in certain circumstances. The changes sought were intended to enliven the exception in s 333F(1)(h) of the FW Act to the prohibition in s 333E(1) upon the use of fixed terms contracts in the circumstances described in ss 333E(2)–(4).

[2] On 13 June 2024, following conferences which the LPA and the Media, Entertainment and Arts Alliance (MEAA) had attended, I issued a Recommendation setting out the form of the variations I recommended be made to the Award.<sup>2</sup> Following the receipt of correspondence from the LPA on 19 June 2024,<sup>3</sup> I issued an Amended Recommendation correcting a drafting error in the proposed variations initially published on 13 June 2024.<sup>4</sup>

[3] On 20 June 2024, LPA and MEAA informed my chambers that the Amended Recommendation was accepted. On 21 June 2024, I issued a statement, together with a draft determination, expressing my provisional view that the variations to the Award proposed in the Amended Recommendation were necessary to achieve the modern awards objective in s 134(1) of the FW Act.<sup>5</sup>

[4] On 28 June 2024, following correspondence from the LPA advising that the definition of ‘fixed term’ contract had been erroneously omitted from the draft determination of 21 June 2024, I issued an amended draft determination giving effect to my provisional view of 21 June

2024.<sup>6</sup> I also invited interested parties to file submissions in relation to my provisional view and the draft determination by 12 July 2024.<sup>7</sup>

**[5]** No submissions were received by the above deadline. Accordingly, I confirm my provisional view at paragraph [7] of my 21 June 2024 statement. The variations in the draft determination of 28 June 2024 are necessary to achieve the modern awards objective in s 134(1) of the FW Act and should therefore be made pursuant to s 158 of the FW Act.

**[6]** A determination varying the Award accordingly is issued with this decision. The variations will operate from today, 16 July 2024.



PRESIDENT

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<sup>1</sup> [MA000081](#).

<sup>2</sup> [Recommendation \[2024\] FWC 1533](#) (13 June 2024).

<sup>3</sup> [LPA Correspondence](#) (19 June 2024).

<sup>4</sup> [Amended Recommendation \[2024\] FWC 1533](#) (13 June 2024).

<sup>5</sup> [Statement \[2024\] FWC 1629](#) (21 June 2024) [7].

<sup>6</sup> [Statement \[2024\] FWC 1700](#) (28 June 2024); [Amended Draft Determination](#) (28 June 2024).

<sup>7</sup> [Statement \[2024\] FWC 1700](#) (28 June 2024) [7].