

MODERN AWARDS REVIEW 2023-24 (AM2023/21)

SUBMISSION COVER SHEET



Name (Please provide the name of the person lodging the submission)

Louise Buckingham (CEO)

Organisation (If this submission is completed on behalf of an organisation or group of individuals, please provide details)

Arts Law Centre of Australia

Contact details:

Street Address 1: Haymarket Creative, UTS Building 5, Block B

Street Address 2: 1-50 Quay Street

Suburb/City: Haymarket, NSW

Postcode: 2000

Email: artslaw@artslaw.com.au

Telephone: (02) 9356 2566

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.

Your submission. Provide a summary of your experience and any relevant issues. You may wish to refer to one or more of the issues outlined in the relevant discussion paper.

ARTS LAW CENTRE OF AUSTRALIA SUBMISSION

1. The Arts Law Centre of Australia (**Arts Law**) is a national community legal centre providing free or low-cost legal advice to creators residing in all Australian states and territories. Arts Law makes this submission on behalf of our broad client base and, in particular, creators and the peak or professional organisations which represent their interests in the arts and culture sector. Arts Law assists thousands of Australian artists and organisations annually. Artists in the Black (AITB) is a specialist program at Arts Law that provides advice and information on legal issues for First Nations artists and communities.
2. Arts Law would like to acknowledge the Traditional Owners of the various lands on which Arts Law works and pay our respects to Elders past and present. Please note that for the purposes of this submission, we respectfully use the term ‘First Nations’ to reference the Aboriginal and Torres Strait Islander people belonging to this country.
3. Arts Law is unique, both in Australia and internationally, as the only national community legal centre (CLC) working across the arts and the law. Arts Law fills an important marketplace gap for artists and organisations, enabling them to access free or low-cost legal advice, professional development, and other resources which they otherwise could not afford. The increasingly high demand for Arts Law’s services across regional, remote, and metropolitan communities demonstrates the relevance of our programs and the important role we play in the arts and culture.
4. Arts Law helps individual arts practitioners, including visual artists, craft practitioners, authors, performers, musicians, composers, screen creators, filmmakers, actors, dancers, choreographers, game creators and designers as well as arts organisations who are peak bodies, theatre companies, music schools, festival organisers, artist-run initiatives and Aboriginal and Torres Strait Islander artists and art centres, community cultural development artists and artists with disability as well as the organisations which support Australian artists. The breadth of issues we advise on includes copyright and moral rights, trade marks, contracts, business structuring, governance, insurance, defamation, censorship, privacy, confidential information, employment, debt, and wills and estates.
5. Arts Law is therefore in a unique position, as it advises a large number of artists and arts workers outlined in the industries and occupations identified as making up the arts and culture sector in the Fair Work Commission Discussion Paper, Arts and Culture Sector – Modern Awards Review 2023 – 24 (**Discussion Paper**).¹
6. In January 2023 the Federal Government’s National Cultural Policy, *Revive*, included an action item to consider modern award coverage and minimum standards for the arts and culture sector. Pillar 3 of *Revive* recognises the ‘Centrality of the Artist’ and the importance of supporting the artist as worker and celebrating artists as creators.

‘The Government Recognises that artistic and cultural work is a professional activity and that fair pay and conditions for arts and cultural workers are essential... As part of

¹ [11], Discussion Paper.

this package, the Government has announced a Review of Modern Awards. Award coverage and minimum standards in the arts sector will be considered through this process.’ Revive, p53

7. Arts Law supports this position, and the move toward recognising artists and arts businesses as real workers and real businesses. This also involves celebrating artists as creators and arts businesses as part of our creative communities and recognising the value of Australia’s cultural and creative practitioners and the necessity of fair pay and conditions.
8. Arts Law will address below some of the questions raised in the Discussion Paper.

ISSUES

CHAPTER 2: The arts and culture sector

1. **Question 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?

The Visual Arts, Craft and Design and Music industries should form the focus of the Commission’s consideration of the arts and culture sector. This is because existing awards lack meaningful coverage for the visual arts and for musicians working in the music industry who are not employees.

2. **Question 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?

The Visual Arts, Craft and Design and Music industries should both be included on the industry list. It is unclear whether these industries are covered by the listed Creative and Performing Arts Activities industry.

The following are some examples of occupations missing from the occupations list:

Access Coordinator

Exhibitions / Collections

Conservator / Registrar

Educators / Public Programs

First Nations (identified roles)

Front of House / Reception / Visitor Services

Gallery Assistant

Gallery Technician / Preparator / Art Handler / Installer

Marketing / Communications / Publicity

Membership Manager

Retail Manager

Studio Assistant / Coordinator / Manager

Art Centre Assistant / Coordinator / Manager

Volunteer Coordinator

Design Professional

Chapter 4: Modern wards with possible coverage in the arts and culture sector

3. **Question 6:** Are there employees performing work of a similar nature to the work performed in the arts and culture sector that are not currently covered by an award but should be?

In Arts Law's experience, the majority of occupations in the Visual Arts, Craft and Design industry, are not covered by an award but should be. The Live Performance Award provides an example of the depth of specializing, breadth of practice and types of work that should be included in a fit-for-purpose award for the Visual Arts, Craft and Design industry.

Arts Law is aware that because there is no applicable award, many artists and art organisations attempt to use various instruments to inform rates of pay for employees, including existing awards, enterprise agreements, contracts, and the National Association for the Visual Arts' (NAVA's) Code of Practice for the Visual Arts, Craft and Design.

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

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

The Miscellaneous Award does not align with the types of work in the Visual Arts, Craft and Design industry in the way an award should. For example, ordinary hours or meal breaks don't apply, roles do not match, inappropriate salary rates, specialised expertise not considered.

5. **Question 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?

Please see Arts Law's response to Question 6 above.

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

The *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023* stipulates that the changes for gig economy workers or 'employee-like workers' are for those who work on a digital platform, which will leave out a large portion of artists and arts workers and other creators such as musicians who work in the gig economy, but not on a digital platform. Arts law understands that there is no digital platform in the visual arts for hiring workers.

The Federal Government recognised arts workers and other creators such as musicians as the original gig workers, noting a large cohort of practitioners are on

short-term contracts based around project funding. Creative organisations, including galleries, entertainment venues and festivals, rely heavily on contractors and casual staff for short-term projects, one-off events or peaks in programmed work.

The Fair Work Commission's new powers concerning 'employee-like forms of work' should be inclusive of all creators such as artists and musicians who are employed as ongoing contractors for businesses. For example, many creators will work on a project for a business on a part-time or full-time basis and may have this relationship with multiple businesses. The Fair Work Commission should be able to set minimum standards for creators who engage in employee-like types of work and help resolve disputes for artists, arts workers and musicians regarding unfair contract terms including:

- a. Rates of pay
- b. Disputes about whether an employee or contractor e.g. being required to switch from one to the other with no changes to rates of pay or other aspects of a contract which are usually negotiated
- c. Not being able to negotiate a contract
- d. Not having a contract

The Fair Work Commission should also consider factors such as:

- e. Maximum hours worked per week
- f. Minimum hourly pay rate (based on minimum wage or award)
- g. Protections at work

7. **Question 12:** Is digital platform work common within the arts and culture sector?

Not in many creator industries such as the Visual Arts, Craft and Design industry and the Music industry.

PROPOSALS

8. Arts Law supports the introduction of mandated minimum pay and working conditions for creators working in the Visual Arts, Craft and Design industry and those in the Music industry who are not engaged as employees.
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