



MUSICIANS (LIVE PERFORMANCE) (STATE) AWARD

Level 3, 222 Pitt Street Sydney NSW 2000

PO Box A2178 Sydney South NSW 1235

Telephone: 02 8267 4365

Fax: 02 8267 4225

CONTENTS

SECTION	TITLE
1	Definitions
2	Terms of Engagement
3	Termination of Employment
4	Wage Rates — Weekly Employees
5	Wage Rates — Regular Weekly Part-time Employees and Casual Employees
6	Payment of Wages
7	Additional Rates and Allowances
8	Overtime and Extraordinary Rates
9	Sundays and Public Holidays
10	Duration of Calls
11	Breaks
12	Annual Holidays
13	Bereavement Leave
14	Sick Leave
15	Personal/Carer's Leave
16	Long Service Leave
17	Travelling and Transportation
18	Band Room Accommodation and Storage of Instruments
19	Uniforms
20	Arranging Band Parts and Orchestration
21	Time and Wages Records
22	Right of Entry
23	Preservation of Existing Rates
24	Special Arrangements
25	Recording and Photography
26	Publicity
27	Support Acts
28	Superannuation
29	Leave Reserved
30	Grievance Procedure
31	Anti-Discrimination

SECTION	TITLE
32	Redundancy
32A	Traineeships
33	Area, Incidence and Duration

1. DEFINITIONS

"Call" shall mean an appearance for either a performance or a rehearsal of not less than three hours' duration.

"Break" shall mean periods during calls in which an employee shall not be required to perform musical services but shall count as time worked.

"Weekly Employee" means an employee engaged by the week for at least six calls in a week.

"Week" means the period commencing 12.01 a.m. Sunday and ceasing 12.00 midnight the following Saturday.

"Regular Weekly Part-time Employee" means an employee specifically engaged as such and working for two to five performances each week for a period of not less than four consecutive weeks' duration.

"Casual Employee" means an employee engaged otherwise than as a weekly employee or regular weekly part-time employee.

"Musical Services (Accompanying)" means work performed in opera, ballet, concerts, religious performances, general theatrical entertainment inclusive of pantomime and variety shows, vaudeville shows, vaudeville revue, musical comedy, drama, circuses and other classes of work in which employee musicians are required to accompany artists; provided that, for the purpose of this clause, the word "artist" shall not mean or include a vocalist who regularly works as an integral part of a band or an orchestra.

"Musical Services (Unaccompanying)" means all other live work performed by musicians. This includes talking through music routines and receiving instructions on routines, miming their own pre-recorded music, being directed to adjust equipment, sorting out and placing in order music before and/or after the performance of same.

"Band" or **"Orchestra"** means a combination of two or more musicians.

"Band Leader" means an employee who plays, supervises and directs the band in its duties and includes a "Conductor – Leader" who directs and supervises a band but may not necessarily play in the band.

"Orchestral Leader" means the first or principal violinist or instrumentalist who is required to perform the duties of leader where there is a conductor. An Orchestral Leader shall be recognised as a "Band Leader".

"Principal" or "Principal Instrument" or "Principal Instrumentalist" in any orchestra or band shall mean and include:

- (a) Repetiteur violin (that is, a violin sitting with the leader), principal second violin, principal viola, principal cello, principal bass, principal flute, principal piccolo, principal oboe, principal cor anglais, principal clarinet, principal E flat clarinet, principal bass clarinet, principal bassoon, principal contra bassoon, principal saxophone, principal and third horn, principal cornet, principal trumpet, principal and bass trombone, principal euphonium, principal tuba, principal tympani, principal percussion, principal vibracussion, principal harp, principal piano and principal organ.
- (b) The first of any one or more instruments other than in the foregoing and where eight or more persons are engaged.
- (c) Where there is only one player of any one instrument and where eight or more persons are engaged, the player of that instrument.

"Speciality Entertainment" means work done in, or in connection with entertainment provided by famous or imported artists.

"Union" means The Musicians' Union of Australia, New South Wales District.

"Vocalist" shall mean a person who sings as a soloist and is accompanied by themselves or a band or an orchestra.

"Doubling" shall mean a player of one or more extra instruments. A percussionist shall only receive such an allowance in respect of each of the following instruments: xylophone, vibraphone, tympani and either (but not both) marimba or glockenspiel.

2. TERMS OF ENGAGEMENT

- (i) All employees engaged in terms of this award shall provide their employer with a bona fide address to which all notices can be sent.
- (ii) Terms of engagement for regular weekly part-time employees shall be the same as for weekly employees.

- (iii) A weekly employee shall be employed for at least seven days, details of which shall be confirmed in writing.
- (iv) Weekly employees are entitled to the prescribed weekly wage if they are ready and willing to perform the work, whether the employee is required to perform such work or not. This provision shall apply to all engagements, open air or not.
- (v) Weekly employees are entitled to 14 days' notification of any alterations to a weekly engagement for which a lower weekly wage is prescribed.
- (vi) Where the employment of a weekly employee is terminated other than on the last working day of the pay period, he/she shall be paid pro rata the prescribed weekly wage.
- (vii) Where an employee is required by an employer to go on tour, such employee shall be deemed to be in the employment of the employer for at least from the time at which the employee begins to travel on the tour and to remain in such employment at least until he/she finishes travelling on the return from the tour.
- (viii) Where an employee is not expressly engaged as a weekly or regular weekly part-time employee, he/she shall be deemed to be engaged as a casual employee, provided each performance or rehearsal shall not be for less than three hours' duration or payment therefore.
- (ix) Casual Engagements

The employer has the right to specify whether the contract of employment shall be oral or in writing. An oral contract may be confirmed in writing.

The written confirmation shall be deemed to have been received by the addressee on the provision of sworn evidence that the said confirmation was despatched by post, lettergram, facsimile, hand delivery or other recognised means.

- (x) Notwithstanding anything elsewhere contained in this award, an employer may, in the case of any weekly employee, deduct payment of wages on any one day on which an employee cannot be usefully employed because of:
 - (1) Any strike;
 - (2) any breakdown of machinery;
 - (3) any stoppages of work unavoidable by the employer.

3. TERMINATION OF EMPLOYMENT

- (i) (a) The employment of a weekly or weekly part-time employee can only be terminated on either side by at least seven days' written notice of termination.
- (b) In the case of a season in a theatre, by notice plainly posted on the call board at least 14 days prior to the conclusion of production.
- (ii) For a casual employee, if an engagement which has been made is cancelled by the employer at a time which is less than 14 days prior to the date of the engagement for which the employee was engaged, the employee shall receive payment in full.

Cancellation of all engagements shall be in writing delivered to the address notified by the employee, in the terms of subclause (i) of clause 2, Terms of Engagement. Cancellation may also be in the form of telex, telegram, or facsimile and notice will be deemed to have been given on the day it was sent by the employer.

Where cancellation is delivered in the form of lettergram, telex, facsimile, recognised courier service, registered or certified mail, such notice will be deemed to have been effective on the day it was despatched; provided verification of such dispatch may be requested by the union.

Neither statutory declarations nor affidavits will be acceptable verification.

- (iii) Employees engaged in "Speciality Entertainment" shall be entitled to the same provisions as casual employees.
- (iv) Nothing in this award shall affect any legal right to dismiss without notice an employee, whether on tour or not, for malingering, inefficiency, neglect of duty or misconduct. In the case of such dismissal, wages or other moneys or allowances due under this award shall be payable for the employment up to but not after the time of dismissal.

4. WAGE RATES - WEEKLY EMPLOYEES

- (i) The minimum weekly rates of pay for all employees as defined in this award shall be the hourly rate set out in Table 1 Rates of Pay, of Part B, Monetary Rates (with effect from the dates

specified in Table 1), multiplied by the number of hours worked with a minimum of three hours for each call.

- (ii) In addition to the minimum weekly rates prescribed in subclause (i) of this clause, an employee employed to provide musical services (accompanying) as set out in clause 1, Definitions, shall be paid an amount of five per cent of the minimum weekly rate so long as he/she is so employed.
- (iii) The rates of pay in this award include all arbitrated safety net adjustments and the adjustments payable under the State Wage Case of May 2003 and May 2004. These adjustments may be offset against:
 - (a) any equivalent over award payments; and/or
 - (b) award wage increases since 29 May 1991 other than safety net, State Wage Case and minimum rates adjustments.

5. WAGE RATES - REGULAR WEEKLY PART-TIME EMPLOYEES AND CASUAL EMPLOYEES.

- (i) Regular Weekly Part-time

The minimum rate of pay for all regular weekly part-time employees as defined in this award shall be the total minimum rate prescribed in subclause (i) of clause 4, Wage Rates - Weekly Employees, plus ten per cent, with a minimum of three hours for each call.

- (ii) Casual

The minimum rate of pay for all casual employees as defined in this award shall be the total minimum rate prescribed in subclause (i) of the said clause 4, plus 20 per cent, with a minimum of three hours for each call.

- (iii) Accompanying

In addition to the minimum rates prescribed in subclauses (i) and (ii) of this clause a regular weekly part-time and a casual employee employed to provide musical services (accompanying) as set out in clause 1, Definitions, shall be paid an amount of five per cent of the minimum hourly rate so long as he/she is employed.

6. PAYMENT OF WAGES

- (i) Weekly and Regular Weekly Part-time Employees - All wages, including overtime, shall be paid on one day of the week, not later than Thursday.

Where a public holiday falls on a Friday, wages shall be paid on one day of the week not later than Wednesday, provided that accrued overtime payment shall be made not later than the week following the week in which it was worked.

Employees who are paid their wages at any time other than during working hours, if kept waiting for more than 15 minutes at the employer's premises, shall be paid overtime rates for such waiting time.

- (ii) Casual Employees

All moneys due under this award to a casual employee shall be paid on completion of the work or, by mutual consent, weekly.

- (iii) Electronic Funds Transfer

The employer may pay by means other than cash, that is by cheque or electronic funds transfer into an account nominated by the employee. Such payment to a casual employee shall be made on the next bank-trading day after the performance or, by mutual consent, weekly.

7. ADDITIONAL RATES AND ALLOWANCES

- (i) Soloist - appropriate rate plus 17.5 per cent.
- (ii) Principal - appropriate rate plus 12.5 per cent.
- (iii) (a) Band Leader (two musicians) - appropriate rate plus 20 per cent.
(b) Band Leader (three or more musicians) - appropriate rate plus 33.33 per cent.
- (iv) Speciality Entertainment - appropriate rate plus 66 and two-thirds per cent.
- (v) Organist - appropriate rate plus 20 per cent.
- (vi) Doubling (per additional instrument per call)

- (a) if supplied by the musician an amount as set out in Item 1 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates;
 - (b) if supplied by the employer an amount as set out in Item 2 of Table 2.
- (vii) Vocalist - an additional amount per call as set out in Item 3 of Table 2.
- (viii) Music where an employee is required to supply his/her own music:
- (a) Weekly and part-time employees an amount per week as set out in Item 4 of Table 2.
 - (b) Casual employee an amount per call as set out in Item 5 of Table 2.

(ix) Refreshment

Where an engagement is for four hours or more and meals are served on the premises, an employee shall, while on duty, be entitled to a meal, free of cost, whenever the venue is providing such meals. In lieu, the employer may make payment of an amount as set out in Item 6 of Table 2.

When, in addition to the ordinary evening call, an employee takes part in an intermediate call commencing at between 4.30 p.m. and 6.30 p.m. a meal allowance of an amount as set out in the said Item 6 shall be paid. Tea or coffee shall also be provided.

(x) Set Up

Where it is necessary for a drummer or an electronic instrumentalist (including keyboards, electric and bass guitars) to set up their equipment, an additional allowance equal to 15 minutes at the appropriate rate shall apply.

(xi) P. A. Allowance

Employees providing a Public Address System

- (a) Up to 100 watts - an amount as set out in Item 7 of Table 2.
- (b) Over 100 watts - an amount as set out in Item 7 of Table 2.

8. OVERTIME AND EXTRAORDINARY RATES

- (i) All time worked on Monday to Saturday, inclusive, in excess of the prescribed time of any call, that is three hours, shall be paid for at the rate of time and one-half for the first three hours and double time thereafter. Provided that work performed after 12 midnight shall be paid for at double the appropriate ordinary rate.
- (ii) Any call in excess of two worked on any one day shall be paid for at the rate of time and a half.
- (iii) Overtime payments payable under this clause shall be made in respect of each quarter hour or part thereof, provided that where the time limit of a call is exceeded by six minutes or less such time shall not be counted for the purpose of this clause.
- (iv) If an employee is directed to appear at a call which commences within one hour of the conclusion of a call at which such employee has appeared, the rate of pay for the second call will be calculated at the overtime rate of time and one-half unless there has been a complete change of audience between such two calls.

9. SUNDAYS AND PUBLIC HOLIDAYS

- (i) Except as otherwise provided in this award, all work performed on Sundays shall be paid for at double the appropriate rate payable for work performed on ordinary days.
- (ii) Public Holidays
 - (a) The day or days upon which the following holidays fall, or the days on which such holidays are observed, shall be holidays for the purpose of this award:

Christmas Day, Boxing Day, New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Queen's Birthday, Labour Day and any other day or days proclaimed or gazetted as public holidays for the State.
 - (b) All work performed on public holidays as set out above shall be paid for at two and a half times the appropriate rate payable for work performed on ordinary days.
 - (c) In the case of weekly employees or regular weekly part-time employees, if by reason of any of the aforesaid

holidays being a holiday, no work is done thereon, employee shall suffer no deduction in pay.

10. DURATION OF CALLS

- (i) Subject to overtime provisions the duration of a call shall not exceed three hours, and shall include all intervals and breaks as time worked.
- (ii) A call shall be deemed to commence at the time notified by the employer to the employee as the commencement time or, if no such time be notified, to have started at the time advertised for the commencement of the call but in either case, if all members of the band or orchestra are not present and ready to start at such time, the call shall be deemed to commence only when the band or orchestra actually starts playing.
- (iii) Notwithstanding the provisions above, if a sound balance commences more than one and a half hours prior to the performance, at the direction of the employer, it shall count as a separate call.

11. BREAKS

- (i) In addition to normal meal breaks all musicians shall be entitled to breaks aggregating not less than 15 minutes in each hour of performance.
- (ii) A performance shall not extend beyond one hour and 45 minutes without a break.
- (iii) Breaks between calls shall be of at least one hour's duration but shall not count as time worked.

12. ANNUAL HOLIDAYS

See Annual Holidays Act 1944.

13. BEREAVEMENT LEAVE

- (i) An employee, other than a casual employee, shall be entitled to two days bereavement leave without deduction of pay, for the purpose of making arrangements for and/or attending the

funeral, up to and including the day of the funeral, on each occasion of the death of a person as prescribed in subclause (iii) of this clause.

- (ii) The employee must notify the employer as soon as practicable of the intention to take bereavement leave and will provide to the satisfaction of the employer proof of death.
- (iii) Bereavement leave shall be available to the employee in respect to the death of a person prescribed for the purposes of personal/carer's leave as set out in subparagraph (ii) of paragraph (c) of subclause (1) of clause 15, Personal/Carer's Leave, provided that, for the purpose of bereavement leave, the employee need not have been responsible for the care of the person concerned.
- (iv) An employee shall not be entitled to bereavement leave under this clause during any period in respect of which the employee has been granted other leave.
- (v) Bereavement leave may be taken in conjunction with other leave available under subclauses (2), (3), (4) and (5) of the said clause 15. In determining such a request, the employer will give consideration to the circumstances of the employee and the reasonable operational requirements of the business.

14. SICK LEAVE

- (i) All weekly and regular part-time weekly employees shall, subject to the production of a medical certificate or other evidence satisfactory to the employer, be entitled to one week's sick leave in each year of service on full pay.
- (ii) When an employee is on workers' compensation, he/she shall not be entitled to sick leave on full pay. However, after the first 26 weeks of an ongoing compensable disability, an employer shall pay the employee who has sick leave entitlement under this clause the difference between the amount received as workers' compensation and full pay. The monies paid by an employer shall be calculated as hourly payments and shall then be deducted from an employee's sick leave entitlement.
- (iii) If the full period of sick leave is not taken in any year, the whole or any untaken portion shall be cumulative from year to year. Nevertheless, an employer shall not be bound to pay for more than five weeks' sick leave in any one year of service or to credit an employee for sick leave which accrued more than four years before the end of the last completed year of service.

- (iv) Provided that, after the first single day's absence of an employee in any one year, the employer may require, in respect of any further single day's absence, the production of a medical certificate or other evidence satisfactory to the employer.

15. PERSONAL/CARER'S LEAVE

- (1) Use of Sick Leave
 - (a) An employee, other than a casual employee, with responsibilities in relation to a class of person set out in subparagraph (ii) of paragraph (c), who needs the employee's care and support, shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement, provided for in clause 14, Sick Leave, for absences to provide care and support for such persons when they are ill. Such leave may be taken for part of a single day.
 - (b) The employee shall, if required, establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person. In normal circumstances, an employee must not take carer's leave under this subclause where another person has taken leave to care for the same person.
 - (c) The entitlement to use sick leave in accordance with this subclause is subject to:
 - (i) the employee being responsible for the care of the person concerned; and
 - (ii) the person concerned being:
 - (a) a spouse of the employee; or
 - (b) a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
 - (c) a child or an adult child (including an adopted child, a step child, a foster child or

an ex nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or

(d) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or

(e) a relative of the employee who is a member of the same household, where for the purposes of this subparagraph:

1. **"relative"** means a person related by blood, marriage or affinity;

2. **"affinity"** means a relationship that one spouse because of marriage has to blood relatives of the other; and

3. **"household"** means a family group living in the same domestic dwelling.

(d) An employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and that person's relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

(2) Unpaid Leave for Family Purpose

An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a member of a class of person set out in subparagraph (ii) of paragraph (c) of subclause (1) who is ill.

(3) Annual Leave

(a) An employee may elect with the consent of the employer, subject to the *Annual Holidays Act 1944*, to take annual leave not exceeding five days in single day periods or part thereof, in any calendar year at a time or times agreed by the parties.

- (b) Access to annual leave, as prescribed in paragraph (a) of this subclause, shall be exclusive of any shutdown period provided for elsewhere under this award.
 - (c) An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.
- (4) Time Off in Lieu of Payment for Overtime
- (a) An employee may elect, with the consent of the employer, to take time off in lieu of payment for overtime at a time or times agreed with the employer within 12 months of the said election.
 - (b) Overtime taken as time off during ordinary time hours shall be taken at the ordinary time rate, that is an hour for each hour worked.
 - (c) If, having elected to take time as leave in accordance with paragraph (a) of this subclause, the leave is not taken for whatever reason payment for time accrued at overtime rates shall be made at the expiry of the 12-month period or on termination.
 - (d) Where no election is made in accordance with the said paragraph (a), the employee shall be paid overtime rates in accordance with the award.
- (5) Make-up Time
- (a) An employee may elect, with the consent of the employer, to work "make-up time", under which the employee takes time off ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the award, at the ordinary rate of pay.
 - (b) An employee on shift work may elect, with the consent of the employer, to work "make-up time" (under which the employee takes time off ordinary hours and works those hours at a later time), at the shift work rate, which would have been applicable to the hours taken off.

16. LONG SERVICE LEAVE

See *Long Service Leave Act 1955*.

17. TRAVELLING AND TRANSPORTATION

- (i) An employee, when travelling on duty, shall be provided by the employer with an economy class return airfare.
- (ii) Where no flight is available, transport shall be by air-conditioned coach or first class rail. Should such rail travel be at night employees shall be provided with sleeping accommodation or, if sleeping accommodation is not provided, the employee shall be paid in cash the difference between the standard provided and first class sleeping accommodation.
- (iii) When an employee is required to travel on the business of his/her employer and is unable to return home each night:
 - (a) The employee shall be entitled to single room accommodation of modern motel standard, including breakfast. The employer shall also pay to the employee an amount per day as set out in Item 8 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, as an allowance for other meals. An employer shall, however, have the option of consulting the State Secretary of the union with a view to entering into an alternative arrangement.
 - (b) Each employee on tour shall be paid an amount per week as set out in Item 9 of Table 2 in addition to the other allowances.
 - (c) Where an employee is travelling by train to the engagement and meals are available, the employee shall be paid an allowance of an amount as set out in Item 10 of Table 2 per day.
- (iv) When an employee is engaged to be employed for a continuous period of at least 13 weeks in the one city or town and is not employed with a view to performing on tour either there or elsewhere, he/she shall only be entitled to the allowances under paragraphs (a) and (b) of subclause (iii) of this clause for three weeks in respect of his/her stay after arriving in the said city or town.
- (v) The employer shall transport or pay the reasonable costs of transporting the double bass or drums or other bulky instruments when they are to be used for the purpose of employment.
- (vi) Where a casual employee is engaged and the ordinary public transport fare for return transit from the post office of the city or

town where such employee is engaged to the place of employment is more than \$5.60 the employer shall pay the reasonable cost of such return transit. Where public transport is not available, the provision of subclause (ix) of this clause shall apply.

- (vii) If an employee is required by his/her employer to travel on Sunday such employee shall, unless paid in pursuance of this award for working on the said Sunday, be paid an amount as set out in Item 11 of Table 2, in addition to the allowance elsewhere prescribed by this award.
- (viii) If an employee is detained at the place of employment by the employer to a time too late to travel by the last train or bus to his/her home, the employer shall provide proper transportation.
- (ix) Where an employee agrees at the request of the employer to use his/her own motor vehicle or motorcycle, the employee shall be paid an allowance of an amount per kilometre as set out in Item 12 of Table 2.

18. BAND ROOM ACCOMMODATION AND STORAGE OF INSTRUMENTS.

- (i) Where practicable, a band room with adequate seating accommodation, air conditioned where air conditioning plant is provided for the premises, together with suitable locker and lavatory accommodation, shall be provided by the employer where musicians are regularly employed.
- (ii) There shall be a proper entrance and exit to the band performance area.
- (iii) Where the employer agrees to the storage of instruments, he/she shall accept responsibility for safe custody thereof.
- (iv) If, as a result of negligent supervision of the venue, an employee's equipment is damaged the employer shall indemnify the employee against such loss or damage; provided that such loss or damage does not arise as a result of negligence on the part of the employee.

19. UNIFORMS

Where an employee is directed to wear a special uniform (other than evening dress), such uniform shall be supplied by the employer and

shall be clean and in good order, and the cost of repairs and maintenance shall be paid by the employer.

20. ARRANGING BAND PARTS AND ORCHESTRATION

The rates prescribed by this award do not include any amounts to be paid to any musician for arranging band parts or doing any orchestration.

21. TIME AND WAGES RECORDS

See section 298 of the *Industrial Relations Act 1996*.

22. RIGHT OF ENTRY

See section 298 of the *Industrial Relations Act 1996*.

23. PRESERVATION OF EXISTING RATES

This award is made on the understanding that the salaries existing for employees at the date on which this award takes effect shall not be reduced merely as a consequence of the coming into operation of this award.

24. SPECIAL ARRANGEMENTS

Notwithstanding the definition of "Call", in clause 1, Definitions, where the New South Wales District Committee of the union agrees in writing with an employer that for special reasons rates and/or conditions as prescribed in this award should not apply, altered rates and/or conditions may be agreed upon between the parties. Such altered rates and/or conditions shall apply to the specified establishment(s) for which written application has been made. Such agreement shall be in writing, and signed by both parties.

25. RECORDING AND PHOTOGRAPHY

- (a) Engagement under the terms of this award is for live performance only. Recording of a live production by any means

whatsoever is expressly prohibited unless agreement as to terms and conditions is reached between the employer, employee and the union.

- (b) The photographing, for commercial purposes, of employees is not permitted without the prior consent of the employee. If agreed, all photographic work will be within parameters established by the employee.

26. PUBLICITY

The publicity of all acts shall be the employer's responsibility. All costs associated with such publicity shall be met by the employer.

In the case of a cancellation of an act, the employer shall be responsible to remove all publicity and withdraw all advertising and to make public notice of such cancellation.

27. SUPPORT ACTS

Notwithstanding the provisions contained elsewhere in this award as to rates of pay, and subject to the written consent of the union, the casual rate for one call can be reduced to \$40.00 per person where:

- (a) The musicians are billed as support entertainment to a major act.
- (b) The contracted playing time does not exceed one 45-minute call (total attendance time not to exceed 1.25 hours).
- (c) All lights, public address system, etc., are provided and set up for the musician(s) call at no charge.
- (d) The major act is not imported.
- (e) The total entertainment budget for the various acts does not exceed \$2,000.

28. SUPERANNUATION

- (i) The subject of superannuation is dealt with extensively by federal legislation including the *Superannuation Guarantee (Administration) Act 1992 (Cth)*, the *Superannuation Industry (Supervision) Act 1993*, the *Superannuation (Resolution of*

Complaints) Act 1993 (Cth), and s124 of the Industrial Relations Act 1996. The legislation, as varied from time to time, governs the superannuation rights and obligations of the parties.

- (ii) The employer shall be a participating employer in any of the following funds:
 - (a) In the case of employees in registered clubs engaged on a regular basis, the Club Plus Superannuation Scheme;
 - (b) Just Super; or
 - (c) Such other funds that comply with the requirements of the legislation contained in subclause (i) above,

and shall participate in accordance with the Trust Deed of that fund.

- (iii) **"Ordinary Salary"** means:
 - (a) Where the employee is engaged on a weekly basis, the employee's usual weekly earnings, including loadings and penalty payments paid on a regular basis, but excluding overtime and any other penalties and allowances paid on an irregular basis such as travel, meals or wardrobe allowances and the like or annual leave loading.
 - (b) Where an employee is engaged on a casual basis, the salary negotiated for the engagement including the casual loading provided for under this award but excluding overtime and any allowances such as travel, meals or wardrobe allowances and the like or annual leave loading.
 - (c) Provided that notwithstanding paragraphs (a) or (b) of this subclause, ordinary salary shall be deemed not to exceed the amount of \$1,560 per employee per engagement, such amount to be adjusted in line with movements in wages under this award.

- (iv) The employer of an employee regularly employed in the industry shall, subject to the provisions of this clause, be required to make a superannuation contribution on behalf of the employee of an amount equivalent to 3 per cent of the employee's ordinary salary to the trustees of the applicable superannuation scheme, provided that this requirement shall not apply to employees performing within Australia who are normally resident outside Australia.

- (v) Enrolment
 - (a) The employer shall establish at the time of engagement whether the employee is a member of an applicable superannuation scheme, and if the employee is not a member and/or shows no proof of such membership, an application form shall be offered to the employee at that time.
 - (b) The employee shall be required to complete fully the necessary application form to become a member of the applicable fund in order to be entitled to the contributions prescribed in subclause (ii) of this clause.
- (vi) Superannuation contributions remain payable pursuant to this clause, notwithstanding that a performer is absent from work on approved sick leave, annual leave, long service leave or other approved paid leave, but excluding absence on workers' compensation.

29. LEAVE RESERVED

Leave is reserved to the union to apply as it may be advised to remove clause 27, Support Acts.

30. GRIEVANCE PROCEDURE

Where an individual or group covered by this award has a grievance with their employer, the following steps will be followed in an attempt to alleviate the grievance:

- (i) The employee(s) may be represented by The Musicians' Union of Australia, New South Wales District.
- (ii) The employee(s) will notify (in writing or otherwise) the employer as to the substance of the grievance, request a meeting with the employer for bilateral discussions and provide an outline of the remedy sought.
- (iii) The grievance will initially be dealt with as close to its source as possible i.e., with the Entertainment Manager or equivalent.
- (iv) If resolution at this level is unsuccessful, there will be graduated steps for further discussion and resolution at higher levels of authority.

- (v) Reasonable time limits are to be allowed for discussion at each level of authority.
- (vi) Following discussions, the employer must provide a response to the employee's grievance if the matter has not been resolved, including reasons for not implementing any proposed remedy.
- (vii) Normal work will continue while the grievance procedure is being followed.
- (viii) When discussions at all levels of authority have failed to resolve the grievance, either party may, at this stage, seek the assistance of the Industrial Relations Commission of New South Wales to resolve the grievance.

Disputes Avoidance Procedure

- (ix) The employer may be represented by an industrial organization of employers and the employees may be represented by The Musicians' Union of Australia, New South Wales District.
- (x) A question, dispute or difficulty must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at higher levels of authority.
- (xi) Reasonable time limits are to be allowed for discussion at each level of authority.
- (xii) While the disputes avoidance procedure is being followed, normal work must continue.
- (xiii) If the dispute in question is not resolved it may be referred to the Industrial Relations Commission of New South Wales for determination.

31. ANTI-DISCRIMINATION

It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act* 1996 to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity and age.

It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects.

Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.

Nothing in this clause is to be taken to affect:

- any conduct or act which is specifically exempted from anti-discrimination legislation;
- offering or providing junior rates of pay to persons under 21 years of age;
- any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
- a party to this award from pursuing matters of unlawful discrimination in any State or Federal jurisdiction.

This clause does not create legal rights or obligations in addition to those imposed upon the parties by legislation referred to in this clause.

32. REDUNDANCY

(i) Application

- (a) This clause shall apply in respect of full-time and part-time employees.
- (b) This clause shall only apply to employers who employ 15 or more employees immediately prior to the termination of employment of employees.
- (c) Notwithstanding anything contained elsewhere in this clause, this clause shall not apply to employees with less than one year's continuous service and the general obligation on employers shall be no more than to give such employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.
- (d) Notwithstanding anything contained elsewhere in this clause, this clause shall not apply where employment is terminated as a consequence of conduct that justifies

instant dismissal, including malingering, inefficiency, neglect of duty or misconduct, or in the case of casual employees, apprentices or employees engaged for a specific period of time or for a specified task or tasks or where employment is terminated due to the ordinary and customary turnover of labour.

(ii) Introduction of Change

(a) Employer's duty to notify

- (1) Where an employer has made a definite decision to introduce major changes in production, program, organization, structure or technology that are likely to have significant effects on employees, the employer shall notify the employees who may be affected by the proposed changes and the Union to which they belong.
- (2) "Significant effects" include termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required, the elimination or diminution of job opportunities, promotion opportunities or job tenure, the alteration of hours of work, the need for retraining or transfer of employees to other work or locations and the restructuring of jobs.

Provided that where the award makes provision for alteration of any of the matters referred to herein, an alteration shall be deemed not to have significant effect.

(b) Employer's duty to discuss change

- (1) The employer shall discuss with the employees affected and the union to which they belong, inter alia, the introduction of the changes referred to in paragraph (a) above, the effects the changes are likely to have on employees and measures to avert or mitigate the adverse effects of such changes on employees, and shall give prompt consideration to matters raised by the employees and/or the Union in relation to the changes.
- (2) The discussion shall commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in paragraph (a) of this subclause.

- (3) For the purpose of such discussion, the employer shall provide to the employees concerned and the Union to which they belong, all relevant information about the changes including the nature of the changes proposed, the expected effect of the changes on employees and any other matters likely to affect employees, provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer.

(iii) Redundancy

(a) Discussions before termination

- (1) Where an employer has made a definite decision that employer no longer wishes the job the employee has been doing to be done by anyone pursuant to subparagraph (1) of paragraph (a) of subclause (ii) above, and that decision may lead to the termination of employment, the employer shall hold discussions with the employees directly affected and the union to which they belong.
- (2) The discussions shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provision of subparagraph (1) of this paragraph and shall cover, inter alia, any reasons for the proposed terminations, measures to mitigate any adverse effect of any termination on the employees concerned.
- (3) For the purposes of the discussion the employer shall, as soon as practicable, provide to the employees concerned and the union to which they belong, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of workers normally employed and the period over which the terminations are likely to be carried out. Provided that any employer shall not be required to disclose confidential information the disclosure of which would adversely affect the employer.

(iv) Termination of employment

(a) Notice for changes in production, programme, organization or structure.

This subclause sets out the notice provisions to be applied to terminations by the employer for reasons arising from “production”, “programme”, “organization” or “structure” in accordance with subclause (ii)(a)(1) above.

(1) In order to terminate the employment of an employee the employer shall give to the employee the following notice:

Period of continuous service	Period of Notice
Less than 1 year	1 week
1 year and less than 3 years	2 weeks
3 years and less than 5 years	3 weeks
5 years and over	4 weeks

(2) In addition to the notice above, employees over 45 years of age at the time of giving of the notice with not less than two years continuous service, shall be entitled to an additional weeks notice.

(3) Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment may be terminated by part of the period of notice specified and part payment in lieu thereof.

(b) Notice for technological change

This subclause sets out the notice provisions to be applied to terminations by the employer for reasons arising from “technology” in accordance with subclause (ii)(a)(1) above:

(1) In order to terminate the employment of an employee the employee shall give to the employee 3 months notice of termination.

(2) Payment in lieu of the notice above shall be made if the appropriate notice period is not given. Provided that employment may be terminated by

part of the period of notice specified and part payment in lieu thereof.

- (3) The period of notice required by this subclause to be given shall be deemed to be service with the employer for the purposes of the *Long Service Leave Act 1955*, the *Annual Holidays Act 1944*, or any act amending or replacing either of these acts.

(c) Time off during the notice period

- (1) During the period of notice of termination given by the employer, an employee shall be allowed up to one days time off without loss of pay during each week of notice, up to a maximum of five weeks, for the purposes of seeking other employment.
- (2) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or the employee shall not receive payment for the time absent.

(d) Employee leaving during the notice period

If the employment of an employee is terminated (other than for misconduct) before the notice period expires, the employee shall be entitled to the same benefits and payments under this clause had the employee remained with the employer until the expiry of such notice. Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.

(e) Statement of employment

The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee a written statement specifying the period of the employee's employment and the classification of or type of work performed by the employee.

(f) Notice to Centrelink

Where a decision has been made to terminate employees, the employer shall notify Centrelink thereof as soon as possible giving relevant information including the number and categories of the employees likely to be

affected and the period over which the terminations are intended to be carried out.

(g) Centrelink Employment Separation Certificate

The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee an "Employment Separation Certificate" in the form required by Centrelink.

(h) Transfer to lower paid duties

Where an employee is transferred to lower paid duties for reasons set out in paragraph (a) of subclause (ii) above, the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to if the employee's employment had been terminated, and the employer may, at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former ordinary time rate of pay and the new ordinary time rate for the number of weeks notice still owing.

(v) Severance Pay

(a) Where the employment of an employee is to be terminated pursuant to subclause (iv) above, subject to further order of the Industrial Relations Commission, the employer shall pay the following severance pay in respect of a continuous period of service:

(1) If an employee is under 45 years of age, the employer shall pay in accordance with the following scale:

Years of Service Of entitlement	Under 45 years of age
Less than 1 year	Nil
1 year and less than 2 years	4 weeks
2 years and less than 3 years	7 weeks
3 years and less than 4 years	10 weeks
4 years and less than 5 years	12 weeks
5 years and less than 6 years	14 weeks
6 years and over	16 weeks

- (2) If an employee is 45 years of age or over, the employer shall pay in accordance with the following scale:

Years of Service Of entitlement	45 years of age and over
Less than 1 year	Nil
1 year and less than 2 years	5 weeks
2 years and less than 3 years weeks	8.75
3 years and less than 4 years weeks	12.5
4 years and less than 5 years	15 weeks
5 years and less than 6 years weeks	17.5
6 years and over	20 weeks

- (3) **“Weeks pay”** means the all-purpose rate of pay for the employee concerned at the date of termination and shall include, in addition to the ordinary rate of pay, over award payments, shift penalties and allowances provided for in the relevant award.

(b) Incapacity to pay

Subject to an application by the employer and further order of the Industrial Relations Commission, an employer may pay a lesser amount (or no amount) of severance pay than that contained in paragraph (a) above.

The Industrial Relations Commission shall have regard to such financial and other resources of the employer concerned as the Commission thinks relevant, and the probable effect paying the amount of severance pay in paragraph (a) above will have on the employer.

(c) Alternative Employment

Subject to an application by the employer and further order of the Industrial Relations Commission, an employer may pay a lesser amount (or no amount) of severance pay than that contained in paragraph (a)

above if the employer obtains acceptable alternative employment for an employee.

(vi) Savings Clause

Nothing in this award shall be construed so as to require the reduction or alteration of more advantageous benefits or conditions which an employee may be entitled to under any existing redundancy arrangement, taken as a whole, between the Union and any employer bound by this award.

32A. TRAINEESHIPS

As to traineeships for persons covered by this award, see the Training Wage (State) Award 2002 published September 2003 (341 I.G. 569) or any successor thereto.

33. AREA, INCIDENCE AND DURATION

- (a) This award shall apply to all persons employed as musicians throughout the State (excluding the County of Yancowinna), such persons being instrumental performers and any other persons who are employed to provide musical services including, but not limited to, any type of service which is directly concerned with live music or musicians or the production of musical sound, such as arrangers and copyists of music, vocalists, conductors and others employed as an integral part of a band or orchestra.
- (b) This award is made following a review under section 19 of the *Industrial Relations Act* 1996 and rescinds and replaces the Musicians (Live Performance) (State) Award published 20 January 1995 (283 I.G. 307), and all variations thereof.
- (c) The award published 20 January 1995 took effect from the beginning of the first pay period to commence on 1 April 1994 and the variations thereof incorporated herein on the dates set out in the attached Schedule A
- (d) The changes made to the award pursuant to the Award review pursuant to section 19(6) of the *Industrial Relations Act* 1996 and Principle 26 of the principles for Review of Awards made by the Industrial Relations Commission of New South Wales on 18 December 1998 (308 I.G. 307) are set out in the attached Schedule B and take effect on 23 August 2001.

- (e) This award remains in force until varied or rescinded, the period for which it was made having already expired.

SCHEDULE A

Award and Variations Incorporated

Clause	Award / Variation Serial No.	Date of Publication	Date of taking effect	Industrial Gazette	
				Vol	Page
Award	B4325	20/01/95	Fppf 1/4/94	283	307
(No.)	B6807	28/5/99	Fppf 17/9/98	309	551
	B6807	28/5/99	Fppf 17/3/99	309	551
	B6807	28/5/99	Fppf 17/6/99	309	551
	B6807	28/5/99	Fppf 17/9/98	309	552

SCHEDULE B

Changes made on Review

Date of effect:

- (1) Provisions modified

Award Musicians' (Live Performance) (State) Award	Clause	Previous form of clause Last published at:	
		IG Vol	Page
	2	283	309
	3(i)	283	310
	7(i)	283	313
	10(ii)(b)	283	315
	10(ii)(c)	283	315
	14	283	316
	17(v)	283	317
	28	283	320

(2) Provisions removed

Award Musicians' (Live Performance) (State) Award	Clause	Previous form of clause Last published at:	
		IG Vol	Page
	1	283	308
	5(iii)	283	312
	6A	283	313
	17(vi)	283	318
	20	283	319
	24	283	320