

# Part 4: Fixed-term contracts exceptions and limitations

*Fair Work Regulations 2009*

October 2024



*Image: Médée  
Pinchgut Opera  
Photo Credit: Cassandra Hannagan*

# What is a fixed-term contract?

A fixed-term employment contract can be:

## Limited by a specific timeframe

- Sets an exact employment commencement date and end date – e.g., 1 January 2023 to 31 December 2023

## Sets an outer-limit timeframe

- Sets an end date that allows for termination with notice, prior to the end date

## For an ‘identifiable period’

- New expression in the *Secure Jobs Better Pay Act* – after a set date or a period of time or a season.

LPA RESOURCES: [\*FWO Fixed term contract Information Statement\*](#)

# Limitations on fixed-term contracts

From 6 December 2023 the following limits will apply to the use fixed-term employment contracts:

## The 2-year Rule

- a period of 2 years maximum; or
- a contract cannot provide that it may be renewed so the employee is employed for a fixed-term of more than 2 years; or
- existing contracts cannot provide for an extension of greater than 2 years

## The Consecutive Contract Rule

- the contract is the 3<sup>rd</sup> contract that follows on from 2 previous fixed-term contracts of any length; and
  - The contract is for the same or substantially similar work; and
  - There is “substantial continuity of the employment relationship” between the end of the first contract and the new contract commencing
- Applies only to contracts that are entered into on or after 6 December 2023
- For consecutive contracts, the 2 years includes the time already worked

# Fair Work Regulation – now ceases on 1 November 2024

## Regulation 2.15(5)

*Live performance industry employees*

- (5) For the purposes of paragraph 333F(1)(i) of the Act, a contract entered into by a person and an employee is prescribed if:
- (a) at the time the contract is entered into, the employee is covered by the *Live Performance Award 2020*; and
  - (b) the contract is entered into:
    - (i) on or after 6 December 2023; and
    - (ii) before **1 November 2025**; and
  - (c) the identifiable period (see paragraph 333E(1)(b) of the Act) at the end of which the contract will terminate is not greater than 12 months.

# Fair Work Regulation

**From 1 November 2024, what does this mean if an employee is already on a fixed-term contract?**

- the employee can continue on a current fixed term contract until it expires.
- when the current contract expires:
  - the time already worked will be counted; and
  - the number of consecutive contracts will be counted

## **AND**

- If the employee has worked for 2 years or more, they will be a permanent employee
- If the employee has already been engaged on two consecutive fixed term contracts, the next contract must be for permanent employment

## **UNLESS**

- the employee enters a new contract before the Regulation ceases to exist
- the role ceases to exist
- another exception applies

# Fair Work Regulation

From 1 November 2024, what does this mean if an employee is already on a fixed-term contract?

## CURRENT FIXED TERM CONTRACT EMPLOYEES

- If the employee enters a new contract before the Regulation ceases to exist, the new fixed term contract:
  - must not be for more than 1 year
- OR**
- if the employee has worked for less than 1 year,
  - the total of their current employment period plus the new fixed term contract or extension must not be for more than 2 years

# Exceptions to the Rules

## Section 333F – Exceptions to the limitations on fixed-term employment contracts:

- performing a distinct and identifiable task involving specialised skills (that the employer does not have)
- apprentices and trainees
- undertaking work during a peak demand period (seasonal)
- undertaking work during emergency circumstances or while another employee is temporarily absent (e.g. parental leave, long service leave, sabbatical, workers compensation)
- earning more than the high-income threshold (currently \$175,000 per year – can be pro-rata)
- engaged in a governance role with a prescribed time-limit under the rules of a corporation or association
- the employment contract is funded in whole or in part by government funding
  - for a period of more than 2 years
  - there are no reasonable prospects that the funding will continue
- the fixed-term contract is permitted under an award (s 333F(h))
- the Minister makes a regulation to exempt certain types of contracts – i.e., to address sector specific arrangements (s 333F(i))

# Live Performance Award

**EXCEPTION: Fixed term contract is permitted under an award**

## 1. PRE-EXISTING EXCEPTIONS

- **Performers, Company Dancers and Musicians\***
  - Run of the play/s contracts (without limitation)
- **Production and Support Staff**
  - Seasonal contracts

## 2. LPA application to the Fair Work Commission (FWC) to vary the *Live Performance Award 2020 (Award)*

- The FWC made a Recommendation, Determination, and Decision
- **Performers (fixed-term contract)**
  - For a single production (a series or one contract greater than 2 year)
  - Multiple productions (a series of contracts up to 2 years)
- **Company Dancers (fixed term)**
  - Level 1 Company Dancers - 3 years
  - All Company Dancers exception to 31 December 2024



# Live Performance Award

**EXCEPTION: Fixed term contract is permitted under an award**

**Production and Support staff (existing exception)**

## **58. Seasonal employees**

**58.1** A seasonal employee is a weekly employee engaged either as full-time or part-time on a fixed term contract.

**58.2** The duration of a seasonal contract will be determined in advance by agreement and the following provisions will apply:

- (a) the contract may be renewed as often and for the time periods as agreed between the employer and employee;
- (b) conditions of employment will be those applying to full-time or part-time employees covered by this award; and
- (c) where a new contract is offered and taken up immediately after the expiry of a previous contract, employment is treated as if it were continuous for entitlement purposes.

# Live Performance Award

**EXCEPTION: Fixed term contract is permitted under an award**

## Performers and Company Dancers (existing exception)

**28.3** A weekly performer or company dancer may be engaged:

....

**(b)** Weekly for the run of play or plays;

## Musicians (existing exception)

**36.1** A musician may be engaged:

**(a)** weekly for the run of the play or plays in a particular place or places, by the call;

# Live Performance Award

**EXCEPTION:** Fixed term contract is permitted under an award

## **NEW CLAUSE: Performers**

### **28A. Weekly employees under fixed term contracts—additional provisions**

[28A inserted by [PR777032\\_ppc\\_16Jul24](#)]

- 28A.1** A weekly performer may be engaged on a series of fixed term contracts, other than for the run of play or plays, if:
- (a) the engagement of the performer under the series of fixed term contracts is for the purpose of a single production; or
  - (b) the total period of service under the series of fixed term contracts does not exceed two years.

# Live Performance Award

**EXCEPTION: Fixed term contract is permitted under an award**

## **NEW CLAUSES: Company Dancers**

**28A.2** A weekly company dancer may be engaged under a fixed term contract, or a series of consecutive fixed term contracts, if:

- (a) the company dancer is classified on engagement as a Company Dancer Level 1 (Level 7); and
- (b) the total period of operation of the contract or series of contracts does not exceed 3 years.

NOTE: A company dancer may progress to a higher classification in accordance with Schedule A – Classification Definitions during their engagement.

**28A.3** Despite clause 28A.2, a weekly company dancer may be engaged by an employer under a single fixed term contract if:

- (a) the company dancer was an employee of the employer as at 30 June 2024;
- (b) the fixed term contract is entered into on or after 1 July 2024 but before 31 December 2024;
- (c) the period for which the company dancer has been employed by the employer at the time the fixed term contract is entered into is greater than 2 years; and
- (d) the term of the fixed term contract does not exceed 12 months.

# Live Performance Award

**EXCEPTION: Fixed term contract is permitted under an award**

**For how long will the Award exceptions apply?**

- Forever\*

**BUT**

- \*Company dancers at **28A.3 expires on 31 December 2024\*\***

# Q&A

1. How do we define breaks between contracts so we can understand how we can keep staff for multiple tours per year?

# Thank you!

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Amy Shark – Cry Forever Tour  
TEG Live  
Photo Credit: Ben Schewitz