

LPA WEBINAR CONTRACTING PERFORMERS

Focus on run of the play or plays contracts

December 2024



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

The Award or the PCA?

1. LIVE PERFORMANCE AWARD 2020 (Award)

- Industry Award
- Sets minimum standards and conditions
- Parts 1 – 5 Apply to performers
- LPA RESOURCES: [*Award Commentary Live Performance Award 2020; LPA Rates of Pay; FWO Pay Guide*](#)

2. PERFORMERS' COLLECTIVE AGREEMENT 2024-2026 (PCA)

- Multi-employer co-operative Agreement negotiated by LPA and MEAA.
- Framework agreement that sets out wages rates and conditions.
- Used by different employers in their individual workplace or productions.
- Replaces the Award
- LPA Website: [Performers' Collective Agreement](#)
- LPA RESOURCE: [PCA Rates of Pay](#)

What is a performer?

Live Performance Award

2. Definitions

performer is an employee who takes part in a performance and includes an actor, singer, dancer, musician, understudy/swing performer, puppeteer, compere, comedian or any other type of performer.

Performers' Collective Agreement

21.1 Definition of Performer

"Performer" is an Employee who takes part in a performance and includes an actor, singer, dancer, understudy/swing performer, variety Performer, puppeteer, compere, comedian or any other type of performer.

How are performers classified?

Live Performance Award

Live Performance Employee Level 9

Performer Category 1 Grade 1

Performers Collective Agreement

Performer Category 1

Performer Grade 1

(a) A performer with less than 3 years' experience in the entertainment industry who is employed in theatrical productions performing as directed to an existing script or score choreography and who is required to exercise their artistic skills to a professional standard as required. An employee at this level will have appropriate qualifications or be able to demonstrate they possess skills of an equivalent standard.

(b) Indicative tasks:

- (i) acting;
- (ii) singing;
- (iii) dancing;
- (iv) skating;
- (v) aquatic performing;
- (vi) understudying; and
- (vii) any other type of performing.

How is a performers classified?

Live Performance Award

Live Performance Employee Level 9

Performer Category 1 Grade 2

A performer with more than 3 years' experience in the entertainment industry provided that the performer's theatrical engagements over the 3 year period amount to 18 weeks employment or an equivalent amount of work in other areas, who is employed in theatrical productions and performs the same duties as set out above but at a standard above and beyond that of a Performer Category 1 Grade 1.

Performers Collective Agreement

Performer Category 1 Grade 2

Live Performance Employee Level 9

Performer Category 2

Performer Category 1 Grade 2

- (a) A performer who is employed as an act or part of an act in theatrical/live entertainment performances and who is responsible for the primary development of the work to be performed.
- (b) Indicative tasks are:
- (i) as per Category 1; and
 - (ii) tasks relating to the development of the work to be performed, such as but not limited to:
 - developing the script and concept for the performance;
 - selecting the music; and
 - generally determining the content and presentation of the performance.

What about limitations to fixed term contracts?

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;

What about limitations to fixed term contracts?

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.

The Contract



Do I need a deal memo?

What is a deal memo?

- Agreement to make an agreement
- It is not the contract of employment

What should be included in a deal memo?

- “Subject to contract”
- Disclaimer – “should the production proceed the performer will be offered a contract”

Do I have to make a deal memo? No but there are some benefits

- Commits a performer to the production
- Agree on a wage prior to contracting

LPA RESOURCES: [LPA TEMPLATE: Contract Deal memo for a performer](#)

Performer contracts

Types of engagements

- By the week (ongoing weekly basis)
- For the specific/particular period up to and including: <insert commencement and end date>
 - Fixed term contract
- Run of the play or plays
 - For the run of play in <insert venue/city/town and/or towns or states>
 - For the run of play in Australia
 - For the run of play in Australia and New Zealand

LPA RESOURCES: *Contract – Performer Weekly (PCA 2017)* (Schedule 5 of the PCA);
LPA Template Contract – Performers (Live Performance Award 2020)

Permitted fixed term contracts

FOR THE SPECIFIC PERIOD:

For a single production

- a series of contracts or one contract greater than 2 years

Multiple different productions

- a series of consecutive contracts up to 2 years

Run of the play or plays contract

Live Performance Award 2020

2. Definitions

Run of the play or plays

means the period for which an employee's services have been distinctly contracted for in writing, in any Australian location/s, for rehearsal of and performances in a particular production/s and starts on the first day of the employee's rehearsal for the production/s and finishes on the last day or night of the presentation of the production/s in the Australian location/s for which the employee's services were contracted in writing. It includes a return season/s in a place in which a season has already taken place if the employee's engagement is still continuing at the time of the starting date of the return season

Benefits of a run of play contract

1. It is not for a specific period of time

- **flexible end date**
 - there is no need to specify the end date of the production in the contract
- **reduces risk**
 - can close a production earlier than expected

2. It is permitted to be issued without limitation

- permitted by the Award and the PCA without limitation

Terminating a run of play contract

25.3 (b) of the Award 16.2 of the PCA

*In the case of an employee engaged for the run of the play or plays, the employer must give the employee **not less than 3 weeks' notice in writing of the conclusion of the tour, season or run** except in a case where the tour, season or run has occupied 5 weeks or less at the time of the giving of the notice when the period of the notice will be not less than 2 weeks*

Notice Period

Whether or not it is written in the contract of employment:

- Employment period is 6 weeks or more = 3 weeks' notice
- Employment period is 5 weeks or less = 2 weeks' notice

Terminating other performer contracts

25.3 (a) of the Award and 16.2 of the PCA

Except in the case of an employee engaged for a run or a casual, a minimum of 2 weeks' notice of termination is required.

16.4 of the PCA

*In the case of specific engagement for a run of the play or for a **particular period** the ordinary rules of law relating to contracts shall apply and shall be binding on both Employer and Employee.*



What does that mean?

If there is no termination clause = must pay out the whole term of the contract

Issuing run of play contracts?

Filling in the contract template

1 - PART OR PARTS TO BE PLAYED BY THE PERFORMER

The Performer will be employed in the above Play

...

2 - TYPE OF ENGAGEMENT

...

(ii) For the run of the play in:
(venue/city/town and state/cities and/or towns and states)

(iv) For the run of the play in Australia.

(v) For the run of the play in Australia or New Zealand.

Multiple contracts for the same production

WHEN CAN MULTIPLE CONTRACTS BE ISSUED?

- If there is a gap of more than 3 weeks between venues/cities (**3 weeks and one day**)

WHY WOULD I ISSUE MULTIPLE CONTRACTS FOR THE SAME PLAY?

- No payment is required for periods when the performer is not working.

EXAMPLE:

A producer secures 3 venues to show The Sound of Music.

- Lyric Theatre in Sydney from 1 February to 30 March 2025
- QPAC from 8 April to 31 May 2025
- Regent Theatre in Melbourne from 1 July to 31 August 2025

How can contracts be issued?

Multiple contracts for the same production

EXAMPLE:

A producer secures 3 venues to show *The Sound of Music*.

- Lyric Theatre in Sydney from 1 February to 30 March 2025
- QPAC from 8 April to 31 May 2025
- Regent Theatre in Melbourne from 1 July to 31 August 2025

How can contracts be issued?

Contract 1: - TYPE OF ENGAGEMENT

...

- (ii) For the run of the play in: **Lyric Theatre, Sydney and QPAC, Brisbane**
(venue/city/town and state/cities and/or towns and states)
- ~~(iv) For the run of the play in Australia.~~
- ~~(v) For the run of the play in Australia or New Zealand.~~

Multiple contracts for the same production?

EXAMPLE:

A producer secures 3 venues to show *The Sound of Music*.

- Lyric Theatre in Sydney from 1 February to 30 March 2025
- QPAC from 8 April to 31 May 2025
- Regent Theatre in Melbourne from 1 July to 31 August 2025

How can contracts be issued?

Contract 2: - TYPE OF ENGAGEMENT

...

- (ii) For the run of the play in: **Regent Theatre, Melbourne**
(venue/city/town and state/cities and/or towns and states)
- ~~(iv) For the run of the play in Australia.~~
- ~~(v) For the run of the play in Australia or New Zealand.~~

Risks with issuing multiple contracts?

Fail to produce or present (Award cl 25.3(d) and PCA cl 16.6)

- If a performer is contracted, but does not perform any work, and the production is cancelled, the employer must pay:
 - 4 weeks' pay: or
 - If engaged for less than 4 weeks', the number of weeks they are contracted.



THIS APPLIES TO EVERY CONTRACT



What is lay off and when can it be used?

Lay off (cl of the Award and cl 16.11 of the PCA)

The employer will have the right to lay off an employee at the applicable award rate (or rehearsal rate) for no more than **3 weeks in a period of 26 weeks** (pro rata for any period of less than 26 weeks), provided that:

- lay-off time may be accumulated to a total of 3 weeks; and
- a lay-off will only be applied on movement of a production from one theatre to another, except by mutual agreement between the employer and the employee.

Engagement monies

4 - ENGAGEMENT MONIES

(1) Rehearsals

Minimum Rate	\$1,321.12 per week
Loadings	
.....	\$.....per week
.....	\$.....per week
.....	\$.....per week
Total Negotiated Rehearsal Rate	\$ 1,321.12per week

(2)(a) Performance – Exclusive of Sunday Performance

Minimum Rate	\$1321.12per week
Loadings	
.....	\$.....per week
.....	\$.....per week
Personal Margin	\$ 600.00 per week
Total Negotiated Performance Rate	\$1,921.12 per week

(PCA RATES USED – grade 2)

Engagement monies

(2)(b) Performance – Inclusive of Sunday Performance

Minimum Rate	\$.....per week
Loadings	
.....	\$.....per week
.....	\$.....per week
.....	\$.....per week
Total Negotiated Performance Rate	\$.....per week

2)(c) Performance – Inclusive of Two Performance

Minimum Rate	\$.....per week
Loadings	
Second Sunday Performance	\$.....per week
.....	\$.....per week
.....	\$.....per week
Total Negotiated Performance Rate	\$.....per week

What can we include in the loadings?

4 - ENGAGEMENT MONIES

(2)(a) Performance – Exclusive of Sunday Performance

Minimum Rate \$ 1,321.12 per week

Loadings

.....	\$..... per week
Wardrobe allowance (shoes)	\$ 5.89 per week
Swing allowance	\$ 27.52 per week
Meals	\$ 356.29 per week
Incidentals	\$ 110.93 per week
Personal Margin	\$ 500.00 per week
Total Negotiated Performance Rate	\$ 2,321.75 per week

Note: The only loadings to be listed above are those paid on a regular weekly basis. All other loadings or penalties incurred must be paid in addition to the negotiated rate and listed loadings. Superannuation and annual leave entitlements shall be based on the total negotiated rate.

Pay increases

What if the Award or PCA rate increases during the life of the contract?

- If the total negotiated rate is higher than the new Award/PCA rate
 - **NO INCREASE** TO THE PERFORMER IS REQUIRED
- If the total negotiated rate is lower than the new Award/PCA rate
 - **YOU MUST INCREASE THE RATE** PAID TO THE TO THE PERFORMER
 - So that it is at least the same as the new Award/PCA rate
- **THIS SHOULD BE SET OUT IN THE CONTRACT**

Special conditions

What can be included as a special condition?

- Termination clause for fixed term contracts
- Increases to rate of pay will be absorbed by the personal margin
- Exclusivity clauses
- Appearance and fitness clauses
- Medical
- Any specific training required – voice and dialect
- Call/attendance times
- Specific travel matters – e.g. shared accommodation
- Confidentiality
- Intellectual property
- Dressing room allocation
- Comp tickets etc

Recommended not to include as special condition?

- Termination clause for run of play contracts (DON'T DO IT)
- Policies
- Codes of conduct
- Anything that provides a lower pay or condition than is permitted the Award or PCA

Q&A

Thank you!

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