

# Contracts and Codes of conduct

July 2025



*Image: Non-Stop  
Circus Oz  
Photo Credit: Ian Sutherland*

# Agenda

1

The contract of employment

2

Fixed term contracts rules

3

Common drafting errors

4

Codes of Conduct and the contract of employment

5

Questions

# The contract of employment

# Where do you start?

1. Review current contracts
2. National System Employer or State System Employer
3. Award or Agreement – [Award Commentary Live Performance Award 2020](#) (to be updated)  
[Performers' Collective Agreement](#); Company specific EA
4. Position/Role & Classification
5. Type of Employment
6. Rates of Pay – [LPA Rates of Pay; FWO Pay Guide; PCA Rates of Pay](#) (updated 1 July 2025)
7. Date of Commencement
8. Hours & Days of work
9. Travel & Accommodation
10. [Fair Work Information Statements](#)

# Template Contracts of Employment






## LPA Template contracts:

- [Performers](#)
- [Production and Support Employees](#)
- [Casual Crew Collective Agreement \(SYDNEY ONLY\)](#)
- [Award free](#)
- [Contract variations](#)

# Fixed term contract rules

# 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 2024 to 31 December 2024
-  **Sets an outer-limit timeframe**
  - Sets an end date that allows for termination with notice, prior to the end date
-  **Limited by a project**
  - Sets a commencement date and a project end date

# Limitations on fixed-term 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 **entered into on or after 6 December 2023 unless an exception applies**
- For consecutive contracts, the 2 years includes the time already worked



# Breaking the rules

- ✧ **Where a fixed-term contract is made in breach of the new provisions:**
  - An employee will automatically become a permanent employee
  - The end date of the contract will have no effect
  - The employee will retain all the other terms and conditions of their contract and gain access to:
    - entitlements to notice of termination and redundancy (in most cases)
    - access to unfair dismissal proceedings
  - **Penalties may apply**
    - Ordinary contravention – up to \$19,800 for an individual; \$99,000 for a company
    - Serious contravention – up to \$198,000 for an individual and \$999,000 for a company

# Fixed-term contracts – Exceptions?

## Live Performance Award 2020

- **Performers, Company Dancers and Musicians:** runs of play/s contract (without limitation)
- **Performers: fixed term contract**
  - For a single production (a series or one contract greater than 2 years)
  - Multiple productions (a series up to 2 years)
- **Company Dancers: fixed term contract**
  - Level 1 – 3 years
  - All other dancers to 31 December 2024
- **Production and Support Staff:** seasonal fixed term contracts

## Fair Work Act 2009

- 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**
- **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**
- **the Minister makes a regulation to exempt certain types of contracts – i.e., to address sector specific arrangements**

## Fair Work Regulations 2009

- Charity and not-for-profit sector employees to 1 November 2025
- ~~Live Performance Award 2020~~

# EXCEPTION: SEASONAL CONTRACTS permitted under the Award

Production and  
Support staff

- Technical and production employees (Crew)
- Administrative Employees

PERMITTED

Separate seasonal contracts from production to production; city to city; one season to another

- An exception applies: *Clause 58.1 of the Live Performance Award allows production and support staff to be engaged as 'seasonal employees'*
- *A seasonal employee is a weekly employee engaged either as a full time or part time employee on a fixed term contract*
- *A seasonal contract may be renewed as often and for as many times periods as agreed*

# EXCEPTION: “Run of the play or plays” permitted under the Award

**Performers, Company  
Dancers & Musicians**

**Performers, Company Dancers & Musicians engaged on “run of the play or plays” contracts:**

- multiple, consecutive “run of the play a or plays” contracts
- a run of the play or play for 2 years or more

**PERMITTED**

**“Run of the play or plays” contracts and exception applies:**

- Clauses 27.1, 28.3 and 36.1(a) of the *Live Performance Award 2020* which allows:
    - performers,
    - musicians and
    - company dancers
- to be engaged on a “Run of the play or plays”

# EXCEPTION: Fixed term contracts for performers permitted under the Award

Performers  
Company Dancers

Performers, engaged on fixed term contracts  
Company Dancers , engaged on fixed term contracts

## Fixed term contracts exception applies:

PERMITTED

- Clauses 28A.1, 28A.2, 28A.3 of the *Live Performance Award 2020* which allows:
  - Performers
    - For a single production - a series of contracts or one contract greater than 2 years
    - Multiple different contracts – a series of consecutive contracts up to 2 years
  - company dancers
    - Level 1 - fixed term contracts for 3 years

# EXCEPTION: Charity and not-for profit sector permitted under the FW Regulations

Any Employee

Employees of an organisation that is a registered charity under the Australian Charities and Not-for-Profits Act 2012 (ACNC Act) that receives funding for a specific program, project or position

PERMITTED

## Fixed term contracts:

- entered into before 1 November 2025
- the position or project is funded
- work is performed for a specific program or project
- the program or project is for no more than 5 years
- the contract is for around the same period of the program or project
- The funding started on or after 1 November 2024

# Common contracting errors

## DON'T

- Include/incorporate
  - policies/codes of conduct
  - legislation or Awards
- use a vague set-off clauses
- lower pay or condition than the Award or PCA
- multiple fixed term engagements in one contract
- fixed term engagement continue past its end date
- termination clause (or end date) for run of play contracts
- call the contract a service agreement or deal memo
- call the payment (wage/remuneration) a fee or fee for service
- pay annual leave as part of the wage

## DO

- state the applicable award/agreement & classification
- rate of pay
- position or role
- hours and day of work
- type of employment
- term of employment
- termination clause (other than for run of play)
- descriptive set off clause (if required)
- **Think about the next pay increase**



### 3. DUTIES

---

You are required to perform the duties set out in the Position Description at Schedule B, and such other duties that may reasonably be assigned to you from time to time. You agree to:

- (a) perform your duties faithfully and diligently;
- (b) comply with all reasonable and lawful directions issued to you by the Company;
- (c) comply with the Company's policies and procedures (though the policies and procedures are not incorporated as a term of this Contract). Failure to do so may result in disciplinary action, up to and including summary termination of employment;
- (d) not engage in any conduct whatsoever (either during a shift or otherwise) that will, or is likely to, damage the public image and reputation of the Company;
- (e) not engage in conduct or engagements which may constitute a conflict of interest with the primary business of the Company; and
- (f) act in good faith and in the interests of the Company.

SCHEDULE A

Details of employment

Employee	[insert employee name]
Term of Employment	[from [x] date to [x] date]
Position	[insert e.g. Head of Lighting]
Type of Employment	[Full-time/Part-time] Employment for a Fixed Term
Award Classification	[insert – e.g. Live Performance Employee Level 8, Production and Support Staff Level 7]
Primary Work Location	[insert address]
Ordinary Hours of Work	[insert number] hours per week (agreed usual hours) Each shift will be rostered between the hours of 7.00am and 12 midnight Monday to Sunday. [confirm /amend]
Remuneration	<p>\$(insert) minimum weekly rate</p> <p>\$(insert) rostered days off (6<sup>th</sup> day) [DELETE/AMEND AS REQUIRED]</p> <p>\$(insert) overtime and penalty rates [DELETE/AMEND AS REQUIRED]</p> <p>\$(insert) company loading [DELETE/AMEND AS REQUIRED]</p> <p>\$(insert) TOTAL WEEKLY REMUNERATION</p> <p>Your entitlement to superannuation is in addition to your ordinary hourly rate of pay.</p> <p>Any applicable PAYG will be deducted from your remuneration.</p>

6. → REMUNERATION¶

---

6.1 → You will be paid at the hourly rate set out at Schedule A (Remuneration).¶

6.2 → The Remuneration has been calculated to be in excess of any entitlements which may arise under an applicable modern award or other instrument relevant to your employment from time to time. The additional amount includes a set-off payment for any employment-related entitlements provided by or arising under an applicable modern award or other instrument including but not limited to the *Live Performance Award 2020*, the Remuneration is paid in satisfaction of:¶

(a) → Clause 11—minimum rates¶

(b) → Clause 61.1(e)—rostered days off¶

(c) → Clause 63—overtime and penalty rates..¶

(d) → company loading [delete or amend as required] [DELETE OR AMEND AS REQUIRED]¶

6.3 → The Company may also be required to make minimum contributions to your nominated superannuation fund in accordance with relevant [legislation](#).¶

6.4 → Your Remuneration will be paid in fortnightly instalments on a Monday by Electronic Funds Transfer **[confirm]** or such other method as determined by the Company.¶

# The Next Pay Increase

- ✧ **1 July every year**
  - Minimum wages – Awards
  - PCA
- ✧ **Does the current rate of pay absorb the increase? Or does the rate increase on 1 July?**
  - **Depends on how the contract is drafted.**

In general

    - Increases only apply to the minimum rate of pay
    - Enterprise Agreements:
      - Must state that an increase will apply, or
      - the increase makes the Award base rate of pay higher than the rate in the Agreement.

# The Next Pay Increase – Performers

## 4 - REMUNERATION

### (1) Rehearsals

Minimum Rate	\$1,321.12 per week
<b>Loadings</b>	
.....	\$.....per week
.....	\$.....per week
.....	\$.....per week
<b>Total Negotiated Rehearsal Rate</b>	\$ 1,321.12per week

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

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

(PCA RATES USED – grade 2)

### EXAMPLE ABSORPTION CLAUSE:

1. The Performer's remuneration is specified in paragraphs 4(1) and 4(2) of this Contract. Any increases to minimum rate(s), allowances and/or loadings pursuant to the Agreement that occur during the life of this Contract shall be absorbed into the Performer's Total Negotiated Rehearsal or Total Negotiated Performance Rate.

# Codes of conduct & the contract of employment

# The Code of Conduct

## Purpose of a code of conduct

- To ensure safe, respectful and inclusive workplaces that are free from discrimination, harassment, sexual harassment and bullying

## How do we do that?

- Ensure responsibilities are understood
- Set standards of behaviour

## Why do we not include the code of conduct in the contract of employment?

- Cannot be amended with the employee's agreement
- Becomes a contractual term

### LPA RESOURCES:

- [LPA TEMPLATE: Code of conduct;](#)
- [LPA TEMPLATE: Social Media and Communications Policy;](#)
- [Australian Live Performance Industry Code of Practice to Prevent Workplace Discrimination, Harassment, Sexual Harassment, Bullying and Victimisation](#)

# Can anything be included in the Code of Conduct?



**No - Nothing unlawful or discriminatory**



**What about a prohibition on an expression of a political opinion?**



**A prohibition on the expression of a political opinion is unlawful.**

- a blanket ban on the expression of political opinion **should not be included** in a Code of Conduct.



# Why is a blanket ban unlawful?

- **Discrimination**
  - on the basis of race, social origin and religion (in all states and territories)
  - (direct and indirect) on the basis of political opinion everywhere except for NSW and SA
- **Adverse action**
  - on the basis of coercion because there is a workplace right under the FW Act (arguably political opinion is a workplace right) so even in NSW and SA political opinion is protected
- Close correlation between race, religion, social origin may make it difficult to determine the reason why such a prohibition is in place or why any action is taken

# Can an employee/worker say or do whatever they want?



No

A **prohibition on actions** that:

- have or may have the effect of causing offence, harm or distress to audience members, members of the public, stakeholders etc
- negatively impact, damage or be inconsistent with a company's reputation or financial interests
- is in conflict with the interests

**is lawful**

# Can an employee/worker say or do whatever they want?

## 2.4 All Workers must not in any way:

- (a) engage in any conduct that may, will, or is likely to:
  - i. negatively impact, damage or be inconsistent with the Company's reputation or financial interests constitute a conflict of interest with the business or interests of the Company; or
  - ii. create a disruption in the workplace,
  - iii. be harmful or offensive including to Workers, customers, patrons, audience members, visitors, board members, stakeholders, clients or suppliers.

# Can disciplinary action be taken for breach of a code of conduct?



**YES**

**Disciplinary action can be taken:**

- when an employee/worker breaches the code of conduct
- after proper procedures are followed
- on the basis that an employee has:
  - failed to follow a lawful and reasonable direction
  - engaged in misconduct/serious misconduct



**What action should be taken (if any):**

- Depends.....

# For more information



**Shay Minster**

Director, Workplace Relations

Live Performance Australia

T: 03 8614 2000

E: [sminster@liveperformance.com.au](mailto:sminster@liveperformance.com.au)



**Claudia Fruscalzo**

Workplace Relations Advisor

Live Performance Australia

T: 03 8614 2000

E: [cfruscalzo@liveperformance.com.au](mailto:cfruscalzo@liveperformance.com.au)

[www.liveperformance.com.au](http://www.liveperformance.com.au)

Thank you!



Image: Beauty and the Beast, Disney  
Photo Credit: Daniel Boud



LIVE  
PERFORMANCE  
AUSTRALIA