



Fair Work
Commission

Discussion Paper

Arts and Culture Sector

Modern Awards Review 2023–24

6 November 2023
Fair Work Commission



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This paper has been prepared by staff of the Fair Work Commission to promote discussions in relation to modern award coverage and minimum standards in the arts and culture sector. It does not represent the concluded view of the Commission on any issue.



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1. Introduction

[1] On 12 September 2023, the Minister for Employment and Workplace Relations wrote to the President of the Fair Work Commission (Commission) expressing the Australian Government’s interest in the Commission initiating a targeted review of modern awards. The Minister made the following comments:

“The desirability of a review and possible areas for focus arise from outcomes of the Jobs and Skills Summit, changes to the objects, objectives and gender equality provisions of the *Fair Work Act 2009* made by the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022*, workplace recommendations of the National Cultural Policy, *Revive*, and the Final Report of the Senate Select Committee on Work and Care.”¹

[2] The Minister identified modern awards coverage and minimum standards in the arts and culture sector as a focus area. The Minister noted that on 30 January 2023 the government released a National Cultural Policy, *Revive*, which included an action item to consider modern award coverage and minimum standards for the arts and culture sector.² Specifically, the Minister asked the Commission to begin by investigating existing award coverage and minimum standards in the arts and culture sector, including potential coverage gaps, as part of the targeted review of modern awards.

[3] On 15 September 2023, the Commission commenced a process on its own initiative under ss 157(3)(a) and 576(2)(aa) of the *Fair Work Act 2009* (Cth) (the Act) to review modern awards in relation to key focus areas identified by the Minister, including the arts and culture sector. The matter has been titled the Modern Awards Review 2023-24 (the Review).³

¹ [Letter](#) from the Hon Tony Burke, Minister for Employment and Workplace Relations and Minister for the Arts to Hatcher J, President of the Fair Work Commission, 12 September 2023.

² Commonwealth of Australia, [Revive: a place for every story, a story for every place](#) (30 January 2023) at 54.

³ ‘Modern Awards Review 2023-24’, *Fair Work Commission* (Web Page, 26 September 2023)

<<https://www.fwc.gov.au/hearings-decisions/major-cases/modern-awards-review-2023-24>>.



- [4] This discussion paper has been prepared by staff of the Commission to support the Commission's consideration of modern award coverage and minimum standards in the arts and culture sector. The discussion paper seeks to identify the industries and occupations that may fall within the arts and culture sector, whether existing modern awards cover those identified industries and occupations and if there are any potential gaps in that coverage. The discussion paper also sets out the legislative framework concerning coverage of modern awards as well as the Commission's powers to make a modern award or to vary the coverage of existing modern awards. The discussion paper then concludes with an exploration of minimum entitlements in modern awards and sets out a sample of current minimum entitlements in the sector.
- [5] To further support the Commission's consideration of the arts and culture sector, an industry profile has been prepared by Commission staff to provide a statistical representation of the sector. The **Industry Profile – Arts and Culture Sector (Industry Profile)** can be found at **Annexure A**.
- [6] The discussion paper poses a series of questions at the end of each chapter. The questions are designed to guide discussion during the consultation process and interested parties are invited to provide responses in their submissions, if they so wish. A consolidated list of those questions can be found at **Annexure C – Discussion questions**.



2. The arts and culture sector

[7] To consider existing coverage of the arts and culture sector in modern awards, it is necessary to first identify the industries and occupations the sector includes. As noted in Chapter 1, the arts and culture sector as a focus of the Review arises from the National Cultural Policy, *Revive*, a 5-year plan to renew and revive Australia’s arts, entertainment and cultural sector.⁴ *Revive* does not define the sector but adopts an expansive view of what culture encompasses:

“Culture then, is the sum of our stories and our music, of our paintings and our craft, our films and our games, our songs and our dance, our architecture and design, as well as the history of our wars and conflicts, our arguments, and accords. It is the story of our comings and goings, our migrations. Culture is also constantly being created and reenergised in the here and now. It is how we play together, entertain each other, inform, enrage and engage with each other. Culture is never THE story of us. Culture is dynamic. Culture is a force.

It is not the role of governments to create culture. Let’s leave that to the artists, makers and storytellers – the creative practitioners. The government’s role is to invest in our creative infrastructure. To preserve the structures and facilities that make cultural memory possible: our libraries and museums, our galleries and archives, our national broadcasters. It is also to fund the organisations, institutions, technologies, and training systems – small, medium and large; metropolitan, suburban, regional and remote – that generate new cultural representations and forms. It is committing to an education system that recognises arts and humanities, media and entertainment, as crucial and productive vocations.”⁵

[8] Insofar as *Revive* concerns the employment of those within the sector, its focus appears to be on artists and arts businesses. *Revive* is structured around five interconnected pillars – the core chapters of the policy – each outlining a strategic objective for the government and its associated actions. Considering the arts and culture sector in the Review is an action identified in Pillar 3 of the policy. Pillar 3 is entitled *Centrality of the Artist* and its strategic objective is to support artists as workers and celebrate them as creators. The chapter notes that artists and arts businesses have too often not been considered real workers or real businesses. It emphasises the need to

⁴ Commonwealth of Australia, [Revive: a place for every story, a story for every place](#) (30 January 2023).

⁵ *Ibid* at 11.



recognise the value of Australia's cultural and creative practitioners and the necessity of fair pay and conditions. The chapter also discusses the intermittent and insecure working arrangements of many creative practitioners, and the need to facilitate continuous career development across the creative sector to equip practitioners of all ages to utilise their skills as both workers and artists.

- [9] The centrepiece of *Revive* was establishing Creative Australia, the government's principal arts investment and advisory body. Creative Australia was launched on 24 August 2023 following the commencement of the *Creative Australia Act 2023*. Creative Australia's functions relate broadly to supporting and promoting Australian arts practice. Australian arts practice is defined in the *Creative Australia Act 2023* as the creation or performance, wholly or partly by Australian artists, of arts.⁶ Creative Australia makes decisions on grants funding through peer and industry assessment and supports a wide range of arts activities, including the creation of new work, collaborations, productions, exhibitions, publishing, recording, promotion, market development and audience engagement.
- [10] The Office of the Arts, a division of the Department of Infrastructure, Transport, Regional Development, Communications, was responsible for coordinating the consultation process that informed *Revive*. The Office of the Arts develops policies and delivers programs aimed at encouraging excellence in the arts, helping protect Australia's cultural heritage and supporting access to and participation in arts and culture in Australia. The following areas are included within its scope:
- Cultural heritage
 - Screen
 - Indigenous arts and languages
 - Literature
 - Performing arts
 - Regional arts

⁶ *Creative Australia Act 2023* (Cth) s 4.



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- Museum, libraries and galleries
- Visual arts.⁷

[11] Mindful of the breadth of *Revive* and the Office responsible for its development, as well as the policy's focus on the insecure work and undervaluing of artists and arts workers, the following industries and occupations are identified as making up the arts and culture sector in this discussion paper and the associated Industry Profile:

Industries

- Creative and Performing Arts Activities
- Design services
- Magazine and other periodical publishing
- Motion Picture and Video Activities
- Museum Operation
- Newspaper publishing
- Professional Photographic Services
- Sound Recording and Music Publishing

Occupations

- Actors, Dancers and Other Entertainers
- Artistic Directors, and Media Producers and Presenters
- Arts Administrators or Managers
- Authors, and Book and Script Editors
- Body Artists
- Fashion, Industrial and Jewellery Designers
- Film, Television, Radio and Stage Directors
- Gallery or Museum Curators
- Graphic and Web Designers, and Illustrators
- Journalists and Other Writers
- Models

⁷ 'What we do', *Office of the Arts* (Web Page, 3 November 2023) <<https://www.arts.gov.au/what-we-do>>.



- Multimedia Specialists
- Music Professionals
- Performing Arts Technicians
- Photographers
- Visual Arts and Crafts Professionals.⁸

[12] The above industries and occupations have been identified with reference to the Australian and New Zealand Standard Industrial Classification⁹ (ANZSIC) and the Australian and New Zealand Standard Classification of Occupations¹⁰ (ANZSCO). Most occupations have been listed by reference to ANZSCO unit groups,¹¹ which each contain an extended list of relevant occupations and specialisations. Additional information concerning ANZSIC and ANZSCO is set out in the Industry Profile at Annexure A.

Chapter 2 discussion questions

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?
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?

⁸ Libraries and library staff are not included within the scope of this paper. Also omitted is the industry of *Computer System Design and Related Services*, which appears to largely consist of activities falling outside the arts and culture space. We note, however, that web designers and multimedia specialists are included in the list of occupations.

⁹ Australian Bureau of Statistics, [Australian and New Zealand Standard Industrial Classification \(ANZSIC\)](#) (26 June 2013).

¹⁰ Australian Bureau of Statistics, [Australian and New Zealand Standard Classification of Occupations \(ANZSCO\)](#) (22 November 2022).

¹¹ See Australian Bureau of Statistics, [Classification structure](#) (22 November 2022).



3. What is modern award coverage?

This chapter provides a brief overview of modern award coverage, setting out when a modern award covers and applies to an employee and how coverage terms in modern awards are expressed. It also sets out key principles concerning the interpretation of modern award coverage.

3.1 Distinguishing coverage and application of modern awards

[13] The Act distinguishes between when a modern award *covers* an employee and when a modern award *applies* to an employee. In short, a modern award covers an employee if the modern award is expressed to cover them, but only applies to that person when it has the effect of conferring rights or imposing obligations on them.¹²

[14] This distinction between coverage and application can be gleaned from ss 47 and 48 of the Act, which provide the following:

- 47 When a modern award applies to an employer, employee, organisation or outworker entity**
- (1) A modern award applies to an employee, employer, organisation or outworker entity if:
- (a) the modern award covers the employee, employer, organisation or outworker entity; and
 - (b) the modern award is in operation; and
 - (c) no other provision of this Act provides, or has the effect, that the modern award does not apply to the employee, employer, organisation or outworker entity.

Note 1: Section 57 provides that a modern award does not apply to an employee (or to an employer, or an employee organisation, in relation to the employee) in relation to particular employment at a time when an enterprise agreement applies to the employee in relation to that employment.

...

Modern awards do not apply to high income employees

- (2) However, a modern award does not apply to an employee (or to an employer, or an employee organisation, in relation to the employee) at a time when the employee is a high income employee.

¹² *All Trades Queensland Pty Limited v Construction, Forestry, Mining and Energy Union* [2017] FCAFC 189; 256 FCR 19.



Modern awards apply to employees in relation to particular employment

- (3) A reference in this Act to a modern award applying to an employee is a reference to the award applying to the employee in relation to particular employment.

48 When a modern award covers an employer, employee, organisation or outworker entity

When a modern award covers an employee, employer, organisation or outworker entity

- (1) A modern award covers an employee, employer, organisation or outworker entity if the award is expressed to cover the employee, employer, organisation or outworker entity.

...

Effect of other provisions of this Act, FWC orders or court orders on coverage

- (2) A modern award also covers an employee, employer, organisation or outworker entity if any of the following provides, or has the effect, that the award covers the employee, employer, organisation or outworker entity:

- (a) a provision of this Act or of the Registered Organisations Act;
- (b) an FWC order made under a provision of this Act;
- (c) an order of a court.

- (3) Despite subsections (1) and (2), a modern award does not cover an employee, employer, organisation or outworker entity if any of the following provides, or has the effect, that the award does not cover the employee, employer or organisation or outworker entity:

- (a) a provision of this Act;
- (b) an FWC order made under a provision of this Act;
- (c) an order of a court.

Modern awards that have ceased to operate

- (4) Despite subsections (1) and (2), a modern award that has ceased to operate does not cover an employee, employer, organisation or outworker entity.

Modern awards cover employees in relation to particular employment

- (5) A reference to a modern award covering an employee is a reference to the award covering the employee in relation to particular employment.

[15] Section 47(2) excludes high income employees from the application of modern awards. A high-income employee is an employee guaranteed to earn an annual amount greater than the high



income threshold.¹³ The high income threshold changes each year. From 1 July 2023, it is \$167,500.

- [16] Pursuant to s 42 of the Act, the terms employee and employer as used in ss 47 and 48 mean a national system employee and a national system employer. The significance of this is discussed in 5.3.1 below.

3.2 Coverage terms in modern awards

- [17] Subdivision C of Division 3 in Part 2-3 of the Act sets out a range of terms that must be included in modern awards and includes a requirement that modern awards must include a coverage term (s 143). Section 143 includes a number of requirements as to the form coverage terms must take, such as who a modern award is to be expressed to cover and how that coverage is to be expressed. The Act also includes particular requirements for coverage terms in enterprise modern awards and state reference public sector modern awards (see ss 143A and 143B).
- [18] Each modern award contains a coverage clause (usually located at clause 4) that defines who is covered by the modern award. Most of the 121 modern awards of general application are industry or occupation-based, so the coverage clause either defines the industry that the modern award covers (for example, the *General Retail Industry Award 2020*) or the occupations that are included in the coverage of a modern award (for example, the *Clerks-Private Sector Award 2020*). Chapter 4 of this discussion paper sets out the modern awards which appear to have coverage relevant to the arts and culture sector.

3.3 Principles concerning interpretation of modern awards

- [19] The principles concerning interpreting the coverage of modern awards are well settled and were succinctly summarised by a Full Bench in *Gourabi v Westgate Medical Centre*:

“[26] ...For relevant purposes, each modern award has a “coverage” clause that determines “the employers, employees, organisations and outworker entities” that are covered by it. The determination of whether a particular employment falls within the “coverage” clause of a modern

¹³ *Fair Work Act 2009* (Cth) s 329.



award usually involves two considerations: first, a legal question concerning the proper construction of the coverage clause (and any other relevant provisions of the award) and, second, a factual question as to whether the employer and employee fall within the scope of the coverage clause, properly construed.

[27] The principles of construction of awards were recently summarised by Rangiah J in *Swissport Australia Pty Ltd v Australian Municipal Administrative Clerical and Services Union (No 3)*. In short summary, the task of construction begins with the natural and ordinary meaning of the words used. However an award is to be interpreted in light of its industrial context and purpose and its commercial and legislative context. The context includes the immediate textual context and the historical context of the origin of the provision in question.”¹⁴

(citations omitted)

- [20] These principles have informed the preliminary analysis undertaken by staff of the Commission in determining which modern awards may provide coverage relevant to the arts and culture sector set out in Chapter 4.

Chapter 3 discussion questions

3. If advocating for a new award to address coverage gaps in the arts and culture sector, how is it proposed that such an award defines its coverage? For example, would the award be expressed to cover employers or employees in an industry or employees in particular occupations and their employers, or both?
4. Are there any responsive views addressing the content in chapter 3?

¹⁴ *Gourabi v Westgate Medical Centre* [2019] FWCFB 3874.



4. Modern awards with possible coverage in the arts and culture sector

Commission staff have conducted an audit of modern awards to identify those modern awards that may cover employees in the arts and culture sector. This chapter provides an overview of the coverage terms in each of the modern awards identified.

4.1 Miscellaneous Award

[21] The *Miscellaneous Award 2020* (Miscellaneous Award) covers employers throughout Australia and their employees in the classifications set out in clause 15 of the award who are not covered by any other modern award (clause 4.1). Clause 4.2 provides that managerial employees and professional employees, such as accountants and finance, marketing, legal, human resources, public relations and information technology specialists, are excluded from coverage.

[22] The classifications for the purposes of clause 15 are relevantly defined in clause 12 of the *Miscellaneous Award* and can be summarised as follows:

- Level 1—for entry level employees for a period of 3 months;
- Level 2—for employees not required to have trade qualifications;
- Level 3—for employees who are trade-qualified or equivalent; and
- Level 4—for advance trade qualified or sub-professional employees.

[23] In 2020, as part of the *4 yearly review of modern awards* (4 yearly review), a Full Bench of the Commission varied the coverage provisions in the *Miscellaneous Award*.¹⁵ Subsequently, as part of the *Variation of awards on the initiative of the Commission*, a differently constituted Full Bench made the following comments concerning the breadth of coverage of the *Miscellaneous Award*:

¹⁵ *4 yearly review of modern awards - Miscellaneous Award 2020* [2020] FWCFB 754 and [2020] FWCFB 1589.



“...The variation to the coverage of the Miscellaneous Award will be to remove the current clause 4.3, and the effect of this will be that there will be no federal system employees at the advanced trade level or below who will not be covered by a modern award, unless they are excluded from award coverage by s 143(7) of the Act. As the Full Bench in that case observed, no party was able to identify any category of employees in that class who are so excluded.”¹⁶

(emphasis added)

- [24] Further, in the 2021-22 Annual Wage Review decision the Expert Panel observed that the coverage of the Miscellaneous Award “means that there are very few (if any) employees whose wage rate is set at the NMW by the NMW order.”¹⁷
- [25] Given the broad coverage of the Miscellaneous Award, it appears that many arts and culture sector employees not covered by any other modern award, where not required to be diploma or degree qualified,¹⁸ may be covered by the Miscellaneous Award.
- [26] As with other modern awards, pursuant to s 143(7) of the Act, the Miscellaneous Award must not be expressed to cover certain classes of employees. This includes employees who perform work that is not “of a similar nature” to work traditionally regulated by awards. As a result, there may be arts workers who, based on the *nature* of the work they perform, are not covered by the Miscellaneous Award. Where this is the case, s 143(7)(b) may prohibit these workers from being covered by any modern award. Section 143(7) is discussed in 5.2.2 and again in 6.1.4 below, which includes commentary by a Full Bench concerning the proper construction of the provision.

4.2 Amusement Award

- [27] The *Amusement, Events and Recreation Award 2020* (Amusement Award) covers employers throughout Australia in the amusement, events and recreation industry and their employees in the classifications set out in the award. The amusement, events and recreation industry is defined in clause 4.2 as follows:

(a) Amusement, events and recreation industry means the operation of:

¹⁶ *Variation of awards on the initiative of the Commission* [2020] FWCFB 1837 at [130].

¹⁷ *Annual Wage Review 2021-22* [2022] FWCFB 3500 at [247].

¹⁸ See *4 yearly review of modern awards - Miscellaneous Award 2010* [2020] FWCFB 754 at [56].



- (i) leisure and recreation facilities and centres;
- (ii) sporting, exhibition, convention and amusement complexes;
- (iii) theme parks;
- (iv) heritage, tourism and cultural centres;
- (v) museums and galleries;
- (vi) zoos, animal parks and aquariums;
- (vii) agricultural and horticultural shows;
- (viii) carnivals and amusement parks;
- (ix) ten pin bowling venues;
- (x) go-kart racing venues;
- (xi) amusement arcades, including video game and pinball parlours; and
- (xii) golf facilities including but not limited to golf clubs, on-course and off-course golf shops and driving ranges.

[28] The grade 4 classification in the award incorporates a range of occupations including Craftsperson at A.5.2(c).¹⁹

[29] The classification structure at Schedule A also includes reference to positions such as customer service officers, receptionists, and cashiers. As the industry definition encompasses museums and galleries at clause 4.2(v), it is likely that front of house staff at certain galleries will be covered by this award.

4.3 Book Award

[30] The *Book Industry Award 2020* (Book Award) is an industry award that covers employers throughout Australia in the book industry and their employees in the classifications specified. The book industry is defined as:

- (a) the receipt, perusal, editing and preparation of manuscripts and other material for publication in book form, or the supervision thereof; or

¹⁹ *Amusement, Events and Recreation Award 2020*, sch A.



- (b) any branch of writing, drawing or photographic work for publicity or public relations purposes in relation to publications in book form, other than those substantially engaged in marketing.

[31] The classifications include book editors (cl. A.1 to A.3) and publicists (cl. A.4 to A.7).²⁰

4.4 Broadcasting Award

[32] The *Broadcasting, Recorded Entertainment and Cinemas Award 2020* (Broadcasting Award) is an industry award that covers employers throughout Australia in the broadcasting, recorded entertainment and cinema industry and their employees in the classifications set out in the award.

[33] The broadcasting, recorded entertainment and cinema industry is defined in clause 4.2 as: the production, broadcasting, distribution, showing, making available and/or sale of audio and audio/visual content. Audio and audio/visual content includes feature films, television programs, news, sports, current affairs, documentaries, video clips, digital video discs, television commercial and training films and similar content whether for television exhibition, theatrical exhibition, sale to the public, digital media release or release in any other medium.

[34] The award is organised into streams of work and the classification structure is set out in Schedules A to G. The classification structure includes reference to the following roles that appear to fall within the arts and culture sector: set designers, scenic artists and artists (defined as persons engaged by the producer to take part audibly and/or visually in productions (including performers, dancers, doubles, extras, stand-ins and stunt artists)).

4.5 Graphic Arts Award

[35] The *Graphic Arts, Printing and Publishing Award 2020* (Graphic Arts Award) is an industry and occupational award that covers employers throughout Australia in the graphic arts, printing, publishing and associated industries and occupations and their employees in the classifications set out in the award.

²⁰ *Book Industry Award 2020*, sch A.



[36] The definition of the graphic arts, printing, publishing and associated industries and occupations in clause 4.2 includes numerous industries, parts of industries and occupations that appear likely to fall within the arts and culture sector. For example:

- engraving, process engraving and/or photo engraving;
- commercial and/or lithographic designing, writing and/or drawing;
- publishing;
- creation of designs, concepts or layouts used or intended to be used:
 - in advertising or marketing of commodities or service, or
 - for other uses in or in connection with the industry of commercial and industrial art.

[37] The industry of commercial and industrial art is not further defined in the award.

[38] The classification structure in the award includes references to art and/or design at levels 5 to 8.²¹ Art and/or designing is defined in clause 2 as follows:

art and/or designing (including commercial art) however described means the work of an employee employed in or in connection with designing, sketching, drawing, tracing, aerographing, keying, colouring photographs, retouching of bromides, reproducing, writing (including ticket writing) lettering, illustrating, commercial art, or in copying artwork or layouts, or in any way preparing art work or layouts manually or electronically for the use or prospective use within the industry as defined in this award.

4.6 Hair and Beauty Award

[39] The *Hair and Beauty Industry Award 2020* (Hair and Beauty Award) is an industry award that covers employers throughout Australia in the hair and beauty industry and their employees in the classifications set out in the Award.

[40] The hair and beauty industry is defined to include any of a wide range of activities set out in clause 4.2, including, relevantly “make-up application, skin analysis, development of treatment

²¹ *Graphic Arts, Printing and Publishing Award 2020*, sch A.



plans, facial treatments including massage and other specialised treatments such as lymphatic drainage.”²²

[41] The classifications in Schedule A includes a make-up artist with a certificate II in makeup services (or equivalent) in the definition of a hair and beauty employee level 2.²³

4.7 Journalists Award

[42] The *Journalists Published Media Award 2020* (Journalists Award) is an industry award covering employers throughout Australia in the published media industry with respect to their employees engaged in journalism in its literary, artistic and photographic branches and/or the gathering, writing or preparing of news matter or news commentaries, and their employees in the classifications set out in the award.

[43] The published media industry is defined as follows:

Published media industry means the industry concerned with the publication of newspapers, magazines, periodicals, journals and online publications, and the provision of wire services.

[44] The classifications include editorial employees,²⁴ which is defined in clause 2 as follows:

editorial employees include reporters, writers, photographers, sub-editors, cartoonists, artists, video journalists, moderators of blogs on news websites, editorial content producers for online publications, chiefs of staff, picture editors, designers and production managers.

[45] Clause 2 also defines the term artist:

artist means a person, other than a person solely employed in retouching photographic plates, who prepares for publication:

- (a) original drawings of any kind; or
- (b) creative art of any kind; or
- (c) photographs, drawings, layouts, maps, plans, diagrams, decorations, lettering (including instant or transfer lettering), borders, backgrounds or similar embellishments.

²² *Hair and Beauty Award 2020*, cl 4.2(j).

²³ *Ibid*, cl A.2.

²⁴ *Journalists Published Media Award 2020*, cl 11.5.



4.8 Live Performance Award

[46] The *Live Performance Award 2020* (Live Performance Award) covers employers throughout Australia in the live performance industry and their employees in the classifications set out in the award.

[47] Clause 4.2 defines the live performance industry as follows:

4.2 Live performance industry means:

- (a) producing, including pre-production and post - production, staging, lighting, audio and audio/visual, presenting, performing, administration, programming, workshops, set and prop manufacture; or otherwise undertaking live theatrical, performance art, operatic, orchestral, dance, erotic, variety, revue, comedy, multi-media, choral; or musical performances, productions, presentations, workshops, rehearsals or concerts which are performed or presented in the presence of an audience or recorded by any means; and
- (b) includes:
 - (i) the provision, sale, service or preparation of food or drink;
 - (ii) selling tickets by any means, for or in or in connection with any such performances, productions, presentations, workshops, rehearsals or concerts; and
 - (iii) the operation of venues or other facilities, whether permanent or temporary, utilised for such performances, productions, presentations, workshops, rehearsals or concerts.

[48] The classification structure includes Live Production and Support Staff and refers to a number of indicative tasks and positions that may be relevant to the arts sector. For example, indicative tasks for Live Production and Support Staff Level 2 include painting and art finishing, dressing and costume decoration. Indicative positions under this level include crewing employee and stage hand.²⁵

²⁵ *Live Performance Award 2020*, sch A at cl A.2.1.



- [49] Indicative tasks for Live Production and Support Staff Level 3 include sewing and cutting skills and fabric knowledge, advanced lifting and scene/props handling skills, scenery, building and prop construction techniques.²⁶ Indicative positions include Assistant Scenic Artist.²⁷ Scenic artist also appears in the indicative positions for Production and Support Staff Level 4²⁸ and Production and Support Staff Level 7/Production and Support Staff Level 6 (Theatre).²⁹
- [50] The production and support staff levels also contain reference to indicative positions such as Marketing Assistant,³⁰ Publicity Assistant,³¹ Specialty Ticketing CSR,³² Sound and/or Lighting Technician,³³ Front of House Manager³⁴ and Publicity/Marketing Officer³⁵ in the industry.
- [51] The award also contains classifications for performers, dancers, and musicians.³⁶

4.9 Local Government Award

- [52] The *Local Government Industry Award 2020* (Local Government Award) is an industry award that covers employers throughout Australia in the local government industry and their employees in the classifications set out in the award. Local government industry is defined in the award as all activities undertaken by local government entities, including activities undertaken by corporations controlled by one or more local government entities.³⁷
- [53] The classification structure in the award is broad and includes levels 1 to 11. Level 1 covers entry level employees with minimal experience and qualifications and Level 11 positions are those with

²⁶ *Live Performance Award 2020*, sch A at cl A.3.1.

²⁷ *Ibid.*

²⁸ *Ibid.*, sch A at cl A.4.1.

²⁹ *Ibid.*, sch A at cl A.8.2.

³⁰ *Ibid.*, sch A at cl A.3.1.

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*

³⁴ *Ibid.*, sch A at cl A.6.1.

³⁵ *Ibid.*, sch A at cl A.6.1.

³⁶ *Ibid.*, cl 8.3, pts 5 and 6.

³⁷ *Local Government Industry Award 2020*, cl 4.2.



a management focus such as senior executive officers (but not a chief executive officer) with overall responsibility and accountability for a number of significant functions. The classifications include a variety of tasks including management work, clerical and administrative work, professional positions including project management and technical work.

[54] Curators, managers and directors employed in galleries or museums controlled by local government entities may be covered by this award.

[55] It is also possible that these roles in other public galleries and museums may be covered by other awards applying to the public sector, such as the *Australian Government Industry Award 2016* or the *State Government Agencies Award 2020*.

4.10 Models Award

[56] The *Mannequins and Models Award 2020* (Models Award) is an occupational award that covers employers who employ mannequins and models. The award defines mannequins and models as follows:³⁸

house mannequin or model means a full-time or part-time employee engaged to show clothing and accessories or ranges of clothing and accessories and who may be employed at other times in work associated with and incidental to that work.

mannequin means a casual employee whose work is exhibiting clothes or other fashion articles for the purpose of attracting a commercial interest.

model means a casual employee who poses or acts as a subject for photographers and/or a person who models for a hairdresser in the process of hair styling for advertising assignments. as an employee who exhibits clothes and fashion articles to attract commercial interest and model as an employee who poses or acts as subject for photographers or who model hair styles for hairdressers for advertising assignments.

³⁸ *Mannequins and Models Award 2020*, cl 2.



- [57] The minimum rates clause includes weekly rates for house mannequins and models and provides rates per engagement for casual mannequins and models modelling for still photography, television or movie appearances and in trade showings or parades.³⁹
- [58] The award does not appear to cover a life model in an art studio.

4.11 Professional Employees Award

- [59] The *Professional Employees Award 2020* (Professional Employees Award) is an industry and occupational award covering employers throughout Australia with respect to their employees performing professional engineering and professional scientific duties who are covered by the classifications in Schedule A of the award. The Professional Employees Award also covers employers in the information technology industry, the quality auditing industry and telecommunications industry and their employees in the classifications in Schedule A and employers principally engaged as medical research institutes with respect to their employees performing professional medical research duties in the classifications in Schedule B.⁴⁰
- [60] The classifications in Schedule A includes, at level 1, a graduate information technology employee and at level 2, a professional information technology employee. The terms graduate information technology employee and professional information technology employee are defined in the Professional Employees Award as follows:⁴¹

Graduate information technology employee means a person who:

- (a) holds a university degree with a science or information technology major (3, 4 or 5 year course) accredited by the Australian Computer Society at professional level; or
- (b) has sufficient qualifications and experience to be a Certified Professional of the Australian Computer Society.

Professional information technology employee means an adult person qualified to carry out professional information technology duties as defined. The term professional information technology

³⁹ *Mannequins and Models Award 2020*, cl 16.

⁴⁰ *Professional Employees Award 2020*, cl 4.1.

⁴¹ *Ibid*, cl 2.3.



employee includes graduate information technology employee and experienced information technology employee as defined.

Professional information technology duties means duties carried out by a person in employment where the adequate discharge of any of the duties requires a person to:

- (a) hold a university degree with a science or information technology major (3, 4 or 5 year course) accredited by the Australian Computer Society at professional level; or
- (b) have sufficient qualifications and experience to be a Certified Professional of the Australian Computer Society.

[61] Employees engaged in computer design or development may be covered by this award.

4.12 Textile Award

[62] The *Textile, Clothing, Footwear and Associated Industries Award 2020* (Textile Award) covers employers throughout Australia in the textile industry, clothing industry, bag making industry, button making industry, footwear industry and allied manufacturing and fabricating industries and their employees who are engaged in duties covered by the classifications in the award.⁴²

[63] The classification structure for general employees contains the following references to designers:

B.5.2 Designer—Creative means an employee engaged as such and who in the course of their employment is required to create original designs and master sketches and may supervise and correct the work of other designers and technical drawers.

B.5.3 Designer—Other means an employee engaged as such and who is required to produce master sketches from designs supplied by the employer and in doing so may be required to adapt or correct such designs or is required to produce original drawings (not being master sketches) or adaptations.

4.13 Travelling Shows Award

[64] The *Travelling Shows Award 2020* (Travelling Shows Award) covers employers throughout Australia in the industry of travelling shows and their employees in the classifications within the award. Clause 4.1 describes the travelling shows industry as including the operation by an

⁴² *Textile, Clothing, Footwear and Associated Industries Award 2020*, sch B.



itinerant employer of any stand, fixture or structure for the purpose of providing amusement, food and/or recreation for any agricultural or horticultural show, carnival, rodeo, gymkhana, community event or festival.

- [65] The classification structure in clause 12 includes reference to employees engaged as counter attendants, program or ticket sellers, cashiers, assistant supervisors, construction technicians and supervisors. The highest classification in the award is Grade 4 which, consistent with Grade 3, notes that employees at these levels are not qualified in any trade.

Chapter 4 discussion questions

5. Are there employees working in the arts and culture sector that may be covered by an award that has not been included in this chapter?
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?



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

This chapter explores whether potential gaps exist in the coverage of the arts and culture sector in modern awards. The chapter also discusses workers in the sector who, due to the nature of their engagement, are not permitted to be covered by the modern awards system, and briefly sets out proposed legislative amendments that may affect some of those workers.

5.1 Coverage of arts and culture sector occupations

- [66] To facilitate discussion of the potential gaps in modern award coverage as it relates to the arts and culture sector, staff of the Commission have conducted a preliminary analysis as to which awards could cover employees in particular occupations in the sector. Findings from this analysis are set out in **Table 1** below.
- [67] The occupations in **Table 1** were selected from the ANZSCO unit groups identified in **Chapter 2**. The descriptions in ANZSCO⁴³ were also considered in the selection of awards that might cover particular occupations.
- [68] The majority of awards identified as providing potential coverage to an occupation in **Table 1** are industry awards. As such, the extent to which they cover the occupation depends on the industry in which work is performed. This limitation is discussed in 5.2.1 below.
- [69] **Table 1** does not include reference to the Miscellaneous Award, despite the possibility that the Miscellaneous Award may cover employees in some of the occupations listed. The possibility of the Miscellaneous Award covering employees in certain occupations, and limitations to the award's coverage, are discussed in 5.2 below.

⁴³ Australian Bureau of Statistics, [ANZSCO - Australian and New Zealand Standard Classification of Occupations](#) (22 November 2022).



Table 1 – Arts and culture sector – occupations and potential award coverage

	Amusement Award	Book Award	Broadcasting Award	Graphic Arts Award	Journalists Award	Live Performance Award	Local Government Award	Models Award	Textile Award
Actor			✓			✓			
Artistic Director*							✓		
Author					✓				
Book Editor		✓							
Choreographer									
Cinematographer			✓						
Comedian			✓			✓			
Composer									
Dancer			✓			✓			
Director			✓						
Entertainer or Variety Artist			✓			✓			
Fashion Designer									✓
Film and Video Editor			✓						
Gallery or Museum Curator*							✓		
Graphic Designer				✓					
Illustrator					✓				
Jewellery Designer									
Journalist					✓				
Media Producer*							✓		
Models								✓	
Multimedia Designer				✓					
Music Director									
Music DJ						✓			
Musician						✓			
Newspaper Editor					✓				
Painter (Artistic)			✓	✓	✓	✓			
Photographers	✓				✓				
Potter or ceramic artist									
Radio Presenter			✓						
Screenwriter									
Script Editor									
Sculptor									
Singer			✓			✓			
Stage Manager						✓			
Web Designer									

* Curators, artistic directors and media producers working in publicly run organisations may also be covered by awards such as the *Australian Government Industry Award 2016* or the *State Government Agencies Award 2020*.



5.2 Identifiable gaps to that coverage

[70] The preliminary assessment set out in **Table 1** does not identify specific coverage in any modern award for the following occupations: choreographer, composer, jewellery designer, music director, potter or ceramic artist, screenwriter, script editor, sculptor and web designer.⁴⁴

[71] The Miscellaneous Award may cover a number of these occupations. However, there are limitations as to its coverage which are set out in 5.2.2 below. There are also limitations to the coverage of industry awards selected; this is canvassed in 5.2.1 below.

5.2.1 Limitations to coverage of industry awards

[72] The majority of the modern awards identified in **Table 1** are expressed to cover employers and their employees in a particular industry, rather than for the kinds of work specified.⁴⁵ This means that where an occupation appears to fall within the scope of the award in a general sense, the occupation is only covered by that award if the work is performed for an employer in the industry or industries that award is expressed to cover. For example, while an author might be covered by the Journalists Award when performing work for an employer in the published media industry, such as an online journal or literary magazine, that coverage does not extend to work performed by an author in other industries.

[73] Similarly, while the analysis identifies the potential for the Local Government Award to cover some of the occupations included in **Table 1**, for example an artistic director or media producer, these occupations are only covered by the Local Government Award if they are employed by a local government entity or a corporation controlled by one or more local government entities. Similar roles in private theatre companies do not appear to be covered by any award.

⁴⁴ A producer engaged by the Australian Broadcasting Corporation is covered by the modern enterprise award the *Australian Broadcasting Corporation Enterprise Award 2016*, as are numerous other arts and culture sector occupations.

⁴⁵ The *Mannequins and Models Award 2020* provides occupational coverage to models and the *Graphic Arts Award 2020* has both industry and occupational coverage.



5.2.2 Limitations to the coverage of the Miscellaneous Award

[74] The Miscellaneous Award was established during the award modernisation process conducted by the Australian Industrial Relations Commission (AIRC) pursuant to Part 10A of the *Workplace Relations Act 1996* (Cth) (WR Act). The ministerial request which commenced the award modernisation request was amended on 16 June 2008 to include the following:

“4A. The Commission is to create a modern award to cover employees who are not covered by another modern award and who perform work of a similar nature to that which has historically been regulated by awards (including State awards). The Commission is to identify this award as such. This modern award is not to cover those classes of employees, such as managerial employees, who, because of the nature or seniority of their role, have not traditionally been covered by awards. The modern award may deal with the full range of matters able to be dealt with by any modern award however the Commission must ensure that the award deals with minimum wages and meal breaks and any necessary ancillary or incidental provisions about NES entitlements.”

[75] The AIRC subsequently made the Miscellaneous Award and it commenced operation on 1 January 2010. As a “catch-all” award, the Miscellaneous Award is not confined to a particular industry. However, as noted in Chapter 4, its coverage is limited to employees falling within the award’s classification structure. The Miscellaneous Award’s classifications include levels for: employees not required to have qualifications; employees who are trade-qualified or equivalent; or – at the highest level – for advance trade qualified or sub-professional employees. This means that employees in the occupations identified whose roles require more advanced qualifications may not be covered by the award.

[76] Further, pursuant to clause 4.2, the Miscellaneous Award does not cover managerial or professional employees. On this basis, it may be possible to conclude that its coverage does not extend to either an Artistic Director or Media Producer, noting the ANZSCO occupation descriptions for these roles indicate a high level of managerial responsibility. For example, an Artistic Director determines and oversees implementation of artistic policies for a performing arts



organisation such as a theatre company, dance company, music ensemble, festival or venue.⁴⁶ Media Producers plan, administer and review activities concerned with publishing, or the production of films, television or radio programs, theatre, music, festivals or other artistic activities.⁴⁷

[77] The Act also prohibits the Miscellaneous Award from covering certain classes of employees. As noted in 4.1 above, s 143(7) of the Act prohibits modern awards from covering employees who have not been traditionally covered by awards “because of the nature or seniority of their role” (s 143(7)(a)) or who perform work that is “not of a similar nature” to work traditionally regulated by awards (s 143(7)(b)). In a decision of the Full Bench during the 4 yearly review, the operation of s 143(7) was the subject of consideration insofar as it concerned website designers.⁴⁸ To the extent website designers are not covered by the Graphic Arts Award, the Full Bench did not consider that this occupation would necessarily be covered by the Miscellaneous Award “by default”.⁴⁹ The Full Bench stated that, if website designers were excluded from the Graphic Arts Award because there were no pre-modern awards covering work of this nature, then website designers would be excluded from modern award coverage by s 143(7) of the Act.⁵⁰ Section 143(7) is discussed further in 6.1.4 below.

5.3 Workers excluded from award coverage

There are types of workers who, due to the nature of their engagement, or whether or not they fall within the definition of a national system employee, are not covered by modern awards.

5.3.1 Workers outside the national system

[78] Modern award coverage is limited by the Act to national system employees.⁵¹ National system employees include those employed by a constitutional corporation in all States and Territories.⁵²

⁴⁶ Australian Bureau of Statistics, [2121 Artistic Directors, and Media Producers and Presenters](#) (22 November 2022).

⁴⁷ *Ibid.*

⁴⁸ *4 yearly review of modern awards – Miscellaneous Award 2010* [2020] FWCFB 754.

⁴⁹ *Ibid* at [56].

⁵⁰ *Ibid.*

⁵¹ *Fair Work Act 2009* (Cth) ss 42 and 48.

⁵² *Fair Work Act 2009* (Cth) s 14.



In Victoria, the Australian Capital Territory and the Northern Territory all employees except police and executives in the public service in Victoria are national system employees. In Queensland, South Australia and New South Wales all private enterprise employees are national system employees but state and local government employees are not. In Tasmania all private enterprise and local government employees are national system employees. In Western Australia only employees of constitutional corporations are national system employees. That means that employers in Western Australia that are sole traders, partnerships or unincorporated companies are not within the national system.

5.3.2 Workers who are not employees

[79] Modern award coverage is also limited to employees. It is therefore relevant to the discussion of potential coverage gaps in the arts and culture sector that a significant portion of workers in the sector may not be engaged as employees, but instead perform work as independent contractors or sole traders. The National Cultural Policy, *Revive*, states its aim is to improve circumstances for all arts workers, “whether they are employees, contractors or business owners.” The policy further notes that many creative practitioners may be engaged as contractors, and describes artists as the original gig workers:⁵³

“Patterns of work across the cultural and creative sector vary, with a large number of creative practitioners undertaking short-term contracts as employees or independent contractors, or performing ad hoc and seasonal work – artists are the original gig workers. Intermittent and insecure working arrangements mean that many may not have access to minimum employment standards. In turn, many creatives rely on holding multiple jobs in order to survive, which can prove to be a disincentive to pursuing a career in the sector.”

[80] The Industry Profile supports the proposition that many arts workers are not engaged as employees. For example, data for the Professional Photographic Services industry indicates that photographers are more likely to be a business entity in which the owner and the business are legally inseparable, and that they are more likely not to have employees than businesses in other industries.⁵⁴

⁵³ Commonwealth of Australia, [Revive: a place for every story, a story for every place](#) (30 January 2023) at 53.

⁵⁴ See Industry Profile– Arts and Culture Sector, Chart 9.



5.4 Proposed amendments to the Act

The following is a discussion of proposed amendments to the Act which may affect workers in the arts and culture sector.

5.4.1 The meaning of employee and employer

[81] The *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023* (the Bill) was introduced into parliament on 4 August 2023. The Bill proposes to introduce a new clause (s 15AA) into the Act which sets out principles for determining the meaning of employee and employer. This proposal may affect whether certain arts and culture sector workers are considered employees or independent contractors for the purpose of modern award coverage. The proposed provision states that to determine whether a person is an employee and not an independent contractor the practical reality and totality of the working relationship should be considered, not just the terms of the written contract in place between the parties.

[82] The new section 15AA proposes to change the current approach to determining whether a worker is an employee or an independent contractor within the meaning of the Act which, having regard to the decisions of the High Court in *Construction, Forestry, Maritime, Mining And Energy Union & Anor v Personnel Contracting Pty Ltd*⁵⁵ and *ZG Operations & Anor v Jamsek & Ors*,⁵⁶ gives primacy to the terms of a contract over the subsequent conduct of the parties.

[83] The proposed new s 15AA is set out in its entirety below:

15AA Determining the ordinary meanings of employee and employer

- (1) For the purposes of this Act, whether an individual is an employee of a person within the ordinary meaning of that expression, or whether a person is an employer of an individual within the ordinary meaning of that expression, is to be determined by ascertaining the real substance, practical reality and true nature of the relationship between the individual and the person.
- (2) For the purposes of ascertaining the real substance, practical reality and true nature of the relationship between the individual and the person:

⁵⁵ (2022) 312 IR 1; [2022] HCA 1.

⁵⁶ (2022) 312 IR 74; [2022] HCA 2.



- (a) the totality of the relationship between the individual and the person must be considered; and
- (b) in considering the totality of the relationship between the individual and the person, regard must be had not only to the terms of the contract governing the relationship, but also to other factors relating to the totality of the relationship including, but not limited to, how the contract is performed in practice.

Note: This section was enacted as a response to the decisions of the High Court of Australia in *CFMMEU v Personnel Contracting Pty Ltd* [2022] HCA 1 and *ZG Operations Australia Pty Ltd v Jamsek* [2022] HCA 2.

- (3) Subsections (1) and (2) do not apply to the following provisions of this Act:
 - (a) Divisions 2A and 2B of Part 1-3;
 - (b) Part 3-1, to the extent that Part 3-1 applies only because of the operation of section 30G or 30R.

5.4.2 Gig economy workers or employee-like workers

[84] The Bill also proposes to empower the Commission to set minimum standards for ‘employee-like’ workers performing digital platform work, where it is satisfied it is appropriate to do so.

[85] The Bill defines an employee-like worker as follows:

- (1) A person is an employee-like worker if:
 - (a) the person is:
 - (i) an individual who is a party to a services contract in their capacity as an individual (other than as a principal), and performs work under the contract; or
 - (ii) if a body corporate is a party to a services contract (other than as a principal)—an individual who is a director of the body corporate, or a member of the family of a director of a body corporate, and performs work under the contract; or
 - (iii) if a trustee of a trust is a party to a services contract in their capacity as a trustee (other than as a principal)—an individual who is a trustee of the same trust and performs work under the contract, whether or not the individual is a party to the contract; or
 - (iv) if a partner in a partnership is a party to a services contract in their capacity as a partner (other than as a principal)—an individual who is a partner in the same



- partnership and performs work under the contract, whether or not the individual is a party to the contract; and
- (b) the person performs all, or a significant majority, of the work to be performed under the services contract; and
 - (c) the work that the person performs under the services contract is digital platform work; and
 - (d) the person does not perform any work under the services contract as an employee; and
 - (e) the person satisfies one or more of the following:
 - (i) the person has low bargaining power in negotiations in relation to the services contract under which the work is performed;
 - (ii) the person receives remuneration at or below the rate of an employee performing comparable work;
 - (iii) the person has a low degree of authority over the performance of the work;
 - (iv) the person has such other characteristics as are prescribed by the regulations.

[86] There may be workers within the arts and culture sector who fall within the proposed definition of an employee-like worker.⁵⁷ While modern awards cannot apply to these workers, the proposed changes provide the Commission with the ability to decide what terms and conditions will be set as minimum standards. If there are arts and culture sector workers who fall within the proposed definition, this may be of relevance to discussion of the sector for the purposes of the Review.

Chapter 5 discussion questions

- 7. Are there any other occupations in the arts and culture sector not covered by a modern award?
- 8. Are there any industrial contexts in which occupations, such as a painter, are engaged that fall outside current award coverage?

⁵⁷ See GigSmash, *10 Platforms for Creative People* <<https://www.gigsmash.com/gig-platforms/online/creative-arts>>.



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9. Do parties agree that the Miscellaneous Award may not cover certain workers, such as artistic directors or media producers?
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?
11. Do the parties have a view about the potential impact of the Closing Loopholes Bill on the arts and culture sector?
12. Is digital platform work common within the arts and culture sector?



6. Changing modern award coverage

This chapter sets out the legislative framework which empowers the Commission to make a modern award or to vary the coverage of an existing modern award and discusses considerations relevant to the Commission exercising those powers. The chapter also explores related commentary extracted from recent decisions and matters currently before the Commission.

6.1 Legislative framework

The Commission is empowered by the Act to make, vary or revoke a modern award if it is satisfied that it is necessary to do so in order to achieve the modern awards objective and, where relevant, the minimum wages objective. The Act also sets out special criteria in relation to changing modern award coverage and about who modern awards can be expressed to cover.

6.1.1 Making or varying a modern award

[87] Certain people or groups can make an application to the Commission to vary an existing award or to make a new award.⁵⁸ The Commission may also do so on its own initiative.⁵⁹

[88] The table in s 158 of the Act sets out who may apply for the making of a determination varying, or for the making of a modern award, under s 157. It relevantly provides:

Who may make an application?		
Item	Column 1 This kind of application ...	Column 2 may be made by ...
...
3	an application to vary or include coverage terms in a modern award to increase the range of employers, employees or organisations that are covered by the award	(a) an employer, employee or organisation that would become covered by the modern award; or (b) an organisation that is entitled to represent the industrial interests of one or more

⁵⁸ *Fair Work Act 2009* (Cth) s 158.

⁵⁹ *Fair Work Act 2009* (Cth) s 157(3).



Who may make an application?		
Item	Column 1 This kind of application ...	Column 2 may be made by ...
		employers or employees that would become covered by the modern award.
...
7	an application for the making of a modern award	(a) an employee or employer that would be covered by the modern award; or (b) an organisation that is entitled to represent the industrial interests of one or more employers or employees that would be covered by the modern award.

[89] Section 157(1) empowers the Commission to vary an existing modern award or make a new modern award if it is satisfied that doing so is necessary to achieve the modern awards objective:

157 FWC may vary etc. modern awards if necessary to achieve modern awards objective

(1) The FWC may:

- (a) make a determination varying a modern award, otherwise than to vary modern award minimum wages or to vary a default fund term of the award; or
- (b) make a modern award; or
- (c) make a determination revoking a modern award;

if the FWC is satisfied that making the determination or modern award is necessary to achieve the modern awards objective.

Note 1: Generally, the FWC must be constituted by a Full Bench to make, vary or revoke a modern award. However, the President may direct a single FWC Member to make a variation (see section 616).

Note 2: Special criteria apply to changing coverage of modern awards or revoking modern awards (see sections 163 and 164).

Note 3: If the FWC is setting modern award minimum wages, the minimum wages objective also applies (see section 284).



6.1.2 The modern awards and minimum wages objectives

[90] The modern awards objective is directed at ensuring that modern awards, together with the National Employment Standards, provide a “fair and relevant minimum safety net of terms and conditions”. It is broadly expressed, and requires the Commission take into account the matters set out at s 134(1)(a)-(h) of the Act, with no particular primacy being attached to any individual consideration.⁶⁰ Section 134 provides:

134 The modern awards objective

What is the modern awards objective?

- (1) The FWC must ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions, taking into account:
 - (a) relative living standards and the needs of the low paid; and
 - (aa) the need to improve access to secure work across the economy; and
 - (ab) the need to achieve gender equality in the workplace by ensuring equal remuneration for work of equal or comparable value, eliminating gender-based undervaluation of work and providing workplace conditions that facilitate women’s full economic participation; and
 - (b) the need to encourage collective bargaining; and
 - (c) the need to promote social inclusion through increased workforce participation; and
 - (d) the need to promote flexible modern work practices and the efficient and productive performance of work; and
 - (da) the need to provide additional remuneration for:
 - (i) employees working overtime; or
 - (ii) employees working unsocial, irregular or unpredictable hours; or
 - (iii) employees working on weekends or public holidays; or
 - (iv) employees working shifts; and
 - (f) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and

⁶⁰ 4 yearly review of modern awards – Preliminary Jurisdictional Issues [2014] FWCFB 1788 at [31]–[32].



- (g) the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards; and
- (h) the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.

This is the *modern awards objective*.

When does the modern awards objective apply?

- (2) The modern awards objective applies to the performance or exercise of the FWC's *modern award powers*, which are:
 - (a) the FWC's functions or powers under this Part; and
 - (b) the FWC's functions or powers under Part 2-6, so far as they relate to modern award minimum wages.

Note: The FWC must also take into account the objects of this Act and any other applicable provisions. For example, if the FWC is setting, varying or revoking modern award minimum wages, the minimum wages objective also applies (see section 284).

[91] If the Commission is setting, varying or revoking modern award minimum wages, it must also consider the minimum wages objective in s 284 of the Act. Section 284 provides the following:

284 The minimum wages objective

What is the minimum wages objective?

- (1) The FWC must establish and maintain a safety net of fair minimum wages, taking into account:
 - (a) the performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth; and
 - (aa) the need to achieve gender equality, including by ensuring equal remuneration for work of equal or comparable value, eliminating gender-based undervaluation of work and addressing gender pay gaps; and
 - (b) promoting social inclusion through increased workforce participation; and
 - (c) relative living standards and the needs of the low paid; and
 - (e) providing a comprehensive range of fair minimum wages to junior employees, employees to whom training arrangements apply and employees with a disability.



This is the *minimum wages objective* .

When does the minimum wages objective apply?

- (2) The minimum wages objective applies to the performance or exercise of:
 - (a) the FWC's functions or powers under this Part; and
 - (b) the FWC's functions or powers under Part 2-3, so far as they relate to setting, varying or revoking modern award minimum wages.

Note: The FWC must also take into account the objects of this Act and any other applicable provisions. For example, if the FWC is setting, varying or revoking modern award minimum wages, the modern awards objective also applies (see section 134).

Meaning of modern award minimum wages

- (3) **Modern award minimum wages** are the rates of minimum wages in modern awards, including:
 - (a) wage rates for junior employees, employees to whom training arrangements apply and employees with a disability; and
 - (b) casual loadings; and
 - (c) piece rates.

Meaning of setting and varying modern award minimum wages

- (4) **Setting** modern award minimum wages is the initial setting of one or more new modern award minimum wages in a modern award, either in the award as originally made or by a later variation of the award. **Varying** modern award minimum wages is varying the current rate of one or more modern award minimum wages.

6.1.3 Special criteria relating to changing modern award coverage

[92] The Act contains specific provisions relevant to the exercise of modern award powers by the Commission, including special criteria relevant to changing the coverage of modern awards at s 163.

[93] Section 163 provides:

Special criteria relating to changing coverage of modern awards

Special rule about reducing coverage

- (1) The FWC must not make a determination varying a modern award so that certain employers or employees stop being covered by the award unless the FWC is satisfied that they will



instead become covered by another modern award (other than the miscellaneous modern award) that is appropriate for them.

Special rule about making a modern award

- (2) The FWC must not make a modern award covering certain employers or employees unless the FWC has considered whether it should, instead, make a determination varying an existing modern award to cover them.

Special rule about covering organisations

- (3) The FWC must not make a modern award, or make a determination varying a modern award, so that an organisation becomes covered by the award, unless the organisation is entitled to represent the industrial interests of one or more employers or employees who are or will be covered by the award.

The miscellaneous modern award

- (4) The miscellaneous modern award is the modern award that is expressed to cover employees who are not covered by any other modern award.

[94] Relevantly, s 163(2) precludes the Commission from making a modern award covering particular employees or employers unless it has considered whether it should, instead, vary an existing modern award to cover them. Submissions and evidence would generally be required to inform the Commission's consideration in this regard.

6.1.4 Excluded classes of employees

[95] As noted in 4.1 and 5.2.1 above, s 143(7) of the Act places the following limitation on modern award coverage:

Employees not traditionally covered by awards etc.

- (7) A modern award must not be expressed to cover classes of employees:
- (a) who, because of the nature or seniority of their role, have traditionally not been covered by awards (whether made under laws of the Commonwealth or the States); or
 - (b) who perform work that is not of a similar nature to work that has traditionally been regulated by such awards.

Note: For example, in some industries, managerial employees have traditionally not been covered by awards.

[96] In a 4 yearly review decision concerning the coverage of the Miscellaneous Award, the Full Bench of the Commission made the following comments clarifying the construction of s 143(7):



[32] There are four conclusions which may be stated about the proper construction of s 143(7). The first is that it prohibits modern awards being “expressed to cover” the specified classes of employees. That is, the prohibition operates by reference to the terms in which the coverage provisions of a modern award are framed, and requires that such provisions, properly interpreted, not have the effect of extending coverage to the proscribed classes of employees. It does not require that the terms of the award coverage clause simply repeat or incorporate the words of the subsection, or that it contain an express exclusion of the proscribed classes of employees from the coverage of the award.

[33] Second, s 143(7) identifies in paragraphs (a) and (b) two separate classes of employees, separated by the disjunctive “or”. That means that if the coverage term of an award clause is expressed to cover employees falling in one or both of paragraphs (a) and (b), it offends the prohibition.

[34] Third, in relation to s 143(7)(a), we consider that the construction of the words “...those classes of employees who, because of the nature or seniority of their role, have not traditionally been covered by awards...” in clause 4.2 of the Miscellaneous Award adopted in paragraphs [37]-[38] of the *Gold Coast Kennels* decision is equally applicable to s 143(7)(a) (noting that clause 4.2 was evidently intended by the AIRC award modernisation Full Bench to reflect the terms of s 143(7)(a)). That is, on the plain meaning of s 143(7)(a), the class of employees the subject of the prohibition consists of those employees who:

- (1) have not traditionally been covered by awards (State or federal); *and*
- (2) have not traditionally so been covered because of the nature or seniority of their role.

[35] The class of employees in s 143(7)(a) therefore does not include employees who have not traditionally been covered by awards for a reason other than the nature or seniority of their role. The obvious and perhaps primary example of this would be employees performing new or emerging types of work who have not yet been the subject of any application or considered for award coverage. Another possible example is obscure groups of employees who have historically simply “fallen through the gaps” of award coverage.

[36] Fourth, the prohibited class in s 143(7)(b) consists of employees who perform work that is not a similar nature to work that has traditionally been regulated by awards – regardless of why this is the case, unlike s 143(7)(a). However, to fall within this class, the work must not be “similar in nature” – that is, not of a character, kind or sort that has a likeness or resemblance – to traditionally award-regulated work. Thus, merely because employees perform work that is not the same as traditionally



award-regulated work is not sufficient by itself to place them within the prohibited class in s 143(7)(b). It is also to be noted that s 143(7)(b) operates by reference to “work” that has traditionally been “regulated” by awards, unlike s 143(7)(a) which is concerned with employees traditionally not “covered” by awards. Thus employees who perform work which resembles in character or kind any work which has traditionally been the subject of award regulation will not fall within the excluded class.”⁶¹

(citations omitted)

- [97] Any consideration of whether modern award coverage should be extended to cover a class of employees not currently covered by modern awards therefore requires consideration of whether awards are permitted to cover that class of employees having regard to s 143(7) of the Act.
- [98] Ascertaining whether a class of employees has either traditionally not been covered by awards “because of the nature or seniority of their role” or performs work that is “not of a similar nature” to work traditionally regulated by awards may require evidence of the coverage of pre-modern Federal and State awards. An examination of pre-reform awards may provide a useful starting point. A list of pre-modern awards that may have covered employees now covered by the modern awards identified in Chapter 4 is set out in Annexure B—Pre-modern awards. Please note, the allocation of instruments to modern awards in Appendix A is indicative only.

6.2 Recent decisions about modern award coverage

The Commission has previously considered a range of applications concerning the coverage of modern awards. Relevant commentary concerning two applications for new modern awards is set out below, followed by an overview of recent decisions affecting the coverage of those awards identified in Chapter 4.

6.2.1 Proposed Helicopter Aircrew Award

- [99] During the 4 yearly review, the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers’ Union (AMWU) proposed the making of a new modern award to cover helicopter aircrew. The Full Bench determined that the

⁶¹ 4 yearly review of modern awards – Miscellaneous Award [\[2020\] FWCFB 754](#) at [32]–[36].



existing coverage of helicopter aircrew under the Miscellaneous Award did not meet the modern awards objective. Pursuant to s 163(2) of the Act, the Full Bench considered whether any existing modern award could appropriately cover helicopter aircrew and ultimately finding that the *Air Pilots Award 2020* should be varied to accommodate helicopter aircrew instead of making a new modern award.⁶²

[100] The Full Bench considered the relevance of ss 163(1) and (2) of the Act and made the following comments:

“[57] These provisions apply to the AMWU’s application in the following way. First, we must be satisfied that the current coverage of helicopter aircrew under the Miscellaneous Award does not meet the modern awards objective such that an alteration to this position is necessary to meet the modern awards objective.

[58] Second, if we are satisfied that the current modern award coverage must be changed to meet the modern awards objective, s 163(2) prevents us from making the new award proposed by the AMWU until we have given consideration to whether an existing modern award should be varied to cover helicopter aircrew. This is problematic in terms of the way in which the AMWU advanced its case, in that the AMWU’s primary case was that its proposed new award should be made and only submitted in the alternative that an existing award should be varied to cover helicopter aircrew. The approach taken by the AMWU implies an order of consideration in reverse of that required by s 163(2).

[59] Third, in giving primary consideration as to whether an existing award should be varied to cover helicopter aircrew as required by s 163(2), it is necessary to consider for the purpose of s 163(1) whether any relevant award is appropriate for them. Again, because of the way in which the AMWU advanced its case, limited attention was given to this issue and it was initially addressed only in relation to the Aircraft Cabin Crew Award.”⁶³

6.2.2 Proposed *On Demand Delivery Services Award*

[101] The Commission is presently considering the *Proposed On Demand Delivery Services Award* matter, which concerns an application by Menulog Pty Ltd pursuant to ss 157 and 158 of the Act. The

⁶² 4 yearly review of modern awards – Proposed Helicopter Aircrew Award [2019] FWCFB 4748.

⁶³ Ibid at [57]–[59].



application seeks the making of a new modern award to cover the ‘on demand delivery services industry’. The Full Bench dealing with the application has expressed a number of provisional views based on the above observations in the *Proposed Helicopter Crew Award* decision, including that the following initial matters require consideration under the Act before deciding whether to make a new modern award:

1. Whether employers and employees in that the on demand delivery services industry are currently covered by a modern award.
2. If there is current award coverage, whether the current award coverage of employers and employees in the industry meets the modern awards objective.
3. If the current award coverage does not meet the modern award objective, whether, instead of making a new award, the Commission should vary an existing award to cover the relevant employers and employees (including considering whether any such existing award is appropriate for employers and employees in the industry).⁶⁴

[102] As observed in 5.2 above, certain employees in the arts and culture sector may be covered by the Miscellaneous Award. In considering whether the coverage of such employees meets the modern awards objective, it may be useful to consider the observations made as to the character of the Miscellaneous Award by the Full Bench in the *Proposed Helicopter Crew Award* matter, with which the Full Bench in the *Proposed On Demand Delivery Services Award* matter concurs. Specifically, that the Miscellaneous Award was never intended to provide a comprehensive safety net for any particular industry or occupation but rather to provide basic conditions until a proper safety net could be established:

“[40] In relation to the Miscellaneous Award, Menulog submits that reliance on that award will not meet the modern award objective, in particular taking into account:

- the need to promote flexible modern work practices and the efficient and productive performance of work (s.134(1)(d)), and
- the need to ensure a simple, easy to understand, stable and sustainable modern award system (s.134(1)(g)).

⁶⁴ *Menulog Pty Ltd* [2021] FWCFB 5227 at [7].



[41] Menulog log submits 'it is uncontentious that these objectives would best be met by the application of an award contemplating the specific industry and employees as opposed to reliance on a safety net award'. In its context, we understand Menulog's reference to 'a safety net award' to mean the Miscellaneous Award. In support of that submission the Application refers to the following observations of the Australian Industrial Relations Commission about the then award:

'...Our approach to conditions of employment is influenced by the nature of the award's coverage. We agree with those who have suggested that the coverage of the award is very narrow and likely to be limited in time where emerging industries are concerned or where the expansion of coverage of a modern award is involved. Accordingly we do not think the award should contain a comprehensive safety net designed for any particular occupation or industry. Rather it should contain basic conditions only, leaving room for the application of an appropriate safety net in another modern award in due course.'

[42] In the Proposed Helicopter Crew Award decision, the Full Bench described the Miscellaneous Award as follows:

'The above passages make it clear that the Miscellaneous Award was never intended to provide a comprehensive safety net for any particular industry or occupation, but rather was meant to provide basic conditions only for employees not covered by other modern awards until such time as a proper safety net could be established for identifiable groups of such employees in another modern award. The terms of the Miscellaneous Award reflect this underlying intention. We have already referred to the simplified and generic classification structure, which is not constructed with any particular group of employees in mind but is rather designed as a catch-all for any employees not covered by any other modern awards. The Full Bench decision above describes the natures of the hours of work provisions. Other provisions are of a similar nature: clause 15, Allowances, for example provides only for some basic expense-related allowances and does not deal with any specific skill increments or disabilities which might be required for a specific industry or occupation, and clause 22, Overtime and penalty rates, provides for a fairly rudimentary scheme of overtime rates and nighttime and weekend penalty rates that is not adapted for any particular pattern of work.'

[43] We agree with those observations as to the character of the Miscellaneous Award. It is our provisional view that if the Miscellaneous Award does cover employers and their courier employees



in the on demand delivery services industry, then it does not provide a fair and relevant safety net for that industry.”⁶⁵

6.2.3 Amusement Award

[103] The coverage and classification clauses of the Amusement Award were substantively varied during the 4 yearly review in 2020.⁶⁶ In a decision dated 9 April 2020, the Full Bench considered an application by the Professional Golfers Association of Australia (the PGA) to extend coverage of the Amusements Award of what was then the *Amusement, Events and Recreation Award 2010*.⁶⁷

[104] The PGA’s application sought to expand coverage to include golf facilities as well as corresponding changes to the classification provisions, including the insertion of golf trainees. Due to structural changes to the PGA Trainee Program, the PGA submitted trainees were no longer eligible for the training wage under the Miscellaneous Award and therefore fell under the Amusement Award.

[105] The PGA contended that there was no ‘golf industry’ in the modern award system and that Golf Professionals had not traditionally been covered by a modern award. It contended that, due to the complexity of finding the ‘best fit’ award’, many Golf Professionals remained award-free.

[106] The Full Bench granted the application in the terms proposed by the PGA finding the variation necessary to achieve the modern awards objective and to remedy the ‘industrial lacuna’ concerning aspects of the golf industry.⁶⁸

6.2.4 Broadcasting Award

[107] The coverage clause of the Broadcasting Award was substantively varied during the 4 yearly review in 2017.⁶⁹ In a decision dated 27 September 2017, a Full Bench considered applications by the Community and Public Sector Union (the CPSU) and the Media, Entertainment and Arts

⁶⁵ Ibid at [40]–[43].

⁶⁶ Amusement, Events and Recreation Award 2010 – substantive issues, (AM2019/7).

⁶⁷ 4 yearly review of modern awards – Amusement, Events and Recreation Award 2010 [\[2020\] FWCFB 1518](#).

⁶⁸ Ibid at [8]–[9].

⁶⁹ Broadcasting and Recorded Entertainment Award 2010 – substantive issues, (AM2016/4).



Alliance (MEAA) to expand the coverage of what was then the *Broadcasting and Recorded Entertainment Award 2010*.⁷⁰

[108] The CPSU application sought to expand the coverage of the award to include captioners, audio-describers, subtitlers and subtitling editors who were not covered by a modern award at that time. The CPSU submitted that coverage under the Miscellaneous Award was inadequate, did not reflect the specific and unique work performed and did not reflect the work value of the roles. It was said that varying the award would remedy these concerns and provide a fair and relevant safety net.⁷¹

[109] The MEAA application sought, amongst other things, to clarify the coverage and application of the award to dancers and cinema workers.⁷²

[110] The Full Bench granted both applications and the award was subsequently varied.

6.2.5 Graphic Arts Award

[111] During the 4 yearly review, the AMWU sought to extend coverage of what was then the *Graphic Arts, Printing and Publishing Award 2010*.⁷³ In its application, the AMWU contended that metropolitan daily newspapers were not covered by the Award, as coverage was expressed to be confined in clause 4.9 to the “production of non-daily and regional daily newspapers”. The AMWU submitted that this rendered the affected employees as either award-free or else subject to ambiguous coverage.

[112] An earlier Full Bench had accepted an in-principle position that coverage did extend to metropolitan daily newspapers and accordingly, consideration of consequential changes to various provisions of the Graphic Arts Award, ‘having regard to the terms of the pre-2009 industrial instruments which applied’, was necessary to clarify that coverage.⁷⁴

⁷⁰ 4 yearly review of modern awards – *Broadcasting Award 2010 – Substantive issues* [2017] FWCFB 3803.

⁷¹ *Ibid* at [17].

⁷² *Ibid* at [18].

⁷³ *Graphic Arts, Printing and Publishing Award 2010 – substantive issues*, (AM2016/33).

⁷⁴ 4 yearly review of modern awards – *Group 2* [2016] FWCFB 7254 at [96].



[113] Being satisfied that the Award should cover metropolitan daily newspapers, the Full Bench determined that the Graphic Arts Award should be varied in the terms proposed by the AMWU. This included removing the reference to ‘regional’ in the coverage clause and throughout the Award, to clarify that coverage extended to metropolitan daily newspapers. The Full Bench held that such a variation was necessary to “achieve the modern awards objective by creating a simpler and more readily understood fair and relevant safety net”.⁷⁵

6.2.6 Journalists Award

[114] In the 4 yearly review, the MEAA made an application to the Commission seeking, amongst other things, to confirm the exemption of certain positions from the coverage in clause 4.9 of what was then the *Journalists Published Media Award 2010*.⁷⁶

[115] The Full Bench agreed with the MEAA that journalists who perform senior editorial and/or management functions in a news publication have traditionally been exempted from award coverage. However, the Full Bench found there were two further issues in relation to coverage which went beyond those raised by the MEAA. Firstly, coverage as expressed was prohibited by s 154(1) as containing state-based difference terms and secondly, that it was arbitrary, indiscriminate and uncertain in its effect.

[116] In finding that it was necessary to retain the exemption given the operation of s 143(7)(a), the Full Bench concluded that changes to clause 4.9 of the Award were required to remove any offence to s 154(1) and to ensure the provision was not arbitrary or uncertain so as to prohibit the achievement of the modern awards objective. It also considered it appropriate to clarify the exemption of employees who occupy positions with an annual salary greater than the level 11 rate of pay and which involve the exercise of significant editorial, artistic or managerial control or direction within a publication.⁷⁷

⁷⁵ 4 yearly review of modern awards – *Graphic Arts, Printing and Publishing Award 2010* [2017] FWCFB 3135 at [21].

⁷⁶ *Journalists Published Media Award 2010* – substantive issues, (AM2018/24).

⁷⁷ 4 yearly review of modern awards – *Journalists Published Media Award 2010* [2019] FWCFB 7603 at [81]–[92].



6.2.7 Professional Employees Award

[117] The Commission recently initiated an application to vary the Professional Employees Award to clarify its coverage.⁷⁸ The application was commenced having regard to the observations made by the Full Bench in *Zheng v Poten & Partners*⁷⁹ (Zheng), which identified concerns with the Award's coverage.

[118] The Full Bench varied the classification structure by inserting the following wording to clarify that persons employed in management positions are not covered by the Award:

“An employee performing professional engineering duties, professional scientific duties, professional information technology duties or quality auditing must be classified in one of the following classifications provided that the employee is not employed in a wholly or principally managerial position.”⁸⁰

Chapter 6 discussion questions

13. Are there any relevant occupations that were covered by pre-reform awards that are not currently covered by a modern award?
14. Are any of the occupations identified as possible gaps in award coverage in this paper, or by the parties, occupations that could not be covered by awards because of section 143(7)?
15. For the occupations identified as gaps in award coverage in this paper, or by the parties, which awards could be varied to close the gap?
16. Are there any other legislative provisions or significant decisions pertinent to the Commission's consideration of the arts and culture sector in this Review?

⁷⁸ See *Variation of Professional Employees Award 2020 on Commission's own motion* [2023] FWCFB 13 and [2023] FWCFB 58.

⁷⁹ *Zheng, Lingli v Poten & Partners (Australia) Pty Ltd* [2021] FWCFB 3478 at [45]-[46] and [58].

⁸⁰ *Variation of Professional Employees Award 2020 on Commission's own motion* [2023] FWCFB 13 at [83].



7. Minimum entitlements in awards

The existing awards identified in Chapter 4 as potentially providing coverage in the arts and culture sector include a diverse range of occupations and industries. This chapter provides a broad overview of minimum entitlements in modern awards, looking first to the legislative framework concerning terms that are permitted or required in modern awards. The chapter then sets out a sample of provisions that apply to employees in the arts and culture sector to facilitate a comparative conversation about minimum entitlements across the sector. This discussion paper does not attempt to deal with all minimum entitlements in the arts and culture sector; instead, it focusses on key provisions that demonstrate the variability of existing conditions in the sector, such as wage rates, hours of work and minimum payment terms.

7.1 Permitted and required terms

[119] Modern awards set out the minimum terms and conditions of employment for national system employees in particular industries and occupations. These minimum entitlements operate in addition to the National Employment Standards. The Act, which empowers the Commission to make modern awards, also sets out the sorts of minimum entitlements awards can include. These provide a useful starting point for a discussion of minimum entitlements in the arts and culture sector.

[120] Division 3 of Part 2–3 of the Act deals with terms of modern awards. Relevantly, it provides that modern awards must only include terms that are permitted or required by:

- (a) subdivision B (which deals with terms that may be included in modern awards); or
- (b) subdivision C (which deals with terms that must be included in modern awards); or
- (c) section 55 (which deals with interaction between the National Employment Standards and a modern award or enterprise agreement); or
- (d) Part 2-2 (which deals with the National Employment Standards).⁸¹

⁸¹ *Fair Work Act 2009* (Cth) s 136.



[121] Subdivision B, which sets out terms that may be included in a modern award, includes the following:

- Minimum wages (including junior rates, rates for workers with disabilities and training rates) (s 139(1)(a))
- Types of employment (full-time, part-time, casual, shift work and facilitative provisions for flexible working arrangements) (s 139(1)(b))
- Arrangements for when work is performed, including hours of work, rostering, notice periods, rest breaks and variations to working hours (s 139(1)(c))
- Overtime rates (s 139(1)(d))
- Penalty rates (s 139(1)(e))
- Annualised wage arrangements (s 139(1)(f))
- Allowances (s 139(1)(g))
- Leave, leave loadings and arrangements for taking leave (s 139(1)(h))
- Superannuation (s 139(1)(i))
- Procedures for settling disputes, representation and consultation (s 139(1)(j))
- Provisions relating to outworkers and outwork entities (s 140)
- Industry-specific redundancy schemes (s 141)
- Incidental and machinery terms (s 142).

[122] Subdivision C, which sets out the terms that must be included in a modern award, includes the following (among others):

- Coverage terms (s 143) (see further discussion of coverage terms in Chapter 3)
- Flexibility terms (s 144)
- Consultation terms (s 145A)
- Terms about settling disputes (s 146)
- Ordinary hours of work (s 147)
- Default fund terms (s 149C).

[123] Subdivision D of Division 3 sets out terms that cannot be included in modern awards such as objectionable terms, terms about right of entry, discriminatory terms and terms that contain State-based differences.



- [124] Section 55 of the Act, which concerns interaction between the National Employment Standards and a modern award, further provides that modern awards may include terms that are ancillary or incidental to the operation of an entitlement of an employee under the National Employment Standards or that supplement the National Employment Standards.
- [125] Modern awards may also include terms they are expressly permitted to include by a provision of Part 2-2.⁸² Part 2-2, which sets out the National Employment Standards, permits awards to include terms providing for averaging of hours of work (s 63); cashing out and taking paid annual leave and paid personal or carer's leave (ss 93 and 101) and terms relating to evidence requirements in respect of leave entitlements (s 107(5)).
- [126] In accordance with s 138, modern awards may only include terms they are permitted to include to the extent necessary to achieve the modern awards objective and (to the extent applicable) the minimum wages objective. This means the scope and effect of permitted and mandatory terms must be directed at achieving the modern awards objective of a fair and relevant safety net that accords with community standards and expectations.⁸³

7.2 Minimum entitlements in the arts and culture sector

A sample of existing entitlements for arts and culture sector employees who fall within the coverage of the identified modern awards is set out below.

7.2.1 Structure and content of modern awards

- [127] A focus of the 4 yearly review was to simplify the language and structure of modern awards. Using insights gained from engagement with small businesses about matters such as the format, structure, language and usability of awards led to the restructure of the modern awards, so they follow a more logical path from engagement to the end of the employment relationship.
- [128] Following the restructure of awards in the 4 yearly review, awards are now broadly set out as follows:

⁸² *Fair Work Act 2009* (Cth) s 55(2).

⁸³ [Explanatory Memorandum](#), *Fair Work Bill 2008* (Cth) at [527].



- Application and operation of the award
- Types of employment
- Hours of work
- Wages and allowances
- Overtime and penalty rates
- Leave and public holidays
- Consultation and dispute resolution
- Termination of employment and redundancy
- Schedules – including classification structures, summaries of rates of pay and allowances

[129] Modern awards also include a range of standard clauses which are the same across the award system (with a few minor industry specific variations). These standard clauses relate to:

- Individual flexibility arrangements
- Consultation about major workplace change
- Consultation about changes to rosters or hours of work
- Dispute resolution
- Termination of employment
- Redundancy

[130] In addition to the standard clauses, a number of award provisions refer to the entitlements contained in the National Employment Standards. These reference provisions include:

- Requests for flexible working arrangements
- The definition of a casual employee
- Annual leave, personal/carer's leave and compassionate leave, parental leave and related entitlements, family and domestic violence leave

[131] As many of the terms outlined above are standard across the award system or simply refer to the entitlements in the National Employment Standards (with some supplementation), this chapter focuses on award specific terms such as minimum wages, ordinary hours of work and minimum engagement.



7.2.2 Minimum wages

[132] As identified in Chapter 4, there are a number of awards that may cover employees in the arts and culture sector. Entitlements vary broadly across the awards. For instance, the lowest rate of pay in some of the identified awards is currently \$859.30 per week (equivalent to the lowest rate – the C14 rate in the *Manufacturing and Associated Industries and Occupations Award 2020*) and the highest identified is currently \$2,064 per week for Level 13 employees under the *Journalists Award*.⁸⁴

[133] In the majority of awards in which the C14 rate appears, the rate applies for a transitional period for new employees.⁸⁵ A matter has been commenced on the Commission’s own motion to ensure C14 rates are transitional in all modern awards.⁸⁶ The C14 rates in several of the awards identified in this discussion paper⁸⁷ are under consideration and may be affected by its outcome.

[134] The following table sets out a range of rates that apply to full-time adult employees who may be working in the arts and culture sector and covered by these identified awards. The rates of pay are selected from awards identified in **Table 1** as potentially covering a broad range of occupations in the sector or that demonstrate the variability of rates of pay:

Table 2 – Arts and culture sector – minimum wages for lowest and highest classification in selected awards

	Broadcasting Award	Graphic Arts Award	Journalists Award	Live Performance Award	Miscellaneous Award
Lowest classification	Grade 2 ¹	Level 5 ²	Band 1.1	Introductory/ training rate	Level 1
Lowest weekly rate	\$882.80	\$995.00	\$1085.60	\$859.30	\$859.30

⁸⁴ *Journalists Published Media Award 2020*, cl 14.

⁸⁵ *Annual Wage Review 2022-23* [2023] FWCFB 3500 at [103].

⁸⁶ [Review of certain C14 rates in modern awards](#), (C2019/5259).

⁸⁷ See *Amusement, Events and Recreation Award 2020*; *Graphic Arts, Printing and Publishing Award 2020*; *Live Performance Award 2020*; *Miscellaneous Award 2020*; *Textile, Clothing, Footwear and Associated Industries Award 2020*.



	Broadcasting Award	Graphic Arts Award	Journalists Award	Live Performance Award	Miscellaneous Award
Highest classification	Grade 7	Level 8	Band 3.13	Conductor-leader	Level 4
Highest weekly rate	\$1057.40	\$1085.60	\$2064.90	\$1453.70	\$1085.60

¹ Grade 1 is not used as wage rate in the Broadcasting Award.

² The classifications for art and design under the Graphic Arts Award start at Level 5.

[135] Most of the awards identified in Chapter 4 as having potential relevance to the arts and culture sector contain a table or tables setting out the minimum rates of pay for full-time and part-time employees.⁸⁸ For example, clause 17.4 of the Graphic Arts Award sets out a minimum hourly or weekly rate for each of its eight classifications.⁸⁹ Some awards contain several pay rates tables each applying to a separate stream or occupation. Broadcasting for example contains two minimum rates tables, one for cinema employees and another for all other employees.⁹⁰ Many of the awards also contain a schedule of hourly rates of pay applicable to full-time, part-time and casual employees encompassing calculated hourly rates for shifts incurring penalty or overtime rates.⁹¹

[136] Some awards in the sector also contain special rates that provide for payment other than on a weekly or hourly basis, including payment per engagement or per occasion. The Live Performance Award, for instance, allows musicians to be paid a weekly rate or by the call, and striptease artists are to be paid per parade. The Live Performance Award also contains rates of pay for performers or company dancers on school tours and rates of pay for employees under the age of 14. Striptease artists may be paid per parade. The Models Award contains rates for still photography,

⁸⁸ Clause 16 of the *Mannequins and Models Award 2020* provides one minimum rate for full-time and part-time house mannequins and models, a table of rates for its junior employees and a series of rates for casual models and mannequins depending on the type and duration of engagement.

⁸⁹ *Graphic Arts, Printing and Publishing Award 2020*, cl 17.

⁹⁰ *Broadcasting, Recorded Entertainment and Cinemas Award 2020*, cl 13.

⁹¹ See, for example, *Journalists Published Media Award 2020*, sch A.



television or movies that are payable per hour or 2 hourly or in half-day amounts. There are different rates depending on whether the models are working on trade showings or parades.

7.2.3 Minimum engagement in the arts and culture sector

[137] Minimum engagement terms in modern awards specify the minimum time of each engagement or shift and hence the minimum payment to which an employee is entitled for each engagement or shift worked. In a decision dated 4 May 2021, a Full Bench of the Commission observed that this type of award clause is commonly described as a minimum *engagement* term but actually operates as a minimum *payment* term, which requires employers to pay employees for the specified minimum number of hours in certain circumstances.⁹² This chapter uses both ‘minimum engagement’ and ‘minimum payment’ in accordance with the language of the particular award under consideration.

[138] The Full Bench in the 4 May 2021 decision also set out the rationale for minimum payment terms as well as the important countervailing considerations for such terms:

“[246] As we said in the *Aged Care Substantive Claims Decision*, the short point made in the relevant authorities is that minimum engagement terms protect employees from exploitation by ensuring that they receive a minimum payment for each attendance at their workplace to justify the cost and inconvenience of each such attendance.

[247] We also note the observation of the *Casual and Part-time Employment Full Bench* that there are a number of ‘important countervailing considerations’ that need to be considered in establishing award minimum engagement requirements, namely:

- longer minimum engagement periods may prejudice those persons who wish to and can only work for short periods of time because of family, study or other commitments, or because they have a disability
- the need for and length of a minimum engagement period may vary from industry to industry, having regard to differences such as in rostering practices and whether there are broken shifts

⁹² 4 yearly review of modern awards – *Social, Community, Home Care and Disability Services Industry Award 2010 – Substantive claims* [2021] FWCFB 2383 at [243].



- an excessive minimum engagement period may cause employers to determine that it is not commercially viable to offer casual engagements or part-time work, which may prejudice those who desire or need such work, and
- a minimum daily engagement period for part-time employees might not need to be as long as for casual employees, because part-time employees are likely to enjoy the greater security of a guaranteed number of weekly hours of work.”⁹³

[139] **Table 3 – Arts and culture sector – minimum engagement** (below), sets out the range of minimum payment terms within the modern awards identified as having potential relevance. These range from 2 hours for casual employees in the Miscellaneous Award, through to a minimum payment of 8 hours for certain performers in feature films in the Broadcasting Award.

Table 3 – Arts and culture sector – minimum engagement/payment

Award	Employee group	Minimum engagement/payment	Clause
Broadcasting Award	General	Part-time employees – 4 consecutive hours on any day or shift	10.3
		Casual employees – 4 hours pay on each occasion they are required to attend for work (unless otherwise specified)	11.5
	Television Broadcasting	All employees – Saturday, Sunday or Public Holiday – specific engagement – 4 hours' work	31.3
	Radio Broadcasting	Announcers and Broadcaster/ Journalists – rostered days off – 2 hours	42.6
		Announcers and Broadcaster/ Journalists – public holidays – 6 hours, or if continuous with previous day's work and ends no later than 2.00am on public holiday, only the time worked after 12.00am	44.2
	Technical staff – Sundays and public holidays – 4 hours	45.1	
	Journalists	Refer to general terms and conditions	10.3, 11.5

⁹³ Ibid at [246]-[247].



Award	Employee group	Minimum engagement/payment	Clause
	Artists	Advertising productions for voice only – 2.5 hours	64.3(a)
		Advertising productions for other than voice only – 4 hours	64.3(a)
		Feature films—performer (speaking more than 2 lines of dialogue) – 8 hours	64.3(b)
		Feature films—all other artists (including performers speaking 2 lines of dialogue or less) – 4 hours	64.3(b)
		All other content—performers (excluding bit players) – 8 hours	64.3(c)
		All other content—all other artists (provided that an artist (other than an extra or stand-in) engaged to work in more than one episode of a serial drama or serial comedy in a week will be engaged by the week) – 4 hours	64.3(c)
	Musicians	Casual employees in television – 3 hours excluding meal breaks	71.1
		Casual employees in all other cases – 3 hours (a call)	71.2
		All employees – Public holidays – 4 hours	76.2
	Motion Picture Production	Casual employees engaged at a location – 4 hours	82.2
		Casual employees – if notice not given prior to finishing ordinary hours of work on the first day that they are not required to work on a 2nd or subsequent day (unless employed for one day only) – 8 hours	82.1
Graphic Arts Award	Part-time employees	<ul style="list-style-type: none"> • 4 consecutive hours per day or shift • 3 hours if a publishing employee in a newspaper office • 2 hours if an inserter in a newspaper office 	10.2



Award	Employee group	Minimum engagement/payment	Clause
	Casual employees	<ul style="list-style-type: none"> 4 consecutive hours per day or shift 3 hours if a publishing employee in a publishing department 2 hours if collating and inserting in the publishing department of a newspaper 	11.2
	All employees	<p>Overtime – Saturday (not continuous with work which began on Friday) – 2 hours or 2 hours’ pay</p> <p>Shiftwork employees – overtime – Saturday (continuous with work which began on Friday) – 2 hours or 2 hours’ pay (except as provided for in clauses 13 and 14)</p> <ul style="list-style-type: none"> All employees – overtime – Sunday – 4 hours or 4 hours’ pay 	<p>28.3(b)</p> <p>28.3(c)</p> <p>28.3(b), 28.3(c)</p>
Journalists Award	Full-time employees	4 hours minimum per day	12.6
	Part-time employees	4 consecutive hours on any day or shift	9.2, 12.6
	Casual employees	3 hours and 45 minutes on each occasion	10.1
Live Performance Award	Performers and Company Dancers	Casual employees – each occasion they are required to attend for work – 3 hours	30.5
		Casual employees – public holidays – 4 hours	21.3
	Musicians	Weekly employees – 6, 3-hour calls per week	37.1, 40.2
		Part-time weekly employees – minimum of 2 calls per week for a period of at least 4 weeks	38.1, 40.2
		Casual employees – 3 hours (a call) for each engagement	39.2, 40.3
Striptease Artists	Weekly and casual employees – Sundays – 3 hours	44.6(a)	
	Part-time employees – 3 consecutive hours per shift	47.5	
	Casual employees – 2 hours or 2 performances on each occasion they are required to attend work	48.3	
		48.7	



Award	Employee group	Minimum engagement/payment	Clause
	Production and Support Staff	Full-time and part-time weekly employees and seasonal employees – 4 hours for each period of work	21.5, 56.5, 58.1, 61.1
		Casual employees – 3 consecutive hours per day	57.1, 61.2
		Casual employees – public holidays – 4 hours	21.5
Miscellaneous Award	Casual employees	2 consecutive hours on each occasion	11.2

7.2.4 Ordinary hours of work

[140] ‘Ordinary hours of work’ must be included in modern awards (s 147). Ordinary hours are an employee’s normal and regular hours of work. Modern awards set out the number of hours that a full-time employee can ordinarily be expected to work over a defined period. They also set out the span or spread of ordinary hours, that is, the times of the day that ordinary hours can be scheduled. For example, in the Miscellaneous Award the span of ordinary hours is 7.00 am to 7.00 pm Monday to Friday.⁹⁴ Full-time employees are generally entitled to a higher rate of pay for work outside ordinary hours.

[141] Given the broad range of awards with potential coverage to the arts and culture sector and the varied classifications, it is difficult to provide a simple comparison of the span of hours across these awards. It is also clear that looking at the span of hours in isolation to other entitlements such as penalty rates and overtime rates does not provide a complete picture.

[142] Nevertheless, it is useful to highlight the ordinary hours of work in a few of the relevant occupations.

[143] Full-time striptease artists in Part 7 of the Live Performance Award work an average of 38 hours per week with the arrangement of hours to be agreed between the employer and employee.⁹⁵ Overtime rates apply for all time worked in excess or outside the agreed rostered hours. Penalty

⁹⁴ *Miscellaneous Award 2020*, cl 20.

⁹⁵ *Live Performance Award 2020*, cls 46.3–46.4.



rates are payable between 7.00 am Sunday and 7.00 am Monday. When compared to the other classifications in the table, it is notable that striptease artists have a large span of ordinary hours, basically all hours Monday – Saturday, with no corresponding penalty rates for working ordinary hours on certain days or shifts.

[144] A number of the occupations set out in **Table 4** below do not specify a span of ordinary hours. However, they provide for penalty or overtime rates outside certain hours.

[145] For example, the Broadcasting Award does not specify a span of ordinary hours. Part 7 which deals with Television Broadcasting provides that ordinary hours of work must not exceed 38 hours per week, worked in shifts of 7.6 consecutive hours.⁹⁶ Penalties are payable for ordinary time worked on a rostered shift on Saturday/Sunday.⁹⁷ Shift allowances are payable for shifts finishing after 7.00 pm or at or before 7.00 am on any day or which begins before 7.00 am on any day.⁹⁸ Clause 32.1 provides that “Employees performing work as Captioners/Audio Describers and Subtitlers/Subtitling Editors in the classifications for that work contained in clause A.1.23 will receive a penalty for all work on a shift commencing after 12.00 pm (noon) and before 6.00 pm and of at least 7 hours duration of 17%.”

[146] **Table 4** below sets out the span of ordinary hours that apply to specified adult employees who may be working in the arts and culture sector and also notes whether penalty rates are payable for certain days or shifts. The awards included in **Table 4** are those identified in **Table 1** as potentially covering a broad range of occupations in the sector:

⁹⁶ *Broadcasting, Recorded Entertainment and Cinemas Award 2020*, cl 29.2; note cl 29.4 provides for limited changes to ordinary hours by agreement.

⁹⁷ *Ibid*, cl 32.2.

⁹⁸ *Ibid*, cl 32.1.



Table 4 – Arts and culture sector – span of ordinary hours

Award	Employee group	Span of ordinary hours	Clause
Broadcasting Award	Television Broadcasting	All hours – no specified span	29
		Penalty rates for working ordinary hours on certain days or shifts	32
	Radio Broadcasting	Announcers and Broadcaster/ Journalists— All hours – no specified span	35
		Penalty rates for working ordinary hours on certain days or shifts	44
		Technical Staff—All hours – no specified span	36
		Penalty rates for working ordinary hours on certain days or shifts	45
	Journalists	All hours – no specified span	48
		Penalty rates for working ordinary hours on certain days or shifts	51
	Artists	Content other than feature films—7.00am – 8.00pm, Monday to Friday	65.1(a)
		Feature films—6.30am – 11.00pm, Monday to Saturday	65.1(b)
		Penalty rates for working ordinary hours on certain days or shifts	69
	Musicians	All hours – no specified span	71
Penalty rates for working ordinary hours on certain days or shifts		76	
Motion Picture Production	12.01am Monday – 12.00am Saturday	77.2	
	Penalty rates for working ordinary hours on certain days or shifts	81	



Award	Employee group	Span of ordinary hours	Clause
Graphic Arts Award	Day work employees	7.00am – 6.00pm, all days	13.3(b)(i)
		6.30am – 6.00pm, employees engaged to clean premise or attend to heating apparatus for machines or buildings	13.3(b)(ii)
		*Span may be altered by up to one hour at one end of the spread (but not both) by agreement	13.3(c), 14.2
		Penalty rates for working ordinary hours on certain days or shifts	13.3, 14.1
	Shiftworkers other than in a newspaper office	Non-continuous—Monday to Friday	13.4(c)
Penalty rates for working ordinary hours on certain days or shifts		13.4	
Shiftworkers in a non-daily newspaper office	Continuous— Monday to Friday	13.5(e)	
	Penalty rates for working ordinary hours on certain days or shifts	13.5, 14.1	
Employees in a daily newspaper office	Non-continuous—Monday to Friday	13.6(d)	
	Penalty rates for working ordinary hours on certain days or shifts	13.6, 14.1	
Journalists Award	All employees, except those listed at clause 4.9(a)	All hours – no specified span	13.7(e)
		Penalty rates for working ordinary hours on certain days or shifts	13.7, 14.1
Live Performance Award	Performers	9.00am – 11.15pm on no more than 6 days in any one week	12
		Penalty rates for working ordinary hours on certain days or shifts	19
	Company Dancers	Rehearsals—9.30am – 6.30pm, Monday to Friday	33.1(a)
		Performance—10.00am – 11.30pm, Monday to Saturday	35
		Penalty rates for working ordinary hours on certain days or shifts	33.2(c) 33.2(e) 35



Award	Employee group	Span of ordinary hours	Clause
	Musicians	All hours – no specified span	42
		Penalty rates for working ordinary hours on certain days or shifts	44
	Striptease Artists	Full-time and part-time employees—7.00am Monday – 7.00am Sunday	46.8, 47.8
		Casual employees—7.00am Monday – 7.00am Saturday	48.2
	Production and Support Staff	Weekly employees—7.00am – 12.00am, Monday to Sunday	61.1
		Casual employees—7.00am – 12.00am, Monday to Sunday	61.2
Penalty rates for working ordinary hours on certain days or shifts		63	
Miscellaneous Award	All employees	7.00am – 7.00pm, Monday to Friday	20
		Penalty rates for working ordinary hours on certain days or shifts	20

Chapter 7 discussion questions

17. Are there any responsive views addressing the content in chapter 7?



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List of tables

Tables listed in the discussion paper

Table No.	Table Title
Table 1	Arts and culture sector – occupations and potential award coverage
Table 2	Arts and culture sector – minimum wages for lowest and highest classification in selected awards
Table 3	Arts and culture sector – minimum engagement/payment
Table 4	Arts and culture sector – span of ordinary hours



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Annexure A

Industry profile

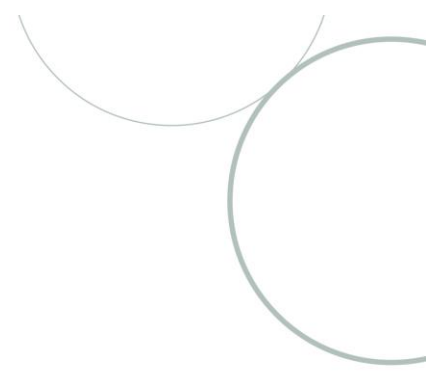
Arts and culture sector

Modern Awards Review 2023–24

6 November 2023
Fair Work Commission

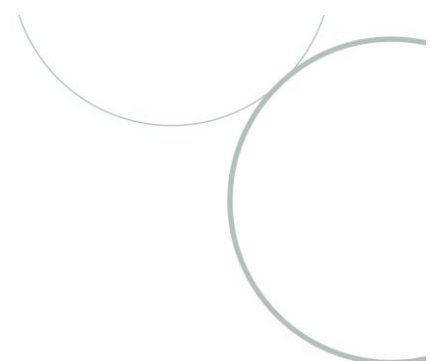


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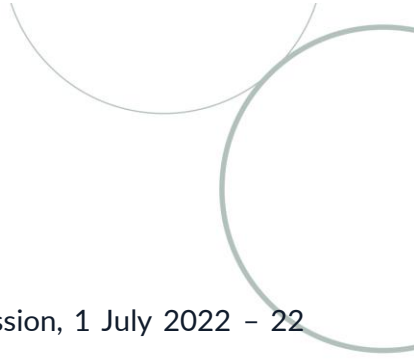


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This profile provides a statistical representation of the arts and culture sector using data primarily from the Australian Bureau of Statistics (ABS).

How the sector is defined

The sector can be defined using a combination of industry and occupation classifications based on the hierarchical frameworks developed by the ABS and Statistics New Zealand. These frameworks differ from the industry and occupation classifications used by the Fair Work Commission and for which industry and occupation awards are set. Relevant industries and occupations, based on the Discussion Paper, have been considered for the analysis. Individuals employed in the selected industries will not completely match with those employed in the selected occupations.

Industry

Industries are based on the Australian and New Zealand Standard Industrial Classification (ANZSIC) which provides a standard framework under which business units carrying out similar economic activities are grouped together to enable the compilation of industry statistics. This classification system is widely used by government agencies, industry organisations and researchers for various administrative, regulatory, taxation and research purposes.⁹⁹

The highest level is the industry division. The subdivision, group and class levels provide increasingly detailed dissections for the compilation of more specific and detailed statistics. Presenting information at the higher classification levels would result in the inclusion of some industries not defined within the arts and culture sector. Therefore, where possible, data are presented at the most detailed industry class level. Each individual class is defined in terms of a specified range of activities. Businesses that engage in a wider range of activities are classified based on their predominant activity.

The most appropriate industry divisions for the arts and culture sector have been identified as Arts and recreation services; Information media and telecommunications; and Professional, scientific and technical services. The industries selected for this analysis are presented in Table 1 below.

⁹⁹ Australian Bureau of Statistics, [Australian and New Zealand Standard Industrial Classification \(ANZSIC\)](#) (26 June 2013).

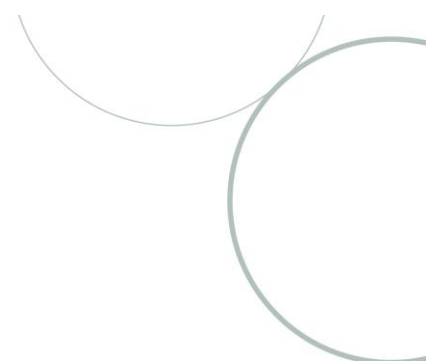
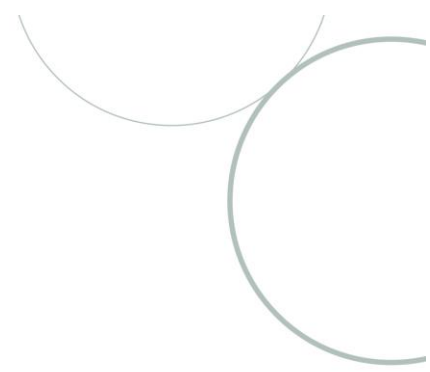


Table 1: Selected industries for the arts and culture sector

Division	Subdivision	Group	Class
Arts and Recreation Services*	Heritage Activities*	Museum Operation	Museum Operation
		Creative and Performing Arts Activities	Performing Arts Operation
			Creative Artists, Musicians, Writers and Performers
Creative and Performing Arts Activities	Performing Arts Venue Operation		
	Information Media and Telecommunications*	Motion Picture and Video Activities	Motion Picture and Video Production
Motion Picture and Video Distribution			
Motion Picture Exhibition			
Post-production Services and Other Motion Picture and Video Activities			
Sound Recording and Music Publishing		Music Publishing	
		Music and Other Sound Recording Activities	
Publishing (except Internet and Music Publishing)*		Newspaper, Periodical, Book and Directory Publishing*	Newspaper Publishing
			Magazine and Other Periodical Publishing
			Book Publishing
Professional, Scientific and Technical Services*		Professional, Scientific and Technical Services (Except Computer System Design and Related Services)*	Architectural, Engineering and Technical Services*
	Other Professional, Scientific and Technical Services		
			Other Specialised Design Services
			Professional Photographic Services

Note: * Not all categories within industry have been selected.

Some business units are unable to be grouped into industry classes where the information provided to the ABS does not allow it to be clearly identified. These are grouped into a category of business 'not further defined' (or 'nfd'). Other businesses are not able to be classified and are grouped into a separate category 'not elsewhere classified' (or 'nec'). The residual classes do not usually constitute a homogeneous set of primary activities, but rather diverse activities which are not sufficiently significant to justify their own separate classes.



Occupation

Occupations are based on the Australian and New Zealand Standard Classification of Occupations (ANZSCO). An ‘occupation’ is defined as a set of jobs that require the performance of similar or identical sets of tasks, that is, they are characterised by a high degree of similarity. Occupations are organised into progressively larger groups on the basis of their similarities in terms of both skill level and skill specialisation.¹⁰⁰ The broadest level is the major group, followed by the sub-major, minor, and unit groups.

Many of the relevant occupations for the arts and culture sector are within the sub-major group Arts and Media Professionals. However, other relevant occupations outside of this sub-major group have also been included. The occupations selected for this analysis are presented in Table 2 below.

Table 2: Selected occupations for the arts and culture sector

Minor Group	Unit Group	Occupation
Miscellaneous Specialist Managers*	Other Specialist Managers*	Arts Administrator or Manager
Arts Professionals	Actors, Dancers and Other Entertainers	Actor
		Dancer or Choreographer
		Entertainer or Variety Artist
	Music Professionals	Composer
		Music Director
		Musician (Instrumental)
		Singer
	Photographers	Photographer
	Visual Arts and Crafts Professionals	Painter (Visual Arts)
		Potter or Ceramic Artist
Sculptor		
Media Professionals	Artistic Directors, and Media Producers and Presenters	Artistic Director
		Media Producer (excluding Video)
		Radio Presenter
		Television Presenter
	Authors, and Book and Script Editors	Author
		Book or Script Editor

¹⁰⁰ Australian Bureau of Statistics, [ANZSCO – Australian and New Zealand Standard Classification of Occupations – Numbering system and titles](https://www.abs.gov.au/statistics/classifications/australian-and-new-zealand-standard-industrial-classification-anzsc/2006-revision-2-0/numbering-system-and-titles) (26 June 2022), <https://www.abs.gov.au/statistics/classifications/australian-and-new-zealand-standard-industrial-classification-anzsc/2006-revision-2-0/numbering-system-and-titles>



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Minor Group	Unit Group	Occupation
	Film, Television, Radio and Stage Directors	Art Director (Film, Television or Stage)
		Director (Film, Television, Radio or Stage)
		Director of Photography
		Film and Video Editor
		Program Director (Television or Radio)
		Stage Manager
		Technical Director
		Video Producer
	Journalists and Other Writers	Copywriter
		Newspaper or Periodical Editor
		Print Journalist
		Radio Journalist
		Technical Writer
		Television Journalist
Information and Organisation Professionals*	Archivists, Curators and Records Managers*	Gallery or Museum Curator
Architects, Designers, Planners and Surveyors*	Fashion, Industrial and Jewellery Designers	Fashion Designer
		Industrial Designer
		Jewellery Designer
	Graphic and Web Designers, and Illustrators	Graphic Designer
		Illustrator
		Multimedia Designer
Business and Systems Analysts, and Programmers*	Multimedia Specialists and Web Developers*	Multimedia Specialist
Miscellaneous Technicians and Trades Workers*	Performing Arts Technicians*	Camera Operator (Film, Television or Video)
		Light Technician
		Make Up Artist
		Sound Technician
Personal Service and Travel Workers*	Other Personal Service Workers*	Body Artist
Miscellaneous Sales Support Workers*	Models and Sales Demonstrators*	Model

Note: * Not all categories within group have been selected.



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Some occupations have not been able to be categorised into an occupation listed in the ANZSCO. These are grouped in the data in a separate occupation noted by either “nec” (not elsewhere classified) or “nfd” (not further defined).

The ABS is currently reviewing certain aspects of the ANZSCO to reflect the contemporary labour market. Focus areas have been grouped based on common industry, including in Arts and recreation.¹⁰¹

Data sources

Data predominantly from the ABS are used to compile a profile of the Arts and culture sector. A short description of the data sources is provided below. Not all data sources are able to present information at the most detailed industry and occupation levels.

Census of Population and Housing

According to the ABS, the Census is ‘the most comprehensive snapshot of the country’.¹⁰² Instead of collecting information from a sample of respondents, the Census includes responses from the whole population, and asks questions regarding age, work and education among others. The 2021 Census collected information from more than 96 per cent of Australian households relating to 10 August 2021.¹⁰³ The majority of data in this report are presented from the Census as the most detailed industry and occupations are able to be identified.

Labour Force Survey

The Labour Force Survey provides information about the labour market activity of Australia's resident civilian population aged 15 years and over. The survey sample consists of approximately 24 000 dwellings and approximately 50 000 people.¹⁰⁴ The survey does not allow for analysis on the most detailed industries and occupations.

¹⁰¹ Australian Bureau of Statistics, [Occupations by focus area: Occupations grouped by focus area for ANZCO public consultation](#) (6 October 2023).

¹⁰² Australian Bureau of Statistics, [The Australian Census](#) (25 October 2023).

¹⁰³ Australian Bureau of Statistics, [Participation in the 2021 Census](#) (25 October 2023).

¹⁰⁴ Australian Bureau of Statistics, [Labour Force, Australia methodology](#) (19 October 2023).



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Jobs in Australia

Jobs in Australia provides information from administrative data on the number and nature of filled jobs, the people who hold them, and their employers.¹⁰⁵ A job is considered as a relationship between an employed person and their employing enterprise. This can be a relationship between an employee and an employer or between an owner-manager of an unincorporated enterprise and their own enterprise. In the dataset, a person can have several jobs in a year with one or many employers, some of which may be held concurrently with others. Information for 2018–19 is presented in this report as this is the latest available data at the more detailed industry and occupation levels. Jobs in Australia is a product of the Linked Employer Employee Dataset (LEED) which is formed using data from the Australian Taxation Office (ATO) and the ABS Business Longitudinal Analysis Data Environment (BLADE).¹⁰⁶

Employee Earnings and Hours

Employee Earnings and Hours is a survey that provides detailed statistics on the composition and distribution of employee earnings, hours paid for, and the methods used to set employees' pay.¹⁰⁷ The survey does not allow for analysis on the most detailed industries and occupations. The data are for the reference period May 2021.

Workforce demographics

As defined by the selected industry classes and occupations, the arts and culture sector comprises more than 130 000–140 000 individuals, or just over 1 per cent of the total workforce.

Chart 1 presents the industry classes ranked by size. The largest industry classes, comprising around 40 per cent of individuals in the sector, are Other Specialised Design Services and Creative Artists, Musicians, Writers and Performers.

According to the selected industries, just over half of individuals in the sector are female (53.6 per cent). Females are relatively more likely than males to be working in Book Publishing, Museum Operation and

¹⁰⁵ Australian Bureau of Statistics, [Jobs in Australia methodology, 2015–16 to 2019–20](#) (8 November 2022).

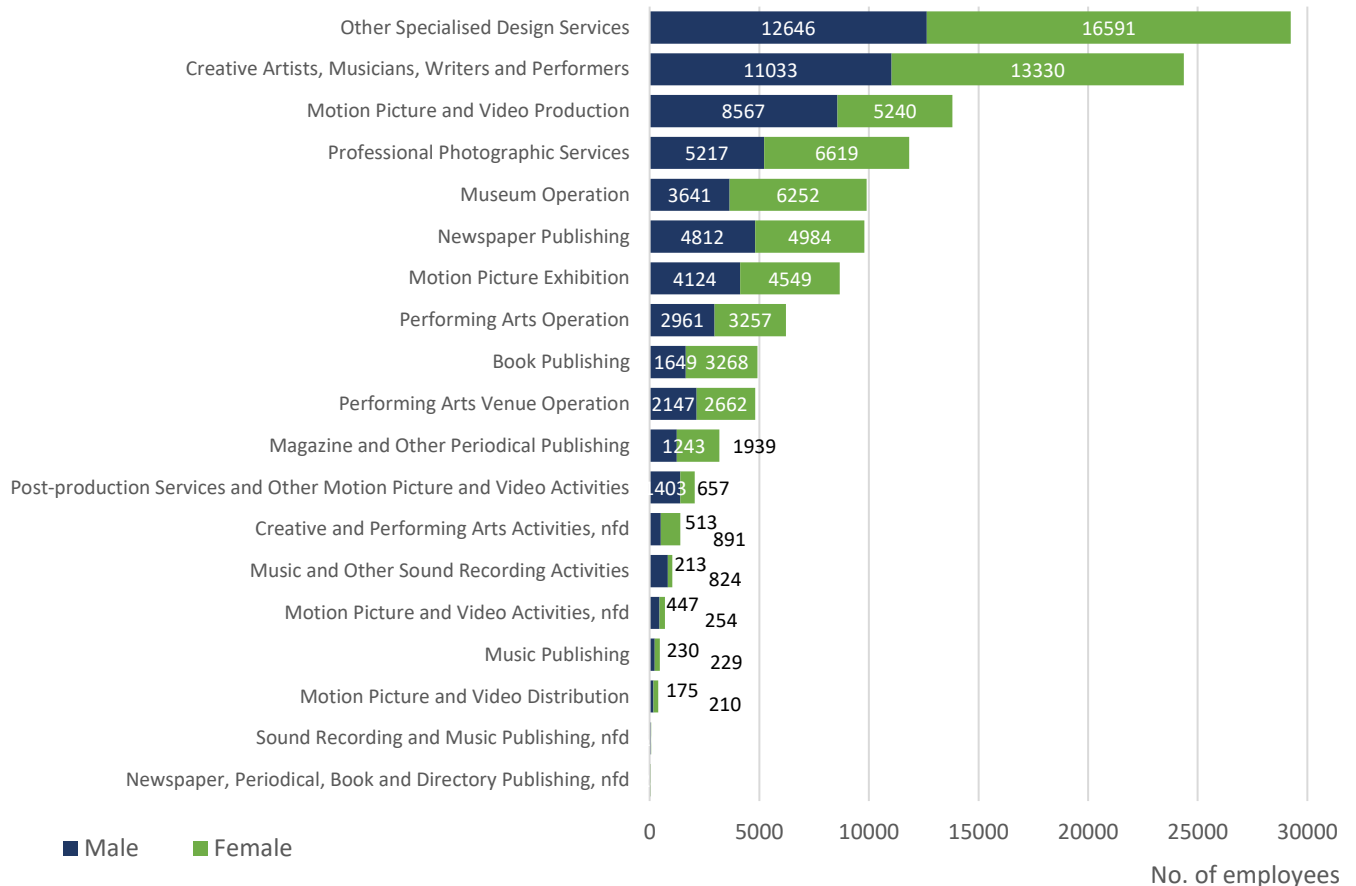
¹⁰⁶ See Australian Bureau of Statistics, [Linked Employer-Employee Dataset \(LEED\)](#), [Labour Statistics: Concepts, Sources and Methods](#) (15 February 2022); Australian Bureau of Statistics, [Business Longitudinal Analysis Data Environment \(BLADE\)](#) (25 October 2023).

¹⁰⁷ Australian Bureau of Statistics, [Employee Earnings and Hours, Australia methodology](#) (19 January 2022).



Magazine and Other Periodical Publishing. Males are relatively more likely to be working in Music and Other Sound Recording Activities, Post-production Services and Other Motion Picture and Video Activities, and Motion Picture and Video Production.

Chart 1: Persons employed by selected industry class and sex, 2021



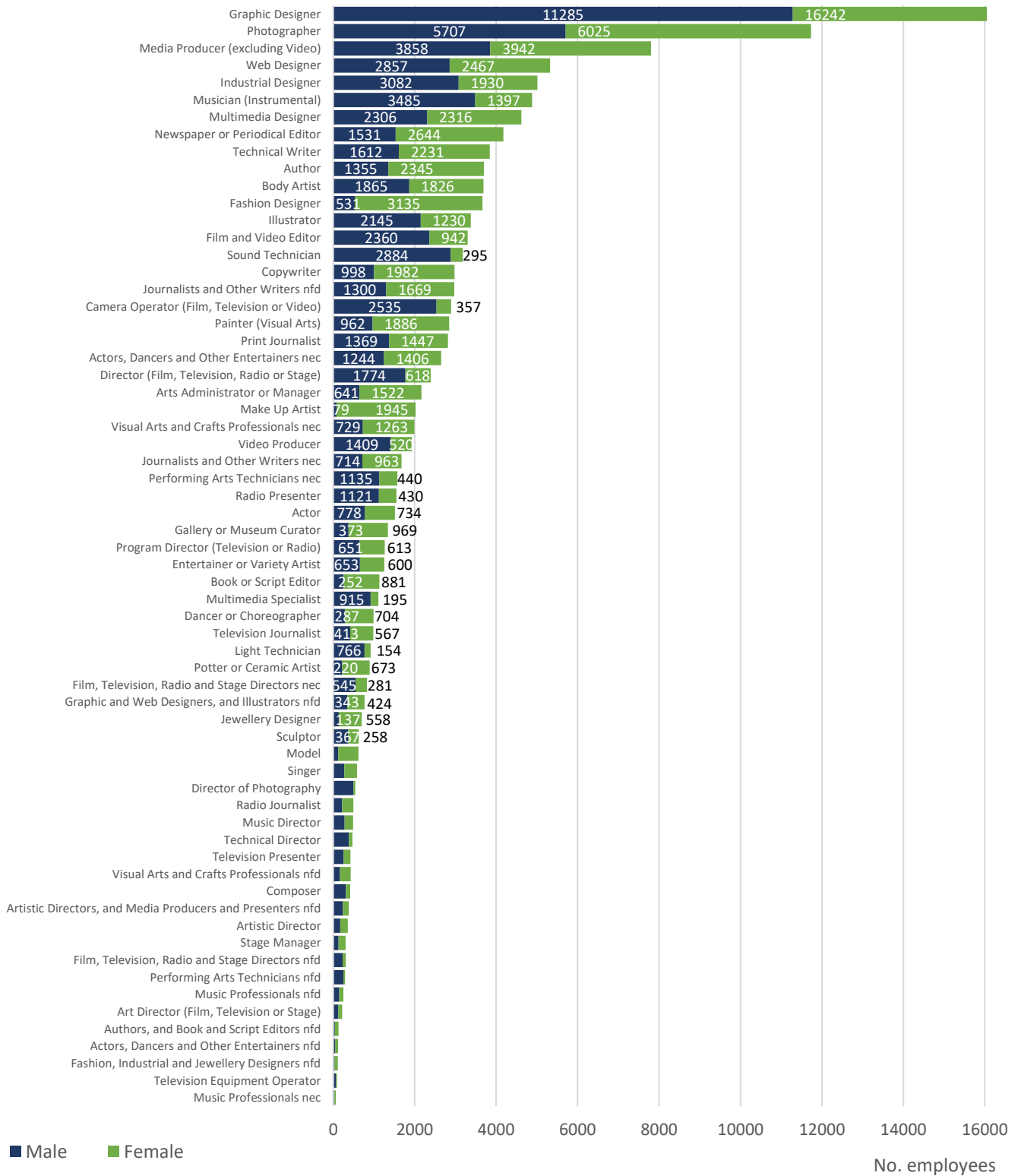
Source: ABS, *TableBuilder: Census, Australia, 2021*.

Chart 2 shows that the largest occupation groups, comprising over one quarter of all individuals in the sector, are Graphic Designers and Photographers.

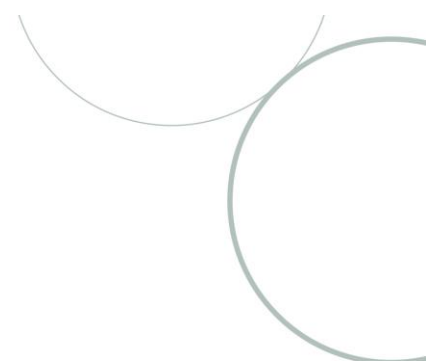
Females are relatively more likely than males to be working as Make Up Artists, Fashion Designers, Models and Jewellery Designers. Males are more likely to be working as Sound Technicians, Director of Photography and Camera Operators.



Chart 2: Persons employed by occupation and sex, 2021



Source: ABS, TableBuilder: Census, Australia, 2021.

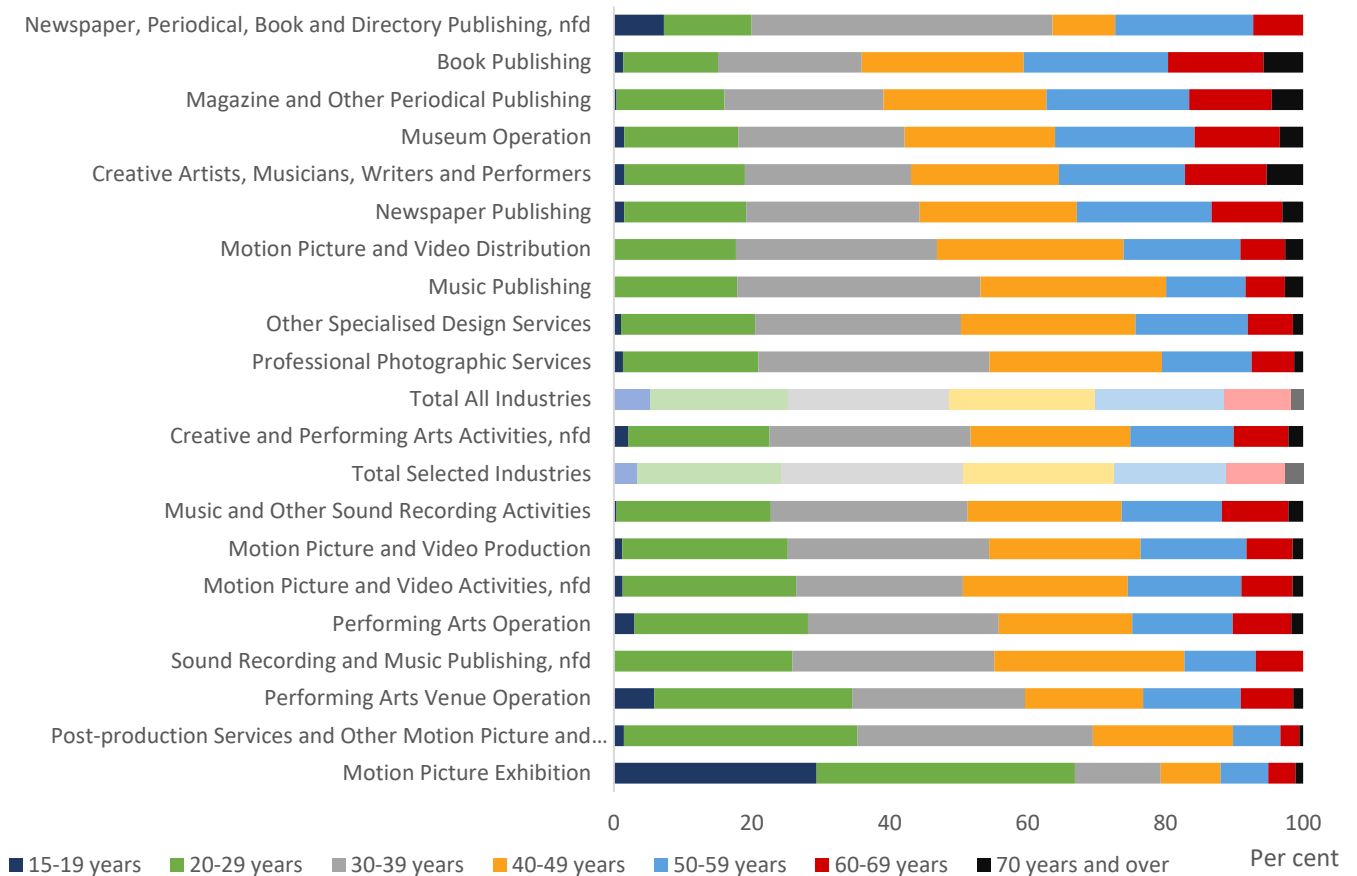


Age

Chart 3 shows that certain industries in the sector are relatively more likely to have an older workforce than others (50 years and over), such as Book Publishing, Magazine and Other Periodical Publishing, and Museum Operation compared with other industries.

In contrast, around two-thirds of workers in Motion Picture Exhibition are aged below 30 years. Post-production Services and Other Motion Picture and Video Activities, and Performing Arts Operation are also relatively more likely to have a younger workforce than other industries.

Chart 3: Persons employed by selected industry class and age group, 2021

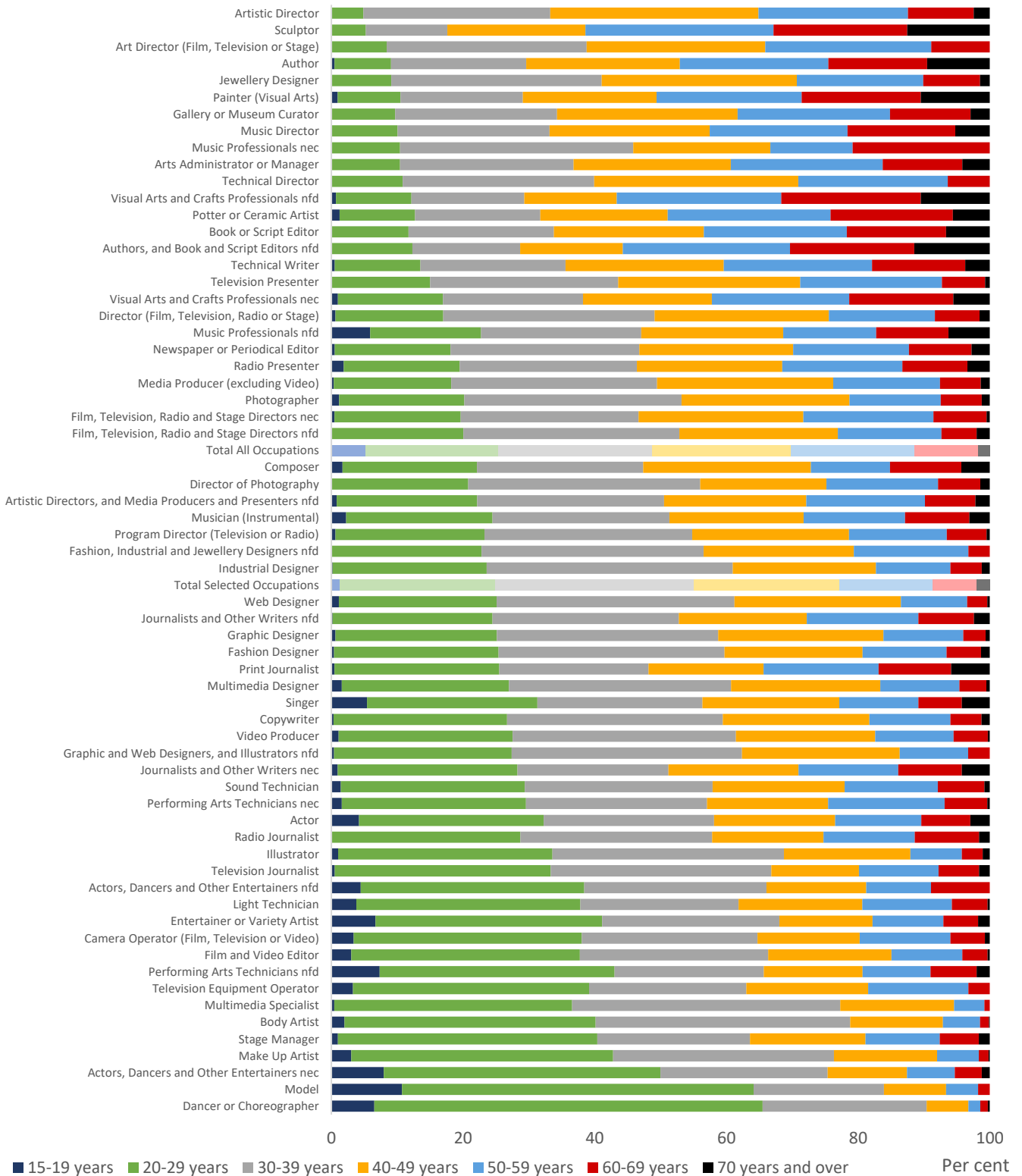


Source: ABS, *TableBuilder: Census, Australia, 2021*.

Chart 4 shows that Dancers or Choreographers and Models are the only occupations where more than half of the workforce is aged under 30 years. Compared with other selected occupations, Sculptors, Painters, and Potter or Ceramic Artists are more likely to be aged 50 years and over.



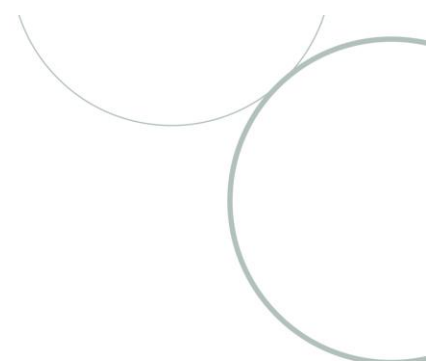
Chart 4: Persons employed by selected occupation and age group, 2021



Source: ABS, TableBuilder: Census, Australia, 2021.



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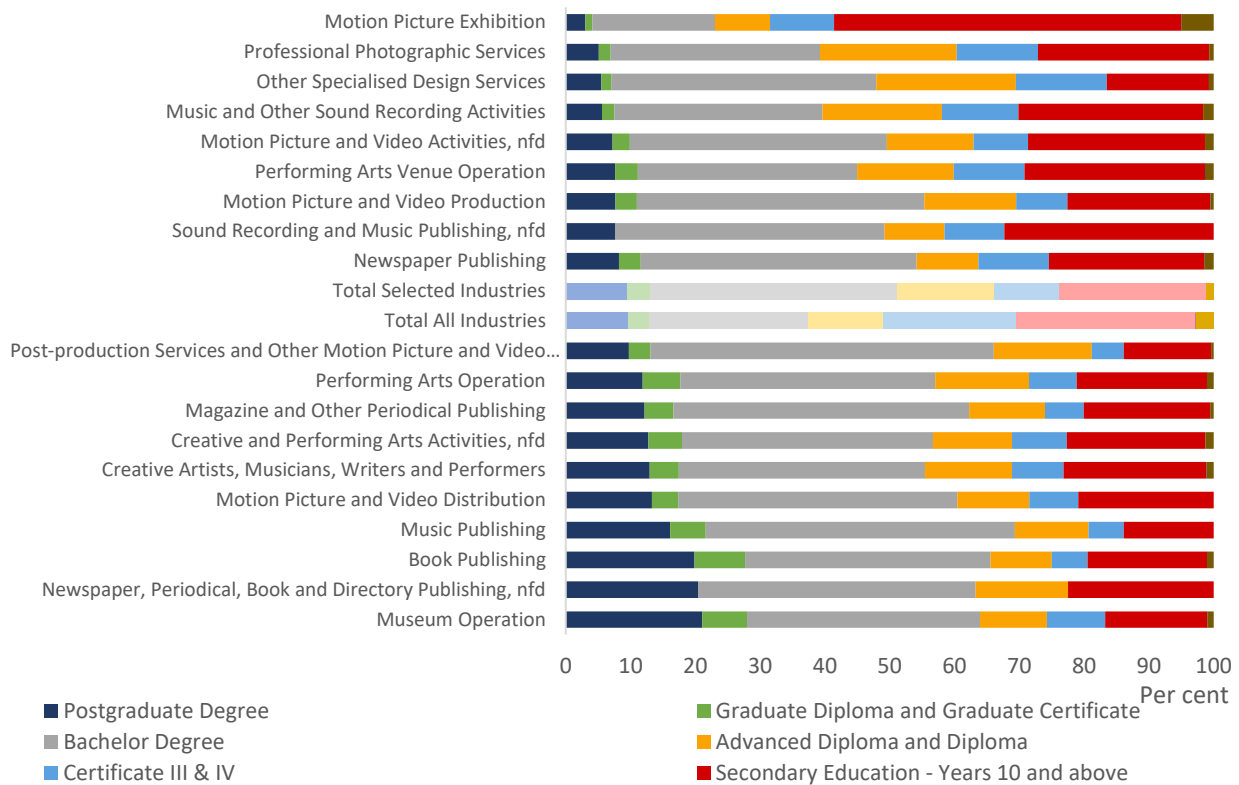


Highest level of education

Charts 5 and 6 shows that individuals in the sector are more likely to have a Bachelor degree than the overall workforce. This was the case across all of the selected industries other than Motion Picture Exhibition.

A higher proportion of individuals in around half of the selected industries are more likely to have a Postgraduate Degree or a Graduate Diploma/Certificate than the average across all industries, particularly those working in Museum Operation and Book Publishing. The Motion Picture Exhibition workforce was most likely to have Secondary Education (Year 10 and above) as its highest level of education.

Chart 5: Persons employed by selected industry class and highest level of education, 2021



Source: ABS, TableBuilder: Census, Australia, 2021.

Among the selected occupations, Gallery or Museum Curators and Book or Script Editors are most likely to have a Postgraduate Degree or a Graduate Diploma/Certificate (Chart 6). Body Artists and Models are relatively more likely than other occupations to have Secondary Education (Year 10 and above) as their highest level of education. Make Up Artists are more likely to have an Advanced Diploma or Diploma.

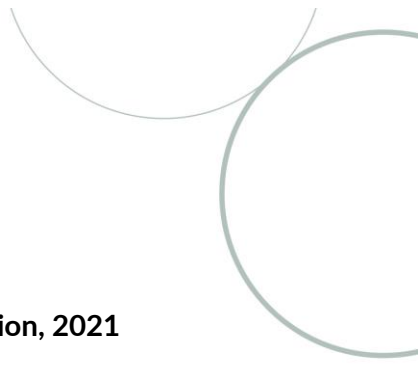
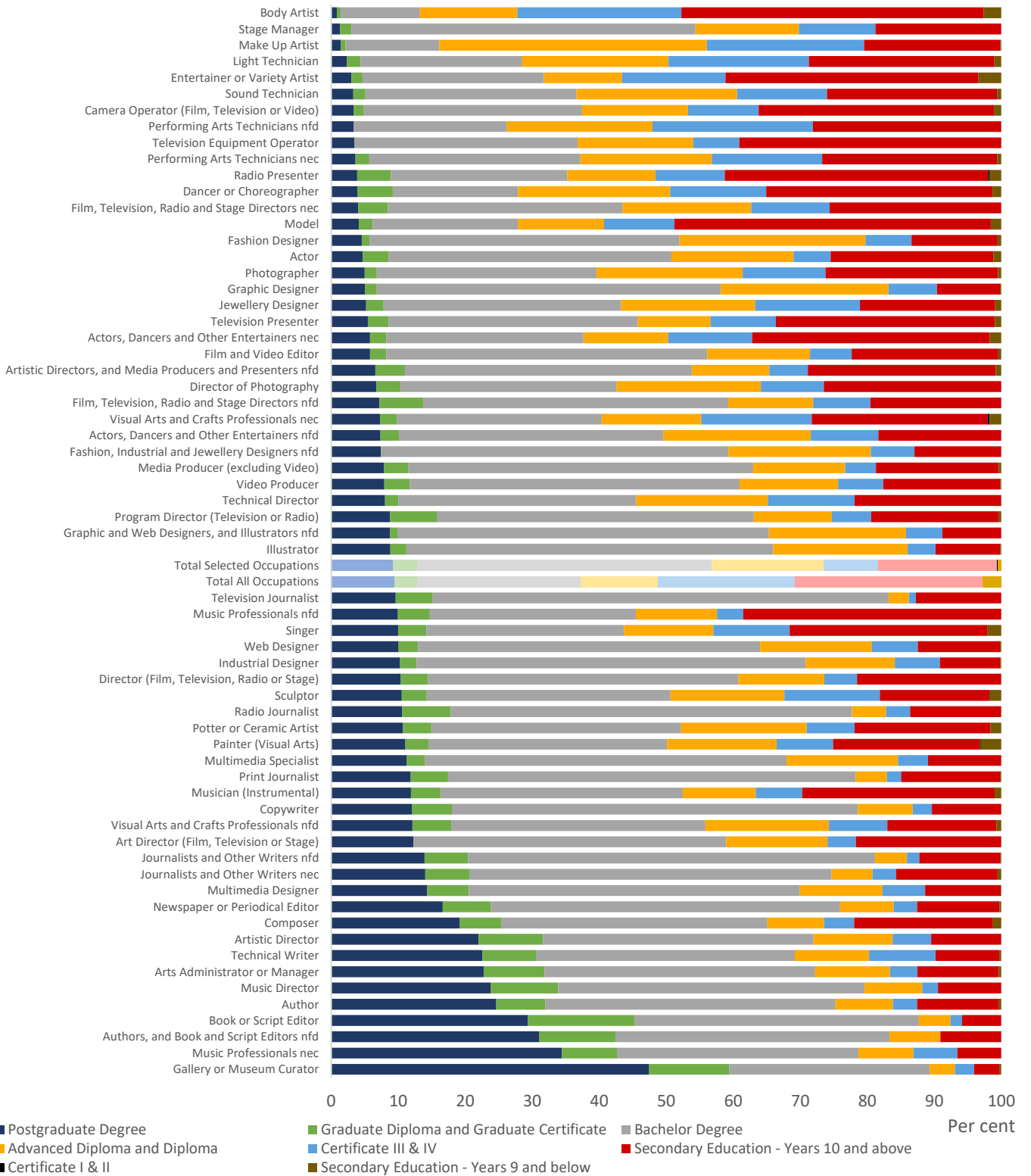
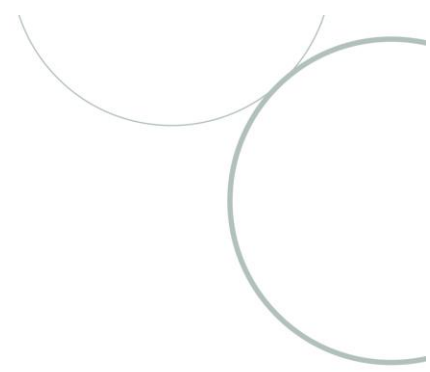


Chart 6: Persons employed by selected occupation and highest level of education, 2021



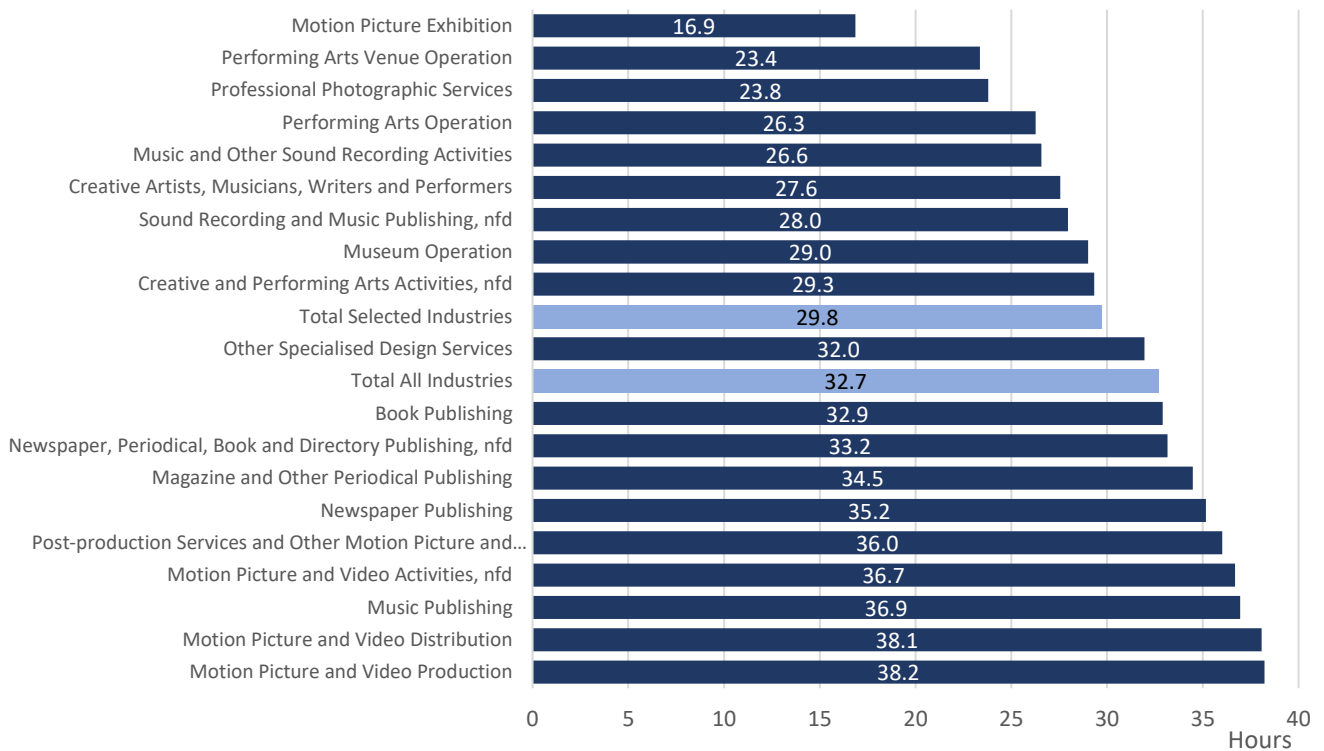


Types of employment

Individuals employed in the selected arts and culture sector industries work fewer hours per week on average than across all workers (Chart 7).

The lowest average hours worked among the selected industries applies to Motion Picture Exhibition, Performing Arts Venue Operation and Professional Photographic Services. Those in Motion Picture and Video Production and Distribution work the highest number of weekly hours on average among the selected industries.

Chart 7: Mean hours worked per week by selected industry class, 2021

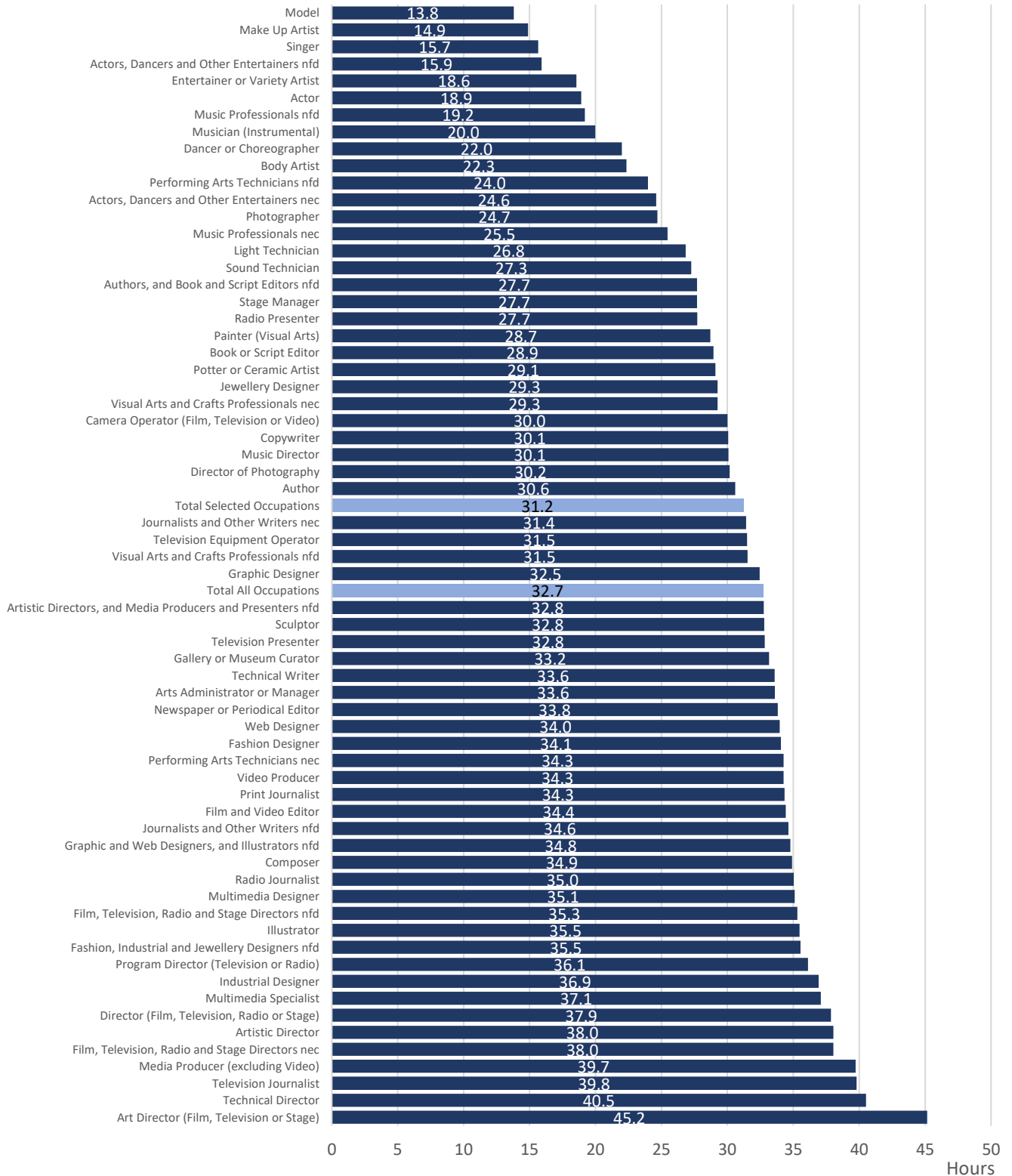


Source: ABS, *TableBuilder: Census, Australia, 2021*.

The fewest average weekly hours worked among the selected occupations were performed by Models, Make Up Artists, and Singers (Chart 8). Art Directors, Technical Directors, Television Journalists and Media Producers worked, on average, the highest number of hours per week.



Chart 8: Mean hours worked per week by selected occupation, 2021



Source: ABS, TableBuilder: Census, Australia, 2021.

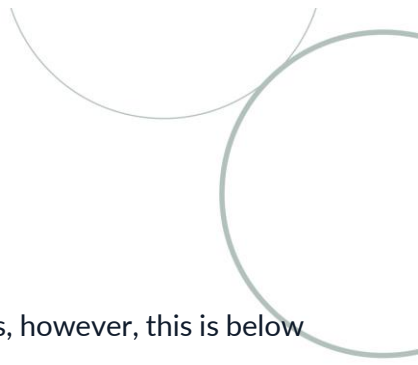
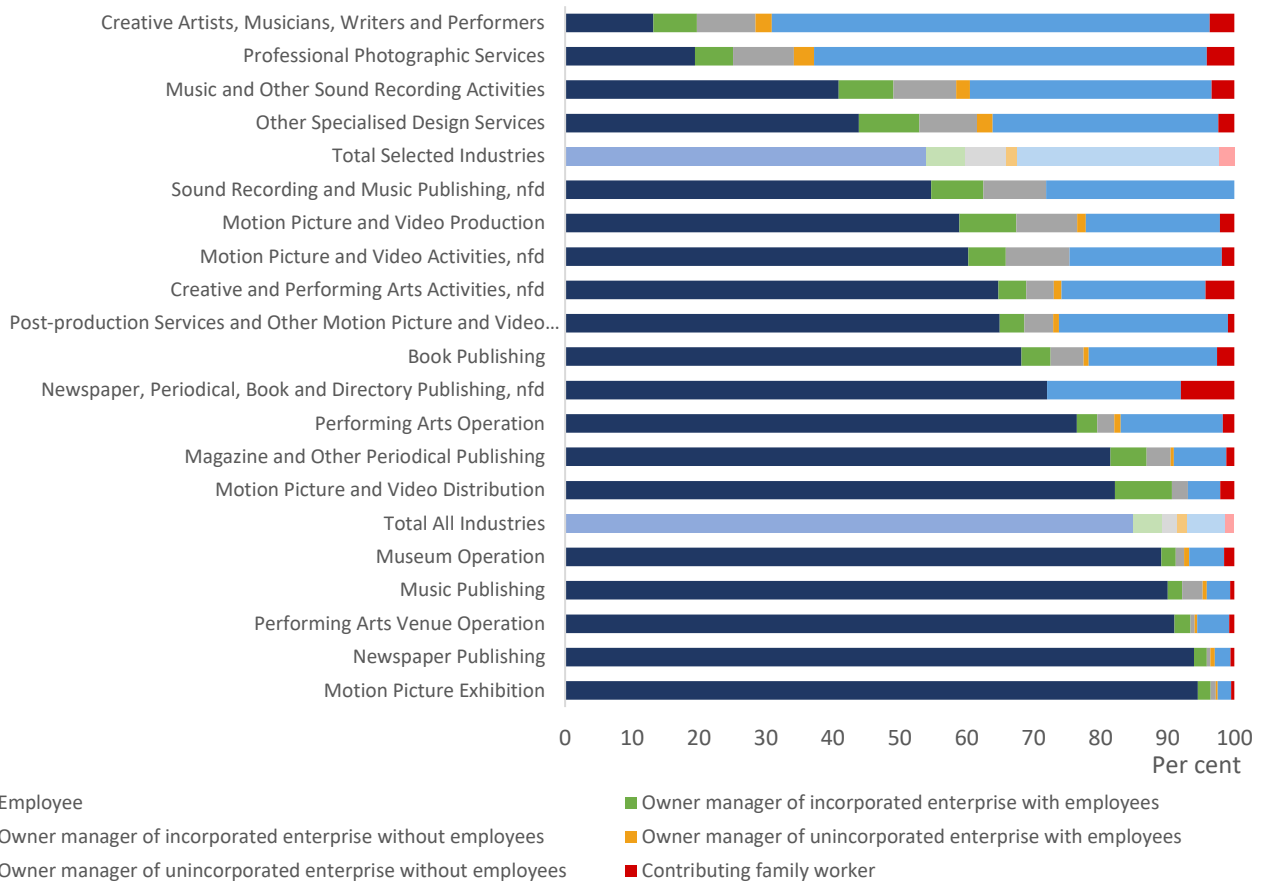


Chart 9 shows that over half of workers in the selected industries are employees, however, this is below the average across all industries. In particular, there is a higher proportion of Owner manager of unincorporated enterprise without employees in the selected industries. A relatively high proportion of these work in the Creative Artists, Musician, Writers and Performers class, and the Professional Photographic Services class, than in other industries.

Chart 9: Status in employment by selected industry class, 2021



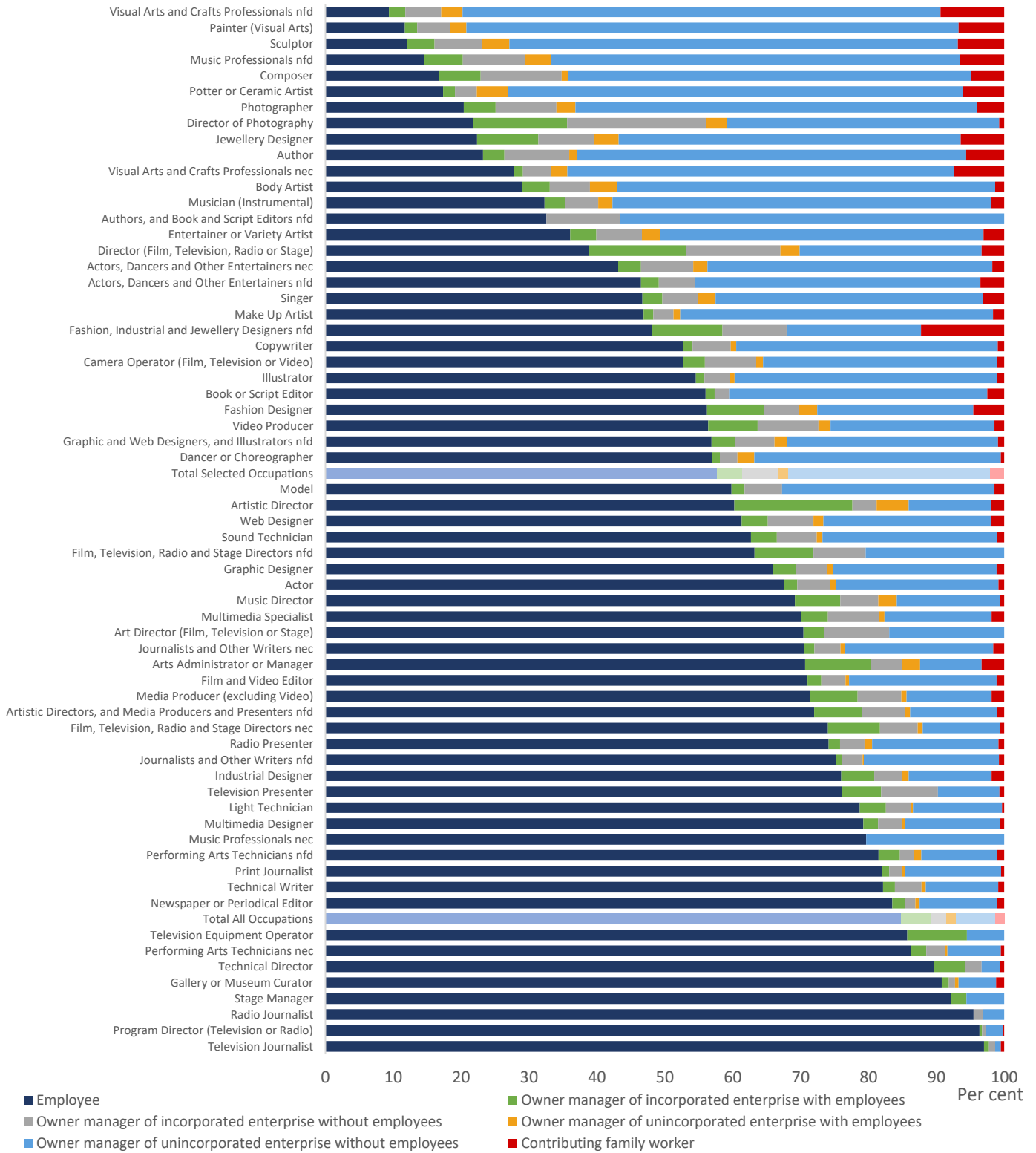
Note: An owner manager of an incorporated enterprise is a person who operates his or her own incorporated enterprise, that is, a business entity which is registered as a separate legal entity to its members or owners (also known as limited liability company). Owner managers of unincorporated enterprises are persons who operate their own unincorporated enterprise which does not possess a separate legal identity to that of its owner(s), or engage independently in a profession or trade (i.e. self-employed).

Source: ABS, *TableBuilder: Census, Australia, 2021*.

Chart 10 shows that Television and Radio Journalists as well as Program Directors (Television or Radio) are relatively more likely to be employees than any other of the selected occupations. Painters, Potter or Ceramic Artists, and Sculptors were relatively more likely to be an Owner manager of unincorporated enterprise without employees compared with other selected occupations.



Chart 10: Status in employment by selected occupation, 2021





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Across both the selected industry subdivisions and occupation minor groups, casual employment among employees in the arts and culture sector is less common than across all industries. Among the selected industries, casual employment is highest in Motion Picture and Sound Recording Activities (Table 3).

Table 3: Casual employment by selected industry subdivision, August 2022

		Permanent	Casual
Publishing (except Internet and Music Publishing)	(%)	88.1*	11.9**
Motion Picture and Sound Recording Activities	(%)	57.0	43.0*
Professional, Scientific and Technical Services (Except Computer System Design and Related Services)	(%)	88.4	11.6
Heritage Activities	(%)	83.9	16.1*
Creative and Performing Arts Activities	(%)	78.2	21.8*
Total Selected Industries	(%)	86.9	13.1
Total All Industries	(%)	76.7	23.3

Note: Permanent employment is defined as employee with paid leave entitlements and casual employment is defined as employee without paid leave entitlements. * Based on estimates with a relative standard error of 25% to 50% and should be used with caution. ** Based on estimates with a relative standard error greater than 50% and is considered too unreliable for general use.

Source: ABS, *TableBuilder: Labour Force, Characteristics of Employment, 2014 to 2022, Australia*.

Personal Service and Travel Workers and Miscellaneous Sales Support Workers were relatively more likely to be employed on a casual basis compared with other selected occupations within the arts and culture sector (Table 4). A greater proportion of Arts Professionals are also employed on a casual basis compared with other selected occupations, however, this estimate has a high relative standard error and should be interpreted with caution.



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Table 4: Casual employment by selected occupation minor group, August 2022

		Permanent	Casual
Miscellaneous Specialist Managers	(%)	98.0	2.0**
Arts Professionals	(%)	61.5*	38.5**
Media Professionals	(%)	85.1	14.9*
Information and Organisation Professionals	(%)	89.2	10.8
Architects, Designers, Planners and Surveyors	(%)	92.8	7.2*
Business and Systems Analysts, and Programmers	(%)	90.4	9.6
Miscellaneous Technicians and Trades Workers	(%)	80.6	19.4*
Personal Service and Travel Workers	(%)	56.5	43.5
Miscellaneous Sales Support Workers	(%)	64.9	35.1*
Total Selected Occupations	(%)	85.3	14.7
Total All Occupations	(%)	76.7	23.3

Note: Permanent employment is defined as employee with paid leave entitlements and casual employment is defined as employee without paid leave entitlements. * Based on estimates with a relative standard error of 25% to 50% and should be used with caution. ** Based on estimates with a relative standard error greater than 50% and is considered too unreliable for general use.

Source: ABS, *TableBuilder: Labour Force, Characteristics of Employment, 2014 to 2022, Australia*.

People in the selected industries are more likely to have worked multiple jobs throughout a year (whether concurrent or successively). This is particularly the case for those in Motion Picture and Video Production, Performing Arts Operation, Motion Picture and Video Distribution, Creative Artists, Musicians, Writers and Performers, and Music and Other Sound Recording Activities, where fewer than half of individuals worked only one job throughout 2018–19 (Chart 11). Those in Music Publishing, Museum Operation, Newspaper Publishing and Magazine and Other Periodical Publishing are most likely to have worked one job throughout the year.

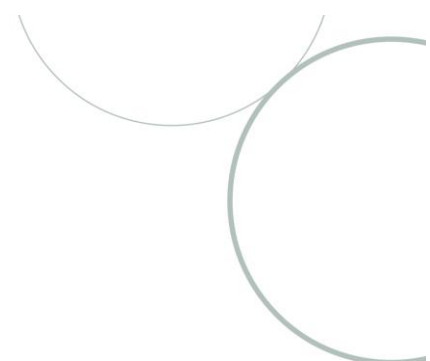
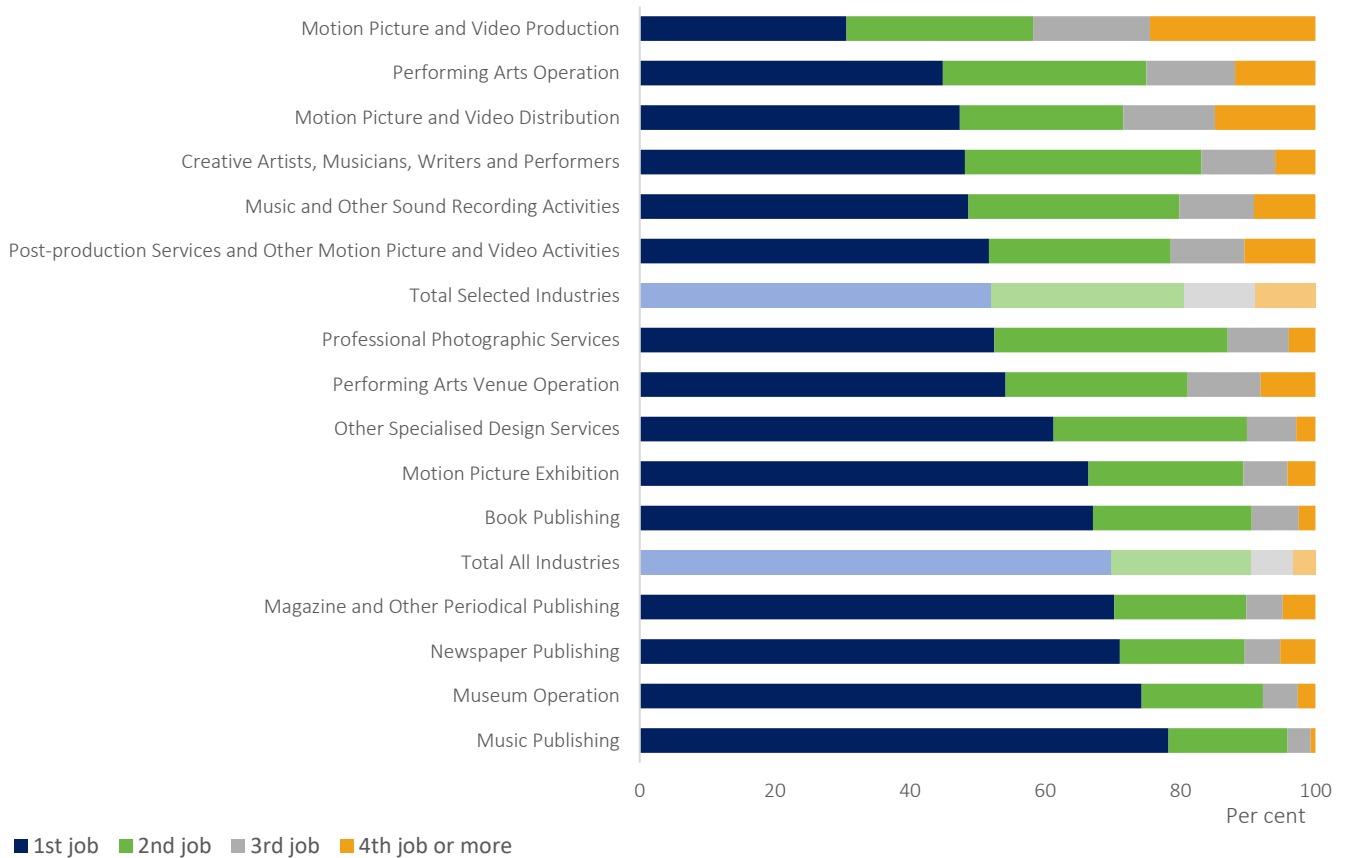


Chart 11: Total jobs held during the year by selected industry class, 2018–19



Note: Includes jobs that were held concurrently and those that were not.

Source: ABS, *TableBuilder: Jobs in Australia*, 2011-12 to 2018-19.

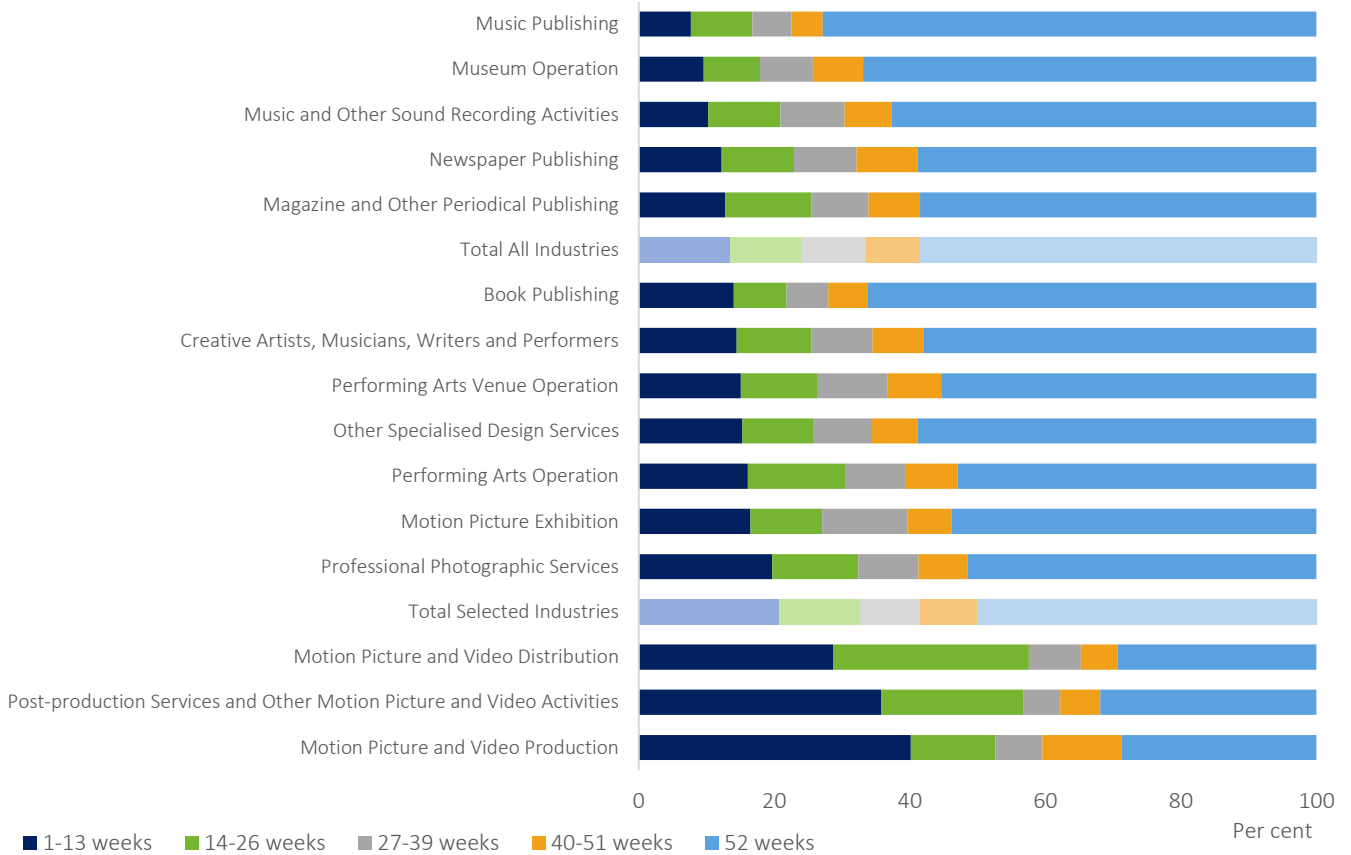
Data on jobs presented in Chart 12 relates to the 2018–19 financial year. If the duration of a job lasted for the entire year, then it is indicated in the chart as having a duration of 52 weeks.

Around half of jobs in the selected industries had a duration of 52 weeks during 2018–19, which is lower than the average across all industries. Around 1 in 5 jobs lasted for up to 13 weeks.

Almost three-quarters of jobs in Music Publishing and around two-thirds of jobs in Museum Operation and Book Publishing lasted for 52 weeks. In contrast, around 40 per cent of jobs in Motion Picture and Video Production and approximately 35 per cent of jobs in Post-production Services and Other Motion Picture and Video Activities had a duration of up to 13 weeks.



Chart 12: Duration for all jobs by selected industry class, 2018–19



Source: ABS, *TableBuilder: Jobs in Australia*, 2011-12 to 2018-19.

Earnings

Information from the Census shows that workers in the selected industries are more likely to earn up to \$799 per week than workers across all industries. Among the selected industries, workers in Motion Picture Exhibition are most likely to earn up to \$499 per week (almost half), however, workers in Motion Picture and Video Distribution and Music Publishing are most likely to earn \$1750 per week or more (over 40 per cent) (Chart 13).

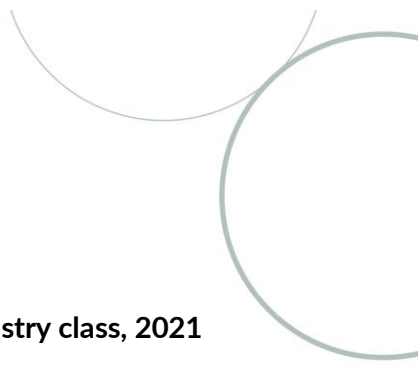
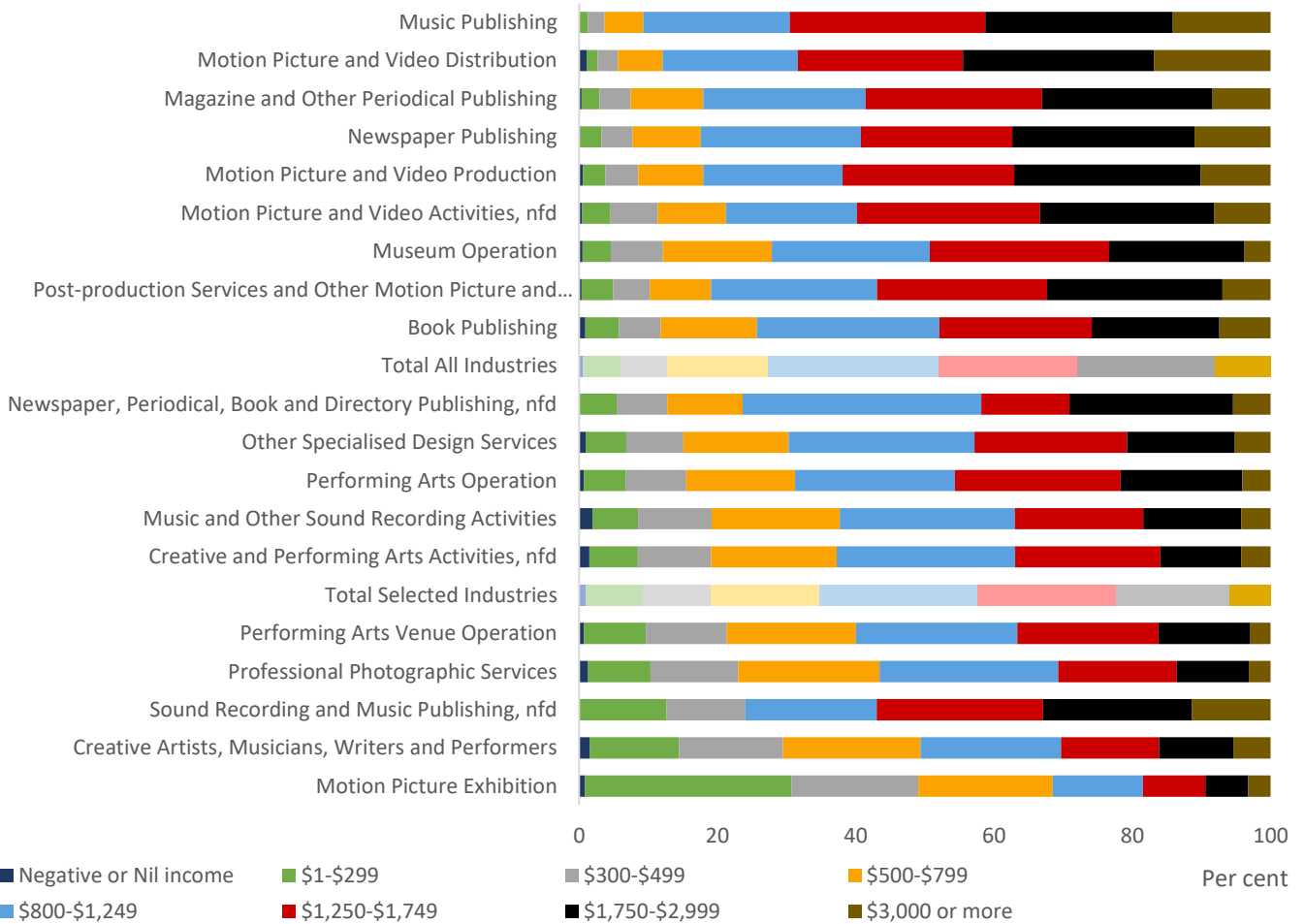


Chart 13: Proportion of workforce in weekly income brackets by selected industry class, 2021



Note: Ranked by proportion of employees earning \$1-\$299.

Source: ABS, *TableBuilder: Census, Australia, 2021*.

Among the selected occupations, Painters and Potter or Ceramic Artists are most likely to earn up to \$499 per week. Art Directors, Technical Directors, as well as Television Journalists and Presenters are most likely to have a weekly income of \$1250 or more (Chart 14).

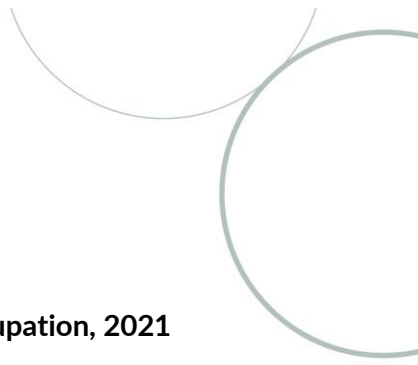
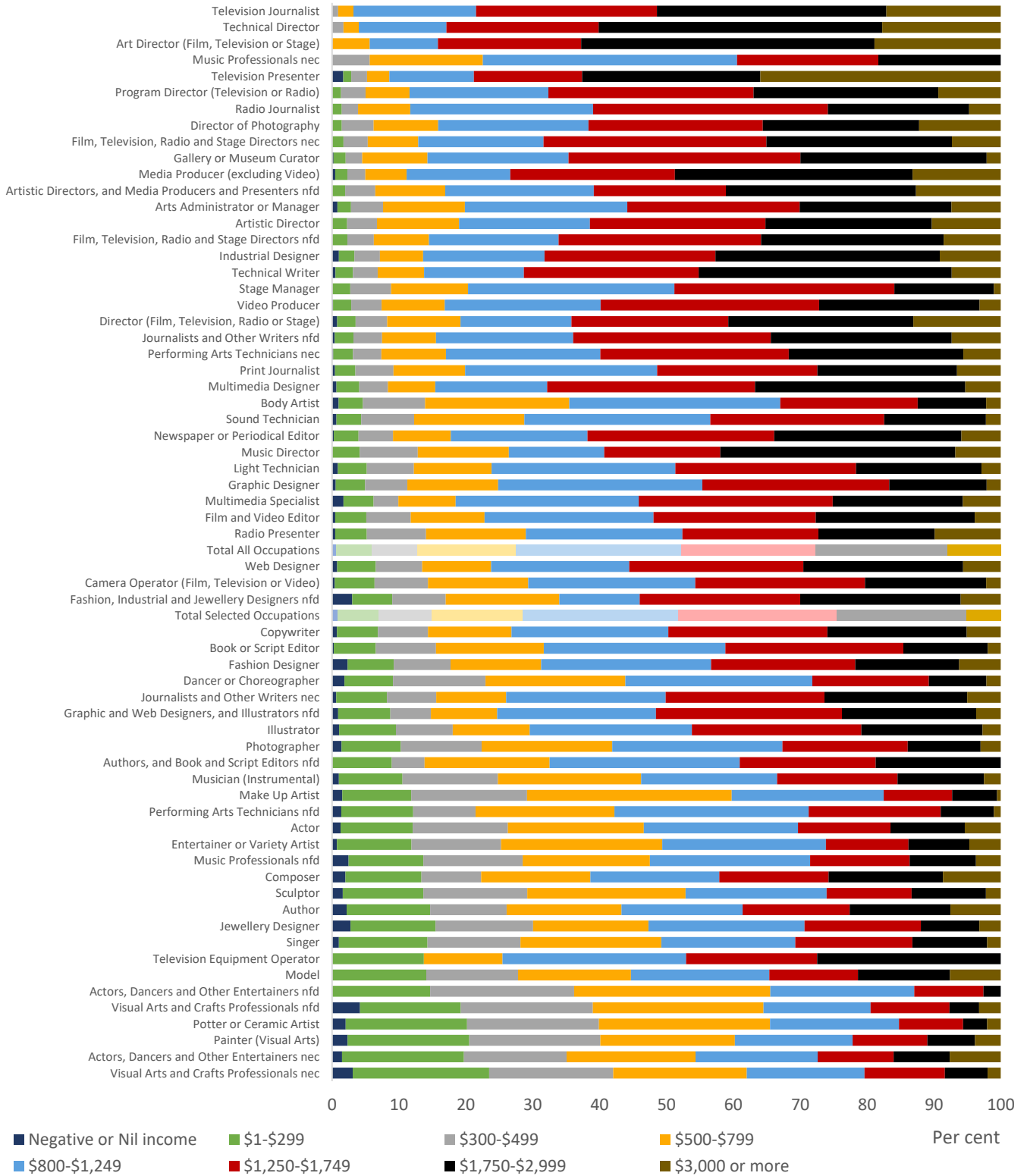
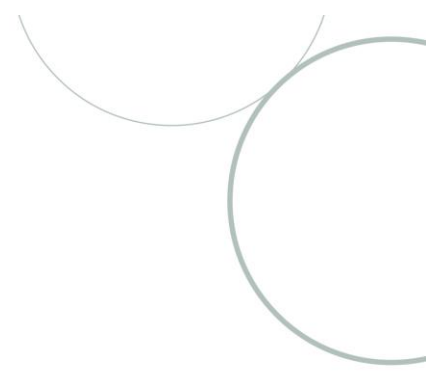


Chart 14: Proportion of workforce in weekly income brackets by selected occupation, 2021



Source: ABS, *TableBuilder: Census, Australia, 2021*.

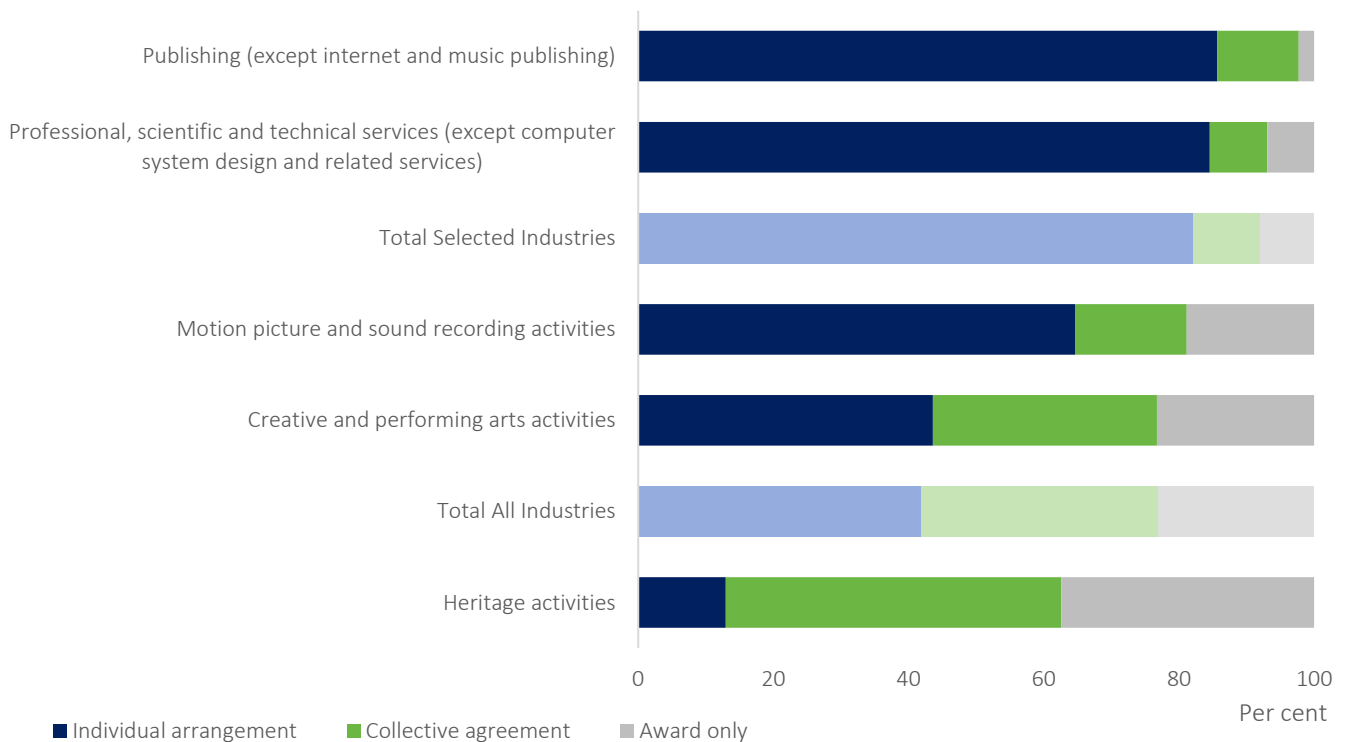


Wage instruments and bargaining

Data on methods of setting pay are not available at the most detailed industry class or occupation level. The data in this section therefore present the proportion of employees within the selected industry subdivisions and occupation minor groups. The three methods of setting pay collected in the Employee Earnings and Hours Survey are Award only (if employees are paid at the rate of pay specified in an award and are not paid more than that rate of pay), Collective agreement, and Individual arrangement (such as individual contracts or common law contracts, or if they receive over-award payments by individual agreement).

Chart 15 shows that while over 40 per cent of employees across all industries are paid by individual arrangements, more than 80 per cent of employees within the selected industries are paid by individual arrangement.

Chart 15: Method of setting pay by selected industry subdivision, 2021



Note: Values for Award only in Motion picture and sound recording activities and Creative and performing arts activities, Collective agreement in Creative and performing arts activities, and Individual agreement in Heritage activities have relative standard errors of 25% to 50% and should be used with caution. The value for Award only in Heritage activities has a relative standard error greater than 50% and is considered too unreliable for general use.

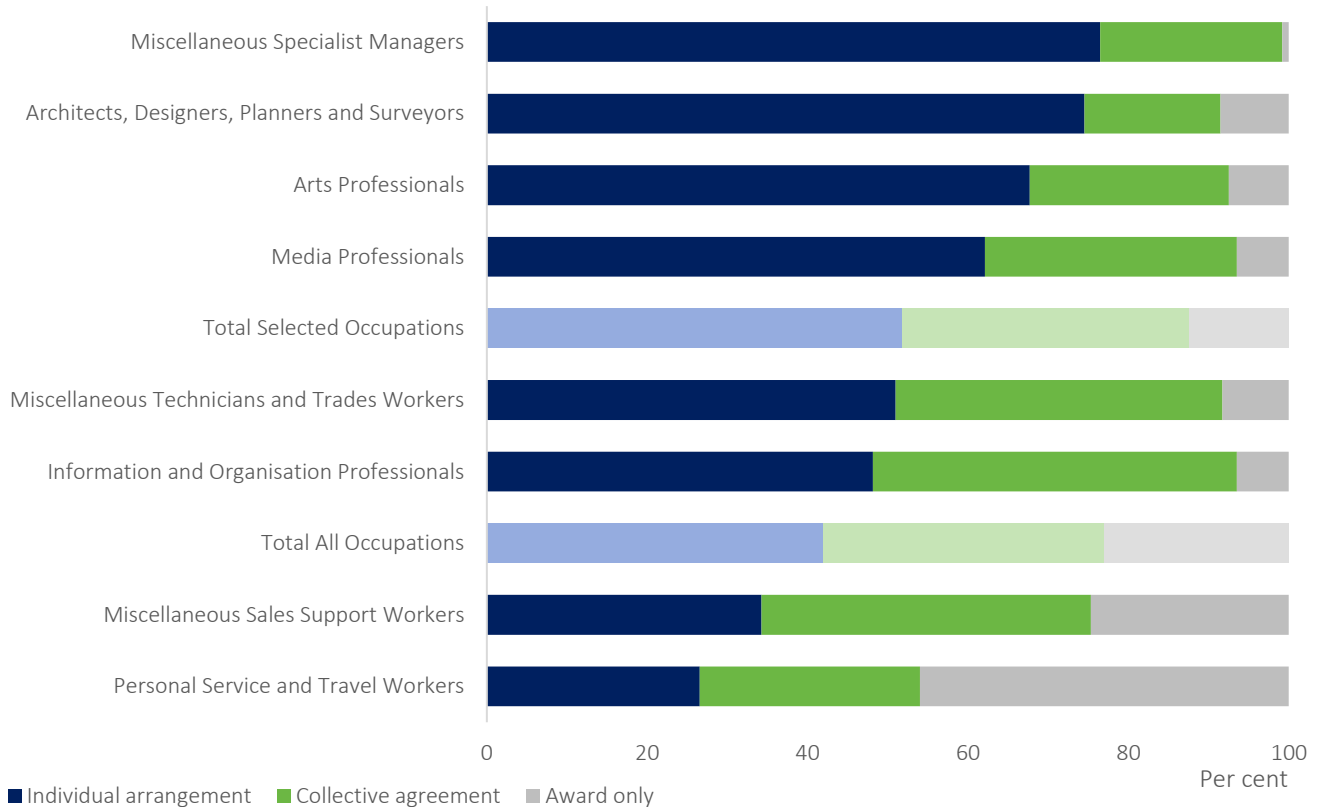
Source: ABS, *TableBuilder: Employee Earnings and Hours, Australia, 2021*.



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Similarly, employees in the selected minor group occupations are more likely to be paid by individual arrangement. This is particularly the case for Miscellaneous Specialist Managers, and Architects, Designers, Planners and Surveyors (Chart 16).

Chart 16: Method of setting pay by selected occupation minor group, 2021



Note: Values for Award only in Media professionals, Miscellaneous sales support workers, Architects, designers, planners and surveyors, in Miscellaneous technicians and trades workers, Collective agreement use in Arts professional, Business and systems analysts, and programmers, and individual agreement use in Personal service and travel workers and in Arts professionals have relative standard errors of 25% to 50% and should be used with caution. The values for Award only in Miscellaneous specialist managers and in Arts professionals have relative standard errors greater than 50% and are considered too unreliable for general use.

Source: ABS, *TableBuilder: Employee Earnings and Hours, Australia, 2021*.

Data collected on agreement approval applications lodged with the Fair Work Commission since 1 July 2022 shows that the size of agreements, according to the median number of employees per agreement approval application lodged, is larger among industries relevant to the arts and culture sector than the median across all industries (Table 5).



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Table 5: Agreement approval applications lodged with the Fair Work Commission, 1 July 2022 – 22 September 2023

Industry	Number of agreement approval applications lodged	Number of employees covered	Median number of employees per agreement approval application lodged
Amusement, Events and Recreation	0	0	0
Broadcasting and recorded entertainment industry	7	7073	413
Graphic Arts	21	2308	43
Journalism	6	1084	35
Live performance industry	18	1166	109
Publishing industry*	2	205	103
Textile industry	8	382	50
All industries	5118	958 143	28

Note: * The majority of employees in this industry are covered by one agreement approval application.

Source: Fair Work Commission.

Data on employees paid an exact award rate of pay was examined in a Fair Work Commission research report published as part of the Annual Wage Review 2022–23 research program.¹⁰⁸ Information on the following modern awards relevant to the arts and culture sector was presented. Of employees paid at a rate of pay specified in the following awards:

- *Amusement, Events and Recreation Award 2020*:
 - 87.5 per cent worked part-time hours
 - 79.4 per cent were employed on a casual basis
 - 67.9 per cent were employed in businesses with 20–199 employees
 - 24.7 per cent were employed in the Arts and recreation services industry division

¹⁰⁸ Yuen, Kelvin and Josh Tomlinson, *A profile of employee characteristics across modern awards* (Fair Work Commission Research Report 1/2023, Fair Work Commission, 2023).



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- 51.3 per cent were female
- The average age was 33.0 years
- 23.9 per cent of employees were paid junior rates of pay
- The average number of hours worked per week was 18.6 hours
- Average hourly earnings were \$25.30 (compared with \$28.70 for all employees paid award rates of pay)
- *Broadcasting, Recorded Entertainment and Cinemas Award 2020:*
 - 49.4 per cent were female
 - The average age was 28.8 years
 - 64.5 per cent worked part-time hours
 - 68.6 per cent were employed on a casual basis
 - 37.9 per cent worked in businesses with 1 to 19 employees
 - 30.7 per cent of employees were paid junior rates of pay
 - The average number of hours worked per week was 22.3 hours
 - Average hourly earnings were \$27.50 (compared with \$28.70 for all employees paid award rates of pay)

Types of businesses

The number of actively trading businesses in the Australian market sector is compiled in the ABS Business Register from administrative data collected from Australian Business Number registrations and from the ATO. The majority of businesses do not contain employees (around 60 per cent), while this proportion is even higher among the selected industry classes (around 70 per cent).¹⁰⁹

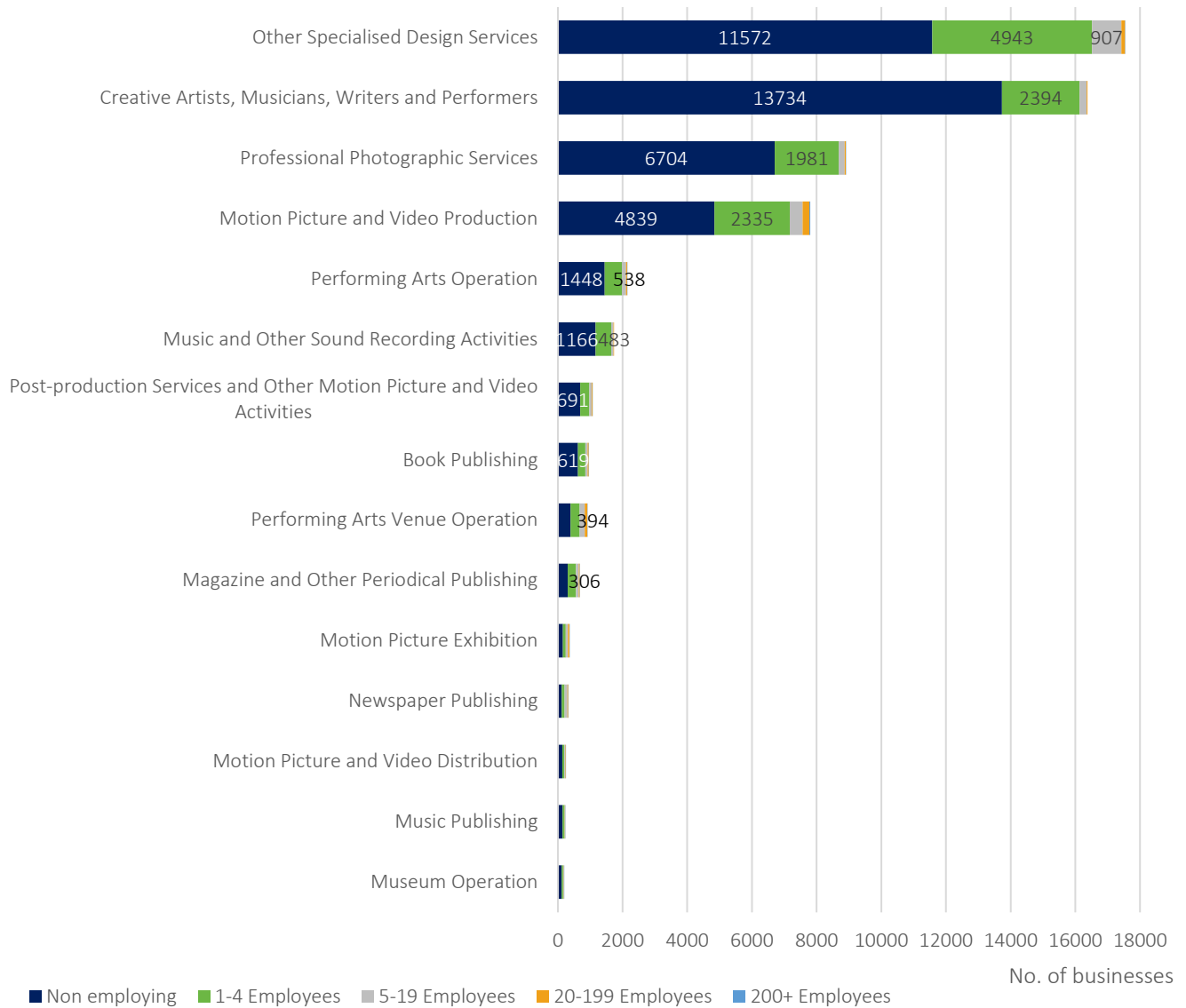
Chart 17 shows that the highest number of businesses among the selected industries are in Other Specialised Design Services and Creative Artists, Musicians, Writers and Performers. The highest

¹⁰⁹ Australian Bureau of Statistics, [Counts of Australian Businesses, including Entries and Exits methodology](#) (22 August 2023).



proportion of non-employing businesses was in Creative Artists, Musicians, Writers and Performers, followed by Professional Photographic Services.

Chart 17: Number and size of businesses operating as at 30 June 2022, by industry class



Source: ABS, *Counts of Australian Businesses, including Entries and Exits*, July 2018 to June 2022.

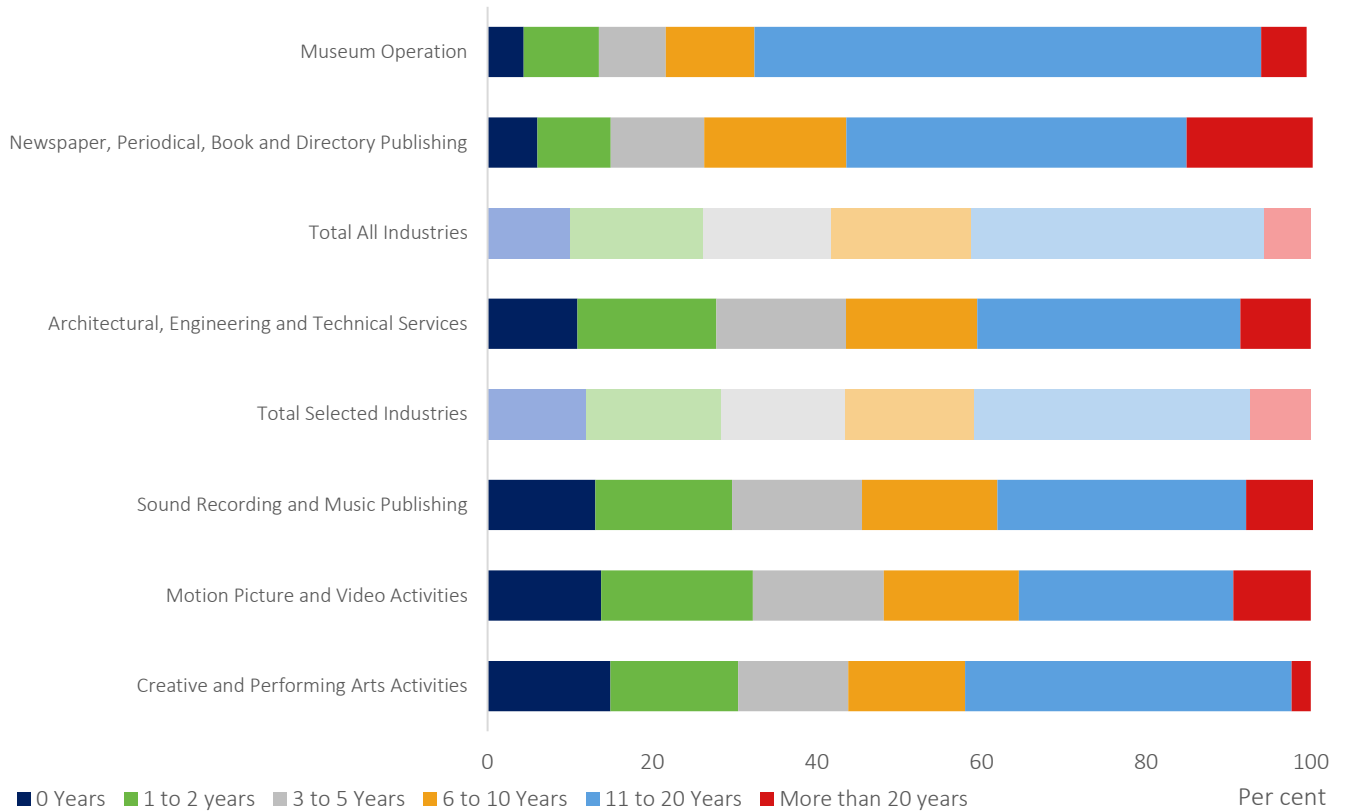
Information on active businesses is provided by the ABS in the Business Longitudinal Analysis Data Environment (BLADE). Chart 18 shows that businesses within the selected industries (at the industry group level) are more likely to be new (0–1 year) or have been operating for more than 20 years compared with the average across all industries.



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Younger businesses were more common among Creative and Performing Arts Activities and Motion Picture and Video Activities. While the lowest number of businesses is in Museum Operation, more than 60 per cent have been operating for 11 to 20 years.

Chart 18: Age of businesses by selected industry group, 2018–19



Source: ABS, *TableBuilder: Businesses in Australia and Business Longitudinal Analysis Data Environment (BLADE)*, 2018-19.



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Annexure B – Pre-modern awards list

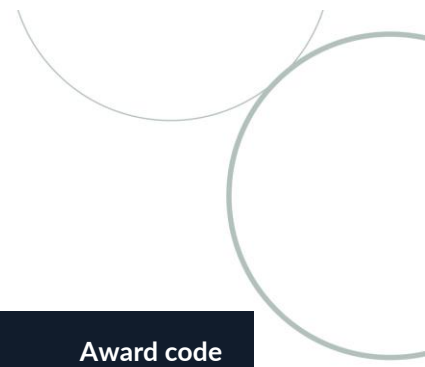
The following tables are based on the [Draft Awards Audit](#). The Draft Awards Audit, prepared by staff of the Commission, lists pre-modern Federal and State awards which may have covered these employers and employees prior to the making of these modern awards in the Part 10A award modernisation process. The allocation of instruments to modern awards is indicative only.

Amusement, Events and Recreation Award 2020 [MA000080]

Amusement Award - Pre-modern award	Award code
Agricultural, Pastoral or Horticultural Society's Show (State) Award	AN120013
AWU Tenpin Bowling Industry Award 2003	AP825397
AWU Theme Park and Amusement Award 2001	AP817297
Carpenters & Joiners (General) Award 1993	AN150029
Cultural Centre Award 1987	AN160093
Entertainment and Broadcasting Industry - Recreation Grounds - Western Australia Award 2000	AP780970
Entertainment and Broadcasting Industry (Recreation Grounds etc - Victoria) Award 2000	AP780960
Entertainment Award	AN170030
Entertainment Industry - Recreation Grounds Queensland Award 2000	AP780966
Exhibition Industry (State) Award	AN120204
Exhibition Industry Award 2001	AP805480
Greenkeeping Industry Award - State 2002	AN140137
Miscellaneous Workers' General Services (State) Award	AN120344
Racecourse and Showground Employees Award - Brisbane 2003	AN140252
Racing Industry Employees' Occupational Superannuation Award - State 2003	AN140254
Show Grounds Maintenance Worker's Award No. 55 of 1968	AN160293
Sports Ground Employees' Award - Southern Division (Eastern District) 2002	AN140276



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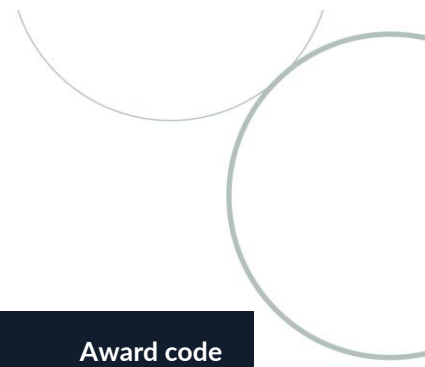
Amusement Award - Pre-modern award	Award code
Sportsground Maintenance and Venue Presentation (Victoria) Award 2001	AP812760
Theatrical Employees (Recreation Complex and Theme Park) Award 2002	AP817267
Theatrical Employees (Recreation Grounds and Raceday Racing officials - NSW and ACT) Award 2000	AP799620
Theatrical Employees (Recreation Grounds, Etc) South Australia Award 2000	AP799048
Theatrical Employees (Training Wage) (State) Award	AN120572
Theatrical Employees' Award - State 2003	AN140298
Theatrical Employees Entertainment, Sporting and Amusement Facilities (Western Australian Government) Award 1987	AN160312
Theatrical Employees Recreation and Leisure Industry (State) Award 2000	AN120573
Theatrical Employees' Redundancy (State) Award	AN120574
Tour Guides Award - State 2003	AN140302

Broadcasting, Recorded Entertainment and Cinemas Award 2020 [MA000091]

Broadcasting Award - Pre-modern award	Award code
Actors Etc. (Television) Award 1998	AP765510
Actors Feature Film (South Australia) Award	AN150002
Actors Feature Film Award 2002	AP817364
Actors Television Programs Award 2001	AP811656
Broadcasting and Television Award	AN170009
Commercial Radio - Announcers' Award 1998	AP775844
Commercial Radio - Journalists' Award 1999	AP776547
Commercial Radio - Technical Staff Award 1998	AP772216
Cultural and Recreational Services Industry Sector Minimum Wage Order - Victoria - 1997	AP774566
Entertainment and Broadcasting Industry - Cinema Award - 1998	AP780422
Entertainment and Broadcasting Industry - Film and Video Production (State) Award	AN120198



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Broadcasting Award - Pre-modern award	Award code
Entertainment and Broadcasting Industry - Motion Picture Production Award 1998	AP780635
Entertainment and Broadcasting Industry - Theatre Managers - Cinema - Award 1998	AP780630
Entertainment and Broadcasting Industry - Western Australian Cinemas - Award 1999	AP780445
Entertainment and Broadcasting Industry Cinema (State) Award	AN120199
Entertainment and Broadcasting Industry Film and Television Programme Distributors Award 2000	AP780942
Indigenous Media Organisations (Minimum Rates) Award 2001	AP812280
Journalists (Commercial Radio - Superannuation) Award, 1988, The	AP785603
Journalists (Television) Award 1998	AP785611
Musicians' (Casual Employment in Records for Sale to the Public) Award 2000	AP807534
Musicians' (Casual Employment in Television) Award 2000	AP787971
Musicians' (Multi Media) (State) Consolidated Award	AN120359
Musicians' Feature Film, Documentary, Telemovies and Television Mini - Series Award 2000	AP788046
Recorded Music and Visual Entertainment Reproduction (State) Award	AN120460
Session Singers (Backing Vocals on Records) - Casual Employees Award 2000	AP796048
Television Industry Award 2000	AP799021
Theatre Managers (State) Award	AN120571
Theatrical Employees (Motion Picture Laboratories) Award 2001	AP806122
Theatrical Employees (Training Wage) (State) Award	AN120572
Theatrical Employees' Award - State 2003	AN140298
Broadcasting and Television Award	AP765510
Commercial Radio - Announcers' Award 1998	AN150002
Commercial Radio - Journalists' Award 1999	AP817364
Commercial Radio - Technical Staff Award 1998	AP811656



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Broadcasting Award - Pre-modern award	Award code
Cultural and Recreational Services Industry Sector Minimum Wage Order - Victoria - 1997	AN170009
Entertainment and Broadcasting Industry - Cinema Award - 1998	AP775844
Entertainment and Broadcasting Industry - Film and Video Production (State) Award	AP776547
Entertainment and Broadcasting Industry - Motion Picture Production Award 1998	AP772216
Entertainment and Broadcasting Industry - Theatre Managers - Cinema - Award 1998	AP774566
Entertainment and Broadcasting Industry - Western Australian Cinemas - Award 1999	AP780422
Entertainment and Broadcasting Industry Cinema (State) Award	AN120198
Entertainment and Broadcasting Industry Film and Television Programme Distributors Award 2000	AP780635
Indigenous Media Organisations (Minimum Rates) Award 2001	AP780630
Journalists (Commercial Radio - Superannuation) Award, 1988, The	AP780445
Journalists (Television) Award 1998	AN120199
Musicians' (Casual Employment in Records for Sale to the Public) Award 2000	AP780942
Musicians' (Casual Employment in Television) Award 2000	AP812280
Musicians' (Multi Media) (State) Consolidated Award	AP785603
Musicians' Feature Film, Documentary, Telemovies and Television Mini - Series Award 2000	AP785611
Recorded Music and Visual Entertainment Reproduction (State) Award	AP807534
Session Singers (Backing Vocals on Records) - Casual Employees Award 2000	AP787971
Television Industry Award 2000	AN120359
Theatre Managers (State) Award	AP788046
Theatrical Employees (Motion Picture Laboratories) Award 2001	AN120460
Theatrical Employees (Training Wage) (State) Award	AP796048
Theatrical Employees' Award - State 2003	AP799021



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Graphic Arts, Printing and Publishing Award 2020 [MA000026]

Graphic Arts Award - Pre-modern award	Award code
Commercial and Industrial Artists Award 2000	AP772248
Country Publishing and Printing Award 2002	AP819465
Graphic Arts - General - Award 2000	AP782505
Manufacturing Industry Sector Minimum Wage Order - Victoria 1997	AP789236
Newspaper Printing Superannuation Award 1988	AP790716
Printers Award	AN170081
Printing & Packaging (Country) Award	AN150115
Printing Award	AN160261
Printing Award	AN150116
Printing Industries (State) Award	AN120432
Printing Industry (Country Press) Superannuation Award 1990	AP792462
Printing Industry Award - State 2003	AN140222
Printing Industry Superannuation Award 1988	AP792397
Printing Industry Superannuation Award 1991	AN160262
Regional Daily Newspapers (Printing) Superannuation Award, 1988	AP794751
State Print Interim Award 2000	AP796458

Hair and Beauty Industry Award 2020 [MA000005]

Hair and Beauty Award- Pre-modern award	Award code
Beauty Therapy Industry Award - State 2003	AN140026
Broken Hill Commerce and Industry Agreement Consent Award 2001	AN120088
Hairdressers & Beauty Salons Award	AN150062
Hairdressers Award 1989	AN160153
Hairdressers' Industry Award - State 2003	AN140140
Hairdressers', &c (State) Award	AN120242



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Hair and Beauty Award- Pre-modern award	Award code
Hairdressing and Beauty Industry (Australian Capital Territory) Award 1998	AP783495
Hairdressing and Beauty Industry (Northern Territory) Award 2002	AP818691
Hairdressing and Beauty Services - Victoria - Award 2001	AP806816
Hairdressing, Health and Beauty Industry Award	AN170042
Personal and Other Services Industry Sector - Minimum Wage Order - Victoria 1997	AP793092

Journalists Published Media Award 2020 [MA000067]

Journalists Award - Pre-modern award	Award code
Indigenous Media Organisations (Minimum Rates) Award 2001	AP812280
Journalists (Country Non-Daily Newspapers) Award 1998	AP785589
Journalists (Ethnic Press) Award 2003	AP824916
Journalists' (News Group and Others) Superannuation Award, 1987	AP785599
Journalists' (Provincial Non-Daily Newspapers) Superannuation Award, 1988, The	AP785604
Journalists (Regional Daily Newspapers) Award 1999	AP785590
Journalists' (Regional Daily Newspapers) Superannuation Award, 1988, The	AP785601
Journalists (Rural Press Limited - Agricultural Publishing) Award 2000	AP785594
Journalists (Specialist Publications) Award 1999	AP785898
Journalists (Specialists Publications) (State) Award	AN120282
Journalists' (Suburban and Free Newspapers) Award, 1984	AN160187
Journalists' Suburban Newspapers (State) Award	AN120284

Live Performance Award 2020 [MA000081]

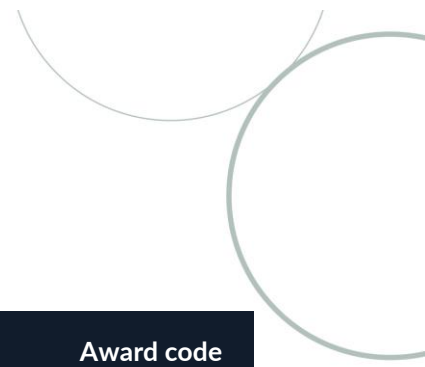
Live Performance Award - Pre-modern award	Award code
Actors (Theatrical) (State) Award	AN120003
Actors Theatrical (South Australia) Award	AN150003
Club Industry (Variety Artists) (State) Award 2001	AN120137



Live Performance Award - Pre-modern award	Award code
Entertainers Award - State 2002	AN140108
Entertainment and Broadcasting Industry - Actors - (Theatrical) Award 1998	AP780413
Entertainment and Broadcasting Industry - Dance Company - Award 1998	AP780410
Entertainment and Broadcasting Industry - Live Theatre and Concert - Award 1998	AP780276
Entertainment and Broadcasting Industry - Performing Arts Centres' Award 2001	AP809360
Entertainment and Broadcasting Industry - Theatre Managers - Live Theatre - Award 1998	AP780633
Entertainment and Broadcasting Industry - Ticketing Agencies - Award 2001	AP805368
Entertainment and Broadcasting Industry Live Theatre and Concert (State) Award	AN120200
Entertainment Industry - Concert and Event Crewing Services Award 2000	AP780139
Entertainment Industry (Entertainment and Presentation Services) Award 2000	AP780164
Exhibition Industry (State) Award	AN120204
Musicians' (Live Performance) (State) Consolidated Award	AN120358
Musicians (Opera and Ballet) Orchestral Award 1998	AP788077
Musicians (SA) Award	AN150088
Musicians Award	AN170070
Musicians' Award - State 2002	AN140188
Musicians' General (State) Award 1985	AN160223
Musicians General Award, 1998	AP787976
Musicians' Hotels Award 2001	AP811555
Orchestral Musicians Award 2001	AP805822
Orchestral Musicians Redundancy Award 2001	AP805840
Performers' Live Award (WA) 1993	AN160243
Striptease Industry Conditions Award 2006	AP847586
Theatrical Employees (Training Wage) (State) Award	AN120572



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Live Performance Award - Pre-modern award	Award code
Theatrical Employees' Award - State 2003	AN140298
Theatrical, Entertainment Etc., SA Award	AN150161

Local Government Industry Award 2020 [MA000112]

Local Government Award- Pre-modern award	Award code
Child Care (Long Day Care) WA Award 2005	AP846963
Child Care (Out of School Care - Playleaders) WA Award 2003	AP826566
Community and Public Sector Union (Central and Northern Land Councils) Award 2001	AP810322
Government Administration Industry Sector - Minimum Wage Order - Victoria 1998	AP782915
Local Governing Authorities Tasmania (Superannuation) Award 1989	AP787038
Local Government (State) Award 2004	AN120316
Local Government Employees' (Excluding Brisbane City Council) Award - State 2003	AN140158
Local Government Employees Award	AN150072
Local Government Engineers Senior Staff (New South Wales) Award 1999	AP787459
Local Government Officers (Western Australia) Award, 1999	AP787011
Miscellaneous Workers (Northern Territory) Award 2001	AP811662
Municipal Baths Attendants Award - State 2003	AN140187
Municipal Employees (Country Councils - Tasmania) Award 2003	AP825465
Municipal Employees (Northern Territory) Award 2003	AP826577
Municipal Employees' (Sporting Grounds - Western Australia) Award 2000	AP807139
Municipal Employees (Western Australia) Award 1999	AP788039
Municipal Employees City of Perth Award 2000	AP807420
Municipal Managers (Tasmania) Award 2003	AP824102
Municipal Officers' (Aboriginal and Islander Community Councils) Award 2004	AP835155
Municipal Officers (N.T.) Award 2002	AP819861



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Local Government Award- Pre-modern award	Award code
Municipal Officers (South Australia) Award, 1998	AP788095
Municipal Officers (Tasmania) Award 2002	AP815609
Pitjantjatjara Council Inc. and Associated Organisations Award 2000	AP807173
Queensland Local Government Officers' Award 1998	AP794071
Remote Communities Local Government (Northern Territory) Award 2002	AP819209
Victorian Local Authorities Award 2001	AP811556

Mannequins and Models Award 2020 [MA000117]

Mannequins and Models Award - Pre-modern award	Award code
Mannequins & Models Award	AN150073
Mannequins and Models (State) Award	AN120328
Mannequins and Models Award 2000	AP808516
Models and Mannequins Award - State 2002	AN140181
Personal and Other Services Industry Sector - Minimum Wage Order - Victoria 1997	AP793092
Shop Employees (State) Award	AN120499

Professional Employees Award 2020 [MA000065]

Professional Employees Award- Pre-modern award	Award code
Energy (Gas) Industry Award 1999	AP780799
Information Technology Industry (Professional Employees) Award 2001	AP812692
Metal and Engineering Industry Award	AN170120
Metal, Engineering and Associated Industries (Professional Engineers and Scientists) Award 1998	AP787948
Metal, Engineering and Associated Industries (State) Award	AN120334
Professional Engineers (General Industries) Award	AN150118
Professional Engineers and Professional Scientists (Private Industry) (State) Award	AN120440



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Professional Employees Award- Pre-modern award	Award code
Professional Engineers and Scientists (Metal Industry, Superannuation) Award 2000	AP792459
Professional Engineers and Scientists (Private Industry) Award	AN170128
Professional Engineers' Award - State 2002	AN140227
Professional Scientists (General Industries) South Australia Award	AN150119
Professional Scientists' Award - State 2002	AN140228
Property and Business Services Industry Sector Minimum Wage Order – Victoria - 1997	AP793164
Quality Auditing and Assessment Award 1999	AP794124
Scientific Services Professional Scientists (Miscellaneous Conditions) Award 1998	AP797837
Scientific Services Professional Scientists Award 1998	AP797607
Space Tracking Industry Award 1998	AP795978
Surveying (Private Practice) Award - State	AN140287
Tasmanian Information Technology Industry Award	AN170101
Technical Services Engineers, Scientists and IT Professional Employees (Consulting Services) Award 1998	AP848366
Technical Services Professional Engineers (General Industries) Award 1998	AP800659
Telecommunications Industry (Professional Employees) Award 2002	AP816688
Western Australian Professional Engineers (General Industries) Award 2004	AN160336
Western Australian Surveying (Private Practice) Industry Award, 2003, The	AN160338

Textile, Clothing, Footwear and Associated Industries Award 2020 [MA000017]

Textile Award - Pre-modern award	Award code
AWU Drug and Pharmaceutical Industry Award, 2000, The	AP804807
Bag, Sack and Textile Award	AN160021
Bag-Making Award - South-Eastern Division 2003	AN140020
Bespoke Bootmakers' and Repairers' Award No. 4 of 1946	AN160024
Boot & Shoe Award	AN150016



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Textile Award - Pre-modern award	Award code
Bootmakers and Heel Bar Operatives, &c. (State) Award	AN120060
Bootmakers Award	AN170118
Broken Hill Commerce and Industry Agreement Consent Award 2001	AN120088
Button Makers (State) Award	AN120099
Clothing Industry Award	AN170018
Clothing Trades (State) Award	AN120135
Clothing Trades Award	AN150041
Clothing Trades Award - Southern and Central Divisions 2003	AN140071
Clothing Trades Award - State (Excluding South-East Queensland) 2003	AN140070
Clothing Trades Award 1973	AN160081
Clothing Trades Award 1999	AP772144
Drug Factories (State) Award	AN120186
Felt Hatting Industry Award 1999	AP781105
Fibre Processing Industry Award 1998	AP781530
Footwear Industries Award 2000	AP781127
Footwear Manufacturing and Component Industries Accident Make-up (Victoria) Award 2002	AP816988
Footwear Manufacturing Award - State 2005	AN140120
Footwear Manufacturing Industry (State) Award	AN120213
Manufacturing Industry Sector Minimum Wage Order - Victoria 1997	AP789236
Personal and Other Services Industry Sector - Minimum Wage Order - Victoria 1997	AP793092
Retail Trade Industry Sector - Minimum Wage Order - Victoria 1997	AP795238
Surgical Bootmaking, Bespoke Bootmaking and Boot Repairing Award - State 2003	AN140286
Textile Award	AN170105
Textile Industry (State) Award	AN120549



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Textile Award - Pre-modern award	Award code
Textile Industry Award 2000	AP799036
Warehouse Employees - Drug (State) Award	AN120632
Wool Scourers and Carbonisers Award 2002	AP818456
Wool Scouring and Fellmongery Industry Award No. 32 of 1959	AN160342
Surgical Bootmaking, Bespoke Bootmaking and Boot Repairing Award - State 2003	AP804807
Textile Award	AN160021
Textile Industry (State) Award	AN140020
Textile Industry Award 2000	AN160024
Warehouse Employees - Drug (State) Award	AN150016
Wool Scourers and Carbonisers Award 2002	AN120060
Wool Scouring and Fellmongery Industry Award No. 32 of 1959	AN170118

Travelling Shows Award 2020 [MA000102]

Travelling Shows Award- Pre-modern award	Award code
Theatrical Employees (Showmen's Guild) Award 2002	AP816117

Pre-modern awards not included in the Draft Awards Audit

Preliminary research suggests the following instruments may have covered parts of the arts and culture sector and do not appear in the Draft Awards Audit:

- *Cultural and Recreational Services Industry Sector Minimum Wage Order - Victoria - 1997*¹¹⁰ - this award was expressed to apply to industries “mainly engaged in cultural and recreational services” which relevantly included:
 - Arts – including music and theatre productions and creative arts;
 - Services to the arts – including sound recording studios, performing arts venues and services to the arts not elsewhere classified.

¹¹⁰ *Cultural and Recreational Services Industry Sector Minimum Wage Order – Victoria – 1997* [[AP774566](#)].



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- *Artworkers Award*¹¹¹ – this award was limited in operation for a period of 12 months and was expressed to “apply to Artworkers, employers of Artworkers, and the union and shall apply throughout the State of Western Australia”. Artworkers were defined as a person who was
 - (a) Engaged in painting, applying paint or its substitutes or any preparation by any means, including, without limiting the generality of the foregoing, plastic relief work, paperhanging, decorating, graining, marbling, varnishing, enamelling, gilding, lacquering or spraypainting; and
 - (b) Whose work is primarily artistic in nature or purpose.
- *Professional Employees Award*¹¹² – this award covered “persons employed under the *Tasmanian State Service Act 1984* or the *Tasmanian Development Act 1983* undertaking work of a professional nature for whom classifications appear in this award” and contained classifications for curators and directors formerly covered by the *Tasmanian Museum and Art Gallery Award*. Employees of the *Tasmanian Museum and Art Gallery* appear to now be covered by the *Tasmanian State Service Award*.

¹¹¹ *Artworkers Award No. A 30 of 1987* [[AN160014](#)].

¹¹² *Professional Employees Award* [[AN170123](#)].



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Annexure C – Discussion questions

The following is a list of the discussion questions at the end of each chapter:

Chapter 2—The arts and culture sector:

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?
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?

Chapter 3—What is modern award coverage?:

3. If advocating for a new award to address coverage gaps in the arts and culture sector, how is it proposed that such an award defines its coverage? For example, would the award be expressed to cover employers or employees in an industry or employees in particular occupations and their employers, or both?
4. Are there any responsive views addressing the content in chapter 3?

Chapter 4—Modern awards with possible coverage in the arts and culture sector

5. Are there employees working in the arts and culture sector that may be covered by an award that has not been included in this chapter?
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?

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

7. Are there any other occupations in the arts and culture sector not covered by a modern award?
8. Are there any industrial contexts in which occupations, such as a painter, are engaged that fall outside current award coverage?



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9. Do parties agree that the Miscellaneous Award may not cover certain workers, such as artistic directors or media producers?
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?
11. Do the parties have a view about the potential impact of the Closing Loopholes Bill on the arts and culture sector?
12. Is digital platform work common within the arts and culture sector?

Chapter 6—Changing modern award coverage:

13. Are there any relevant occupations that were covered by pre-reform awards that are not currently covered by a modern award?
14. Are any of the occupations identified as possible gaps in award coverage in this paper, or by the parties, occupations that could not be covered by awards because of section 143(7)?
15. For the occupations identified as gaps in award coverage in this paper, or by the parties, which awards could be varied to close the gap?
16. Are there any other legislative provisions or significant decisions pertinent to the Commission's consideration of the arts and culture sector in this Review?

Chapter 7—Minimum entitlements in awards:

17. Are there any responsive views addressing the content in chapter 7?