



**media, entertainment & arts alliance**  
the people who inform and entertain

---

## **Media, Entertainment & Arts Alliance**

### **Submission to the**

### **Fair Work Act Review**

**February 2012**

#### **The Media, Entertainment & Arts Alliance**

The Media, Entertainment & Arts Alliance (Alliance) is the industrial and professional organisation representing the people who work in Australia's media and entertainment industries. Its membership includes journalists, artists, photographers, performers, dancers, symphony orchestra musicians, freelance musicians and film, television and performing arts technicians.

## Introduction

---

The Media, Entertainment & Arts Alliance (“the Alliance”) welcomes the opportunity to provide input into the Fair Work Act Review and the Background paper provided. This submission seeks to address a number of the administrative and procedural issues that arisen during the life of the Fair Work Act and details the burdens and difficulties these have created for the Alliance and our members.

## Bargaining and agreement making

---

### **22. Have enterprise agreements helped employees to better balance work and family responsibilities?**

The Alliance has significant issues with respect to exemptions under the disputes provision that impact directly upon families and the ability to develop more flexible working conditions for the sake of a better work/life balance.

Subsection 739(2) (*Disputes dealt with by FWA*) prevents parties having a dispute about s. 65(5) (*Requests for flexible working arrangements*) and s. 76(4) (*Extending period of unpaid parental leave—extending for up to 12 months beyond available parental leave period*) unless the dispute resolution provisions in an enterprise agreement, other written agreement or contract of employment specifically provide for it. In the Alliance’s experience this disproportionately affects women.

Subsection 65(5) deals with an employer refusing to grant a request for flexible working arrangements on reasonable business grounds. Subsection 76(4) deals with an employer refusing to extend a period of unpaid parental leave for up to 12 months beyond the available parental leave period on reasonable business grounds.

In the Alliance’s experience most employers take up the model dispute resolution clause provided for in the Fair Work Regulations. The model clause does not include reference to ss. 65(5) and 76(4) so if an employee is refused a flexibility arrangement or an extension of unpaid parental leave there is no mechanism for resolution.

The fact that an employer can refuse a request on ‘reasonable business grounds’ means that the provisions of the National Employment Standards cannot be enforced. It is the Alliance’s view that “reasonable business grounds’ are too broad and undefined in these circumstances. Courts and the Tribunals are adept at making decisions about reasonableness and there is no reason why they should be prevented from resolving these disputes.

These two important matters in the disputes resolution procedure become a matter for bargaining because of the operation of s. 739(2). Employers have difficulty

understanding why the Alliance's seek them, as do employees, until they are faced with a 'reasonable business grounds' refusal.

For example – the ABC Enterprise Agreement 2010-2013 (AE881909) and the News Ltd Metropolitan Daily Newspapers–MEAA Enterprise Agreement (AE882705) do not include these provisions. The Alliance deals with such disputes on a regular basis. The Alliance is however unable to give specific examples because this would breach confidence and privacy. It is important to note though that in all cases, workers are shocked and disappointed when they learn of a refusal by their boss to give them flexibility at work – particularly when the provisions are supposedly enshrined in the National Employment Standards. Workers expect the safety net to protect them and it is not fair that there are holes where subsections 65(5) and 76(4) should be.

**Recommendation**

The Alliance recommends redrafting s. 739(2) to empower FWA to deal with all aspects of the NES as per the model dispute clause without the 'reasonable business grounds' exclusion.

**26. Are employees appropriately protected when making Individual Flexibility Arrangements?**

The Alliance has concerns that the model individual flexibility term contained within the Fair Work Regulations 2009 – Schedule 2.2 is too broad and disadvantages employees.

Currently there can be flexibility about arrangements regarding when work is performed, overtime rates, penalty rates, allowances and leave loading. The Alliance understands that employers look directly to this model clause to undermine collectively won conditions. Alliance members are disadvantaged when pressure is applied to them by employers to agree to individual flexibility arrangements which leave them worse off. The reasoning behind having the ability to collectively bargain is surely to protect against having to negotiate individually. The model clause fundamentally undermines this ability.

**Recommendation**

The Alliance recommends limiting the breadth of the model individual flexibility clause under the Fair Work Regulations 2009 – Schedule 2.

## General Protections

---

### **37. Do the general protections provisions provide adequate protection of employees' workplace rights, including the right to freedom of association and against workplace discrimination?**

The Alliance is concerned that general protections do not serve to assist in resolving matters with FWA. Rather, employees are forced to seek resolution in the Federal Court of Federal Magistrates Court.

When a breach of general protections provisions arises in the workplace, Alliance members are understandably reluctant to go to Federal Court or Federal Magistrates Court. Being a higher court, it is not as familiar or friendly an environment as FWA. The inability of FWA to be able to compel all parties to attend a conference when dismissal is not the issue means there is no possibility of reaching a settlement at a less formal/lower level if a party refuses to attend the conciliation.

For example, the Alliance is currently dealing with an employer in northern NSW and eastern Queensland. Employees are entitled to the benefit of a collective agreement which has passed its nominal expiry date and has not been terminated. The Alliance alleges that the company is breaching the workplace rights of employees by denying them the opportunity to access their collective agreement and instead insisting that they sign individual contracts which purport to exclude the agreement. Further the Alliance believes that the employer is coercing and applying undue influence or pressure on employees not to exercise a workplace right by entering into the contract. However, if the employer refuses to attend a conciliation with FWA, the only remedy available is to seek orders from the Federal Court or Federal Magistrates Court that there has been a breach.

The Alliance would prefer to resolve this matter at the lowest level to ensure that working relationships are preserved and members' rights are upheld. Taking the matter to the Federal Court or Federal Magistrates Court for many seems to be an undue escalation, when it could and should easily be resolved at Fair Work Australia.

#### **Recommendation**

The Alliance recommends that FWA be given the power to deal with general protections disputes where there has not been a dismissal. The Alliance recommends redrafting s. 374 (*Conferences*) to ensure that all parties are compelled to attend FWA for a conference.

## Unfair Dismissals

---

### **44. Are the procedures for dealing with unfair dismissal quick, flexible and informal and do they meet the needs of employers and employees? What is the impact of the changed processes upon the costs incurred by employers and employees?**

The Alliance believes that the provisions in the current s. 394(2)(a) of the Fair Work Act (*Application for unfair dismissal remedy*) are insufficient. The fourteen day limit on applying for a remedy for unfair dismissal does not allow people sufficient time to seek legal/industrial advice about their situation.

It is the Alliance's experience that employees often find themselves still processing the shock of having been terminated when they then realise their application for a remedy is already out of time.

#### **Recommendation**

The Alliance recommends that the time limit under s. 394 be increased to at least 21 days.

### **47. Is FWA's emphasis on telephone conciliation in unfair dismissal matters desirable? If so, why, if not, why not?**

It is the Alliance's view that conferences held over the telephone pursuant to s. 398 significantly decrease the chances of achieving positive outcomes for both employees and employers. There is a severely diminished ability to settle a matter fairly when the parties are unable to see and interact with one another. Usually face-to-face conferences enable the parties to resolve a matter quickly and allow all parties to leave the conciliation feeling that they have been fairly dealt with. This is because industrial representatives can often recognise and act on settlement opportunities which are signalled by visual cues and have the ability to discuss matters with the other side when meeting in person. Face to face meetings require a certain level of decorum and interaction that is missing in a purely verbal interaction. It also allows representatives to discuss other issues, maybe not pertinent to the dismissal but relevant to the employment relationship, which can be the catalyst in reaching a successful outcome for all parties.

Recently the Alliance conducted a telephone conference, where a member became very distressed in regard to the comments that were being made about her by the Employer. It was impossible to resolve the issues that were in dispute, so the conciliation ended without an outcome. Later, a chance meeting with the Employers representative revealed that a complete misunderstanding had occurred in regard to the facts of the case. The member subsequently returned to work. Had the

conference been conducted on a face-to-face basis, there is little doubt the misunderstanding would have been revealed then.

### **Recommendation**

The Alliance recommends that s. 398 (*Conferences*) be redrafted to specify that conferences shall be face-to-face or that an application needs to be made by one of the parties for conferences to be held by telephone.

## **Industrial Action**

---

### **52. Is the process of applying for and conducting protected action ballots simpler under the new system? If so, why, and if not, why not?**

The Alliance believes that there are significant ambiguities within the legislation as it pertains to protected action ballots, which require clarification to ensure that the process is fair and clear. The Alliance provides specific comments with respect to the following issues:

- Employer compliance with a protected action ballot order and the placing of all names on a ballot list;
- Facilitation of the smooth running of ballots;
- Notice;
- Dispute Resolution.

#### ***Employer compliance with a protected action ballot order and the placing of all names on a ballot list***

On 29 June 2011 the Alliance made an application for a protected action ballot (PAB). Fair Work Australia (FWA) made an order that the PAB be held on 1 July 2011 (B2011/136). The order stated that the group of employees to be balloted were:

*‘editorial employees employed by the respondent employers in locations in Australia and overseas for whom the MEAA is a bargaining representative’.*

The Respondent, various news media companies (the employer), did not oppose the making of the order at the hearing, yet failed to provide the Australian Electoral Commission (AEC) with the full list of names of the employees specified in the order. The employer did not include employees in positions which have traditionally been ‘exempt’ from agreement coverage. Examples of such employees are editors or chiefs of staff.

The scope of the proposed agreement was a matter for bargaining, and one of the reasons for seeking a PAB in the first place. As such, the Alliance held the position that these people may be covered by the proposed agreement. These employees were Alliance members and as such the Alliance were their bargaining representatives. The employer had never sought a scope order at any stage, rather leaving scope as a matter for negotiation. When the employer formally agreed to commence bargaining on 11 May 2011, they did not signal that it was conditional upon excluding employees in the 'exempt' positions.

When the employer failed to comply with the order made on 1 July 2011 the Alliance could see no practical option available under the Fair Work Act to seek compliance other than to apply for a variation pursuant to s. 447 (*Variation of protected action ballot order*).

The Alliance could potentially have applied to the Federal Court or the Federal Magistrates Court for orders in relation to the contravention of s. 463: (*Contravening a protected action ballot order etc.*) This was not a viable nor practical option for the Alliance, nor would it be for most unions, given the timeframes involved and the amount of evidence that would potentially be required. Further, it was not practical or reasonable in the Alliance's opinion to wait until the roll had been completed and then to seek the addition of names under s. 454(2). (*Variation of roll of voters: Adding names to the roll of voters*).

The Alliance attempted to resolve the practical issue of whether people who were left off the employer's list and disenfranchised would be engaging in protected action should it become necessary to take part in industrial action. The Alliance formed the view that they *would* be taking protected action and informed the members and the employer accordingly. The employer refuted this, saying it was not consistent with s. 409 (*Employee claim action*). The Alliance did not agree, noting that the section does not require that an employee vote in a PAB to be protected. The section simply states at s. 409 (1)(b)(ii) that they need to be

*"an employee who is included in a group or groups of employees specified in a protected action ballot order for the industrial action"*

Subsection 409(1)(b)(i) was and remains problematic as it refers to an employee who 'will' be covered by the agreement. This was still a matter that had not been decided. Potentially, protected industrial action would have a role to play in the scope of the agreement.

The Alliance was concerned that the employer would press an amendment to the Alliance's original order and that FWA would so alter the order so that 'exempt' employees were left out of the group referred to in subsection 409(1)(b)(ii) thus making any action they took unprotected. We withdrew our application under s. 447.

The employer said that the voting and action are connected – that is, if an employee votes they can take action, if an employee does not vote they cannot take action. The employer in this case did not refer to any sections of the Fair Work Act, nor could the Alliance find any sections to support this.

The Alliance formed the opinion that if the members were specified in the group ('editorial employees') and even if they were not on the roll and thus did not get a vote, they would receive immunity. The ballot was conducted. 64.3% of people on the roll voted and 96% of those people voted yes to approve the action.

The use of the word 'will' in ss 173(1)(a) (*notice of employee representational rights*), 409(1)(b)(i) (*employee claim action*) and 453(a) (*who is eligible to be included on the roll of voters*), is in the view of the Alliance inappropriate. The word creates confusion, particularly if scope is a matter for negotiation. How can the parties know which employees 'will' be covered by the proposed agreement if there has not been a majority support determination or scope order made?

#### **Recommendation**

Sections 173(1)(a), 409(1)(b)(i) and 453(a) of the Fair Work Act should be amended with the word 'will' replaced with 'may' to reduce opportunities available to a party to exclude employees. Further, the Alliance recommends that be a mechanism introduced to ensure that all employees' names are put on the relevant lists before the roll of voters is compiled, and if they are not, there should an alternative way to resolve this matter rather than applying to the Federal Court of the Federal Magistrates Court to have FWA's order enforced.

#### ***Facilitation of the smooth running of ballots***

During the matter described above, the Alliance had some difficulty in obtaining a clear and practical timetable for the protected action ballot. It was left up to the Alliance and the ballot agent, the Australian Electoral Commission (AEC) to agree on a timetable. The timetable – in particular when to have lists to the AEC – was imprecise and caused considerable confusion. The employer did not oppose the order nor did it concern itself with the timetable.

Subsection 449(2) (*Protected action ballot to be conducted by Australian Electoral Commission or other specified ballot agent*) of the Fair Work Act states that the ballot agent must conduct the PAB in accordance, inter alia, with the order and the timetable. However, there is no provision that specifies the timetable needs to be part of the order.

Subsection 109N(1)(d) of the Workplace Relations Act 1996 (WR Act) set out that the Australian Industrial Relations Commission (AIRC) was to include in a PAB order, inter

alia, the day on which the roll of voters is to close, which had to be at least two working days before the day on which the ballot was to start.

The involvement of the AIRC in making the timetable part of the order allowed the parties to sort out any issues in an environment where the AIRC could assist. Leaving this detail up to the parties causes issues where the parties either do not turn their minds to the importance of a workable timetable or do not agree on the timetable.

#### **Recommendation**

The Alliance recommends amending s. 443(3) (*When FWA must make a protected action ballot order*) to require FWA to include the timetable in the ballot order.

It is the Alliance's view that the current requirement in subsection (c) that the date by which voting closes does not go far enough. The section should mirror the provisions in s. 450 (*Directions for conduct of protected action ballot*) for non-AEC ballot agents or reflect the requirements set out in s. 109N of the Workplace Relations Act 1996.

#### **Notice**

The Alliance has membership at many sites where employers run round-the-clock operations. For example, in the media industry companies work every day of the year. This includes weekends and public holidays. As such they have managers rostered who are senior enough to receive and understand protected action notices. The requirement under s. 414 (*Notice requirements for industrial action*) that employees in industries which work round-the-clock provide their employer three 'working days' notice of action which does not include weekends or public holidays disadvantages these employees. At one of the major employers, management effectively receive up to five days' notice of proposed protected industrial action which had the potential to significantly diminish the effectiveness of any action.

#### **Recommendation**

The Alliance recommends that the requirement under s. 414 to provide three days' notice be amended to state 'operational' days, or days on which the workplace conducts business.

**56. Should compulsory conciliation play a more prominent role, either generally, in the enterprise bargaining regime, in settling disputes over the application of enterprise agreements or more especially in the machinery which governs the settlement of intractable disputes?**

Subsection 186(6) (*When FWA must approve an enterprise agreement—general requirements: Requirement for a term about settling disputes*) of the Fair Work Act requires that agreements contain a provision that allows FWA or another person to ‘settle’ disputes. The Alliance submits that concomitant with that requirement is the ability to ultimately arbitrate the dispute if it cannot be settled via other, less formal alternative dispute resolution methods. The term ‘settle’ means resolve or determine a matter.

A recommendation made, an opinion expressed, or an outcome achieved through mediation or conciliation does not have the same force of authority of an arbitrated decision. The Alliance has found that employers are more likely to:

1. attempt to genuinely resolve the dispute at the workplace level or less formal stages in the process; and
2. comply with an arbitrated decision rather than a recommendation or opinion where arbitration is a possibility.

The Alliance refers to the decision of Commissioner Smith in *Woolworths Ltd trading as Produce and Recycling Distribution Centre* [2010] FWA 30. In summary, the decision examined the requirements of s. 186(6) for settling disputes. Commissioner Smith found that access to arbitration is a prerequisite for the approval of an agreement as arbitration is the way to settle a dispute, or to definitely fix a dispute. The Alliance agrees with the proposition that arbitration is an essential ingredient of a dispute resolution procedure. Unfortunately this decision was overturned by the Full Bench in *Woolworths Ltd trading as Produce and Recycling Distribution Centre* [2010] FWAFB 1464.

Without the certainty of arbitration the whole agreement is undermined. The Alliance is frustrated by negotiating terms and conditions into agreements and then finding that there is very limited ability to enforce these matters when an employer fails to abide by them.

In 2011 the Alliance dealt with a dispute about redundancy provisions with an employer. The employer and the Alliance held different positions on the interpretation of the redundancy clauses and consultation obligations under the agreement. FWA was only able to express an opinion on the matter to which the company did not strictly adhere. The Alliance is of the view that the entire dispute could have been resolved quicker and the parties would have acted more positively if arbitration was an available option to finalise the matter. The inability to fully resolve the matter means that employee members of the Alliance learnt to distrust management and the relationship has never been fully repaired.

The Alliance believes some hostile employers are aware that they are able to, in effect, breach or ignore provisions of enterprise agreements without fear that the Alliance will pursue such breaches because FWA is not empowered to settle a dispute through arbitration.

Arbitration is the most time and cost effective way to fully resolving a dispute. Going to the Federal Court is expensive and time consuming. Most employers know that unions would prefer to be spending their funds on things other than Federal Court applications. Employers are therefore less inclined to make genuine attempts to resolve disputes.

Employers generally take on all of the model dispute resolution clauses when negotiating and drafting agreements except for the part requiring arbitration. The Alliance faces this situation almost every time we negotiate an enterprise agreement. The practical reality of the legislation means that an employer ends up making the call on whether the terms and conditions of an agreement will be able to enforced by FWA. This is because it is very difficult to educate workers about the importance of one word in a single clause of their agreement. The disputes procedure does not immediately benefit them in the way a wage increase or penalty provisions would, so they do not appreciate the importance of arbitration. Only later when a dispute arises do employees realise the value of having a clause which allows for a third party, usually FWA to ultimately resolve a dispute through arbitration.

#### **Recommendation**

The Alliance recommends that arbitration be a compulsory final stage in dispute resolution procedures. Subsections 595(2) and (3), and 739(3) and (4) should be amended accordingly with an express statement that the legislation intends that arbitration be a compulsory final stage, if necessary.

#### **57. Are employees able to resort to protected industrial action more easily or quickly since the passage of the Fair Work Act? If so, which provisions of the Act facilitate this?**

The Alliance notes that the current legislative framework does not permit industrial parties in the entertainment and media industries to determine their own industrial agendas and support those agendas through protected industrial action. It is also an anomaly within the Act that multi-enterprise agreements are permitted, but the industrial action avenue is not open to those wishing to take advantage of these agreements.

The Alliance believes that the Fair Work Act should be amended to allow protected industrial action in support of multi-enterprise bargaining and to allow FWA to be able to make bargaining orders, scope orders or majority support determinations for multi-enterprise agreements.

The Alliance was recently a bargaining representative during negotiations for a multi-enterprise agreement. The employers where represented by an employer representative organisation with approximately 75 rural and regional sites across

Australia. Most employers strictly follow the employer representative organisation's lead and use employer representative organisation as their human resources and industrial advisors. In reality the employers act as one entity under the umbrella of the employer representative organisation.

Alliance members wanted to be able to access the full scope of the FW Act and be able to take protected industrial action against their employers should it become necessary. However, because the employers were seeking a multi-enterprise agreement Alliance members were denied this opportunity.

### **Recommendation**

The Alliance strongly recommends that employees be able to apply for a protected action ballot and potentially take protected action against employers who are acting in concert under the umbrella of one employer group and seeking a multi-enterprise agreement.

### **Other matters**

---

The Alliance wishes to raise a number of matters that do not fit neatly under questions listed in Attachment B of the Background Paper. These include issues regarding consultation, employees voting in multi-enterprise agreements and the method of payment.

### **Consultation**

In every enterprise agreement the Alliance has negotiated since the introduction of the FW Act one of the main issues of conjecture has been the consultation clause, ie at what stage in the decision-making process the employer is obliged to consult with employees and their representatives. This matter is often described by the Alliance as the 'trigger-point' issue. The regulation model clause, favoured by employers, simply says that the employer is obliged to consult when they have made 'a definite decision' to introduce change. This does not allow for consultation in its true sense.

The commonsense definition of consultation as defined in *Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v Vodafone Network Pty Ltd* [PR911257] at paragraph 25 is:

*"Consultation is not perfunctory advice on what is about to happen. This is a common misconception. Consultation is providing the individual, or other relevant persons, with a bona fide opportunity to influence the decision-maker...Consultation is not joint decision making or even a negative or frustrating barrier to the prerogative of management to make decisions.*

*Consultation allows the decision making process to be informed, particularly as it may effect the employment prospects of individuals...”*

Logan J in *Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia v QR Limited* [2010] FCA 591 at paragraphs 40 – 45 sets out a similar definition.

It is clear from these two cases that once an employer has made ‘a definite decision’ to do something there is no opportunity for employees or their representative to influence the mind of the decision maker.

The Alliance recently dealt with a dispute about a restructure which would incur redundancies. Members came up with a proposal which secured the cost efficiencies the employer required while retaining more jobs than the employer proposed to cut. The employer had already taken its proposal to market rendering the members’ proposal useless.

This is another issue on which is hard to educate employees. They often do not realise the importance of a functional clause until a time when the company is obliged to consult and they are not able to influence the mind of the decision maker. During recent negotiations with various employers management offered some ridiculous reasons for rejecting an earlier trigger point – such as ‘any thought I have over breakfast would trigger this’, ‘anything I imagine would mean I had an obligation to consult’, ‘I have a million thoughts a day which I would have to tell staff about’.

The Alliance argues that there needs to be a sensible balance so that employees are afforded fairness in the consultation process.

#### **Recommendation**

The Alliance recommends amending the model clause so that there is an earlier trigger point in line with case law, and that FWA establish guidelines, in similar terms as the cited decisions, around when the obligation of an employer to consult is triggered.

#### **Employees voting in a Multi-enterprise Agreement**

The Alliance wishes to raise difficulties that have arisen around the process of voting in a Multi-enterprise Agreement. In 2011, the Alliance negotiated with an employer representative organisation for a multi-enterprise agreement involving approximately 75 different sites across the country, in rural or regional areas who needed to vote on the proposed multi-enterprise agreement. The vote was co-ordinated by the employer representative organisation, the employer group representing the interests of publishers of non-daily country newspapers operating

in Australia and is their peak body. The employer representative organisation was the bargaining representative for the employers. Unfortunately, even after the timetable for the vote was extended once, there was not enough time for all sites to vote and some did not even attempt to vote. As such some were left off the agreement. This was not the intention of the parties to the agreement and created a great deal of confusion for employers and employees affected. Bargaining inefficiencies have also been created as there are now a number of mirror agreements which have been created.

Pursuant to s. 182(2) of the Fair Work Act (*When an enterprise agreement is made: Multi-enterprise agreement that is not a greenfields agreement*) the employees of each employer covered by the proposed agreement need to vote and pass a majority for the agreement to operate at that site. Section 184 requires that the agreement be varied to reflect that not all employees of each employer voted in support of the agreement. As noted, it was not the intention of the parties to exclude any employees of any employers. It was simply a case of employers failing to hold or encourage ballots. Some sites simply did not vote. It was not the case that there was a vote and a rejection of the agreement. FWA had no capacity to order a re-vote at sites who did not participate. The Alliance believes that this is too strict and that there needs to be greater flexibility in the system to ensure that employees are not denied the ability to vote and join an agreement.

This was not a situation where the parties were acting in an adversarial manner, yet problems still occurred. The Alliance is concerned about the potential problems which could arise in the situation where the parties are less inclined to cooperate.

#### **Recommendation**

The Alliance recommends that FWA be empowered to order a vote of employees of employers who fail to participate in a vote to make a multi-enterprise agreement. This should be confined to circumstances where it is clear on the evidence that the employees did not actively choose to refrain from voting, but rather did not get the opportunity to vote. FWA should be given the ability to make orders about how a vote for such an agreement occurs which would involve safeguards against such occurrences

#### **Method and frequency of payment of wages**

One of the key distinguishing features of the entertainment industry as opposed to most other industries, is that the great majority of performers including actors, comedians, dancers, and singers, are represented by agents or managers. The nature of a career as a performer involves being engaged on a number of short individual

jobs on a variety of productions. This necessarily requires the engagement of a representative looking after their employment and financial affairs.

This performer-agent relationship is regulated in NSW and in Queensland to ensure that performers are protected in their business dealings with their employment representatives. There are strict rules around commissions, fees, monies held in trust and appropriate financial reporting and other protections.

This relationship is however not recognised under the Fair Work Act. This creates administrative difficulties for performers and agents that could easily be avoided. Subsection 323(2)(c) (*Method and frequency of payment of wages*) does not allow wages to be paid to an agent on behalf of a performer even if a performer requests.

**Recommendation**

The Alliance recommends that s. 323(2)(c) be amended to ensure that a performer employee can request that their salary be paid to an account nominated by the employee, rather than simply held by the employee.