

MODERN AWARDS REVIEW 2023-24
(AM2023/21)
SUPPLEMENTARY SUBMISSION COVER SHEET

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Modern Award Review Stream: Arts and Culture

This supplementary submission is made by Commercial Radio & Audio Ltd (**CRA**) in response to:

- the Supplementary Submission of Media, Entertainment and Arts Alliance (**MEAA**) dated 22 January 2024 (**MEAA's Supplementary Submissions**); and
- the Reply Submission of Business NSW & Australian Business Industrial dated 31 January 2024 (**Business NSW Reply Submission**).

All references to MEAA's submissions below relate to submissions made by MEAA in clause 1.1 of MEAA's Supplementary Submissions.

CRA filed Submissions in the Commission in this matter on 4 December 2023, and continues to rely upon those Submissions.

1 Audio book recording

- (a) CRA disagrees with MEAA's submission that 'audio book recording' is an example of an activity or enterprise where there is a coverage gap apparent from the terms of the *Broadcasting, Recorded Entertainment and Cinemas Award 2020* [MA000091] (**BRE&CA Award**).
- (b) In this regard:
 - (i) Screen Producers Australia (**SPA**) has submitted that the activity or enterprise of audio book recording for the independent screen production sector is already covered by the provisions within Schedule G of the BRE&CA Award¹; and
 - (ii) MEAA acknowledges that a voice actor or performer is not an occupation which falls in a coverage gap, as these roles would be covered under Schedule E of the BRE&CA Award.
- (c) CRA respectfully submits that as no coverage gap has been identified in relation to audio book recording, there is no basis for the Commission to 'adjust' (this being the phrase used by MEAA) the BRE&CA Award in respect of this activity.

¹ Submission of SCA dated 19 January 2024, plus submissions made in conference before the Commission on 22 January 2024.

2 The 'enterprise of production of audio books'

- (a) In relation to MEAA's submission that the "*...enterprise of production of audio books requires more than engagement of a voice actor as performer. Various technical or production occupations are necessarily engaged also*", CRA makes the following submissions.
- (b) MEAA's Supplementary Submissions fail to identify:
 - (i) who or what persons / entities are involved in the 'enterprise of production of book recording'; or
 - (ii) what technical or production occupations are involved in the 'enterprise of production of book recording' or 'production of audio content in any other medium more broadly'.
- (c) CRA submits that the failure to identify these matters makes it difficult to understand the intended reach of MEAA's submissions for Schedule B of the BRE&CA Award to be 'enlarged', and therefore to respond to this submission.
- (d) Noting CRA's members hold a commercial radio broadcasting licence issued under the *Broadcasting Services Act 1992* (Cth) which entitles them to provide radio services in the broadcasting services bands, CRA's response to MEAA's submissions is limited to 'radio broadcasting'.
- (e) The term 'radio broadcasting' is not defined in the BRE&CA Award. Despite this, CRA submits that there is no ambiguity as to the meaning of the term 'radio broadcasting'. In this regard, CRA is not aware of any Commission proceedings in which the meaning of the term 'radio broadcasting' has been raised by a party since the commencement of the BRE&CA Award on 1 January 2010, and does not recall the words being the subject of any discussion or amendment in the 4 yearly review of modern awards process conducted by the Commission. On this basis, CRA submits it is well settled that the following parts of the BRE&CA Award specifically apply to radio broadcasting:
 - (i) Part 8 (clauses 35 to 46); and
 - (ii) Schedule B,both of which are headed 'Radio Broadcasting'.
- (f) CRA submits that it is not clear from MEAA's Supplementary Submissions which lack specificity, as identified in paragraphs 2(b) and 2(c) above, how its submission that the Commission 'adjust' or 'enlarge' Schedule B is consistent with the modern awards objective in section 134 of the Fair Work Act.

3 Schedule B

- (a) CRA disagrees with MEAA's submission that the exclusion from "*...coverage of occupations in that part of the industry associated with the production of audio content outside radio stations and broadcasting*" can be remedied by adjusting Schedule B.
- (b) As is noted above, Schedule B is focused on radio broadcasting. MEAA's submission would require the Commission to ignore this fact, and extend coverage to persons / entities involved in the 'enterprise of production of book recording', but not within radio broadcasting.

- (c) CRA respectfully submits that this submission would create difficulty for interested parties in relation to issues such as the modern awards objective in section 134 of the Fair Work Act, coverage, construction interpretation etc.

4 Business NSW Reply Submission

- (a) In support of CRA's submissions above, CRA identifies the following paragraphs from the Business NSW Reply Submission.
- (b) Paragraph 17, which confirms that where a specific occupation can be properly identified as falling outside the suite of existing industry and occupational awards, there might be merit in more detailed consideration as to:
 - (i) whether the role/s can or should be regulated by a modern award (as opposed to being award-free);
 - (ii) whether the *Miscellaneous Award 2020* is an adequate safety net instrument for the role; or
 - (iii) whether another existing award should be varied to cover the role.
- (c) Paragraph 18, which confirms that the consideration above will require a more detailed consideration of the work performed by those employees, who their employers are (and the character/industry of their employer), the employee's qualifications, the minimum terms and conditions appropriate to be set for those roles, and other factors such as the modern awards objective.
- (d) Paragraph 24, which confirms the important note that most of the discussion to date has been at a level of generality, with discussions being directed at broad occupations or job titles rather than real examples or specific employees. The effect of this is that:
 - (i) in most cases, for each of the relevant occupations canvassed, it continues to be unclear which businesses or organisations tend to employ those people (e.g. the character or industry of the employer is not known);
 - (ii) it makes it difficult to properly consider the issue of award coverage given that an employee's modern award coverage will, to a large extent, be determined (or at least influenced) by the character of the employer; and
 - (iii) occupations or 'job titles' often do not accurately reflect the actual duties performed by employees (or there can be a significant variability in the use of role titles and the work actually done by people working in different establishments).
- (e) CRA submits that these are fundamental considerations that need to be the subject of greater detail, consultation (if appropriate) and submissions (and possibly evidence), before the Commission could (respectfully):
 - (i) consider if a new modern award is necessary or required for the arts and culture sector, or vary an existing award, particularly where there is little precision around how the sector is defined, and the types of employers and employees who might fall into the scope of such a modern award; and
 - (ii) identify if specific occupations could or should be covered by a new or varied modern award for the arts and culture sector.

2 February 2024