



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

DEPUTY PRESIDENT MILLHOUSE

AM2023/21

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

**Modern Awards Review
(AM2023/21)**

Melbourne

10.00 AM, TUESDAY, 30 JANUARY 2024

Continued from 25/01/2024

PN1973

THE DEPUTY PRESIDENT: I'll just confirm the appearances. It's only us in the courtroom today, nobody appearing by Teams. Mr Borgeest, you continue your appearance for MEAA?

PN1974

MR BORGEEST: Correct. Thank you, Deputy President.

PN1975

THE DEPUTY PRESIDENT: Mr Lowe, you continue your appearance for Theatre Network Australia. Mr Floyd and Ms Minster, you continue your appearance for the LPA. Thank you, everyone. There are a couple of matters that were foreshadowed late last week that each of you proposed to speak to today. Who would like to kick off?

PN1976

MS MINSTER: I'm happy to kick off.

PN1977

THE DEPUTY PRESIDENT: Thanks, Ms Minster.

PN1978

MS MINSTER: I've circulated this yesterday to Mr Borgeest and Mr Lowe, and I can hand it up to you. I can talk now or I can talk to it first. We've finally come to some sort of agreed positions on some of the proposed amendments to the award.

PN1979

THE DEPUTY PRESIDENT: I will take a copy of that now if that's all right.

PN1980

MS MINSTER: Yes.

PN1981

THE DEPUTY PRESIDENT: Thank you.

PN1982

MS MINSTER: Everyone else has been sent this by email. So firstly, with the position of chaperones, MEAA and LPA have agreed on a classification for chaperone. Generally, this is what the industry is doing anyway, but we're happy to have the word 'chaperone' inserted as an indicative position. And that would be in schedule A, obviously, at level 5.

PN1983

THE DEPUTY PRESIDENT: Yes.

PN1984

MS MINSTER: And then LPA and TNA have come to an agreement – if you recall, when we first started, there was a bit of confusion of administrative staff or employees being included in the awards.

PN1985

THE DEPUTY PRESIDENT: Yes.

PN1986

MS MINSTER: And although we agreed that there's coverage, there is some confusion about where that should go. And so to assist with that, our shared position is the word 'clerk' is a bit outdated, and we could replace that with the word 'administrator'. And attached to this document that you're reading is like a marked up version of these positions, which is probably easier to read than the initial page. In addition, we have a recommendation that an indicative position at level 3 could be administrative assistant.

PN1987

THE DEPUTY PRESIDENT: Yes.

PN1988

MS MINSTER: And then the other recommendation is that in some of the – where it identifies the skills required, the award should be updated. It says things like, 'keyboard skills', but really we think that's a reference to computer skills in a contemporary workplace, rather than keyboard skills. So there's a list of clauses in this document I've given you where that could be amended. One that was more difficult for us to kind of classify and fit in with the award was the suggested arts programmers, arts producers. But we have agreed on where a junior or associate arts programmer should sit, which kind of does include a more junior producing style work, and so we think the level is around level 6 for that role.

PN1989

And then – perhaps Mr Lowe would like to speak more about this, but we thought about the position of the producer, and because of how that is used in such a varied way across the industry, we decided that any kind of roles like that that could be fit into the award – should be covered by the award, I should say – should more rely on the skillset that's described in the classification, rather than putting it under a certain classification, because it was too hard to just put it into one section. And then obviously there's producers who are at an employer or executive level, that would not be covered by the award.

PN1990

So we have talked about, probably there is a need for the industry to have a little bit more education around how to classify under the award, and that's definitely something that LPA would be interested to do, and would do.

PN1991

THE DEPUTY PRESIDENT: Tell me a little bit more about the arts programmer.

PN1992

MS MINSTER: So the arts programmer – I think Mr Lowe might like to talk about this too.

PN1993

THE DEPUTY PRESIDENT: Sure.

PN1994

MS MINSTER: A programmer, producer can kind of sometimes be a bit of an interchangeable word, and it's recognised in that way. So it doesn't highlight 'producer', which is often used at a higher level. It's not going to kind of attract a misclassification, which is why we've decided to use that terminology instead of – we think it's better to use that terminology than 'producer'.

PN1995

THE DEPUTY PRESIDENT: I see. That's helpful. Mr Lowe, is there anything you'd like to say in relation to those matters?

PN1996

MR LOWE: Yes. I agree with what Ms Minster has said, and I thank her and her colleagues for doing this work. So, yes, in terms of producer, within the part of the sector that TNA represents, even within part of the sector, producer is a huge spectrum of responsibilities and seniority. So just to further emphasise Ms Minster's point that it would be really challenging to put a role in just one classification, and then for that to be accurately used within the sector, not to mention that in the broader sector, in the higher end of town that LPA represents, that is a completely different role to what we would call a producer. So, yes, I agree that it's too challenging within the current structure of the award, how it's structured, to put in an indicative position in there for what we would call (indistinct) producer.

PN1997

THE DEPUTY PRESIDENT: And so with that concession, Mr Lowe, you're content that the matters that have been advanced here in this consent document adequately reflect all of the issues that Theatre Network Australia sought to raise as part of this consultation session in the Commission? All right. Thank you. Is there anything else? Thank you. Mr Borgeest, is there anything that you would like to say?

PN1998

MR BORGEEST: Just confirming what Ms Minster put concerning chaperones is the subject of agreement of MEAA. And I think it's fair to say that the logic behind inserting chaperones as an indicative occupation at production support staff level is that that's the level at which it's clear that some form of accreditation or qualification is required for a position of that kind. It's been inserted effectively at the minimum level that anyone doing chaperone work would be classified.

PN1999

There'd be scope in particular engagements with people given particular responsibilities that might be more complicated, and users of the award might see that in some circumstances, a level 6 might be appropriate for an individual, and then there's a level 8 for – if there's a big team, for a team leader or manager or supervisor to kick in at that level. But we didn't see it was necessary to insert some elaborate classification structure for that occupation into all of (indistinct) classifications. It was enough for our purposes to just (indistinct) five.

PN2000

THE DEPUTY PRESIDENT: All right. Thank you. Mr Lowe, you are nodding. That all sounds consistent with your views? Ms Minster, anything else to add in response to that?

PN2001

MS MINSTER: No, I don't think so, other than to say that I agree with Mr Borgeest. The reason why we didn't add it higher is because there is a classification – I think it's level 8 or 10 – which is a head of department. And so anyone who is managing a team of chaperones would fit quite easily into what's already there.

PN2002

THE DEPUTY PRESIDENT: Yes.

PN2003

MS MINSTER: And partly, that level that we chose for chaperone is because in Victoria, New South Wales and Queensland, there are regulations about employing children in the entertainment industry.

PN2004

THE DEPUTY PRESIDENT: Yes.

PN2005

MS MINSTER: And when a child I think is – I think definitely in Victoria, from up to six years old, you have to have that level of classification in order to supervise those children in the entertainment sector.

PN2006

THE DEPUTY PRESIDENT: That's all really helpful, everyone. Thank you for all the work that has gone into it. I'll take this material on notice, and I'm grateful to you all for speaking to it today. Are there any other matters?

PN2007

MR BORGEEST: There's just one other related matter, with the Live Performance Award.

PN2008

THE DEPUTY PRESIDENT: Yes.

PN2009

MR BORGEEST: You'll recall that Live Performance Australia handed up some proposed corrections of (indistinct) errors.

PN2010

THE DEPUTY PRESIDENT: I do.

PN2011

MR BORGEEST: And we've since discussed that, but I don't think it's on the record here yet that those corrections appear appropriate to MEAA, and we support them.

PN2012

THE DEPUTY PRESIDENT: Thank you. Those matters address the issues that we had identified as being future agenda items when we last met on Thursday. Is there anything else that this room would like to use the time to discuss?

PN2013

MS MINSTER: We are satisfied with what we've discussed here.

PN2014

THE DEPUTY PRESIDENT: That's great. That's wonderful. Thank you all. I'm very grateful for the work that you've done and for the position that you've been able to provide to the Commission. Thank you very much. In terms of immediate next steps, the Commission anticipates, but has not received submissions from Professionals Australia in relation to the issues discussed concerning video games and programming.

PN2015

There will be an opportunity provided to Professionals Australia to speak to that material once it has been filed, but in terms of scheduling a time and a date this week for that agenda item, I can't be specific until such time as that material is produced. Separately, ABI, Business New South Wales are not present today, on the basis that they are preparing their supplementary written submissions, which they're hoping to file with the Commission I think today or at least tomorrow. And a further opportunity will be provided for ABI, Business New South Wales to speak to those submissions should that be desirable. NAVA is not present this morning, but has separately indicated to the Commission that there are at least two other individuals who would like to speak to their lived experience as artists, and a facility will be made available for those persons to attend the Commission in person tomorrow afternoon.

PN2016

Otherwise, in the event that there are no additional matters for us to speak to today, I propose that we adjourn until tomorrow morning. I understand, Ms Minster, from the other session, you have indicated some unavailability tomorrow morning. But subject to anything that comes in writing, which of course you'll be privy to, it may be that you consider that LPA has addressed the matters it needs to as part of this aspect of the review, but of course I'll leave that to you.

PN2017

MS MINSTER: Thank you.

PN2018

THE DEPUTY PRESIDENT: All right.

PN2019

MR BORGEEST: There's one other outstanding matter. I foreshadowed last Thursday that Screen Producers Australia and MEAA were in discussion about some proposals to clarify the scope of operation of schedules to the broadcasting (indistinct) and cinemas.

PN2020

THE DEPUTY PRESIDENT: Indeed. Yes.

PN2021

MR BORGEEEST: Those discussions are progressing, and we continue to lock in agreements (indistinct) principle, and are now at the stage of exchanging some relatively uncontroversial drafting. And so I don't want to put a time on it, but it would be quite soon that something agreed between SPA and MEAA could be circulated. I don't know that we would need – we will be available to speak to it, but anything we produce would not be controversial between ourselves. We would not be seeking to use the facility of the Commission's consultation sessions to work anything through. We would envisage speaking to it (indistinct) an opportunity to explain it to the Commission and answer any questions the Commission might have.

PN2022

THE DEPUTY PRESIDENT: Yes.

PN2023

MR BORGEEEST: I do see – we're proposing some introductory clarifying words, not only to schedule G, but to schedules A and B. The Commission will recall schedules containing classifications under the heading of television broadcasting and radio broadcasting. And those would be very innocuous. They would be of the nature of stating that those classifications operate with respect to enterprises that have a commercial television broadcasting licence or a commercial radio broadcasting licence, as those terms are defined in the Broadcasting Act 1992. Certainly we think that – you'll recall that Mr Fuller from Commercial Radio last week was – needed time to consider anything that we were talking about in that environment last week, when MEAA was suggesting some more substantial amendments to schedule B, and only in broad outline, and he was naturally keen to be informed of anything that went further. So it's now not proposed that there be anything of substance adjusted in schedule B, other than those introductory words, which – I can't speak for him, but I anticipate should be controversial, but we'll communicate with him outside of the Commission. But I'm flagging that because he at least might be – his organisation might be an interested party once we have something on the table.

PN2024

THE DEPUTY PRESIDENT: Yes.

PN2025

MR BORGEEEST: And that might affect whether it's appropriate that we come back later in the week and talk it over.

PN2026

THE DEPUTY PRESIDENT: Yes.

PN2027

MR BORGEEEST: So I flag that as to the possibilities for programming. And again, for our part, we don't anticipate and need to work anything through in discussion, other than produce the document that will keep the Commission informed, if that's a suitable way to leave it today.

PN2028

THE DEPUTY PRESIDENT: Indeed it is. Thank you for taking me back to that matter and raising it. Thank you also for indicating your intention to speak separately with Mr Fuller outside of the Commission in relation to those matters. I do wish for him to have an opportunity to consider those issues, and I'm grateful that you're assisting in that way, Mr Borgeest. Thank you very much. On that basis, knowing that we will have an afternoon session with certain artists tomorrow, I'll adjourn the proceeding, the consultation process until 10 am tomorrow. And the timetable for tomorrow may well play out based on who is in attendance at 10 am and whether it's an afternoon session only. Thanks, everyone, for coming in. We'll adjourn.

PN2029

MS MINSTER: Thank you.

ADJOURNED UNTIL WEDNESDAY, 31 JANUARY 2024 [10.25 AM]