



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, THURSDAY, 1 FEBRUARY 2024

Continued from 31/01/2024

PN2690

THE DEPUTY PRESIDENT: Thank you all for your attendance today. I'm going to start by taking the appearances. Mr Goodwin, you are representing yourself and you are an artist. Thank you for your attendance. Ms Gabriel, I understand you are also an artist, and you also have a relationship with the Australian Centre for Contemporary Art. And that's also the case for you, Ms Hubbard. You are also an artist. Thank you. Ms Benton, you continue your appearance for NAVA. Ms Vincent, you're on the Microsoft Teams Link and you continue appearance for AVI and Business New South Wales.

PN2691

MS C VINCENT: Yes. Thank you, Deputy President.

PN2692

THE DEPUTY PRESIDENT: Thank you. Mr Kemppi, you continue your appearance for the ACTU.

PN2693

MR S KEMPPPI: Yes. Thank you.

PN2694

THE DEPUTY PRESIDENT: Mr Borgeest, you continue your appearance for MEAA.

PN2695

MR T BORGEEST: I do. Thank you, Deputy President.

PN2696

THE DEPUTY PRESIDENT: And hello Ms Angus. You continue your appearance for SPA.

PN2697

MS Z ANGUS: I do, your Honour, on behalf of SPA, but I'd probably suggest that it does appear as though the subject matter today is going to be about the visual and perform artists which may not intersect with any BRECA issues that we've been discussing. So subject to how you want to run the consultation today, if that is the case, then at some point I will ask to be excused.

PN2698

THE DEPUTY PRESIDENT: I understand. Thank you very much Ms Angus. While I have you I can confirm receipt of the written submissions that Screen Producers Australia has filed this morning with the Commission. And so it might be that the most appropriate course will be to invite you to initially speak to those submissions, before I then turn and hear from those that are present in the courtroom with us this morning. Are you content with that course, Ms Angus?

PN2699

MS ANGUS: Certainly, yes. I hadn't planned to speak to them, but that's pretty straightforward given I've just freshly prepared them. I think what we have sought to do there is summarise how the screen production sector which SPA

represents operates. It does also encompass - 'nascent' is not the right word - emerging sector of digital games development and production, and so there is essentially sort of three things I think that we've sought to address in those submissions.

PN2700

Firstly, the relationship between the motion picture production part of the award, part 13, which in colloquial speak we refer to as the crew section and then there's both the television and radio broadcasting which is the inhouse media companies when they make their own news television like news, current affairs programs et cetera.

PN2701

So that was one issue that was raised in earlier discussions in the consultation, and we've made some points there. Unless you want me to go further on that one I won't because I think the commercial radio person who has got an interest in that is not with us today.

PN2702

And then the other two things that we have sought to address in the submissions is the - unless anyone is offended, the ACTU, MEAA and Professionals Australia have in short summary raised concerns about two groups of employees being not covered adequately by any award and specifically the Broadcasting, Recorded Entertainment and Cinemas Award, the BRECA, and they are audiobook recording and digital games development.

PN2703

And dealing with those separately, MEAA, Mr Borgeest and myself have had discussions because I think as I've sort of accepted conversationally in the consultation, our people do audiobook recordings. They are probably doing it as part of a broader production and post-production slate and they are using the same employees as they would for other production and post-production tasks, but it is still open to the possibility of discussions with MEAA as to whether they could be comfortably incorporated into schedule G, part 13, noting that there are issues around that.

PN2704

But I think there was a period where MEAA and I were trying to see if everything could fit within part 13 of the award, but it just doesn't. It's clearly that that part is very specifically tailored to motion picture production crew on film and television and so we are then left with the more pressing issue of what do we do with the digital games development employees.

PN2705

And in our submissions I think we accept that they either are covered by the coverage clause of BRECA or are capable of being covered with some amending language by BRECA. Subject to finessing details, we wouldn't dispute the fact that this probably an appropriate award for the bulk of those employees to fall within. And so the next -you know, what flows from that I guess is the subject of further discussion. But I think, in essence, they are our submissions, your Honour.

PN2706

THE DEPUTY PRESIDENT: Thank you very much, Ms Angus. Mr Borgeest, is there anything that you would like to say in response to the submission or the matters that have been raised by Ms Angus this morning.

PN2707

MR BORGEEST: I think sort of going to the end of the submission - well, the end of the oral presentation and the end of the document, we read and hear a preparedness from SPA - - -

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MS ANGUS: SPA is what the S-P-A is referred to as. Sorry, Toby.

PN2709

MR BORGEEST: We read and hear a preparedness to continue talking about the subjects that have come up in the consultation session and in offline discussions. I think that that would be valuable, and I don't know that there is much that we can expect that can be settled within the remaining scheduled dates for the consultation session.

PN2710

I think that there is a significant question in relation to the BRECA award and the that is that the BRECA award does not clearly articulate which occupations and which parts of the industry are regulated by the various schedules and Ms Angus has articulated a contention that schedule G only covers and only appropriately covers employees within that part of the defined industry engaged in motion picture production.

PN2711

But what the metes and bounds of that are is poorly articulated in the terms of the award and that gives rise to ambiguities which have been illustrated in some - just a range of contentions about what the schedule applies to that have been offered in discussion during these consultations.

PN2712

So we'll certainly keep talking to SPA about that. I think that the issue is not so much restricted to the question of how audiobook tech and editors are classified, but there's a related and broader issue about the appropriateness of the definition of application of the schedules.

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So that's just the heads-up as to what we are thinking about and would bring to further discussions with SPA, but I don't propose that we occupy the consultation sessions further with trying to thrash that out, as it appears that there's more distance and more different levels of abstraction or generality between us that I thought there were a few days ago and that would take some time to work through. Thank you, Deputy President.

PN2714

THE DEPUTY PRESIDENT: Thank you, Mr Borgeest. That's most helpful. Ms Angus, is there anything that you wanted to say in reply on behalf of SPA?

PN2715

MS ANGUS: Only to apologise to Mr Borgeest that I've kind of dumped these submissions on him early this morning when we had been talking along one line and then I indicated that that's just not going to work and here at the written submissions. So just as a matter of - I apologise for giving you very little notice, Mr Borgeest. But that's all from me.

PN2716

THE DEPUTY PRESIDENT: Thank you very much. Can I indicate my thanks to both of you. I think that the important takeaway from the sessions that we've had together so far is that there is an opportunity through this process to bring you together to discuss what appears to be some important issues that necessitate some additional time and consideration.

PN2717

Of course, I encourage that further discussion to occur directly between you. It doesn't need to be facilitated by the Commission and I thank you for giving the indication that that's as far as you will take things throughout the course of this consultation process. I'm indebted to both of you for the work that you've done and the communication that you provided back to the Commission this morning.

PN2718

I'm comfortable if you're both comfortable doing so to be excused from the balance of the consultation session this morning if you consider you've addressed the matters that you'd like to address.

PN2719

MS ANGUS: Thank you, your Honour.

PN2720

MR BORGEEEST: Deputy President, can I follow up please on that indication about future steps. We appreciate that the Commission has set aside this time for consultation and has established a timetable for the review as a whole. We would foreshadow that there may be something arising from future direct engagement between MEAA and SPA on this question about the structure of the BRECA award that may still be relevant to notify the Commission about which the Commission might find relevant or useful in constructing its report on the arts and culture stream.

PN2721

Now, that raises the question if we are going to launch into some new document outside of these consultation sessions, that might raise a question for the Commission about whether it's fair to have regard to that without a structured process for other interested parties to engage in quite the same way as in these consultations. I only flag that to say we wouldn't want to surrender the opportunity for contributing to the Commission's thinking about coverage gaps in the arts and culture stream in respect of the BRECA award around these issues

that have emerged, simply because the way that it has developed there just happen to be these issues that haven't been worked through by the end of this time.

PN2722

THE DEPUTY PRESIDENT: I understand. So perhaps I can provide you with this indication, Mr Borgeest, that issues that have come to light in relation to issues that are the subject of this topic will be matches that are identified and addressed in the ultimate report by the Commission as a consequence of this aspect of the review.

PN2723

Now, in the meantime, if there are further constructive discussions that develop the ideas that have been generated directly between the two of you or indeed result in a decision to make a consent application or an application by one party to vary an award, it might be useful for my chambers to be apprised of that fact, in circumstances where the report hasn't otherwise been issued.

PN2724

But those options of course remain available to interested parties within the parameters of the Act at any time outside the scope of this review. And so I see the review process as being beneficial in the sense of providing a facility for you to generate discussion about the issues I have come to lot in relation to these matters. But if there is an appetite or a desire by consent or by either party to take steps to progress these issues in the Commission then, within the parameters of the Act, you are well open to do that outside this process.

PN2725

MR BORGEEEST: Thank you, Deputy President.

PN2726

THE DEPUTY PRESIDENT: Thank you, Mr Borgeest. Might I just indicate to you also that the submissions from Professionals Australia in response to the issues raised by me are concerning video game digital have been received by the Commission and I've separately been informed by Ms Buchanan that Professionals Australia don't have an intention to attend the consultation sessions over the balance of this week and speak directly to those written submissions.

PN2727

In those circumstances, Mr Borgeest, it's open to you upon consideration of that material from Professionals Australia to provide some supplementary oral submissions addressing those matters, but I will leave that to you.

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MR BORGEEEST: Thank you, Deputy President. I don't intend to address on those.

PN2729

THE DEPUTY PRESIDENT: Very well. Thank you. In those circumstances then, I propose to turn to the artists that are present in the Commission this morning and start considering further issues in relation to the visual arts sector if that's, as per my earlier indication, not a matter that you would like to be involved

in this morning, then of course you are excused and thank you for your submissions.

PN2730

MS ANGUS: Thank you.

PN2731

MR BORGEEEST: Thank you, Deputy President.

PN2732

THE DEPUTY PRESIDENT: Thank you everyone. I'd like to turn now to the issues that have brought you to the Commission this morning. This aspect of the modern award review and the arts culture sector has comprised of various subcomponents, and you have just heard a little bit about one of the other components that has been generating some dialogue here in the Commission.

PN2733

As artists, I am particularly interested in hearing about your experiences and what are the issues that have brought you to the Commission today; what stories are there that you would like to share. The focus of this aspect of the modern awards review is upon understanding whether there is any gap in the modern award system that applies to artists or art workers.

PN2734

And we have been talking about art works as perhaps the employees who perform things like the front of house, and you're all nodding. I think you probably understand the distinction all too well.

PN2735

And so the focus of this aspect of the review is upon how that all information that you hold might fit into the considerations that the Commission might have into the modern award system and whether or not there's a gap there for artists and art workers, and how you see that that might arise and to the extent that you can provide me with some information about your experiences and that's going to be really helpful in providing some context for me when I'm looking at the issues relating to the award system.

PN2736

And so because you're traditionally in the spot that starts, Mr Goodwin, I am going to turn to you first. Tell me a little bit about you and what you do.

PN2737

MR GOODWIN: Thank you very much. I hope I can be as candid and transparent as possible about my experience. I've got some notes to read through so that (indistinct) and so I might just tell my story in my (indistinct) I promise it won't be exhaustive, but hopefully it gets to all the information in my (indistinct).

PN2738

THE DEPUTY PRESIDENT: Thank you. That's wonderful.

PN2739

MR GOODWIN: So it's gratifying to be a part of this process (indistinct) following the launch of the national culture policy which (indistinct) gratified to see champions artists as worker. For me and many of my colleagues, you know, we really know how important official artists are to forging our national identity and that these (indistinct) artists are the (indistinct) sector.

PN2740

So I'm an artist, an arts worker and a PhD researcher at RMIT within the school of Art making (indistinct) my supervision team was actually giving testimony yesterday as well. And I think that kind of fluidity across roles is probably (indistinct) which requires a kind of a patchwork kind of career, I think, working . I think working across these roles.

PN2741

So since 2016 I've also been a kind of convener of an informal alliance of artist-run organisations called All Conference which represents in some ways or it's a solidarity network for organisations run by artists right around the country and in 2009 we put together our thoughts and data into a report on the conditions of our work entitled 'Permanent Recession'. I just wanted to communicate that and clarify that, because it is in some way a dual mindset which I speak as a (indistinct), and I speak in solidarity with other artists.

PN2742

So in my contribution today, it stems from my own lived experience and observations of the Australian Visual Arts Sector over (indistinct) almost 20 years now as an artist from a working class background. Primarily it's been one of ever present economic precarity, economic precarity particularly.

PN2743

So this personal experience is backed up by the most authoritative recent data on the incomes of working visual artists in Australia, by the Australian (indistinct) and their researchers and the Commission reports which shows that the majority of artists are faced with low and declining incomes in contrast with what is a highly profitable and popular industry. As the artist and researcher David Pledger observed in 2014, 'Artists are the lowest-paid members of the arts industry and the Australian workforce.' And he asks, 'What kind of an industry has the majority of its primary producers living below the poverty line?' I think that really stays with me and certainly it's been a shared experience.

PN2744

So this is not to bury the lead, I suppose I should say. It's therefore my view that we do in fact need a change to markedly improve how visual artists are able to earn a living in this country. The status quo is not working for the sector's primary producers, nor has it ever really worked except for perhaps the top couple of percentage of artists.

PN2745

This is reinforced by academic and cultural critic Ben Eltham who wrote in 2019 that while audiences and collectors are flocking to see and buy Australian art, working visual artists in this country suffer significant levels of poverty and disadvantage, which points he says and I think I would agree, to an endemic

market failure in the visual arts sector and that while art markets can return spectacular growth for lucky investors, they are much less successful at delivering a decent income for artists.

PN2746

But for me the catch-as-catch-can approach to payment, fees and wages that I've encountered in my working life in the arts is the result, I would say, of a sloppy patchwork of recommended pay rates and the reference to existing unspecific award which leads to what I was reading in NAVA's submission rightly describes as a systemic noncompliance, underpayments, wage theft and a lack of acknowledgement of proper value in the arts.

PN2747

It is therefore important to note that when considering changes to perhaps this modern award coverage that the majority of Australia's highly productive workforce in the visual arts face this unique set of pressures and also, because of the need to earn a living from employment in other sectors, experience the added negative impacts affecting the wider workforce, including casualisation, erosion of welfare services, student debt, rising rental costs and the growth of the on-demand economy. And this has certainly been my story too.

PN2748

In these circumstances, Australian visual artists are left with no choice but to speculate heavily on their own careers with little to no possibility of economic reward. I was really heartened - well, when I say 'heartened', what I really felt and agreed with First Nations Poet and researcher Eveline Araluen when she described the dire straits for artists in her recent awards speech for the 2022 Stella Prize stating:

PN2749

The arts are only sustained, barely sustained by unpaid labour, by the struggle and sacrifice of artists and arts workers who accept punishing and finally untenable working conditions for love and passion. This is not sustainable, and it never has been. This structure produces mass inequality of representation and will continue to restrict access for creatives from working class and marginalised contexts.

PN2750

And while I don't speak for the marginalised context, certainly it's only been through the support of partners along the way that I've been able to retain my career in the arts in terms of their subsidy of my rent et cetera.

PN2751

So delays in taking decisive action on this matter, I suppose, could well be reflected back on us as a collective of artists. It's likely due to a confluence of presumptions about all of the circumstances of artistic labour. Firstly perhaps there is a presumption that artists' work is considered a luxury commodity or a hobbyist pastime, done for pleasure.

PN2752

And secondly, it may be true, the enjoyment that artists themselves gain from their work puts them in a bind where they feel - I think this has been a documented problem - there is a guilt associated with the enjoyment of work, which makes it hard to collectively bargain for (indistinct) pay rates and regulation, which is why I'm happy to be here today.

PN2753

There is the individual (indistinct) meritocratic culture developed from art school and reinforced within the art world makes collective bargaining difficult and (indistinct) solidarity (indistinct) the stark contrast let's just say, to the visual arts sector that I'm in now.

PN2754

In some of my research, I looked at Canadian academic Greig de Peuter who argues that precarity that I so often reference, and I will finish up with soon, in the discussion of the state of play for creative workers is something that should be considered at by design. He describes the current advanced capitalist economy as 'putting a premium on risk-taking, flexible employment, valorisation of immaterial labour, entrepreneurial forms of subjectivity', not to mention 'a mode of governmentality expecting individuals to shoulder responsibilities otherwise borne by an employer or the stat'.

PN2755

A friend of mine and some who I am researching (indistinct) for my work, Lise Soskolne, who is the core organiser of the US Visual Art advocacy group (indistinct), and that group is called W.A.G.E, puts it, 'It turns out that an industry organised around profiting from unpaid labour requires more than a voluntary certification program to keep it in line. It requires artists to mobilise together as a workforce.' (indistinct) your testimony, because that's a really rare example of artists engaging in that kind of collective bargaining.

PN2756

So these ad nauseum statements - and I'm sure you've heard plenty of them in these consultations of 'all work and no pay' for artists and arts workers are heard all over the world in data reported from other parts of the globe that bear out similar trends.

PN2757

In a new report by an artist run organisation and a kind of similar organisation to NAVA, a-n The Artists Information Company, their new report was called 'Structurally' - and of course I won't offend the court by kind of swearing, but it's 'F-cked.' Their report really tended to be quite strident.

PN2758

You know, the authors highlighted a continuing culture of low fees, unpaid labour and systemic exploitation stating that, in their findings, that this demonstrates clearly that artists are propping up the public art world with low and unpaid labour.

PN2759

What this means in the Australian context is that artists are left to their own devices in a dog-eat-dog meritocracy, and they invest heavily in their own careers, engaging in a booming speculative economy as they attempt to turn precarity into opportunity. Of course, this is not sustainable (indistinct)

PN2760

I stopped making conventional art work myself soon after graduating from school in Meanjin/Brisbane, a scene in which opportunity for a sustainable career as an artist was almost comical. One only needs to think of Stephen Vagg's famous stage play, 'All my friends are leaving Brisbane', to realise how much this perception is ingrained. Instead of making art objects I went to work in founding an artist-run organisation with the aim to gain funding and redistribute that funding to pay artists and establish proper wage roles for the artists that administer these organisations.

PN2761

I spent the last sixteen years volunteering much of my time to create stable employment within equitable arts organisations or what I tried to make equitable arts organisations. This year I am having my first child and it's a stark realisation that I can no longer participate in the arts in this way. I will have care and responsibilities and I have to confront the fact that I have practically no savings and very little superannuation to eventually retire.

PN2762

While any change this Commission recommends may have limited impact on me, I hope the reform to the current award - any change to the current award will benefit new generations of artists emerging to the scene and that it will allow them to achieve a living wage while making art.

PN2763

My conclusion, I suppose, pretty straightforward, the current system is not economically sustainable for artists. Artists continue to be the lowest paid participants in the Australian work force and yet are seen as complicit in the circulation of extreme wealth.

PN2764

Fundamental change is needed in order to improve artists' working conditions and a bespoke award or changes to award coverage could be a highly effective mechanism in achieving this ambition.

PN2765

THE DEPUTY PRESIDENT: Indeed it was. Thank you, Mr Goodwin for your submissions. Can you tell me a little bit about what you are doing now? Are you working as an arts worker?

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MR GOODWIN: I work at the student union at Melbourne University.

PN2767

THE DEPUTY PRESIDENT: Yes.

PN2768

MR GOODWIN: (Indistinct) subsidised and I voluntarily run (indistinct) an artist-run organisation.

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THE DEPUTY PRESIDENT: Yes.

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MR GOODWIN: So I'm returning to my film-making roots - - -

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THE DEPUTY PRESIDENT: Yes.

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MR GOODWIN: - - - by creating a space, but that is again a voluntary role for which I subsidise the organisation and I suppose that for me is the continuing - my continuing engagement in the sector is to try to redistribute any privilege that I had through being able to gain paid employment into creating sites that I hope will become sustainable.

PN2773

What I suppose I'm facing now is the possibility of spending another decade building up the artist-run organisation and taking money from my paid employment is - would be at the detriment to my family.

PN2774

So I suppose in the past while that has been possible and albeit I had some successes in terms of building up previous artist-run organisations - so these are things that evolve from community-based, friendship-based informal things into formal organisations, company limiteds or association - incorporated associations that eventually pay staff, that eventually weave together resources, the time scales on which that works and the precarity that they remain is only done at the - by a whole lot of interdependencies with other creative workers, partners, or other communities donating into those (indistinct).

PN2775

I suppose as I'm heading towards (indistinct) and it's probably worth realising that these are the (indistinct) of what people would describe as - for me it's not necessarily burn out, but it is a process of attrition that comes with these engagements.

PN2776

And I suppose for me that my current circumstances that where I'm on this precipice which makes this a very interesting moment to think (indistinct) experiences, so working part-time, study part-time which gives me a certain amount of ability to formalise my thoughts and decant my experience into a research project, and then trying to retain a certain engagement in the sector through the administration of a volunteer-run artist-run space, which (indistinct) means that (indistinct) my perspective is entangled and I don't think it's unique.

PN2777

There (indistinct) many people, whether they're running studios or businesses (indistinct) where they're on boards or committees (indistinct) the sector. I think that is symptomatic of both a creative (indistinct) or getting involved, creating and imagining but also a necessity that these things would not exist without the kind of passionate DIY spirit, the self-organised spirit that artists need to develop when they exit into a sector for which there is very little offer of assistance, let's say (indistinct) pathways, that you hope will lead somewhere.

PN2778

And I suppose for me it's - having been involved in various consultations over the last decade around artists' experiences, these things are cyclical. They come with doses of enthusiasm. And I guess for, I'm really passionate about anything that will make our testimonies impact in lasting change. Otherwise you are dependent on the enthusiasms and the understandings of particular individuals at particular times or particular governments at particular times (indistinct) who have little understanding come in view the sector differently (indistinct) the resources (indistinct) slip away (indistinct)

PN2779

So the title of our report, 'Permanent recession' that we all put together was a phrase by artists in the 70s, talking about circumstances that they were facing that (indistinct) perception that they had to develop what the artists (indistinct) described as recessional strategies on their part. It's (indistinct) to be able to replicate a (indistinct).

PN2780

These kind of things are - you know, one would say that maybe one of them (indistinct), so they consider that this is sometimes considered a necessary circumstances in which artists live, because that is the way they make the best work; it's tormented, it's bohemian, it's - and that they become resourceful and (indistinct) responsive. (Indistinct) which are exciting and unique and (indistinct) probably that is - there should necessarily be an accepted standard (indistinct) that's celebrated impoverishment of artists and they DIY strategies to overcome that is, while it's something that's worth congratulating them for, it is a circumstance that are (indistinct)

PN2781

THE DEPUTY PRESIDENT: I have more questions, but I'd like to bring - no, please don't apologise. I'd like to bring Ms Gabriel and Ms Hubbard into the discussion. So perhaps I might turn to you, Ms Gabriel. What is it that you can tell me about your experience? You have come to the Commission today as an artist, but you also are employed with the Australian Centre for Contemporary Art.

PN2782

So tell me a little bit about both of those aspects of your life.

PN2783

MS GABRIEL: I also - as Channon touched on, I am also on multiple boards and committees for some artist-run initiatives, so I can tell you about that also, if you'd like.

PN2784

THE DEPUTY PRESIDENT: Yes, please.

PN2785

MS GABRIEL: But I have - I graduated from art school in 2019 and I think that's - upon reflection that's when I started to realise a lot of the problems that Shannon has touched on actually begin, where there is this very pressing assertion that you need to learn how to volunteer and to accept any opportunity that comes your way. It is a tough industry. And so before the students are even workers you are taught to essentially devalue your labour to a point where free labour is normalised. And as we've been hearing, that is a lot of what actually props up these bigger institutions or a lot of this industry in general.

PN2786

And so when I left in 2019, I then started working as an artist, as a sole trader, because it's the only way that you can really work as an artist, bouncing around different jobs and different commissions always only paid project fees which is I believe a way that no artist really get paid wage labour. You could be paid \$300 for a project that takes you three months to create, which a hundred dollars each month is really nothing to live off.

PN2787

And so then you are forced to either take on as much as possible or you then need to subsist with finding work from other places.

PN2788

And then alongside all of these projects that I have been taking, I also joined some committees, initially under the impression but they were paid labour because so much work goes into running a space. So it was quite a surprise to find that I was joining please spaces that have been existing in Melbourne for over 20 years some of them, to find that none of the staff on these committees are being paid and that the galleries are run by free labour.

PN2789

And so I kept my job at the institution, which is the Australian Centre for Contemporary Art, only to find that there was no way to move out of the precarity that I found myself in entering there firstly as a volunteer, where you volunteer for - at the time we volunteered for two years, before we were being given a paid role, which was a paid casual role, and then we stay, because the assumption is that you then get trained at this institution. You then become the staff that know it the best, inside out and then when opportunities come to progress into more stable part-time or fulltime back of house roles, they are never shared or circulated with the staff, or they are but there is never actually any investment into the progression of your time there as a staff member. And so you then end up being stunted and moving across different casualised roles in the sector, while holding on to gig work outside of everything else.

PN2790

I found that being - I think being - all of us being sole traders also makes it quite hard to organise, because then everyone does get quite worried about their own precarity which is very fair to do so. And I think it certainly changed the attitudes

that a lot of people had when we were first organising over at ACCA, but you are so used to trying to kind of punch your way through it, I suppose.

PN2791

And a lot of artists that I know, and myself included, are bouncing in and out of JobSeeker payments. There almost isn't an artist that I know who isn't on that or who hasn't been on that for a very long time. And so we are finding these mangled ways to sustain ourselves, because when you are getting paid a hundred dollars a month to create a piece of work, it's really nothing.

PN2792

And so we unionised eventually. Those talks started out of COVID when the galleries said that they were not sure that they could sustain or support us as the gallery was shut. And a big sticking point of the problem was that for a space that gets granted funding where the wages of your workers are already folded into that funding, how is it that you can continue to support your back-of-house staff and say that their wages are accounted for in this budget that you've just been approved for, and yet the wages of your other staff have not been accounted for.

PN2793

So there is also, from my experience in this industry there is an underlying current of just constant devaluation of front-of-house arts workers or artists themselves, or living image makers, a lot of cultural practitioners.

PN2794

And those talks about our economic security continued into when we emerged out of our lockdowns and that was when we decided that we would then instead try to shoot for casual conversion, which is - like, it's a great initiative to start, but if you're actually within a cultural institution that is surviving off of funding or private funding, then it's really easy for them to tell you that they actually cannot give you any permanent security, because of the way that their business operates and this is true for almost all arts organisations, I would say.

PN2795

And so that's why we decided to unionise, never mind that most of us have been there for over five year. A lot of us had been there for six upwards. Some people had been there for over a decade. And so it's quite difficult when you are told that your employer cannot give U permanency, when you've been there for such a long time already and you've demonstrated the ability for them to give you that kind of permanency and security as well.

PN2796

And so because the casual conversion discussions were not successful that is when we decided to start bargaining, because a major problem that we found with the awards is that people were most often crossing over different grades in the awards which meant that they were not being paid out of quickly.

PN2797

And it ignored the high specialisation that often comes with roles within the cultural industry. So it's never stated as a requirement that you need - sometimes it will be. It will state that you need a masters of art history or whatever it is to

work in a specific institution or that they prefer you to have a PhD, but they will always use the word 'prefer', because then they don't need to pay you at this higher qualification.

PN2798

Most people that I work with in bigger cultural institutions have high tertiary qualifications, have had a really long research career and so we found that the award doesn't actually encapsulate how highly specialised a lot of the different jobs in cultural sectors are.

PN2799

But I don't know if you want me to talk about what it was like trying to unionise in a (indistinct) institution.

PN2800

THE DEPUTY PRESIDENT: Yes.

PN2801

MS GABRIEL: Yes. The first thing that was difficult was that when we were first starting to do that we were actually singled off into one-on-one meetings with our executive team to be told why we actually should not pursue casual conversion and why we would be worse off if we were to go for part-time employment or if we were to go for security or annually for anything like that.

PN2802

So we were first told that it actually would be worse for us. And that was very effective at breaking apart and already tenuous momentum.

PN2803

THE DEPUTY PRESIDENT: Can I just interject there and inquire in that process you have spoken about being engaged for about five years. So what is it you were doing in that five-year period?

PN2804

MS GABRIEL: So I worked in - I work in front of house. So we do reception duties. I often do a lot of the tours as well. So every Sunday the gallery holds art in focus tour and so I would deal with it as well. You have artwork security and visualisation when events are happening. You also have crowd control for that, public programs, night events. Sometimes bar. It really depends on how busy it is. It's quite ad hoc sometimes.

PN2805

THE DEPUTY PRESIDENT: And so in - whilst you're an artist, you had this role performing art work. And how were engaged to do that? You've been speaking about pursuing the casual conversion. So am I to understand that you were engaged on a casual basis, and you were looking for permanent part-time employment?

PN2806

MS GABRIEL: Yes. So the entire front of house team are actually all casuals.

PN2807

THE DEPUTY PRESIDENT: Yes. Go ahead.

PN2808

MS GABRIEL: And after we went for casual conversion, then we started - we went right into bargaining. That took a little while as well. Yeah. August to December was like, 'We're going to start bargaining. Oh no, how do we do this?' And then December is was, like (indistinct) began bargaining which was last year in December.

PN2809

THE DEPUTY PRESIDENT: Yes.

PN2810

MS GABRIEL: Of last - last year. I believe at first it was our management were not really wanting to meet with the union. So it was kind of difficult to get bargaining underway in the first place. And then - - -

PN2811

THE DEPUTY PRESIDENT: Which union? This is MEAA?

PN2812

MS GABRIEL: Yes. And so that was our first industrial officer contacted the management team to try to initially just have initial chats. And she eventually had to leave, and we had not yet begun bargaining officially.

PN2813

MS HUBBARD: Yes. She had just resigned and then we got assigned a new industrial officer.

PN2814

MS GABRIEL: Yes. And then we got assigned a new industrial officer and then that's when I believe management were told that - like, they were just issued that we were going to begin negotiating a new EBA. And so that happened, and we spent a lot of time - a lot of free labour on this very substantial EBA draft which we submitted only to have our first meeting be quite unproductive. We had already done a lot of the work creating this first draft of the EBA and then creating a log of claims only to really have nothing addressed in the first meeting that we had.

PN2815

THE DEPUTY PRESIDENT: And when you had those discussions in those meetings and the preparation of that enterprise agreement draught, what modern award were you benchmarking the agreement against? Do you remember?

PN2816

MS GABRIEL: The Amusement - - -

PN2817

THE DEPUTY PRESIDENT: Yes. The Amusement Award.

PN2818

MS GABRIEL: From the start we were staunchly being anti that award as well. We were wanting to move away from that award.

PN2819

THE DEPUTY PRESIDENT: And why is that in particular?

PN2820

MS GABRIEL: So for a place like ACCA, we found that the award was insufficient, and I mentioned earlier that a lot of people work across different grades.

PN2821

So we found that, for example, as visitor experience team member, you would find yourself doing grade 1 and maybe like half to two-thirds or the duties of somebody whose grade 2. But you were only paid a grade 1. Because that is what your contract says.

PN2822

But in terms of the duties and the role, they cross-over into grade 2 duties. And when you are working with a team or only two people are actually in the gallery, you can't not fulfil the rest of those duties even if they fall out of your grade.

PN2823

So that was a big motivator for us to move away from the award, because we were finding that we were just continuously paid at the lowest rate.

PN2824

THE DEPUTY PRESIDENT: Okay.

PN2825

MS GABRIEL: There were lots of negotiation. Lots and lots.

PN2826

THE DEPUTY PRESIDENT: And did the agreement ultimately get finalised?

PN2827

MS GABRIEL: Yes. At the end of last year.

PN2828

THE DEPUTY PRESIDENT: And it was lodged with the Fair Work Commission for approval and - - -

PN2829

MS GABRIEL: It's just been approved.

PN2830

THE DEPUTY PRESIDENT: It's been approved?

PN2831

MS GABRIEL: Yes. Another really big thing what we were hoping to achieve but wasn't able to be achieved in the award - initially we were quite ambitious and wanted volunteers to be - we wanted their roles to either change to be a little bit

more aligned with, I believe, what the volunteer association outlined where what a volunteer does cannot be core to the everyday operations of a business and that even if you are not remunerating them financially that they should at least be learning something tangible from it. You know, how you can't get an intern to just get you coffee.

PN2832

And so we really wanted that to change, because half way through our negotiations, our volunteer team were also then doing invigilation work. Like, they were there in the galleries with us. If there was an invigilator that was sick, it was very easy for the gallery to shift a volunteer into their place, which becomes very awkward when a volunteer asks you why they're not paid, and you are, to do exactly the same job in the same space.

PN2833

THE DEPUTY PRESIDENT: Yes.

PN2834

MS GABRIEL: And so that was another thing that we really wanted to achieve, which was pushed back on quite heavily by everyone in that room. And so we tried to settle on saying that if the volunteer - if they were going to insist that the volunteers do the exact same job as us, that they be capped at 50 per cent of the paid staff capacity.

PN2835

Because in the past for some of our events or openings, you could have six invigilators paid to be there. And then you would have six to seven volunteers who would be not paid to be there to do the same thing. And so we said, 'You've got to cap it at half.' That didn't pass, which is a big worry.

PN2836

But we did get, what - a little over half of our log of claims got through, which was quite successful, but it was quite an arduous process. Especially when we would be talking to other arts workers or other people from other organisations, and they are faced with the same issues. You know, there is this really big division that happens within big institutions, because you have this split between people who are very precarious and who are doing a lot of other things, many of which are volunteer or just unwaged.

PN2837

And then you have this other team that half of them are also just contract workers with very few fulltime staff and very little security. But then there does also end up being this cultural divide where a lot of front-of-house arts workers will try to be fighting for better working conditions.

PN2838

THE DEPUTY PRESIDENT: So something that you just said now that a lot of them are our contract workers.

PN2839

MS GABRIEL: On contract, sorry.

PN2840

THE DEPUTY PRESIDENT: Yes. On contract. Yes, so they are no employees?

PN2841

MS GABRIEL: They are, but for example you could be employed as a curator for a contract term of say two years and then at the end of two years you don't know if you are going to be able to keep your role.

PN2842

THE DEPUTY PRESIDENT: So they are fixed term employment contracts?

PN2843

MS GABRIEL: They are fixed term employment. Yeah.

PN2844

THE DEPUTY PRESIDENT: Thank you.

PN2845

MS HUBBARD: I believe with ACCAs ones they are like - they do rollover. Those I think that they're a recent law that's come through the fixed terms ones will be, sort of, made into permanent.

PN2846

SPEAKER: There are new provisions in the Fair Work Act which address the way in which fixed term employment contracts can be used on an ongoing basis.

PN2847

MS GABRIEL Yeah, that's okay. It was like a sort of big three-year period. We started these conversations in 2020. We only got this EBA passed at the end of 2023. So apologies if we're just bouncing - - -

PN2848

THE DEPUTY PRESIDENT: No, that's absolutely fine. You can make your submissions in whatever way you would like to. And so I suppose the question for me is in circumstances where you've been able to successfully negotiate an enterprise agreement for your workplace, so that you have some under pending terms and conditions of employment that apply clearly to the work that you are performing, what is it that you think is the situation outside of your working environment where employers - I presume if you are benchmarking your agreement against the Amusement Award then that might be an award that applies to some other private galleries.

PN2849

MS GABRIEL: The amusement award.

PN2850

THE DEPUTY PRESIDENT: The Amusement Award.

PN2851

MS GABRIEL: It might. I've worked with a commercial gallery before where they actually paid me under the Retail Award and not the Amusement Award.

PN2852

THE DEPUTY PRESIDENT: Right.

PN2853

MS GABRIEL: And so I think that's another thing that an award for artists and arts workers by proxy to fix, because then you are not bouncing around various types of award. I was quite surprised to find that a commercial gallery would pay me (indistinct) retail which were better than the Amusement Award rates.

PN2854

THE DEPUTY PRESIDENT: Yes, okay.

PN2855

MS GABRIEL: So I found that I was suddenly doing the same job for more money anyway. Yes, so some consistency would probably be good.

PN2856

THE DEPUTY PRESIDENT: Right.

PN2857

MS GABRIEL: And then I think a really tough thing as well with the Amusement Award is that I think ordinarily, at least under the Retail Award, as a casual, you can't really go for too long without getting a shift. Like, I remember being a manager somewhere and I had to give someone at least one shift every fortnight, whereas under the Amusements Award, you don't have anything like that. So when a gallery closes for installation, we could be up to three weeks just without work and sometimes you can be contracted to then undertake some installation work.

PN2858

THE DEPUTY PRESIDENT: Yes.

PN2859

MS GABRIEL: But that did stop after COVID. When the negotiations started they stopped doing that. And so we just lost all form of income that we could have gotten.

PN2860

THE DEPUTY PRESIDENT: And what, practically, is the solution in those circumstances if the galleries closed for installation, there is obviously some work for the people that are doing the installation and the technicians to do, but what is it if you're doing the front of house or tours? What is it that you could be contributing to the business during that time? I appreciate that the issue which is that you've got three weeks where you are not getting paid work, but what's the solution to that?

PN2861

MS GABRIEL: So what we came up with were - I forgot what we called it, but they were a type of part-time (indistinct) part-time contracts. That's what we came up with, where you could actually elect to continue to receive your wage over the weeks of closure, but then you would either have to make up for them at

some point during the period when the gallery is open, or you can elect to not take any pay during that time and then work regular hours, if that makes sense. So you just work a little bit more, which we found was the best compromise that we could reach, because it was better than - it was the closest thing to annual leave that we could all get, because it's better - having to work more to make up for it was better than going three weeks forward with no pay.

PN2862

THE DEPUTY PRESIDENT: And what sort of response did you receive to that proposition?

PN2863

MS GABRIEL: That was quite tough in the beginning . They didn't want to make part time contracts at all, because they said that they couldn't- the operations of ACCA were too - not volatile, but too unpredictable. And so they couldn't make part time contracts, because they couldn't guarantee security. They also said that they were worried it would fail the BOOT, by forcing people to take annual leave, even though our response was that we wouldn't be forcing people to take annual leave.

PN2864

SPEAKER: But that's how we came up with this flexible one, because it was really trying to work out a way to make it actually sustainable to be part-time at the gallery and get paid while they are doing install periods, instead of having to go find another casual job that you have to do for a quick three-week stint.

PN2865

THE DEPUTY PRESIDENT: Yes.

PN2866

SPEAKER: And then change back (indistinct) the lanyard back on and start doing tours again for the show (indistinct)

PN2867

MS HUBBARD: Especially because during the install period, I know that there is like two weeks where you are not getting shifts, but there is also like briefings that you get on the last week before the show opens, and opening nights, so there are like - if you were to take up another job in those three weeks - I know, I had the trouble when you can't make the shift where it is the briefings at the exhibition and then you are like, 'Well, for the rest of the show you are not really equipped to actually give proper tours, because you haven't got the correct training and things like that. So it's sort of that balancing game of being super precarious, but also really committed to being at ACCA and wanting to be - I don't know, that to be your lead job. Yes.

PN2868

THE DEPUTY PRESIDENT: Yes .

PN2869

MS GABRIEL: We also were up until recently weren't even - I think now they're - they are introducing more training now, but before we negotiated for this EBA, a

lot of - for those tours that we run, a lot of people would just be pulling time outside of work and in their spare time to read up on it, because it's quite difficult to do research while you have to watch a whole gallery and interact with people who are coming in, and answering phones.

PN2870

It's almost impossible to write down anything. And so that was something that we were also fighting for, to acknowledge that a lot of time that we - even though we were casuals and a lot of the time that we were only paid for is when we're on site, there's also a lot of work that goes into what we do off site, which was also part of the flexi part-time contract, because then you can allow for people to learn about a show before the show starts, so that if you have the first tour on the first Sunday, you are not unprepared, because the gallery doesn't prepare you. You have to do it yourselves.

PN2871

THE DEPUTY PRESIDENT: Okay.

PN2872

MS HUBBARD: There are also things with the award, I remember it included a dot point about giving tours but it was at a level 1 and this was this thing that for us to give tours that actually allowed us to have our tertiary degrees in (indistinct) really aided the tours and gave us the training - like professional meaning that we were educated in art to then give the tours.

PN2873

It wasn't this sort of thing in reading a script out and going around a particular site and just regurgitating facts. It's like a whole different thing of interpretation and analysis and, I don't know, just sort of the bridge between some crazy contemporary art work and a member of the public who has no training whatsoever. So that's what we saw as the real problem with the award, tours and what they were offering to people doing the tours.

PN2874

THE DEPUTY PRESIDENT: And so in your experience and correct me if I'm wrong, but because you've had the experience of operating under different awards like the amusement or the retail award. There is firstly some misunderstanding generally about the appropriate award to apply to the work that art workers are performing.

PN2875

And then secondly, if you are applying the amusement award which does contemplate within its scope museums and galleries, then there are problems applying the classification provisions or descriptions of that award to the work that's actually being performed because it's more highly skilled than just having a trail of people follow you around in a tour.

PN2876

MS HUBBARD: It also became a thing - sorry, I'm just writing notes. It seemed that the award wasn't actually fitting the reality of the gallery, like the context at all, with the situation of volunteers being used, the situation of us being recently

graduated as fine arts students to then go be working in an industry of - professional industry, the award was something that we were really hoping to completely move away from, because it seemed just so rigid in its structure for it.

PN2877

Like, I know that in the award it says that we - it's like you only get overtime after 10 hours and there's a usual time when we would be doing over 10-hour shifts. We'd be doing a full day of work and then going to a public program. And that's - 10 hours is a lot of time to dedicate before you get overtime and that's something that (indistinct) with the EBA, so you know, tailoring it to the workplace, because we are standing on hard floors all day, talking all day and all of these things that needed to be adjusted to the workplace we were in as well.

PN2878

THE DEPUTY PRESIDENT: That's really helpful. Anything else that you think might be relevant to share about that experience?

PN2879

MS HUBBARD: Before my (indistinct) because (indistinct) visitor experience team member, coordinator, event supervisor. I'm also a bar manager when there's openings and there's like - - -

PN2880

SPEAKER: We straddle a lot of different roles.

PN2881

THE DEPUTY PRESIDENT: Yes. That sort of them has come through quite a bit throughout the consultation that you don't just assume a front-of-house role full stop, for instance.

PN2882

MS HUBBARD: I think was well with the EBA process, the aim of it was also to professionalise our roles, because that was something we continually saw as being de-professionalised with having more volunteers in the space, but also it sort of being the lowest rung job. So the EBA had like the immediate impacts of getting paid more and things like that, but also a broader aspect was to professionalise work in a front-of-house role in a gallery, because a lot of us are artists and stuff like that, but I think that's something that ACCA is also sharing in professionalising the industry is a real key thing that needs to happen.

PN2883

MS GABRIEL: I guess the last thought that I had was we a kind of an anomaly. I know a lot of other galleries who have attempted to begin negotiations and to begin writing EBAs, who either get their momentum side-tracked or dismantled, and so they are not successful. But a lot of the issue that we encountered at this specific gallery is such things like the exploitation or the overuse of volunteers and free labour, the constant precarity and the constant undervaluing of what it is that you do there as a part of that team or that workspace is something that - like, I haven't met anyone in a large institution who has not said that they don't have the same problems.

PN2884

Like, it's the same issue everywhere. Some people just aren't able to take it as far as we manage to take it and so I guess that's just an observation that I really want to highlight in support of this award, because a lot of places probably do need to unionise and do need to have their own EBA, but it could be much more difficult in other places.

PN2885

But that's no reason for them to not get the same working conditions or the same employment rights that they do deserve. Yes.

PN2886

THE DEPUTY PRESIDENT: Ms Benton, is there anything that you would like to contribute to this knowledge discussion?

PN2887

MS BENTON: If I'm allowed to say, this has made me feel a bit emotional. I am really grateful for the three of you to make time to come today. I think that was really valuable and I hope that you agree. I do have things to add, but I don't think (indistinct)

PN2888

THE DEPUTY PRESIDENT: All right, thank you. Unless there is anything else that you'd like to say, can I extend my thanks to each of you for attending the Commission this morning and for sharing your experiences as part of this aspect of the review. I found it really helpful, and I appreciate and really value the time that you've taken to do so. Thank you.

PN2889

Ms Benton (indistinct) attendants that I think they proposed to attend at 2.30. So subject to anything else that you wanted to advance, does it suit you to adjourn until 2.30?

PN2890

MS BENTON: Yes.

PN2891

THE DEPUTY PRESIDENT: We will do that. Thank you. It's really wonderful to get the opportunity to understand your lived experiences in relation to these things. It's beyond a document and I really appreciate getting the opportunity to meet you and to hear from you first-hand. Thank you.

LUNCHEON ADJOURNMENT

[11.16 AM]

RESUMED

[2.37 PM]

PN2892

THE DEPUTY PRESIDENT: Thank you for attendance. We're going to start by confirming the appearances here in the Commission this afternoon. Mr Marani, you're an artist.

PN2893

MR MARANI: Yes.

PN2894

THE DEPUTY PRESIDENT: And you are appearing as part of these consultations for yourself. Thank you very much. Ms Tiquia.

PN2895

MR TIQUIA: That's right.

PN2896

THE DEPUTY PRESIDENT: Thank you for your attendance. You're an artist also.

PN2897

MR TIQUIA: That's right.

PN2898

THE DEPUTY PRESIDENT: And Ms Benton, you continue your appearance for NAVA. And via Microsoft Teams Ms Vincent, you continue your appearance for ABI Business, New South Wales.

PN2899

MS VINCENT: Yes. Thank you, Deputy President.

PN2900

THE DEPUTY PRESIDENT: Thank you very much everyone for your attendance. Folks, the consultation process that the Commission has been embarking upon over the last two weeks in this aspect of the Modern Awards review is focused upon the arts and culture sector with a particular focus on the issue of whether there are employees or persons within this industry that fall within what has been termed an 'award crack'.

PN2901

That is, are there awards in the modern awards system that should apply and are there issues with any of the awards that are in operation so applying and all of that information is going to be considered by a Full Bench of the Commission in relation to what issues we've been able to identify within the industry.

PN2902

And so it's to that end I'm quite grateful that you have attended the Commission this afternoon and thank you to Ms Benton for facilitating that. I'm interested hearing a little bit about your story and what information you think might be relevant for the Commission to know, based on your lived experience as artists.

PN2903

To that end, I might invite you, Mr Marani, first to explain a little bit about yourself and what brings you here today.

PN2904

MR MARANI: I'm an artist. I graduated in 1990. I've been an arts worker for about the past 25 years. And I've had some experiences - I've had plenty of experience working in the field and I've - I don't know, there's many things to

cover. I've been injured in the game, and felt unfairly done by with that, where I was injured in the act of taking something of a fall and almost lost my right - my dominant hand. Luckily, I was near the hospital. I severed some tendons and veins and nerve damage and all that.

PN2905

It was quite severe, and I ended up with nothing. And I had to do all the physiotherapy because I wasn't insured. I was young in the game, and I wasn't insured through NAVA and tried going through legal processes and all that. I got treated like a specimen, looking for the five per cent or whatever it is arbitrary number impairment. I must say it was all - it was terrible.

PN2906

It was a terrible experience and I had legal representation because that number was less than five per cent, how they judged that, they've got their perimeters and I ended up with nothing (indistinct) arts worker, yeah. Doing a de-installation of a sculptural piece on a wall which just gave way and first point of contact, second point of contact, just missed my feet. It was terrible at the time. It was like a scene from Monty Python, but anyway - - -

PN2907

THE DEPUTY PRESIDENT: Awful.

PN2908

MR MARANI: You know, I've got to find the humour in it. And then through my own - through good and lucky - good service at St Vincents, you know, good surgeons and physio. The (indistinct) but that's one case - - -

PN2909

THE DEPUTY PRESIDENT: So you were an employee or not?

PN2910

MR MARANI: Invoice, so just - yes.

PN2911

THE DEPUTY PRESIDENT: You'd been engaged as a contractor to perform some installation work?

PN2912

MR MARANI: Yes.

PN2913

THE DEPUTY PRESIDENT: Okay.

PN2914

MR MARANI: So in that grey area and it's (indistinct) what a grey area is in terms of all that sort of thing.

PN2915

THE DEPUTY PRESIDENT: Right.

PN2916

MR MARANI: And I had a more recent experience with insurance again. Insurance ran out (indistinct) once bitten where I was asked to bring some wax in to - on a job the night before I was going. 'Sure, I'll get some wax.' And got in and did all my picture hanging which was (indistinct) and got asked to use this wax on it on a glass (indistinct).

PN2917

I said, 'Wax isn't what you need. You need like a putty or a gel. Wax isn't going to cut it.' And it was the end of the day. I said, 'Look, you're not going to be able to get that, or I need to leave so I can (indistinct) today', and anyway - assistance - I said, 'Look, I'll just do it. I'll try and balance it.'

PN2918

And anyway, they went away - probably to (indistinct), who knows what happened. Something happened. It's on me. You know that sort of thing is really frustrating and annoying, from my perspective. So that's got me now. I mean, I - the dais was kind of ignored and (indistinct). The insurance covered it. But it was a hell of a lot of hassle and anxiety, and it brought up all that and the unfairness and the disparity of treatment. Anyway, it was another grey area because I don't think it should have been on me to pay it.

PN2919

THE DEPUTY PRESIDENT: And in that context you were as a contractor.

PN2920

MR MARANI: As a contractor again.

PN2921

THE DEPUTY PRESIDENT: Performing installation.

PN2922

MR MARANI: Performing my installation work with a regular - if you call - I'd probably do three jobs a year for them. Maybe it might be six days' work.

PN2923

THE DEPUTY PRESIDENT: And so you are engaged with that organisation on occasion to perform but you are no longer?

PN2924

MR MARANI: I'm no longer, no.

PN2925

THE DEPUTY PRESIDENT: And in your experience, their approach to engaging you as a contractor as aside from an employee was a considered decision or was that something you were driving?

PN2926

MR MARANI: No. They called me, because you sort of work and people will say, 'Who do you know?' Like, they might ask another institution of something. I don't know how he how he came to my name. But he was given my name (indistinct). And you'd do it once or twice and you'd develop a bit of a

relationship, and you'd get a phone call when there's a job coming up and see if you (indistinct).

PN2927

THE DEPUTY PRESIDENT: And that work is typically time specific because it's focused upon a set outcome, which is to install this exhibition.

PN2928

MR MARANI: Install the exhibition, yes. Working a loose deadline in that case. Because it's probably a little bit of leeway before the show opens. Yes. Working the set number of works to get on the wall as per their instructions. Sometimes we advise a little bit and say - you know, so we come in as well, saying 'You can do that, but this might look better', or you know this little bit of advice if you feel comfortable give it.

PN2929

THE DEPUTY PRESIDENT: How long does it typically take for a standard exhibition to be installed?

PN2930

MR MARANI: It's huge variation on that.

PN2931

THE DEPUTY PRESIDENT: Huge.

PN2932

MR MARANI: It depends on the scale of the exhibition. And (indistinct) exhibition what's involved. Because, you know, I've worked in places - can I use names and that of institutions?

PN2933

THE DEPUTY PRESIDENT: Yes, you can. These sessions are recorded, so - - -

PN2934

MR MARANI: Okay. I've got nothing bad (indistinct) I'm trying to not say too many bad things personally. But at places like ACCA and that where these huge ambitious exhibitions where there's building involved, painting involved, lighting involved, cartage involved back and forth.

PN2935

So you sort of jump between roles of being body and physical and, you know, doing lots of stuff and climbing up ladders (indistinct) sometimes it's could change, but you always recommend the (indistinct) because it's different muscle memory and all that happening, you know. (Indistinct) before you (indistinct) and that doesn't always happen that way.

PN2936

But there's jobs like that and that might be over - they might take -sometimes I think they would take me three weeks to - for the changeover because you've got to take down one and put up another one. And sometimes there's a rush to take it down, because they want to put an event on to raise funds.

PN2937

But then you - you're working against the clock and then there's the install, so that's the whole considered time. You know, you get sledgehammers out and stuff sometimes. And then there's more considered time where everything has got to be polished and placed and you work to the curate of the artist. And you do (indistinct) what's wanted or needed, or necessary.

PN2938

THE DEPUTY PRESIDENT: So is it your position that the engagement of people like you by organisations like that as a contractor to perform that installation work is problematic?

PN2939

MR MARANI: It can be. It can be. I mean, it's - - -

PN2940

THE DEPUTY PRESIDENT: In what way?

PN2941

MR MARANI: Well, sometimes there's a lack of understanding you've got other stuff booked. And you've loyalties and priorities with people that you've been with longer and sometimes they treat you better and pay you better and there's the variation. His hours are better or closer. Closer to home. So there's sometime a real lack of that sort of understanding and compassion for your needs and wants, because of that.

PN2942

THE DEPUTY PRESIDENT: Yes.

PN2943

MR MARANI: And sometimes if you say, 'Look, I can't make it', your position disappears or you won't get a call for a while, because it's - someone else is there and the next one comes up and they're being asked, you know. So there's this thing. There's that little bit of a thing where you've sort of got to say yes to things, even though - so you get the next turnaround, if you're sort of committed to that side of doing things.

PN2944

So it cuts - it works both ways. I mean, it would be nice if you got well paid and you say, 'Okay, this what I'm doing. You know, like, if that was possible, but there's so many - the job itself just happens for that little two weeks in three or four months.

PN2945

THE DEPUTY PRESIDENT: Yes.

PN2946

MR MARANI: Where that's a focus. And there might be some places where there is that two weeks and then it needs a little bit of upkeep. There might another day a week or some piecemeal thing on the way (indistinct)

PN2947

THE DEPUTY PRESIDENT: So if we were to compare that structure as a contractor to come in and perform work on a daily basis or by reference to the project until the installation is complete, for instance. If one were to compare an alternative mode of engagement as an employee, how would you imagine an employment relationship would work for that kind of work if it's only for a few weeks or indeed a few days? Is it a practical issue that arises?

PN2948

MR MARANI: It would be a practical issue, like, from both perspectives, I guess. I mean, I don't know how exactly that would happen. I mean, there would have to be some sort of agreement to guarantee that you're going to be there. There would be incentives, I guess. I don't know how that works.

PN2949

THE DEPUTY PRESIDENT: (Indistinct) more specific, what is the engagement? Are you told what time to turn up?

PN2950

MR MARANI: Yes.

PN2951

THE DEPUTY PRESIDENT: Is there a structured work day and over a period of time what are you required to do, what skills are you required to have.

PN2952

MR MARANI: Yes, like over that sort of two weeks?

PN2953

THE DEPUTY PRESIDENT: (Indistinct)

PN2954

MR MARANI: Yes, there's usually like a standard given fee for those. If I'm going back to ACCA. I haven't worked there for a little while, but that was a standard fee. You'd be in there at 7.00 or 7.30 in the morning and you'd be there until 3.30 or beyond. And there was no sort of shifting in rates at all.

PN2955

And then there would be weekends. And that would still be the same sort of flat rate. I don't know if things have changed there. It's a little while ago. It's a few years. And then you'd start with - in terms of the structure, you'd go in and the first thing that would happen would probably be getting any crates - so quite physical - any crates and that sort of movement of how the art works are going to be shifted away.

PN2956

So that it might go in a crate, or they might come straight off the wall and then onto a truck or they've got to be packaged. That would be the first one and then once all that's moved, generally they've got to be in a safer area because then you've got to get the machines out and you've got to repair the walls often and

you've got to prepare it for painting. There might be painting involved. Sometimes they get contractors to do that.

PN2957

And then so you're doing all the prepping. If there's any bills, like if there's being any walls built of sound rooms or anything like that, you've got to do (indistinct) take them down and get your sledgehammer out and that can be fraught with danger or - once at that institution - I'm digressing a little bit, another little story, but I was -there was a little room built within the room. And there was plaster on the ceiling and we had to get up on the roof and knock the ceiling down. And you're sort of walking on the beams.

PN2958

And then I was working with a bit of a cowboy and he was just pushing it and the whole - the whole ceiling just drops you know and you're three metres up in the air and all of a sudden you realise that you're three metres in the air, and your body moves with it, and it's like - yes, it was a very dangerous moment and that - I think they shifted some safety practices after that.

PN2959

But there's stuff like that, so there's moments where you are putting yourself on the line a little bit in order for this show to go on, because it's that thing, the show must go on and there are deadlines and things have to be done within this framework for the next stage to happen.

PN2960

Particularly in the big ambitious ones, they've got a lot of coordination between different jobs and different aspects of the takedown and the install. You've got to get things clear so other things can come in. You know, you need space so be able to do the next part of the project before the art works come in. That's kind of lie, the last bit. You know, you do all the rebuilt and the painting and now look at (indistinct) lighting.

PN2961

THE DEPUTY PRESIDENT: So in terms of the focus of this review, to the extent that safety-related issues arise, that's not going to form part of the focus of what we're doing here in the Commission, but rather the focus is upon the issues that might arise in relation to the mode of engagement and what underpinning terms and conditions might apply to arts workers in the space and whether there are any problems that you've identified in your experience with those sorts of matters.

PN2962

So you've said that in terms of the mode of engagement, it was always just approached on the basis that you would be a contractor and you'd be paid a set fee or a daily rate for attending at 7am until 3 pm or something, right?

PN2963

MR MARANI: Yes. That would be that particular place and then others would be 9 o'clock.

PN2964

THE DEPUTY PRESIDENT: And do you negotiate that rate?

PN2965

MR MARANI: A lot of them it's a given rate and - - -

PN2966

THE DEPUTY PRESIDENT: Where is the given rate sourced from?

PN2967

MR MARANI: I don't know where they get that number. When it's a give rate it's (indistinct) you know often (indistinct) with those, because it's - you know it's - I understand that a lot of institutions have a pretty tight budget and they're scratching around for money, they've got to put their hand out for money from other bodies.

PN2968

THE DEPUTY PRESIDENT: Yes.

PN2969

MR MARANI: It's like, 'I don't want to do that.' You know, honestly (indistinct) you put some sort of value on your time and you kind of - the longer you're doing something, the more value you put on your time.

PN2970

THE DEPUTY PRESIDENT: Yes.

PN2971

MR MARANI: I think it's only natural and there's not a lot of - I guess, there's not a lot of increments in what I do. Like, I'll be doing a job and if I'm getting - say they've said, 'It's \$40 an hour, but I'll do you a favour or whatever, you know, and I'll do it, I can just do it, because I've been doing it for years. I'm pretty good with numbers. So I'll just do the hanging. That's usually what those things are about. It's just a quick hang of things.

PN2972

I've got to show someone else while I'm doing it how to do it. You know, like, so I'll give him the same rate as someone else - Joe or Joanne Bloggs. It's just on their third job or something and I've been doing it for years, so there's this - it's a bit of an inconsistency with what they're going to get out of me as opposed to someone else.

PN2973

So and I kind of (indistinct) a bit of quality and all of that, but it's - you know, it's a little bit of that comes into it. And there's often - often another thing that happens is you are there for a job and you get the job done and there's that squeezing the blood out of a stone. You know, like = and you've done it because you've done it - you get things done, because you work efficiently.

PN2974

You just want to go (indistinct) when there's a job to do, you want to do it and get it done. And then there's often more things loaded on. If you finish your - you know, I'd rather just (indistinct) finished and then, 'We'll pay you for the day or, you know, like, no incentive to work well or efficiently on a lot of jobs, because you're paid on a hourly basis.

PN2975

And then when you do, you've just got - often you'll (indistinct) lift that heavy thing and put it over there, for example.

PN2976

THE DEPUTY PRESIDENT: Okay.

PN2977

MR MARANI: Just expressing a little bit of annoyance at the moment - - -

PN2978

THE DEPUTY PRESIDENT: No, I understand. I might turn to you, Ms Tiquia. Tell me a little bit about your experience as an artist.

PN2979

MR TIQUIA: Yes. So a bit of my background, so I studied - went to art school 21 years ago and since then I've practised as a practising artist. I've also worked as an art worker so - and in my art working roles, I've worked both in specialist technical roles like Jordan.

PN2980

Mine were more specifically around working on the technical set up of complex audiovisual and interactive exhibitions or installations or art works. I've worked in professional arts roles or arts and administration roles. And I'm currently active in my art practice but in a senior - but have also recently started a senior management role within a cultural institution as well.

PN2981

So in addition to that, I've also had a consultancy practice where I consult as well to galleries, libraries, museums, cultural sector clients. So I feel like I've had an interesting perspective in that I've - occasionally I've worked as a consultant in a consulting context to a gallery or cultural institution. Sometimes I've been an employee within them or other times I've been commissioned or brought on by them to do - sometimes it would be for service work or art commission-based work.

PN2982

Recently, I've just come off a one and a half to almost two-year-long residency program where I was involved in a community based residency, which was a partnership between the Art Gallery of Western Australia and a Western Australian based art residency organisation, which involved me spending, I think, a total of about six months in total within a small rural community in Western Australia and doing community-based engagement work as well as making art work that was presented there and in Perth.

PN2983

THE DEPUTY PRESIDENT: What a variety.

PN2984

MR TIQUIA: Yes. It's interesting. Yes, so I think I feel like in my - over the past 20-plus years, I have moved from art practice into, say, arts work because it has been largely unfeasible financially for me to be consistently practising as an artist. My practice doesn't involve me making paintings or saleable objects. Most of my work is more participatory or it's work that's live, so it can't really be collected. So if I am reliant on income derived from my art practice, I'd predominantly be reliant upon commissions or grants.

PN2985

THE DEPUTY PRESIDENT: Yes.

PN2986

MR TIQUIA: And of course the grant writing process is a risky one to base your kind of projected financial - your year's finances on, because it's unpaid labour, the hours that go into writing the grant and, in many ways, it is almost like having to reapply for you job year on year. Or many times a year. So, yes.

PN2987

THE DEPUTY PRESIDENT: So tell me a little bit about your experience first as the artist. You have been paid on the basis of commissions?

PN2988

MR TIQUIA: Yes.

PN2989

THE DEPUTY PRESIDENT: Have you ever been an employee as an artist?

PN2990

MR TIQUIA: No. And that's what I think is really interesting. I think there are some examples and models where that has been applied and definitely you can see that overseas, but I've never personally been employed as an employee to do arts work. I mean, work as an artist.

PN2991

THE DEPUTY PRESIDENT: Yes.

PN2992

MR TIQUIA: And so when I've been engaged as an artist I've always been engaged as a sole trader through my ABN, and I actually - I'm just running - double-checking this through my mind, I don't think I've ever actually been paid superannuation for any of those engagements. The fees are all largely arbitrary. A lot of organisations will look to NAVA's code of practice, which is great, but of course the code of practice isn't binding.

PN2993

So, you know, similarly when you get offered a fee it doesn't feel like it's necessarily as an artist, that there's necessarily huge amounts of room for

negotiation, and because I think in Australia we have so few arts organisations, so the size that could have saved resources for the funding to provide decent fees for artists. I think as well a number of us probably feel a degree of trepidation in pushing back if we feel that that fee isn't fair, because it may jeopardise your future ability to be paid or to get work made in a funded way. Yes.

PN2994

THE DEPUTY PRESIDENT: And thinking about those issues and together with an understanding of the modern award system which only deals with employment relationships do you think that if there were an award that was to apply to artists that artists would be engaged as ongoing employees of an organisation?

PN2995

MS TIQURIA: I think they definitely could be, and should be. I think that - for instance when you're an artist in residence you are still engaged to be often on site in a particular place. Often artists and residents are asked to respond to particular communities or contacts, or sometimes you are asked to respond, to say if it's an organisation like a museum or gallery that has a collection, maybe you are asked to respond or work with that collection for a period of time.

PN2996

There is no reason why that engagement couldn't be as an employee, which would give you obviously, you know, WorkCover, which would give you access to superannuation, or make the responsibilities I think between both parties much clearer. I think there's - yes, it's a really - it's a little mysterious to me - it's not entirely mysterious, but I think it is really strange that we don't have a stronger sense that the way you perform as an artist is general labour and work and that it should be remunerated in a clear way.

PN2997

THE DEPUTY PRESIDENT: I think part of the issue as I understand it is that there is some proprietary in the creative work that you create, your art, your product. And that sometimes appears from some of the information that I have received over the last couple of weeks that there are potentially some concerns about how that might work from an employment perspective in terms of sharing of IP or other issues related to the work, or an understanding about what that person might be doing on a day to day basis in an employment relationship where you are the servant of your master, as opposed to the artist creating your own product. So I think those are some of the issues of many in a very complex area that potentially arise. What would you say in response to those matters?

PN2998

MS TIQURIA: I think the IP question you raised was a really good one, but I have also had experience of working commercially in the private sector for commercial design studios for instance, where I had roles that were involved in the creation of IP where I was able to have clauses that excluded me in certain ways, or protected my IP that I created while in the service of a design company.

PN2999

I don't see why there couldn't be scope to be able to develop the kind of guidelines, or say for instance some standards around like how artists when

employed or in an employment arrangement with an arts or cultural organisation how they can negotiate or protect their IP, you know, for the time that they're there. You know, I think it's a really good point to highlight, but I don't see it as something that's like unachievable.

PN3000

THE DEPUTY PRESIDENT: Would it really only be feasible for a role like an artist in residence role, or do you think that it's capable, that the employment relationship model might be capable of extending beyond an artist in residence?

PN3001

MS TIQURIA: Yes. Look, I think there's definitely ways in which - you know, I guess it's a question of what value might an artist bring to an organisation. I sometimes work in context outside the culture sector as well, and there have been a number of conversations where people actually I feel increasingly - you know, even in, let's say in the private sector see the value of - sorry, outside the culture sector see the value that artists bring to for instance things like creative thinking processes to opening up ideas, strategic brainstorming in even a corporate context. Could an artist be employed to work with an organisation in those kind of ways? Absolutely.

PN3002

THE DEPUTY PRESIDENT: But are they employed as the artist or are they employed as the creative - some corporate title where you draw on your natural skills and experience and education as an artist, but you bring to bear those skills in a different way in the performance of some other role?

PN3003

MS TIQURIA: I am not quite sure why we'd draw a huge distinction between say in this sort of employment kind of conversation. We're talking speculatively why the role of an artist would be so distinct from say the role of an employed creative director in a design or even advertising agency. As an artist, especially when you do a residency you are asked to actually respond in many ways to a brief. There are actually parameters. You aren't just given - I've never done a residency which has a fee attached where you're given free range to do absolutely anything you want, or a commission as well.

PN3004

There's often - there's a real context to it. You might be asked to engage a collection, you might be asked to engage community. You're often asked to engage a range of different stakeholders you could say. Sure, you might be given - there might be an open kind of brief to how you - the processes that you use, or what you finally create, but there are often very real constraints that are given, and in the contracts that I've been given when I've been engaged as an artist in residence they've often outlined those.

PN3005

So for instance one of the things I had to do on a recent residency, which was actually (indistinct) to my payment, was that I actually had to produce writing. I had to write blog posts in order to be paid across the duration of my residency. So I was paid \$12,000 as a fee, but that was for a project that went over 18 months,

and when I went out and took community, which I did three times, twice I went out paid, and the third time I returned I had my flights and accommodation covered, but I didn't receive a fee.

PN3006

The two times I received fees I wasn't even able to - even though I was spending six weeks at a time in the community I wasn't able to access those fees until I'd written a substantial piece of writing, submitted it, had it approved, and then I was allowed to access \$2000. So the demands on artists when they do things like residencies or work with organisations actually quite large, and I wouldn't say you're given - like the notion of given open artistic licence I think is - you know, it sounds lovely, but I've never encountered that. Yes. Yes, so I think there's - you know, I think there's definitely room to consider how, you know, artists could be engaged on more of an employee/employer relationship.

PN3007

THE DEPUTY PRESIDENT: All right. Thank you, that's helpful. If we then just shift to the role of the art worker, and bearing in mind our focus is on the award system. Do you have experience with some of the awards that are currently in operation and how they might have been used for you or for others that are employed as art workers in this space?

PN3008

MS TIQURIA: As in artists who are employed as art workers?

PN3009

THE DEPUTY PRESIDENT: Yes.

PN3010

MS TIQURIA: I guess I've done different types of work and under different awards.

PN3011

THE DEPUTY PRESIDENT: Okay. Do you remember which awards have been applied?

PN3012

MS TIQURIA: Off the top of my head - I actually should have done - - -

PN3013

THE DEPUTY PRESIDENT: No, no, that's perfectly fine. I am also interested in your experiences though.

PN3014

MS TIQURIA: Yes. Look, I mean I guess I've worked under like EPAs and various like public sector awards and things like that.

PN3015

THE DEPUTY PRESIDENT: Yes. So you've been employed in local government galleries or - - -

PN3016

MS TIQURIA: State.

PN3017

THE DEPUTY PRESIDENT: - - - state galleries?

PN3018

MS TIQURIA: Yes, or cultural - like museums.

PN3019

THE DEPUTY PRESIDENT: Yes.

PN3020

MS TIQURIA: Cultural organisations.

PN3021

THE DEPUTY PRESIDENT: Okay.

PN3022

MS TIQURIA: It's a really different experience. I feel that when I enter the same institution as an employee as opposed to as an artist I'm actually valued. I don't have to go in and argue my worth. My value is inherent, and if you're working obviously as a public servant within a statutory body, like a state statutory body, there's a huge amount of transparency and clarity as to what you're being paid and why. That's the joy of, you know, enterprise agreements and award system.

PN3023

So it's a very, very different type of engagement, and of course I don't get to do my artwork necessarily in those roles, but what I find interesting is that within arts and cultural organisations that do engage artists that there is a valuing of the time and labour of arts professionals and arts managers, but less so. That doesn't feel like it gets extended to the labour and the time and expertise of artists.

PN3024

THE DEPUTY PRESIDENT: Right.

PN3025

MS TIQURIA: And I think the other thing to mention as well, and it's probably come up in maybe some of the other consultations you've had, is that artists in Australia are incredibly highly educated. We have so many bits of paper tied to our name. You know, I have a masters degree. I've got - you know, I went to arts school and did a BFA.

PN3026

I have also, you know, received postgraduate, other forms of postgraduate education. I started a PhD and decided not to complete it, but the majority of practicing visual artists that I know are either doing PhDs, have completed PhDs, or are feeling the intense pressure to undertake further study and gain a doctorate.

PN3027

We are required to research constantly as a part of our role, and not only are you required to have these sort of qualifications, but you are also required to have often decades of experience and of continual practice. And it is kind of galling to

then have to then be offered often just, you know, fees that don't actually cover your costs or fees that only cover part of your work with the knowledge that so much paid for education, time, skill and the constant development of work, it just doesn't feel valued under the systems that we currently have. Yes.

PN3028

So it's interesting, you know, I guess in management areas within across sectors there's a lot of talk about how everyone needs, you know, an MBA or everyone needs masters these days, but I feel like the demands on a practicing visual artist are even higher. Everyone needs a PhD. So we have huge amounts of HECS debt as well, which is the other thing, and that doesn't - you know, that doesn't get accounted for when we're not covered, when we don't have the protections of employment, when we don't have regular incomes.

PN3029

THE DEPUTY PRESIDENT: Thank you. That's really a helpful additional piece of the puzzle. We've been pulling together lots of terrific information over the last couple of weeks, and I really value the opportunity to hear from you and understand your experiences and information that you're able to share with the Commission as part of these consultations. Thank you for coming. I probably don't have any further questions of you unless there's anything else that you felt that you wanted to raise.

PN3030

MR MARANI: I had something earlier, but - - -

PN3031

THE DEPUTY PRESIDENT: Take a moment, no rush.

PN3032

MS TIQURIA: Can I add something to your arts technical expertise and work. I was just going to say in addition to what Jordan said arts technicians as well I feel bring highly a key to the development and presentation of major artwork and exhibitions, and I don't really know anyone who's worked as an art technician who isn't an artist.

PN3033

There's this really strong connection between the fact that arts technical work is often a step into potential employment within larger organisations, arts institutions. It's often for a lot of artists when they start out a way that they can actually apply their practical skills as well as their many degrees.

PN3034

MR MARANI: Yes, and stay connected. That work is in amongst it a little bit, but you're right at the bottom

PN3035

MS TIQURIA: Yes. But also I think, you know, one of the things that's I think integral is that you can't really be an arts technician without a huge amount of practical as well as (indistinct) knowledge of art.

PN3036

MR MARANI: Yes, and the passion for it. You need to carry that passion through to it, because you want to see - you need that pride to see the end result. You want it to shine for the artist and have that magic on the fresh eyes (indistinct).

PN3037

MS TIQURIA: (Indistinct) examples of where art technicians have been part of - have received like permanent paid employment, have been permanent members of staff in places like the NGV, but what I think I've seen over time is actually the casualisation of those pools, and so I think those who work in, you know, art technical sort of services, have been kind of increasingly moved into more precarious work situations, but they perform essential, really essential and actually highly skilled niche work.

PN3038

You know, for instance if you're working at the major galleries such as an NGV in Melbourne you will often be - an art technician will often be the person who's in direct conversation with international artists or teams that fly with international artworks, and so there's a lot of on the ground problem solving as well as interrelation skills and that knowledge of art and artists and art history.

PN3039

MR MARANI: Yes, lots of problem solving, back to that. They're all (indistinct) on a design and all that sort of thing, but when you get to the actual point it doesn't always work. There is a lot of coming in with a solution, and nutting it out, and it might be a team effort, someone might just come up with a solution that's experienced that before or who's got the knack for it. And there's all that goodwill too that you've got to maintain with international - have the artists and all that sort of stuff.

PN3040

MS TIQURIA: Exactly. Yes, like almost, you know, sort of like (indistinct) diplomacy as well - - -

PN3041

MR MARANI: All that, yes.

PN3042

MS TIQURIA: - - - artwork coming from, yes, China or Russia or (indistinct).

PN3043

THE DEPUTY PRESIDENT: Yes.

PN3044

MR MARANI: A bit of tourist advice for all that sort of stuff.

PN3045

THE DEPUTY PRESIDENT: Yes. Ms Benton?

PN3046

MS BENTON: Back to the installer or art technician, a number of different terms. Just in regard to the Amusement Award which some galleries are applying, it looks as though you would be looking at grade 5 which (audio malfunction) different classification structure, difference. An employee at this level is an employee who (audio malfunction). No, that's to supervise staff, so it would be under that - - -

PN3047

MS TIQURIA: Where you're saying you're sometimes asked to supervise other team members with less experience, but not everybody - - -

PN3048

MR MARANI: Everybody (audio malfunction), and sometimes it's just to get them under the radar and not - you know, not be found out to not have all the skills.

PN3049

MS BENTON: (Indistinct) the exhibition technician.

PN3050

MR MARANI: Training someone else (indistinct).

PN3051

MS BENTON: For exhibition technician.

PN3052

THE DEPUTY PRESIDENT: Yes. So A.5.2(d).

PN3053

MS BENTON: Yes, exhibition technician. So then when you look at the rates for that work (audio malfunction) \$26 an hour. In a way that I read, the way this is - a lot of the language seems to be drawn from (indistinct). You know, this is the rate that also an exhibition technician at a trade fair or a convention centre has prefabricated walls that they need to assemble for an exhibition stand - (indistinct) simple work relatively - is the same rate. If this is the rate that (indistinct) it is actually completely different.

PN3054

MR MARANI: Everything is different, every job you go to is a different set of (indistinct) on every level, whether it be the artist personality, the artwork. D-rings on the back of a picture are fairly standard, but beyond that there's so many different (indistinct).

PN3055

MS BENTON: Some galleries are using this \$26 to pay people on an invoice basis (indistinct).

PN3056

MR MARANI: Really?

PN3057

MS BENTON: Yes, and those contractors are also required to have their own insurance.

PN3058

MR MARANI: Probably their own tools as well.

PN3059

MS BENTON: Their own tools in some cases, required to use their own car to pick up from Bunnings or wherever. And I think again that is a lot of - due to the ambiguity in the award that leaves too much open to interpretation.

PN3060

MR MARANI: Got to work a lot to pay your rent.

PN3061

MS BENTON: I don't know many independent installers. I know the general rate is 35 to 40, unless you're (indistinct) grade. Do you say that?

PN3062

MR MARANI: Yes, when I've been asked - the day to day going in it's around about that. There is a little bit more flexibility if you're outside of the galleries and all that need to apply for grants and all that and get a little bit more. Private galleries are going to be a little bit less because they don't take in as much (indistinct). But if you get to more like a council setting and all that you can ask a little bit more to be the pool of funds and they use to pay other contractors.

PN3063

I always use the example when I'm in a place, you know, and they've got cleaners running around, so those cleaners won't be getting as much as us, but the person that they're working for they're getting more than us, and a lot more than us probably, you know, and there's that sort of thing. So there's this equation where they expect it to be a certain amount almost for your work. If an electrician comes in or (indistinct) he can charge a little bit more, but (indistinct) the situation. You know, places like CCP and all that - - -

PN3064

MS BENTON: This is a public gallery.

PN3065

MR MARANI: Yes, and they've got to apply for the grants (audio malfunction), yes. That's very limited, tight budget, limited time, and then you work and engage yourself because it's a bit of a time constraint, and you don't get the quality out of that and time to consider, be a little bit careful. That's (indistinct).

PN3066

MS BENTON: It's all sort of loosely tied to that. I had a great discussion with Dr Coates yesterday afternoon, and I wish that she had said what she said to me on the way down in the elevator. But she talked about the way that the rates in the Amusement Award were applied to various (indistinct) at Shepparton Art Museum that she talked about yesterday, and she described heated discussions about the skills and expertise in various gallery roles being beyond particular

grades for (indistinct). They're amusement or recreation type organisations of spaces. And she doesn't have access to the details of what was applied, which is a shame.

PN3067

So I think (indistinct) this. But she did recall that every role was above grade 8. (Audio malfunction) I guess inconsistent application of interpretation of such a broad (audio malfunction). And she also acknowledged that there are (indistinct) grades. So they needed to do quite a lot of tweaking in regard to (audio malfunction) gallery staff (audio malfunction). There are (indistinct) two grades because of the level of skills and (audio malfunction). So everybody else is sort of squeezed out.

PN3068

THE DEPUTY PRESIDENT: And to that end we heard this morning about conducting tours, and the suggestion that it was dealt with at grade 1 of this award as a tour guide in circumstances where one might be performing a far more skilled role in explaining to the public the relevance or the import of that particular scope of work, as opposed to simply just leading people around and exhibition.

PN3069

MS BENTON: Yes, and generally you could assume that a tour guide would be sticking to a script or something not fixed, but temporary exhibitions, which they all are. There's a new set of knowledge and interpretations each time (audio malfunction) relearning and rethinking, responding, and often through the eyes or lens of an artist.

PN3070

THE DEPUTY PRESIDENT: Yes. Ms Benton, was there anything else that you wanted to add to the discussion?

PN3071

MS BENTON: I don't (audio malfunction), but I am going (audio malfunction).

PN3072

THE DEPUTY PRESIDENT: Fine. So will I.

PN3073

MS BENTON: (Audio malfunction) the artist who was here this morning realised she had a lot more to say.

PN3074

THE DEPUTY PRESIDENT: Okay.

PN3075

MS BENTON: She didn't (indistinct) were talking a lot about (indistinct) doing their enterprise agreement, but left out the whole story of their practice (audio malfunction) and the ways that they're engaged to contribute.

PN3076

THE DEPUTY PRESIDENT: All right.

PN3077

MS BENTON: And there is another artist and arts worker who would like to contribute (audio malfunction).

PN3078

THE DEPUTY PRESIDENT: Okay. At 10 o'clock.

PN3079

MS BENTON: I guess in lines of, you know, thinking about this discussion this afternoon and in the last two weeks I have been clearly processing a lot of in depth information. I know a lot of first hand as an artist and arts worker myself, my partner who is an artist and arts worker. I retain the position that there is a severe lack of clarity under the award coverage for (indistinct), and I feel that's been acknowledged by various organisations within the sector as well as artists and workers, and previous advice through the Fair Work Ombudsman and numerous legal experts who all are reading or interpreting various awards that are being applied to our sector in very different ways, and I think this persisting ambiguity needs urgent attention.

PN3080

I think that the Amusement, Entertainment and Recreation Award is generally the closest fit other than (indistinct), and museums and galleries are included in coverage outlined in clause 4. The definition of exhibition employees under 4.2 is said to be, said just now:

PN3081

Employees of employers engaged in the supply, preparation, marking out, fabrication, installation, erection or dismantling of exhibition stands or associated componentry for the trades and public promotions industry.

PN3082

All that detail described under each grade just leaves too much of (audio malfunction). It's clear to me, to NAVA, that the lack of this specific award for the visual arts causes great confusion, and in some cases leads to complete exclusion of their workplace rights of workers within the sector.

PN3083

A specific concern raised in the course of what might this be assumption that contractors in certain roles will always be considered contractors due to the nature of their work. However, (indistinct) discussed this afternoon and in various ways over the last two weeks that many contractors in the visual arts (indistinct) for administrative ease processing an invoice. It's much simpler it seems (audio malfunction) payroll and adding them to a separate (audio malfunction).

PN3084

But for the purposes of this review I think there are lots and lots of situations where many could be deemed employee based on the terms of their engagement, and we have hourly rates for almost every role (indistinct) in our code of practice. (Indistinct) clear that our preference is for a standalone award which gives (indistinct) coverage to the sector, that they're an adequate safety net for all of visual arts.

PN3085

While not necessarily agreed by all this view is shared by many employers, so for purpose of award (audio malfunction) supported (indistinct) for a sector specific reference and stance. I do appreciate a number of reply submissions this week that there is resistance to establishing a new industry specific award in the effort to keep the number of various (audio malfunction). Therefore (indistinct) that the Fair Work Commission (audio malfunction) a (indistinct) award to not adequately cover (audio malfunction).

PN3086

I also appreciate that the intention of the modern award and scope (indistinct) for a multiplicity of employee (indistinct), but I'd argue that in the case of the Amusement, Events and Recreation Award it's just too broad a mix. There is clarity for some. There's real clarity for some roles. The clear inclusion of roles related to (audio malfunction) such as amusement park workers, trade fair works and golf professionals. Yet there's an ambiguity for gallery and museum (indistinct) types of employee visual arts. The Amusement Award falls short in addressing specialisations of workers and the hierarchy of roles you need to your sector. It's very confusing for employers and employees to provide transparency.

PN3087

I think it was discussed by Ms Powell yesterday that there's a lot of validation in the title of (audio malfunction) and words or names used to describe activity. To give more clarity to any award whether it be a new one, adjustments to existing award it's really important to recognise our entitlement. An expansion of definitions and clauses to (indistinct) some of the language that our sector associates with work, and expansion of classification structures, particularly (audio malfunction) the Amusement Award (indistinct) to respond to the various types of role.

PN3088

I guess to wrap up today the primary challenge for our sector is a lack of an independent (indistinct). That leads to non-compliance and (indistinct). I urge you, or the Fair Work Commission to consider making the recommendation for (audio malfunction) in existing awards to address (audio malfunction) the sector, which for clarity, consistency (audio malfunction).

PN3089

THE DEPUTY PRESIDENT: Thank you. That was a really helpful summing up of some of the important information we have heard over the last couple of weeks. Thank you very much. I appreciate it very much. All right, well on that basis is there anything else that anyone would like to say before we adjourn this afternoon?

PN3090

MS BENTON: That probably sums it up for me.

PN3091

MR MARANI: I would walk out and remember stuff.

PN3092

THE DEPUTY PRESIDENT: Everybody does - - -

PN3093

MR MARANI: Yes, I think (indistinct).

PN3094

MS BENTON: Content is being delivered in the lobby downstairs.

PN3095

THE DEPUTY PRESIDENT: And for completeness, Ms Vincent, was there anything that you sought to contribute this afternoon?

PN3096

MS VINCENT: Yes. I think just firstly I would just like to say thank you, obviously we appreciate everyone's contributions this afternoon. They're always really helpful and insightful. Moving forward we would just appreciate if there is an indication that the Commission can give as to the agenda that's looking as though it will play out for tomorrow, just to ensure that we can be attendance to the extent that we're required.

PN3097

THE DEPUTY PRESIDENT: We will adjourn until 10 am tomorrow and we will sit tomorrow for as long as we need to. It appears we have two artists who are seeking to participate and provide some views, and then I anticipate that there may be a need for Ms Benton to provide any further summing up to address those submissions. That might take us through - that might be the course of the morning only, but I am open to any other people that would like to take the opportunity to participate tomorrow if anybody else makes themselves available and they will be heard.

PN3098

MS VINCENT: Okay, thank you for that indication. I really appreciate it, Deputy President.

PN3099

THE DEPUTY PRESIDENT: Thanks, Ms Vincent. All right, well with that said I would like to extend my thanks again for your participation this afternoon, it was very helpful, and we will adjourn on that basis until 10 o'clock tomorrow. Thank you.

PN3100

SPEAKERS: Thank you.

PN3101

THE DEPUTY PRESIDENT: My pleasure.

ADJOURNED UNTIL FRIDAY, 02 FEBRUARY 2024

[3.37 PM]