



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

DEPUTY PRESIDENT MILLHOUSE

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

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

Melbourne

10.00 AM, WEDNESDAY, 24 JANUARY 2024

Continued from 23/01/2024

PN1367

THE DEPUTY PRESIDENT: Thank you, everyone, for your attendance. I'm going to start by taking the appearances, noting that we have some fresh faces in the room today. Ms Benton, you continue your appearance for NAVA.

PN1368

MS BENTON: Correct.

PN1369

THE DEPUTY PRESIDENT: And moving through the Bar table today, Ms Burgess.

PN1370

MS BURGESS: Correct.

PN1371

THE DEPUTY PRESIDENT: You appear on behalf of Gertrude.

PN1372

MS BURGESS: Yes.

PN1373

THE DEPUTY PRESIDENT: Ms Richardson, you are the executive director of the Australian Centre for Contemporary Art.

PN1374

MS RICHARDSON: Yes.

PN1375

THE DEPUTY PRESIDENT: Thank you. Ms Thornton-Smith, you appear on your own behalf. And Ms Watson, you appear on behalf of National Exhibitions Touring Support Victoria.

PN1376

MS WATSON: Yes.

PN1377

THE DEPUTY PRESIDENT: On Microsoft Teams today we have Ms Simmons who appears – continuing her appearance for ABI Business New South Wales.

PN1378

MS SIMMONS: Yes. Thank you, Deputy President.

PN1379

THE DEPUTY PRESIDENT: And Ms Minster, you appear for LPA together with Ms Floyd.

PN1380

MS MINSTER: That's correct.

PN1381

THE DEPUTY PRESIDENT: Thank you. Good morning, everyone. We have earmarked today for the purposes of hearing from those that are present in the courtroom today. Some of you have filed written submissions in relation to this aspect of the Modern Award Review. And others of you, I understand, might have taken the opportunity to come along to express to the Commission or share some of your lived experiences on your own behalf or on behalf of the organisations that you represent.

PN1382

Now, we do understand that there are some general time limitations on the capacity for each of you to appear. But I think that, at the outset, I'd really be interested in understanding from each of you what you're here to talk about. What you'd like to convey to the Commission and that might generate some discussion amongst yourselves and with me. And so I'd like you to appreciate this opportunity to really share some views and collaborate in relation to matters that might arise, if there are topics of interest to you. So thank you for your attendance.

PN1383

Is there anyone that might be brave enough to speak first? I know it can feel a little bit intimidating. Ms Benton has been here for NAVA and speaking generally about the position that NAVA has advanced insofar as it relates to her experiences and the experiences of NAVA about the capacity for artists and art workers to be covered by a modern award. As so, there might be some issues that you each would like to share generally in relation to that. And then I understand Ms Thornton-Smith and Ms Watson, you have each filed a written submission and you might like to speak to the content of that written submission and elaborate on that, if you'd like to. Is there anyone that would like to kick off? Ms Watson, I might start with you.

PN1384

MS WATSON: Yes. Sure thing.

PN1385

THE DEPUTY PRESIDENT: And I'm doing so because you have filed a submission in writing. And you might be able to start by speaking generally to that.

PN1386

MS WATSON: Yes. Yes, sure thing. We – NETS Victoria made a submission because I guess I've been in the industry 11 years, working in local government and one year in a university context and four years working for the not-for-profit NETS Victoria. And I've just seen the vast differences in pay scales and how they, yes, just similar position descriptions are given such different rates of pay and that concerns me. Because I feel that the qualifications and skills and experience required to fulfil a position description are very much similar in most instances. But the pay is just so vastly different. So the concern is that by having a specific fit-for-purpose award, that would be, I guess, hopefully, yes, no longer occurring. So there'd be consistency across the sector.

PN1387

Just in my capacity, representing a touring exhibitions agency, I know there to be other touring agencies that are using different awards to the ones we are using, and the position descriptions are very similar. So our consultation was through Fair Work Commission and I guess I don't think that the Miscellaneous Award and the Clerks Award really do consider the level of skills and experience required to work in our sector. It's a highly skilled sector. The professional skill set required to attain the roles are significant and the qualifications required are significant. And that's across the board of all the roles that I'm seeing. And, yes, I think, effectively, arts workers are getting exploited, in a way, because they're willing to do the work, they're very passionate about the work that they do. And they are working for really disappointing salaries.

PN1388

THE DEPUTY PRESIDENT: All right. So in the context of NETS - - -

PN1389

MS WATSON: Yes.

PN1390

THE DEPUTY PRESIDENT: - - - are you engaging artists or art workers to provide that supplementary, like, or is it a mix of both?

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MS WATSON: Yes, so it's a mix of both. So we employ staff, at the moment, five staff work for NETS Victoria in casual or part-time work. And then we tour exhibitions. So a tour of an exhibition usually lasts two to three years. And within that exhibition, there'll be up to anywhere between one artist all the way up to, like, 20 or so. And we use the NAVA code of practice when we apply for grant funding to determine the fee for loaning their art work. And also for determining their speaker fees at galleries across Australia. And then curator fees is another significant part of this where we work with independent contractors. Often curators are often-times also artists, or they see themselves as both, an artist or and a curator. And, yes, working with curators, their level of engagement within an exhibition over time can vary. But, yes, it's important, I guess, for us to advocate for higher pay conditions for these workers, because their investment is significant. Yes.

PN1392

THE DEPUTY PRESIDENT: And so you've mentioned artists and curators specifically.

PN1393

MS WATSON: Yes.

PN1394

THE DEPUTY PRESIDENT: How is it that you engage them? You spoke about utilising NAVA's code of practice in order to determine the loaning fee and a speaker fee.

PN1395

MS WATSON: Yes.

PN1396

THE DEPUTY PRESIDENT: So in terms of the way in which you engage with that artist, is that by contract?

PN1397

MS WATSON: Yes. So we have agreements in place for loaning the art work and copyright permissions. And we enter into contracts with the venues to support the public program side of things.

PN1398

THE DEPUTY PRESIDENT: And in terms of the relationship that NETS has with that artist; how would you define that? Are they your employees?

PN1399

MS WATSON: It can vary because some of them are heavily invested and want to know a lot about what's happening and every little detail. And others, they're in multiple exhibitions or curating multiple exhibitions, they have less capacity. So there's a lot of variables impacting that relationship. So I can't say there's one size fits all there, Deputy President.

PN1400

THE DEPUTY PRESIDENT: So does that mean that you sometimes employ them as your employee? Or is it the case that they never become an employee of NETS?

PN1401

MS WATSON: No. They never are an employee; they are always engaged as an independent contractor.

PN1402

THE DEPUTY PRESIDENT: And so that's the experience with the artist and you aligned quite closely the curator to the artist. Sometimes they're required, sometimes less so. Is it the same kind of relationship that you have with the curator, when they're required to be engaged? That they're not your employees, that you engage them on a tour or an exhibition basis?

PN1403

MS WATSON: Yes. That's right. They are – at the time of the funding submission, we generally submit a letter from the curator which stipulates their expected remuneration which comes in the form of a sort of hourly based rate. That's generally how that applies. But curators can negotiate as well, for different sort of conditions, I guess, at the time of the funding submission. And so we use that to federal and state government funding bodies and they endorse, essentially, that payment schedule that we provide through the grant.

PN1404

THE DEPUTY PRESIDENT: And what's your experience, generally, of the type of hourly rate that a curator is seeking as part of that letter that they produce to you, with their expectations?

PN1405

MS WATSON: Yes. In the past, we've used the NAVA code, and they had a - sort of like a minimum rate for an emerging kind of curator and then a standard curator at, sort of, fee. And then a more senior and experienced fee. And so we have, even today, we still base it on that schedule, which I understand was reviewed and remains unresolved. So we still refer to that. Yes.

PN1406

THE DEPUTY PRESIDENT: Okay. All right. So that addresses the situation of the artists and the art worker. And then, tell – sorry, the artist and the curator.

PN1407

MS WATSON: Yes.

PN1408

THE DEPUTY PRESIDENT: Tell me a little bit about your experiences with people that we're generally referring to as art workers, because that's been a helpful way of dividing them, and that's the way that NAVA has approached the division of those two types of role types.

PN1409

MS WATSON: Yes.

PN1410

THE DEPUTY PRESIDENT: And so, we're calling front of house and, you know, related employee role types as art workers. What sort of employees or roles are you engaging for the purposes of NETS work?

PN1411

MS WATSON: Not front of house, which I think more applies to a gallery scenario and we're not a gallery. So as an independent arts organisation, we're more an administrative body, I guess. And all logistics and coordination of exhibitions. So we have my role as director, and then a senior exhibition's coordinator for touring and then exhibition coordinator touring roles. We have, in the past, had administrative officers and roles in partnerships and communications but, yes, they're funding dependant roles, so – yes.

PN1412

THE DEPUTY PRESIDENT: So, obviously, in your role as the director, that's quite a senior role. Would you anticipate or do you align that role to any particular award?

PN1413

MS WATSON: I was encouraged to use the Clerks Award through our HR consultant who also consulted with Fair Work Commission regarding the award I was on. And the other – the administrative role was also Clerks as was the partnerships communications. And the exhibition coordinator role was Miscellaneous. And it could relate to the fact that the role isn't in a gallery, per se, and that they move into different areas of work.

PN1414

THE DEPUTY PRESIDENT: Was that the coordinator and the touring manager?

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MS WATSON: Yes.

PN1416

THE DEPUTY PRESIDENT: That you said you've aligned to the Miscellaneous Workers Award?

PN1417

MS WATSON: Yes.

PN1418

THE DEPUTY PRESIDENT: If we could just pop mobile phones on silent, please. Thank you. You said, a little earlier, that your experience is that you might be utilising some awards or different awards than your counterparts, or in your experience of working with other organisations. Would you like to speak to the other awards that you understand might be being applied to arts workers of the kind that you employ?

PN1419

MS WATSON: Yes. So certainly the Local Government Act is employing arts workers and using that award, obviously. And then the - - -

PN1420

THE DEPUTY PRESIDENT: And, of course, that wouldn't apply to you or your organisation.

PN1421

MS WATSON: No. That's correct. Yes. And then the Amusement Award – Entertainment and Amusement Award would be the other one. I'm aware, anecdotally, of like organisations using that award. I don't know what level of interrogation they went through to decide on that, though.

PN1422

THE DEPUTY PRESIDENT: Yes. Noting there's a broad reference there to a museum or a gallery within the scope of that award. But otherwise, that's not something that you're privy to, in terms of why they're applying that award over and above Clerks or Miscellaneous Award or something else.

PN1423

MS WATSON: Correct. Yes.

PN1424

THE DEPUTY PRESIDENT: All right. When you're engaging those employees that you have under the Clerks Award and the Miscellaneous Award, tell me about the experience that you're having or is it the case that you're finding it difficult to align those roles to classification descriptors under the award? Or what's driving the concern for you about the application of those awards to those roles?

PN1425

MS WATSON: Yes. I guess for me it's more the pay disparity across the sector that concerns me. So seeing director roles advertised at \$60,000 pro rata, when that means that person's in charge of the entire arts organisation. And then not – and curators getting more than that at local government at – and in different incorporated associations. That is alarming to me and I think, yes, just highly concerning because it seems to me that there's no general, I guess, support for the arts as a professional sector that requires the qualifications, the skills, the experience. Let alone in the director role or the other aspects of governance and a range of things that you only learn through experience rather than generally. A lot of the arts specific qualifications that a lot of people entering the arts might not necessarily have. So, yes, that's really the concern for me. And so, that's why I'm here. It's not so much about NETS Victoria as much as it would be wonderful to see the sector having its own award, so there was no ambiguity – and also there was an attractiveness to work for not-for-profit incorporated associations. Equally, too, the local government, university sectors. Because it's a highly rewarding area to work in and so we see many staff losses as a result of the higher salaries under the local government and university. And that essentially turns a lot of these incorporated associations into more like an internship. Because the salaries are just so extraordinarily low. Yes, so I think it's about professionalisation of the industry, for me.

PN1426

THE DEPUTY PRESIDENT: In terms of conducting that comparison, in relation to wages, that you've just referred to; you spoke about some disparity between local government and universities and then what other private galleries or organisations are paying their arts workers. You also refer to the difference between rates with curators. And I wanted to just explore that for a moment. In terms of the curators, as I understood from what you said just a moment ago, a little bit earlier, the curators are typically employed as independent contractors and so they're bargaining their own rate of pay as their own business, so to speak. Right or wrong, it appears that that's how it's operating in the industry at the moment.

PN1427

MS WATSON: Yes. My apologies, that is actually just for in our specific line of work. So our specific organisation works with curators in that way.

PN1428

THE DEPUTY PRESIDENT: Yes.

PN1429

MS WATSON: However, in the sector more broadly, there's many employment agreements with curators who are on salary with conditions that - local government or university endorsed rate. And there are also curators employed by incorporated associations and private spaces that, yes, we're just potentially a small anomaly or, yes, maybe not making up that broader sector there – that arrangement. Yes.

PN1430

THE DEPUTY PRESIDENT: Yes. All right. I understand. And so, one of the issues that you see presents a particular problem is this comparison between

universities and local government, where there is perhaps a little more specificity in relation to the awards that might apply to some or all of these art workers and those awards are providing a higher rate of pay. And the problem, if I can understand it, is that in your view, because you're applying the Clerks Award and Miscellaneous Award, but you understand that some of your counterparts might be applying the Amusement Award and there's no consistency; there's a disparity between the rates of pay that are being paid in those private enterprises, when compared to local government and universities.

PN1431

MS WATSON: That's correct.

PN1432

THE DEPUTY PRESIDENT: Okay.

PN1433

MS WATSON: Yes.

PN1434

THE DEPUTY PRESIDENT: That's really helpful, Ms Watson. Is there anything else that you would like to share about your experience with engaging these employees that NETS has in relation to those awards or any other lived experiences about how the awards do or do not helpfully apply?

PN1435

MS WATSON: I guess it's just a general comment, that it does concern me that there isn't this clear understanding in our sector. And I guess, in the translation of the museum area, there doesn't seem to be a very clear understanding about our sector. So from the perspective of the role of gallery staff and what they actually do. And it seems a bit confused with, maybe, exhibitions as trade fairs. So that would be my only other comment.

PN1436

THE DEPUTY PRESIDENT: You've said in your written submission, that the Miscellaneous Award and the Clerks Award aren't appropriate for the specialised skills that are required. In relation just to those categories of employees that you do have, are you able just to tell me what is particularly specialised about the work that they're doing for you that makes them sit outside the scope of, perhaps start with the Clerks Award? So you've got your, I think, admin officers.

PN1437

MS WATSON: Yes.

PN1438

THE DEPUTY PRESIDENT: And applied the Clerks Award to the admin roles and the clerk's Communication Award.

PN1439

MS WATSON: Yes.

PN1440

THE DEPUTY PRESIDENT: So tell me a little bit about why you think the specialised nature of the work that those employees are performing for you don't fit even in the Clerks Award?

PN1441

MS WATSON: The administrative sort of style of work?

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THE DEPUTY PRESIDENT: Yes.

PN1443

MS WATSON: Yes. I guess they are needing to know about the whole art – visual arts and contemporary arts and design sector. So they need to know trends in the arts, they need to have a good grasp of critical dialogue around visual arts culture. They need to be culturally sensitive to First Nations lived experiences. They need to have specialised understanding around the whole, I guess, infrastructure that supports an exhibition and how it can be crated across Australia. How their administration is also around copyright, so they need to be aware of copyright law and ensure that our agreements are sound with artists and curators and venues. Yes, they need to have a strong understanding of how galleries operate. So the purpose and role of the visual arts gallery and appropriate ways to present art in different gallery spaces. And I guess an experience of working with artists. So, yes, a sensitivity to their practice, the meaning of their visual arts practice, so that they can liaise with them and understand the importance of certain ways of presenting their art or handling their art, that kind of thing.

PN1444

THE DEPUTY PRESIDENT: Okay. That's helpful. And are you able to then address, similarly, the role of the touring manager and coordinator.

PN1445

MS WATSON: Yes.

PN1446

THE DEPUTY PRESIDENT: And why you think there are problems with fitting that into the Miscellaneous Award.

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MS WATSON: Yes. Look, the administrative function is reasonably supportive of the exhibition touring roles, so there's cross-over in what I've articulated relating to the administration.

PN1448

THE DEPUTY PRESIDENT: Yes.

PN1449

MS WATSON: I guess the expertise of the exhibition coordinators is about understanding how an exhibition functions. So the various parts that are required to display art, they really need a high level of understanding of, for example, projections for video art, how to mount projectors, how to instruct galleries how

to mount projectors and televisions and media players. I guess for the finer detail of manage a conservation of an art work. So when an art work is deteriorating over the life of an exhibition tour, they need to have appropriate knowledge around conservation so the right person's engaged to undertake that work. And then, yes, the – I guess the crating and documentation of exhibitions so that the promotion of the work and the exhibition is handled professionally and with the artist's intention and curator's intention in mind.

PN1450

THE DEPUTY PRESIDENT: Can I just understand, when that work goes on tour, does that touring manager and coordinator follow the art work for the entire time that it is on display or for any period of time, to oversee the set up and establishment?

PN1451

MS WATSON: Yes. So in our case - and this is not necessarily the case for other touring agencies – but we do take pride in being on site during the installation of the exhibition and the de-installation. So that there's more or less a custodian that understands the exhibition's needs and can oversee condition reporting of all of the art works. That's again, understanding conservation issues. And working with different teams of staff at various venues. So, yes, excellence in verbal communication's really highly required in that context. Because you're moving, in some cases, you're lifting up art work and moving it into crates, you're documenting it. And, yes, our experience is that galleries really value that – us being on the ground with them, because they have a lot of questions, they're not sure whether an art work might have deteriorated over time. So by having a custodian, the exhibition touring coordinator being on site, they are able to check all the art works and make sure everything's travelling well.

PN1452

THE DEPUTY PRESIDENT: And so, in your experience, when you're going to a gallery, for instance, does the gallery typically have their own employees that are the installer, the technical production support employees that then assist your team with the doing?

PN1453

MS WATSON: That's right.

PN1454

THE DEPUTY PRESIDENT: Yes.

PN1455

MS WATSON: Yes. And in many cases, yes, that pay disparity's (indistinct) pretty clear.

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THE DEPUTY PRESIDENT: Becomes apparent.

PN1457

MS WATSON: Like, that these employees in this local government or university run gallery have less knowledge about the show, have much better pay

conditions. And, yes, they are being – enjoying the specialist experience and expertise of our staff in that context. But, yes, they're not on an equal playing field in their ways of being remunerated for that work.

PN1458

THE DEPUTY PRESIDENT: And in your view, is that an award issue or is that an issue about the industry practice for only paying, in the private enterprise, the minimum amount possible. And that's reflected by a slightly lower rate in those awards, by comparison to the, say, Local Government Award, which I accept has a commensurate slightly higher rate of pay. So is it about organisations typically sticking to the award rate and electing not to recognise the award terms and conditions that pay a little more, in order to secure the services of those really well-regarded specialist employees?

PN1459

MS WATSON: I guess my feeling on this is that our sector is extremely under-funded. So staff - you know, organisations will always pay the minimum wherever possible, because they simply aren't funded well enough to perform the work that's expected of them in the arts culture of Australia. So I think, for me, that the award is a great path forward. Because it raises the profile of the professionalisation of our sector, to the level it should be. And it's just been chronically under-represented and under-valued. And the impacts of that are really, I see them all the time. Like, staff really struggling. They're not paid sufficiently, they feel exploited. It's throughout the visual arts sector in Australia. If – I guess, yes, to me, I can't divorce this question from the entire funding climate of the visual arts.

PN1460

THE DEPUTY PRESIDENT: Yes. Thank you. You've answered a lot of questions that I peppered at you. Is there anything else that you wanted to share about your experiences or matters that you think might be relevant to the consideration of potential award gaps in the arts culture sector?

PN1461

MS WATSON: I just – I strongly believe this is a great way forward for raising the profile and so I appreciate your time listening and thank you, Deputy President.

PN1462

THE DEPUTY PRESIDENT: Thank you. Thank you for your attendance. Ms Thornton-Smith, you also filed a written submission with the Commission, and thank you for doing so. You're an artist. You've indicated in your written submission that you work specifically in the ceramics industry and you've had an experience of what, perhaps, Ms Watson has termed the 'exploitation' in that industry. Would you like to speak to your experience?

PN1463

MS THORNTON-SMITH: Yes, so I also, like a lot of artists, have many years of training. Like, I think I've studied for 10 years at university and TAFE and I consider being an artist and an art worker my profession. I moved into ceramics, like, I originally studied painting, but I moved into ceramics because I felt I got

some specific, kind of, more vocational training and I got really interested in it. And I felt there were more job opportunities. And I started teaching ceramics, initially, in a local government studio. But also, I've taught at a few different private and public studios. Something I noticed, and it's happening in local government, but it's also happening in private studios, probably more so, workers such as art technicians and teachers are being – not getting put on any award at all. Employers are trying to completely avoid putting these workers on awards and then just sham contracting them. So the employer will say, 'this is your rate of pay, but you're not able to negotiate it', so it's not that, like you were talking about, well, some curators are independent contractors and they can negotiate their pay, supposedly, as businesses or sole traders. Well, that's, in my experience in talking to a lot of other art workers in this situation, just not the case.

PN1464

In the case of my local government job, I was able to really fight to get on the payroll because there was an EBA, like, a local government EBA. And my local government job, they were, sort of, trying to undercut the EBA and pay contractors less. So any new workers were coming on as contractors not casual employees. That's its own scenario. But my experience, working in other mostly little private studios, is they don't even consider looking at any award. Not a Miscellaneous Award, not a Design Award, none of it. They just make up their own rates of pay. They generally don't pay superannuation. And I got very passionate about this issue, so I ended up doing a call out and writing the article which I attached to the submission. I talked to probably over 100 art workers. Some of the ceramic, most of them in ceramics, but some of them other forms of art, like teaching painting and so on. And it's just a really – it's absolutely rife, in my opinion. And part of the problem is – I've even talked to some employers who've wanted to do the right thing – and they said, 'well, there's no award that is appropriate, so we kind of just make up a rate', and there's like a going rate that's sort of, you know – the going rate can vary from \$20 an hour up to \$100 an hour. It's just kind of made up.

PN1465

So I do think that having an award, just as a kind of minimum standard, would even the playing field. You don't want, of course, workers to end up being paid less because there's an award. But, like, just minimum standards. And also, if these workers were taken on as employees, they have more protections against unfair dismissal and so on. Yes. And I have experiences – a professional artist and not being paid in that scenario as well. But that's a kind of different – a different kind of scenario when you're exhibiting in a gallery and not getting paid. Which is pretty common as well. And it would be even better, honestly, if there were some sort of minimum pay that exhibiting artists at least, in public spaces, could get paid. And from my research, that is the case in Canada, where they – all artists in public – publicly funded galleries have to be paid an artist's fee.

PN1466

THE DEPUTY PRESIDENT: So are the experiences that you're speaking about there, Ms Thornton-Smith, really focused upon the experience of the artist as

opposed to those categories that were termed art workers for the purposes of the discussion?

PN1467

MS THORNTON-SMITH: I would say my article was primarily about art workers, so - who are often also artists.

PN1468

THE DEPUTY PRESIDENT: Right.

PN1469

MS THORNTON-SMITH: But doing things like teaching – teaching ceramics, teaching art. And this is outside, like Claire was saying, it's like perhaps outside of working in a university or a school or a local government, where there might be better standards were adhered to. But then there's this grey area of everyone else. Which, you know, there's nowhere to go there.

PN1470

THE DEPUTY PRESIDENT: And so, your article speaks, as you've just indicated, about teaching rates varying significantly. And the difficulties that are experienced by art workers in those roles, getting some level playing field in terms of a rate of pay that's commensurate with what others might be receiving.

PN1471

MS THORNTON-SMITH: Yes. I mean, there are, you know, there'll be some businesses that might be a bit more fair and have their own system and – or if you have more experience, they'll pay you a bit better, and less they pay a bit lower. But, like, none of it's kind of official. So my understanding, at least in the ceramics and kind of craft field, which I'm more familiar with, it's kind of the wild west. And there's just – when I did this article, I did a call out and for two weeks there was just dozens and dozens of people contacting me and telling me, you know, their stories, not only of not feeling their pay rate is correct but not feeling like they're real workers and being mistreated and, yes, not – not getting superannuation either, which in itself, I mean, even contractors are meant to get that. But, yes, there's a kind of misconception that if they're contracted, they don't need to be paid super. So, I guess I have a problem with the - sort of, like, wanting to have their cake and eat it. Like, not taking people on as proper staff but then treating them like staff. And if people raise issues, they're just fired. I guess you could say they're contractors and (indistinct), yes.

PN1472

THE DEPUTY PRESIDENT: And so, that experience that you're speaking about in relation to the art workers is the first part of what I wanted to understand from you. And then separately, recognising that you are an artist, what can you tell me about the way in which you engage with organisations, galleries or the like, in relation to any contracts that you might receive for the production of or presentation of your art and your work? How does that work for you?

PN1473

MS THORNTON-SMITH: That has its own problems as well. I suppose when I started exhibiting I mostly showed my work in artist run spaces – artist run

initiatives that often don't have much funding. And so, that was like 10 years ago, the common practice was that you didn't get paid, you actually paid for the space. You pay to show your work. That was just – everyone did that. Thankfully, now that seems to be changing and often these small artist run spaces usually do pay a small artist fee that depends how much funding. So for years I was just paying a fortune to show my work. Now, I usually choose to not apply for galleries where I have to pay. But it's still, for me, quite rare to get paid. Sometimes getting paid, you have to, like, go through a whole long grant process to even consider getting paid. And the last couple of years I've had a couple of major shows, one of them curated and one of them a solo show, in a local – in a couple of local government galleries. And there was, yes, there was no – there was just no artist fee. Like, if you were lucky to get a grant, to get some pay, sure. But that's extra unpaid work you have to do. And I find that really disappointing, because having worked in local government, a lot of local governments do have the money to pay artists, like, a minimum amount of fees, but there's, like, no motivation.

PN1474

And then you have this scenario where you'll have – like myself last year doing unpaid freelance curating and making art and all the artists making art – and none of us got paid. But then you've got all the staff that are on the payroll as the – say the technicians and so on – they're getting paid. And they deserve to get paid. But it's like Claire was describing, it's a two-tiered system, where actually the people making the content are not getting paid or not getting paid very well. So – and that's not the case in every country in the world. There are countries where, in – at the very least, in public spaces – it's legislated that artists have to get paid at least something – yes. Yes, so that – in fact, it was a little bit ironic because last year the show was about – all about how artists needed to get paid, and then the irony of none of us getting paid for that. Like, we did fund raising, but I think that's a real problem. Yes. Because it just takes so much time and effort to put on a show, whether it's curating or administrating or being the artists. And it's just like that's invisible labour.

PN1475

THE DEPUTY PRESIDENT: And so when you enter into those agreements to show your work and in those instances where there may be a negotiated fee, is there any written communication or documentation that passes between you and those organisations, generally?

PN1476

MS THORNTON-SMITH: I mean, usually they'll give you, yes, an agreement and it will say – it will say either you're paid a fee or not. Some local government galleries, I've noticed they might pay – they'll have curated spaces where they do pay those artists. And then they'll have what's – they call, usually community spaces, where you can apply for it, and they don't pay those artists. And I don't like that either, because it – and it's another two-tiered system, where it's the artists that are, you know, established or lucky enough to be in the real space that gets paid, and then the community artists don't get paid. The assumption that they're lower order. I think that's – I just think, you know, all artists should be paid in all public spaces. But that does mean they need the funding to do so.

PN1477

THE DEPUTY PRESIDENT: And in your experience how detailed a document is that? It sets out what you might get paid but does it also set out matters like what's expected of you in terms of additional work that you're required to perform, or times that you need to be present at the gallery or speaking engagements, or anything like that? Does it go into that level of detail?

PN1478

MS THORNTON-SMITH: I just think of the last contract - - -

PN1479

THE DEPUTY PRESIDENT: And I know this is - your personal experience depends on the gallery – different, you know, for every single different person that might attend here. But I'm just interested in your lived experience.

PN1480

MS THORNTON-SMITH: Yes. Usually there'll be a long list of what's expected. Like, you know, by this date we need your professional images, by this date we need your artist statement, by this date, you know, that between these hours you need to be there to install and so on, so on, so on. The last two contracts from two different government galleries, yes, there was just no mention of getting paid for any of that. Or should I say, one of them actually did say it would pay us for – said I'd get \$1 artist fee, which I think was because they had a general contract and sometimes they pay artists, you know, the NAVA rate. And when they don't want to pay artists anything they just put \$1, so it's the same contract.

PN1481

THE DEPUTY PRESIDENT: Right.

PN1482

MS THORNTON-SMITH: Yes. But, yes, to answer your question, yes, there is usually, like, all the expectations are there. So that does really lay out the amount of labour that's actually expected. And some galleries do pay an artist fee. But even when they do, it often doesn't cover all the labour. It's not usually a per hour rate, like, might be just a one-off fee - yes. Yes, but if artists are sort of taken more seriously as workers, then, you know, workers usually get paid for their labour, so it's also about changing the attitude towards what artists are. It's not their hobby, it's a profession.

PN1483

THE DEPUTY PRESIDENT: Yes. Recognising the artist's work.

PN1484

MS THORNTON-SMITH: Yes.

PN1485

THE DEPUTY PRESIDENT: Is there anything else that you'd like to share?

PN1486

MS THORNTON-SMITH: (Indistinct). I suppose just, yes, one last thing. I know it's sort of – it's not like you can easily just overhaul a whole system. But I think sometimes a lot of artists I talk to find also the grant system can be a little problematic. Because, like, you can spend all this time, you could spend a week applying for a grant and it's really, really unlikely you're going to get it. Say, like, the Australia Council, their last round there only funded 17 per cent of projects. So, yes, that being the only way that people can be remunerated for their labour, I think is a problem. Sort of ends up being a sort of competitive model where all are just competing just to get paid. Or small organisations are competing just to exist. More stability in funding would (indistinct).

PN1487

THE DEPUTY PRESIDENT: Probably falls outside the scope of (indistinct). But I understand. You've raised it as a matter of context because it leads in to the other issues that you're speaking about.

PN1488

MS THORNTON-SMITH: Yes.

PN1489

THE DEPUTY PRESIDENT: All right. Well, look, thank you very much for sharing your experience and coming to the Commission this morning, Ms Thornton-Smith. That was great to hear from you. Ms Burgess, I'll jump over to you because I understand that you have the next limit in terms of your availability.

PN1490

MS BURGESS: Thank you.

PN1491

THE DEPUTY PRESIDENT: What is it that you would like to speak to the Commission about on behalf of Gertrude?

PN1492

MS BURGESS: I think, maybe, just (indistinct) for the context, as we do run a physical gallery space.

PN1493

THE DEPUTY PRESIDENT: Yes.

PN1494

MS BURGESS: We employ six staff. And we do employ full-time curators as well. So full-time artistic and administrative staff.

PN1495

THE DEPUTY PRESIDENT: Yes.

PN1496

MS BURGESS: So maybe giving a little bit more context to how we – to how we interpret the award and are able to do that.

PN1497

THE DEPUTY PRESIDENT: Great.

PN1498

MS BURGESS: Or the award, we use the Amusements and Recreation Award.

PN1499

THE DEPUTY PRESIDENT: Yes.

PN1500

MS BURGESS: And we also do contract and commission artists to present work in the gallery and we pay them. And I can speak to that briefly as well.

PN1501

THE DEPUTY PRESIDENT: Thank you.

PN1502

MS BURGESS: And then Claire can probably fill in some of the gaps because the models of the spaces we run are quite similar and funded in similar ways. I suppose, you know - - -

PN1503

THE DEPUTY PRESIDENT: Sorry, just before you go ahead, just tell me a little bit about Gertrude.

PN1504

MS BURGESS: Yes. About Gertrude, absolutely.

PN1505

THE DEPUTY PRESIDENT: Yes.

PN1506

MS BURGESS: So Gertrude Contemporary is an incorporated association. We are funded primarily through Creative Australia, formerly the Australia Council for the Arts and Creative Victoria. So we get core multi-year funding through those organisations. We also fundraise and earn revenue through a variety of sources to supplement that. And with it, we present a kind of year-round program of contemporary art in our own two galleries. We also have – we also support artist study spaces. So we have 16 highly subsidised studios on our premises in Preston South.

PN1507

And so it's a site of both production and presentation of contemporary visual arts. And kind of all of the different things that that entails. You know, from painting to photography to sculpture to live performance. We supplement those programs with education opportunities and other opportunities for audiences to enrich their experience of visiting the gallery and viewing art. We commission writing around the art, we advocate for the sector, we work closely with our peers nationally – locally, nationally, internationally. We do a lot of things, all covered by the Amusements and Recreation Award. It would be so much easier if I was employing a golf (indistinct). Sorry, that's like my award joke and I'll leave it.

PN1508

But, you know, it is the bulk of my – I guess the bulk of my professional career has been in the visual arts. But I did have a little time when I dipped out and as a general manager in retail. And, you know, obviously the award for retail is very robust and, you know, really kind of covers, you know, the – it covers what the employees are doing and the functions of the business. So the award, you know, the kind of transparency that that offered us as an employer and the clarity it offered us as an employer I found to be, you know, really very useful in, you know, in not only negotiating working with my – with my management team but with the employees and with the business owners to ensure that there were very, you know, kind of clear structures in place.

PN1509

We do, well, we use the Amusements and Recreation Award as kind of a basis. I think, as it's quite clear, that most of the roles that we employ fall out of, like, kind of - the specificity of them fall out of – fall out of, you know, the kind of – the criteria and the job functions that sit with that in that award. We also do, well, we kind of try and benchmark different roles. We do, in all of our, kind of, I guess, full and part-time employee engagements, pay above the award rate. So, you know, while the award is that basis of minimum conditions, we've, you know, worked very hard to, you know, ensure, while we're not paying – while we're not paying at the same level as, like, a local government might be, we are, you know – we understand that, you know, that paying the best possible remuneration leads to having the best possible candidates and leads to retaining staff for longer periods of time as well.

PN1510

And while, you know, it's not fully satisfactory, it is, you know, it is, you know, I guess an aspiration for us to continue to improve on that. And we also use, I guess, you know, beyond the award as benchmarking, we use NAVA's kind of guidelines as well, of – because that helps, you know, bring it more back into the industry context of the types of roles that we're employing. So, you know, as far as my, kind of, you know, full-time engagements of staff, I'm the executive director, I work with a co-director who's our artistic director. You know, we both have considerable 20 plus years of professional experience. You know, within – and sector specific experience. We have really broad stakeholder networks that, you know, enable us to, you know, enable us to expand the reach of, you know, the programs that we're presenting with in the gallery. Which is, you know, there's a lot of intangible that comes with any kind of professional network.

PN1511

We also employ a curator. We employ a gallery manager – a gallery and education manager. You get lots of roles in especially smaller organisations that are, kind of, these (indistinct) roles. So, you know, like, the same person who runs our communications and kind of oversees the, like, day-to-day operations of the front of house spaces, also develops and delivers really specialised education programs, you know, as a gallery education manager. So you see – like, the nuance of these, you know, will be hard to capture in any award. But I think that we can get close, you know, I hope that, you know, by having that Arts and Cultures Award we can get closer to, kind of, the actual functions that people are, you know, that people are performing in these roles.

PN1512

Another, kind of, I guess, big thing for the not-for-profit sector in particular is on development and fundraising. And, you know – you know, myself, leading that for the organisation, you know, but I also have members of my team which contribute to development and fundraising. Which, again, is a very specialised – which is a very specialised skill. You know, asking people for money is never easy and, you know, the kind of networks and, kind of – that are necessary to be very good at that is, you know, is something that in, you know, major performing arts and stuff, attracts very large salaries. And, you know, in other types of not-for-profits like, you know, big, kind of, medical not-for-profits and stuff. So, you know, those are the kind of, sometimes, some of – for some of these more specialised roles, some of the sectors that we're competing with, and, you know, without having – we're often, kind of, (indistinct) and as Claire, I think alluded to, is work on this training ground for state galleries and museums and, you know, other kind of – other kind of, like, higher level and bigger organisations. And that's an important part of, I think, you know – it's an important part of the ecosystem.

PN1513

But having fair conditions, you know, within that and having, you know, employees working under – working under conditions in which they, you know, they're trained to, you know, not just expect the bare minimum but they understand that as, you know, employees, they are valued by their employer and that their skills are valuable. I think is, you know, a key – a key thing in having an award. Also, I think I'd like to speak briefly about how we engage artists, if that would be helpful – (indistinct) independent artists.

PN1514

THE DEPUTY PRESIDENT: Indeed. Yes.

PN1515

MS BURGESS: Because while I have, you know, a core team of six and a few casual employees which work on (indistinct) ad hoc basis, on a, like a rostered ad hoc basis. We probably, over the course of the year, would make payments to – and would - maybe 40 to 50 independent artists for their participations in our program at different levels. And some of those levels are major commissions and some of them are one-off speaking engagements. And so there's a really wide, like, range of how you would employ those people. And we also have specialist contractors like photographers who work with us on a regular basis, to come in and, you know, give us – and document our exhibitions.

PN1516

Now, within, I guess, in the case – I might just speak to you, because there's, you know, there's lots of different, kind of, agreements that come into place around engaging all of these people and it's complex on an administrative level. And I couldn't possibly explain it all now but for, you know, a major commission in the gallery, for instance, you know, we would start the conversation with an artist maybe 12 to 18 months out from the exhibition. We would offer them, you know, an artist fee as a professional fee. On top of that, a materials budget. Then, you know, all of the, kind of, professional support of, you know, the gallery, including the space, you know, there's a lot of in-kind support that sits around those

agreements as well. And professional support that sits around those agreements. But there are cash payments which are outlined in, you know, there's a schedule of deliverables and there's also a schedule of payments in a contract that I would give an artist for a new commission of work. But they are, kind of, set fees.

PN1517

Sometimes artists will – and I guess I acknowledge within that, that, you know, in those set fees I would also say that we do pay superannuation on the artist's fees. So, you know, even though they're contractors and they're invoicing us, I guess they're, kind of, for certain, we do have criteria in which we deem people employees for the purposes of, you know, contractors treated as employees for the purposes of a type of service that they're delivering.

PN1518

THE DEPUTY PRESIDENT: Yes.

PN1519

MS BURGESS: So, and, you know, a lot of, you know, that is something that shifted in the sector quite significantly. And I think in, you know, what would be deemed a small to medium sector, which both Gertrude and ACCA sit in, you know, those are – we've worked very closely with NAVA over, you know, decades, really. But particularly, I think, in the last five to 10 years, over – over formalising some of the standards and, you know, getting to this point where we're sitting in this room and having a conversation about what an award would look like for artists.

PN1520

THE DEPUTY PRESIDENT: Yes.

PN1521

MS BURGESS: And, you know, we've been doing a lot of things as best practice in order to prepare our organisation, prepare the funding bodies, prepare a lot of different, you know, it's a big – it is a big shift. Because, you know, in, I think, in some of my very early roles in the arts, it was very, you know, ad hoc, how artists would be paid. But now, I think, you know, for us, we tried to lead by example, of how we remunerate – of how we remunerate artists.

PN1522

THE DEPUTY PRESIDENT: And just interjecting on that point.

PN1523

MS BURGESS: Yes.

PN1524

THE DEPUTY PRESIDENT: In circumstances where, in your experience, the artists are engaged in this way as contracted, under the various arrangements and schedules for payment that you've spoken briefly to; how is it that an award would cure or resolve any of those informalities in circumstances where the award system does not apply to non-employees?

PN1525

MS BURGESS: Yes. To non-employees. I think that's a really – I don't know how the award would interject in that way. But I think potentially, just on a conditions level, like, rather than on a, you know, rather than, kind of, I guess, yes, providing guidance of what we pay, provide maybe some guidance on how we pay and things like which services attracts superannuation and that kind of stuff would be, I think, really helpful as a sector, to have formalised. As, you know, someone who works – who has quite a big group of artist stakeholders that are very close to my organisation and I have a lot of, kind of, you know, professional relationships over time, where they, you know, come to me for advice about, you know, their kind of relationships with other organisations or other, you know, as artists. You know, it's very inconsistent and it's very confusing for artists, you know, what they should expect when they're engaged by an organisation. So I think having, you know - and I don't know if the award can cover that, like I don't know if that's in the scope of the award - you know, is covering, you know, in some way what minimum standards for contractors would look like.

PN1526

THE DEPUTY PRESIDENT: No, the award system applies for all employees only.

PN1527

MS BURGESS: Yes. It's all the employees. Yes.

PN1528

THE DEPUTY PRESIDENT: That's right, and so in those circumstances, if the focus of your submissions today then goes back to the initial category of employees that you were talking about, and the manner in which you engage the six employees plus casuals that you have, would you like to speak to the experiences that you feel cause some difficulties for your organisation or other experiences you might have in relation to using the Amusement, Events and Recreation Award for the purposes of engaging those employees?

PN1529

MS BURGESS: I think really that the award just becomes something that like sits on a very low level for us. It provides us very little guidance of how we engage employees. You know, we have our own kind of employment contracts. We look to the award for guidance on what a minimum pay would be, but, you know, often just use that as a - use that as a benchmark and then - but it's not very, I guess it's not very helpful, well, for employees in understanding how we have - how we have assigned remuneration to a specific - to a specific role. There's kind of not much that they can refer to in helping them to understand, you know, why it is.

PN1530

It becomes very arbitrary in a way and, you know, a lot of times it's simply, you know, you have got a minimum from the award that you have kind of loosely collated. You have got a suggestion from NAVA which is based on kind of aggregated sector data, and then you have got what you can afford to pay them, and like these things kind of triangulate in having some, you know - and that's

based on kind of funding and, you know, having - working within a fairly fixed budget.

PN1531

So I think, you know, having some minimum standards set by the government I think could, for us, help with our advocacy, to like help with our advocacy to our funding, to the funding bodies and to, you know, I guess actually create further steps in, you know, these changes and professionalisation of the arts and crafts of the sector that we have spoken to.

PN1532

THE DEPUTY PRESIDENT: And in circumstances where the award, where the Amusement Award does provide minimum standards, albeit in your view in a general sense, in order to assist you with those endeavours, such as advocating to the funding bodies, or providing the employees with greater certainty, how would you see that achieved in the Amusement Award? Would it need to be varied in some way or what is it that you would have in mind as a proposal for curing those issues that you speak about?

PN1533

MS BURGESS: I think maybe just having more specific reference to the sector, whether it's the gallery and museum sector, or somehow pointing out, you know, somehow pointing out the specificity of some of these, you know, as we have spoken about, like a curatorial role is, you know, an artistic role, and you know, some - some organisations do employ artists, but mine does not. Some organisations do employ artists as artists. I mean we all kind of employ artists, but we employ artists as employees often for - in administrative roles, but employing artists as artists, I think having some guidelines for that, you know, will help set standards as well for organisations who are employing artists as contractors.

PN1534

THE DEPUTY PRESIDENT: Okay.

PN1535

MS BURGESS: Yes.

PN1536

THE DEPUTY PRESIDENT: So just unpacking that a little. In terms of the scope of the Amusement Award, it does, of course, already refer within its scope at 4.2 to museums and galleries specifically.

PN1537

MS BURGESS: Yes.

PN1538

THE DEPUTY PRESIDENT: So that sort of captures the first point you made about a more specific reference - - -

PN1539

MS BURGESS: Yes.

PN1540

THE DEPUTY PRESIDENT: - - - to museums and galleries. So is it that your focus is more upon some more specific explanation or terms or classifications within the classification schedule of the document to provide greater clarity or is it something else?

PN1541

MS BURGESS: I think that there's so much to unpack in the arts and cultural sector as a professional sector that it is something else. We could specify that Amusement Award, but I still think that, you know, within that, like you will still have, you know, organisations delivering similar services using a variety of awards, and I think that having unification of a very clear award, you know, as we have spoken about, some people using the Miscellaneous or some people using the Clerks Award. Some organisations are using several different awards, but having a singular award that covered the sector would, you know, often - you know, we are working with small organisations that don't have a lot of external resources or the capacity to, you know, constantly be receiving HR and legal advice.

PN1542

You know, having just that one point of - that one point of reference would, you know, I think be a great aid to us as far as, you know, creating that transparency and kind of cohesion within the sector through these payments standards.

PN1543

THE DEPUTY PRESIDENT: I see.

PN1544

MS BURGESS: Yes.

PN1545

THE DEPUTY PRESIDENT: So what you would be advocating for is not some sort of evolution of the Amusement Award, but rather, maintaining that a singular award for the industry - - -

PN1546

MS BURGESS: Yes. Correct.

PN1547

THE DEPUTY PRESIDENT: - - - is what would be required in your view?

PN1548

MS BURGESS: Yes.

PN1549

THE DEPUTY PRESIDENT: Okay.

PN1550

MS BURGESS: To, yes, just to, I guess, give us kind of, yes, greater cohesion and transparency so that, you know, employees are, you know, nowhere - for

employers and employees I think is, you know, a really interesting or a really useful composition and tool.

PN1551

THE DEPUTY PRESIDENT: Tell me about how you engage curators.

PN1552

MS BURGESS: So we have two curatorial roles on our staff. So they're engaged as one of them is an artistic director and the other one, I mean we do look, I think, more to - more to the guidelines, like as we engage, because we engage them as employees, like we have full-time. We have full-time curators on staff.

PN1553

THE DEPUTY PRESIDENT: Yes.

PN1554

MS BURGESS: In certain instances we do employ independent curators for the delivery of specific projects.

PN1555

THE DEPUTY PRESIDENT: And how do you engage them? Is it a fixed term employment contract or something different?

PN1556

MS BURGESS: In the same way that we would commission an artist.

PN1557

THE DEPUTY PRESIDENT: As a contractor?

PN1558

MS BURGESS: Yes, as a contractor with a - with a set fee. With a set fee schedule.

PN1559

THE DEPUTY PRESIDENT: Based on a project?

PN1560

MS BURGESS: Yes, based on the project.

PN1561

THE DEPUTY PRESIDENT: So just leaving aside those that you engage as a contractor for the delivery of a project, and the category that you engage largely is artistic director.

PN1562

MS BURGESS: Yes.

PN1563

THE DEPUTY PRESIDENT: You said that you look more towards NAVA's guidelines for that?

PN1564

MS BURGESS: Yes.

PN1565

THE DEPUTY PRESIDENT: Is that because you form the view that they are so senior that they fall outside of the award or is there some other reason why you focus more on NAVA's code as opposed to the Amusement Award for that category of employee?

PN1566

MS BURGESS: I think that they are so senior that they fall outside of the award.

PN1567

THE DEPUTY PRESIDENT: All right.

PN1568

MS BURGESS: Yes.

PN1569

THE DEPUTY PRESIDENT: And then tell me a little bit about the gallery manager, appreciating that what you said was that these employees tend to perform a real variety of duties.

PN1570

MS BURGESS: Yes.

PN1571

THE DEPUTY PRESIDENT: And sometimes the gallery manager might perform lots of different tasks, but if we just refer to the gallery manager for a moment. How do you typically engage those?

PN1572

MS BURGESS: So the gallery manager is engaged as a full-time employee.

PN1573

THE DEPUTY PRESIDENT: Yes.

PN1574

MS BURGESS: And while we use the Arts and Amusement Award as a base, they're engaged above award rate.

PN1575

THE DEPUTY PRESIDENT: And when you're applying the rate for those employees - and appreciating that you typically pay higher - can you speak to the level that you typically align those employees to under the award?

PN1576

MS BURGESS: Yes. Let me just - I just pulled up my breakdown and it doesn't have the levels, but - - -

PN1577

THE DEPUTY PRESIDENT: Does it have the rate? Well, I suppose it's a higher rate.

PN1578

MS BURGESS: Yes, and we're engaging them on a, like on a salary basis.

PN1579

THE DEPUTY PRESIDENT: Yes.

PN1580

MS BURGESS: On a salary basis.

PN1581

THE DEPUTY PRESIDENT: Yes.

PN1582

MS BURGESS: So it's a higher rate. Let me just pull – and I am just going to briefly get to the award, but I think I kind of got to the point with the award that, you know, even when you get to the highest level of all, like because it's eight.

PN1583

THE DEPUTY PRESIDENT: Eight.

PN1584

MS BURGESS: Yes. It's like, you know, I would consider, you know, most, like some of the more junior roles in my organisation I, you know, I kind of create at level, at that level 7.

PN1585

THE DEPUTY PRESIDENT: Yes.

PN1586

MS BURGESS: But then everything else falls above that.

PN1587

THE DEPUTY PRESIDENT: Yes.

PN1588

MS BURGESS: You know, you're typically dealing with people who have, you know, full university qualifications.

PN1589

THE DEPUTY PRESIDENT: Yes.

PN1590

MS BURGESS: In some cases at PhD level, you know, and it's, you know, significant other kind of work experience. So while, you know, I think that, you know, something that's probably missing from that Amusement Award is that it's very vocational and while these are more professional - like these are more professional roles.

PN1591

THE DEPUTY PRESIDENT: Yes. So is that your experience generally that you typically go to level 7 and 8 - - -

PN1592

MS BURGESS: Yes.

PN1593

THE DEPUTY PRESIDENT: - - - under the Amusement Award to set your minimum benchmark for rates?

PN1594

MS BURGESS: Yes. That's kind of where - where I go within the award and then, you know, things like, you know, like executive director and artistic director just fall purely outside of that.

PN1595

THE DEPUTY PRESIDENT: Outside?

PN1596

MS BURGESS: Fall purely outside of that, but you know, I want to ensure that, yes, that's 7 and 8. We do, with our casual staff, even like our weekend kind of casual staff I think I have got them at level 3.

PN1597

THE DEPUTY PRESIDENT: Yes.

PN1598

MS BURGESS: And then pay slightly above, like and then pay slightly above that, and I think those are the roles that fall a little bit more neatly within, you know, someone who is purely doing kind of house services.

PN1599

THE DEPUTY PRESIDENT: Yes. Grade 3 is very broad.

PN1600

MS BURGESS: Yes. It's very. I think that's why I - - -

PN1601

THE DEPUTY PRESIDENT: It captures a lot.

PN1602

MS BURGESS: Yes, it has captured a lot.

PN1603

THE DEPUTY PRESIDENT: Yes.

PN1604

MS BURGESS: And, you know, because these people are often working independently, you know, with - it's a small gallery. Only one person needs to be there on the weekend to open it, for example, on a Sunday or something.

PN1605

THE DEPUTY PRESIDENT: So is that what they're doing sometimes, opening and closing?

PN1606

MS BURGESS: Yes, opening and closing.

PN1607

THE DEPUTY PRESIDENT: And in the front of house?

PN1608

MS BURGESS: Yes, with very specific kind of instructions and just general audience. Then it's very general audience engagement.

PN1609

THE DEPUTY PRESIDENT: Yes.

PN1610

MS BURGESS: Sometimes, you know, these people are ongoing employees. So sometimes they have, you know, small administrative tasks that are completed, which is kind of, you know, compiling data for reporting from the week and stuff, but it's, you know, nothing kind of beyond data entry, you know, and yes.

PN1611

THE DEPUTY PRESIDENT: And what about that aspect of 4.4(j) which talks to the erection or dismantling of structures? Do you ever use that component of grade 3 for employees?

PN1612

MS BURGESS: For the dismantling? For like the - I'm sorry, I'm just - which? Are you in the schedule?

PN1613

THE DEPUTY PRESIDENT: I am. I am in the schedule and I'm at Schedule A – Classification Structure, Grade 3, clause 4.4, which talks about the general skills and duties that might be required, and my interest was in relation to (j).

PN1614

MS BURGESS: Is in (j).

PN1615

THE DEPUTY PRESIDENT: Do you ever rely upon that?

PN1616

MS BURGESS: Look, we - I don't, because someone that we would employ to do that, like we have a full-time. I guess one of our - one of our staff, one of our full-time staff whose level, who I rate at level 7, is our kind of exhibitions coordinator.

PN1617

THE DEPUTY PRESIDENT: Yes.

PN1618

MS BURGESS: So is in charge - and studios coordinator - so kind of oversees the, you know, oversees the planning and delivery of exhibitions which sometimes can include types of, like as Claire spoke to earlier, the installation of different audiovisual equipment.

PN1619

THE DEPUTY PRESIDENT: Yes.

PN1620

MS BURGESS: Structural modifications to the space and other kind of, you know, rigging and stuff to the mix.

PN1621

THE DEPUTY PRESIDENT: Yes.

PN1622

MS BURGESS: So primarily the person who is responsible for that is graded at level 7. We do, from time to time, also engage people to come in to do kind of like specialist building, but they're more, because that's often like carpentry and stuff, we employ - I believe the rate - the rate that we pay is well above, you know, because they are only coming in on an ad hoc basis as well, the rate that we pay is well above the level.

PN1623

THE DEPUTY PRESIDENT: I see.

PN1624

MS BURGESS: It would be level 3. They are being supervised by that person at level 7 when they're onsite. They're in to do a very specific task and they're paid a rate, I think it's about like \$45 or \$50 an hour plus superannuation because we're requiring them to be onsite. So for, even though it's they are invoicing us for their services, we're not paying them as a PAYG employee - - -

PN1625

THE DEPUTY PRESIDENT: Yes.

PN1626

MS BURGESS: - - - or do they have any kind of ongoing employment contract with us. We do pay superannuation - - -

PN1627

THE DEPUTY PRESIDENT: I see.

PN1628

MS BURGESS: - - - because they're deemed employees for the time that they are there, but yes, we do, I mean like that type of work is actually far more, you know, it's very highly skilled.

PN1629

THE DEPUTY PRESIDENT: Yes.

PN1630

MS BURGESS: And if someone was a carpenter, you know, I do have a carpenter who I need to use from time to time who is a, you know, like a trained kind of tradesman and that's like \$700 a day. So it's a whole other, you know.

PN1631

THE DEPUTY PRESIDENT: Yes.

PN1632

MS BURGESS: Like, you know, he gets to name it. It's interesting because for everyone else we set the price, but then a person like a carpenter comes in and they name their prices.

PN1633

THE DEPUTY PRESIDENT: Yes. I understand. Look, that's helpful. So grade 3 sort of sets the duties for the erection and dismantling, but for your purpose you would typically use level 7 because you recognise that the person that's in that role as an exhibition coordinator or something similar is responsible or accountable for that work output, and that's something that's acknowledged in grade 7 of the award.

PN1634

MS BURGESS: Yes. They do planning and they supervise all of those kind of things.

PN1635

THE DEPUTY PRESIDENT: Yes. All right. That's helpful to know. So we have spoken then about the curator and the gallery manager. We haven't spoken specifically about the gallery education manager, but is that very different to - - -

PN1636

MS BURGESS: I mean it kind of sits - it's a funny one because it doesn't even, in my notes that I have - above, like you know, it doesn't even fit neatly into the categories that, you know, our industry advice kind of give us. So you know, the education, the gallery and education manager, you know, I employ them at level 8, but pay them above the award.

PN1637

THE DEPUTY PRESIDENT: Okay, and finally, I think you referred to the requirement for perhaps many members of your team contributing to development and fundraising duties. So how do you approach that? Do you just simply incorporate that as an additional duty into the roles of some of your senior employees or is there a specific role that you employ for that work?

PN1638

MS BURGESS: I mean it's largely my responsibility as the executive director.

PN1639

THE DEPUTY PRESIDENT: Yes. I see.

PN1640

MS BURGESS: In, I guess, in collaboration with my board or with the organisation's board, but I do have an employee who their job title is Engagement Coordinator.

PN1641

THE DEPUTY PRESIDENT: Yes.

PN1642

MS BURGESS: So that - that, I guess, covers both. It covers a broad range of kind of like, you know, front of house and different stakeholder engagement, you know, on the day-to-day basis.

PN1643

THE DEPUTY PRESIDENT: Yes.

PN1644

MS BURGESS: They sit at front of house. They support me in and the artistic director and the board in the administration of the fundraising and also some of the kind of, you know, planning and rollout of it, but it's not - you know, we have tried to - we have tried to recruit for more specialised kind of development roles in the past, and just simply like what we can pay for the skills that are required and what the market kind of sets, it just doesn't - - -

PN1645

THE DEPUTY PRESIDENT: Yes. I see.

PN1646

MS BURGESS: They don't align.

PN1647

THE DEPUTY PRESIDENT: Yes.

PN1648

MS BURGESS: So it falls. You know, just because of the scale of the organisation it primarily then falls, but you know, we do raise about - we raise about 20 to 30 per cent of our annual turnover through different initiatives of fundraising and income diversification. So you know, I guess everyone has, in a not-for-profit, everyone has some degree of fundraising. Everyone contributes to fundraising in some way, but there are roles which it's more explicit. Yes.

PN1649

THE DEPUTY PRESIDENT: And so how do you typically engage someone like the Engagement Coordinator? There's a real variety of duties that you have just mentioned.

PN1650

MS BURGESS: Yes.

PN1651

THE DEPUTY PRESIDENT: Do you allocate them to a grade under the award?

PN1652

MS BURGESS: Well, like I said, I don't, like they have - these roles have specific, well, position descriptions and we use the - I use the award as kind of a minimum guidance.

PN1653

THE DEPUTY PRESIDENT: Yes.

PN1654

MS BURGESS: But I don't - but it's not kind of referenced. It kind of sits underneath. It's kind of invisible within the employment agreement, like because they're employed above.

PN1655

THE DEPUTY PRESIDENT: Yes.

PN1656

MS BURGESS: Because they are paid above the award. So it doesn't, yes, it's not - the only place where it's really directly applied is in those casuals. In those casual roles is where it's most directly, I would say it's most directly applied, and other roles it's part of my kind of, like, you know, it's part of the framework that we use in consultation with, I guess, you know, other industry kind of benchmarking. Pure. Pure networks, like you know, sometimes if I'm trying to benchmark a new role I might even call other organisations and try and get an idea of, you know, what their kind of pay range is for that, if I'm having trouble kind of allocating it within our structure.

PN1657

THE DEPUTY PRESIDENT: Okay. That's very helpful. Is there anything else that you wanted to share?

PN1658

MS BURGESS: I don't think so. No. Thank you for, I think, for taking the time and I'm glad to see that this has progressed to this point.

PN1659

THE DEPUTY PRESIDENT: Of course. Yes. Thank you.

PN1660

MS BURGESS: Thank you, and for having us in today as well.

PN1661

THE DEPUTY PRESIDENT: Ms Richardson, I'm interested in what you're able to contribute to the discussion. I am conscious that Ms Thornton-Smith, Ms Watson and also you, Ms Burgess, had indicated some time restrictions. If it is the case that you're able to stay and ask any questions or any further matters that you would like to raise in response to the issues that we have heard, then I welcome you staying, but if it is the case that you do need to leave, you're permitted to be excused. So that's a matter for you. Thank you.

PN1662

MS WATSON: Okay. Thank you very much.

PN1663

THE DEPUTY PRESIDENT: I would also like to recognise that Ms Robertson has arrived. Ms Robertson, welcome. Thank you.

PN1664

Ms Richardson.

PN1665

MS RICHARDSON: Yes.

PN1666

THE DEPUTY PRESIDENT: What is it that you would like to contribute to the discussion today?

PN1667

MS RICHARDSON: I would like to, I guess, introduce ACCA, so the Australian Centre for Contemporary Art, that I'm the executive director of currently, but I have also worked in the industry, much like my colleagues. I have actually worked across the commercial gallery industry, artist run spaces, also state agency and local governments.

PN1668

THE DEPUTY PRESIDENT: All right.

PN1669

MS RICHARDSON: So I have quite a background in those areas, but would also, I think, just like to, first and foremost, note our support of NAVA's submissions and Penelope's submissions for a singular award to cover arts and culture or visual arts and craft and can speak to a little bit about our reasoning behind that support.

PN1670

Also, I can also speak to, we have recently put in place an enterprise bargaining agreement at the Australian Centre for Contemporary Art, so I can also talk to that and how that might differ from the award and the process of that.

PN1671

THE DEPUTY PRESIDENT: Thank you.

PN1672

MS RICHARDSON: But I guess to just introduce ACCA for context. So we are a contemporary art space in Melbourne. We have been going for 40 years and we really see ourselves as a platform for artists and creatives in the industry, and so I think we can talk to, as well, just how we engage those workers and professionals, and also I guess the breadth of our scope of work, which is something that I think echoes what we have heard today as well because I think the current award, at the moment, we tend to refer to the Amusement, Recreation and Events Award. It can't really, yes, cover I guess the breadth of the industry.

PN1673

Also the different levels that we have spoken about, so the small to medium sector, ACCA is one of the larger organisations in the small to medium sector and we are a company limited by guarantee and do receive our majority of funding, much like Gertrude, through multiyear grants, through Creative Australia, state government and also local, and within that we do primarily exhibit contemporary art, but we also commission contemporary artists to create work.

PN1674

We also have a publishing platform, so produce books and also publishing online. We have a range of public programs and events. We also have an education program, and also a stream for earned revenue, so an art consultancy program as well, and I guess so not only talking about, I guess, the breadth of the industry itself, but also just within singular organisations, I think the breadth of scope of productions and scope of output means that it's very difficult to apply a singular award to even just one organisation.

PN1675

So I think that, that idea of a singular award would be really helpful, both as we have spoken about in terms of transparency, but also consistency, and also just to ensure that we, in seeking to maintain best practice, can really navigate the different legislations, the different awards and the different minimum entitlements as well.

PN1676

I think too, to Tracy's point, just in terms of the individual roles can also have quite broad scope and so it's sometimes quite difficult to even put individual roles within a - within an agreement. Within an award; I'm sorry.

PN1677

So we do refer to the NAVA code of practice benchmarking first and foremost, and we also at ACCA, so we have a core team of part-time and full-time staff which range from artistic and academic staff, as well as administrative. We also have, for example, development and fundraising, you know, marketing and media, and then we also have our educators, artistic staff, so curators, and then we also have, I guess, more administrative operations, finance coordinators and those kinds of roles as well.

PN1678

We also have a bookshop and so retail operations, so retail staff as well, and then in terms of our enterprise bargaining agreement, that has been developed to cover those employees in grade 1 to 5 of the Amusement, Events and Recreation Award. Now, we have just started on 21 December so it's quite new.

PN1679

THE DEPUTY PRESIDENT: All right. I might just draw it up.

PN1680

MS RICHARDSON: Yes. Of course, and so that was the Australian Centre for Contemporary Art and the Media, Entertainment & Arts Alliance.

PN1681

THE DEPUTY PRESIDENT: I might have a look at that later.

PN1682

MS RICHARDSON: Yes. Of course. So we, ACCA, initiated bargaining in December 2022 and so we're really pleased that after working with delegates and MEAA across this past year we were able to wrap it up by the end of the year and it was, fortunately, approved by the Fair Work Commission, but that, in terms of ACCA's staff or team, it tends to, whilst it does kind of make, I guess, outlines for

part-time, full-time and casual staff, it really just covers our casual team at the moment, so front of house because they're an experienced team, our artist educators that are casual and it doesn't cover any exhibition staff. So it's just non-exhibition staff.

PN1683

So I think that's an important clarification as well because I think, at the moment, the current award, it doesn't often cover artistic or academic specialties so we too pay for a lot of our other awards - I'm sorry, roles well above the award. So I think the majority of our other roles would be grade 10 or above in terms of remuneration, but also just in specialisation.

PN1684

It doesn't really outline, I think as Tracy said, it's more kind of vocational. So when it refers to museums and galleries, it tends to, I think, be applicable more for those front of house roles, more for the functioning of the gallery itself, but less about the production and artistic and academic functions of the gallery, the museum and gallery centre as well, and we also engage generally as contractors and curators as contractors as well.

PN1685

We, too, pay - we engage in over a range of services, whether it's artists' talks or presentation. They might do a video for us. They might exhibit with us. Commission them to create works, and we also, through our consultancy, I think navigate and advocate for artists in terms of their work with other entities as well.

PN1686

So in terms of, I guess, the breadth of the industry, I think I have seen a lot of disparity over the past years, even just in terms of the type of art that is produced. So, for example, artists with potentially, you know, that might consider themselves more an architectural background or design which have, I guess, clear professionalisation will be able to seek much higher remuneration than a visual arts or craft artist, for example, and that also goes to the consultancy point because we often consult on terms of public art or development, and so there's, of course, a lot more money available and we try and advocate as best we can for artists to get the best remuneration possible in those contexts.

PN1687

The same I think for art, an educator, which Ms Thornton-Smith spoke to a little bit. So in terms of our educators, they often do have a teaching background and so whilst we would absolutely love to be able to pay appropriately and perhaps look to the education sector to benchmark, it can be very difficult to, within the confines of our organisation, because it would mean that those roles which might, in terms of our organisation, might be not as senior as some management roles or executive roles, but if we were to benchmark it against the education sector they would be remunerated much, much higher than other roles. So I think it's the, I guess complexities of our industry would benefit from that singular award so that there's that opportunity to unpack these areas.

PN1688

THE DEPUTY PRESIDENT: And in your agreement I just had a look at educators just as you were speaking.

PN1689

MS RICHARDSON: Yes.

PN1690

THE DEPUTY PRESIDENT: And you align those. You call those grade 3 employees.

PN1691

MS RICHARDSON: Yes.

PN1692

THE DEPUTY PRESIDENT: And you align grade 3 employees to grade 5 - - -

PN1693

MS RICHARDSON: Correct.

PN1694

THE DEPUTY PRESIDENT: - - - under the award?

PN1695

MS RICHARDSON: Yes.

PN1696

THE DEPUTY PRESIDENT: And it looks like, currently, full-time and part-time employees are receiving a base hourly rate of \$31 an hour for that work as a grade 3 employee under your agreement.

PN1697

MS RICHARDSON: Yes, I believe so, and so that is also - our educators were paid above the award, above grade 5 of the award, but we just used that as a, I guess as a minimum standard as well. We also engage technicians as casuals.

PN1698

THE DEPUTY PRESIDENT: Yes.

PN1699

MS RICHARDSON: And whilst, again, we use the award as kind of a minimum standard and to manage breaks and overtime and those kind of entitlements, we do also pay technicians above the award, and they are not covered by our EBA because they are exhibition employees.

PN1700

THE DEPUTY PRESIDENT: Yes.

PN1701

MS RICHARDSON: But I think their, again, scope of work and skills and specialisation probably isn't very - doesn't fit very neatly under the award. Even though the award does refer to exhibitions, it is a little bit more about, yes, installing structures as though it might be a trade fair, rather than the installation

of artworks, so audiovisual, rigging, that can require different art handling and conservation.

PN1702

THE DEPUTY PRESIDENT: And so because there is that handling component, is that why you draw the distinction between rigging and technician related duties associated with art fairs and for those associated with exhibitions?

PN1703

MS RICHARDSON: Yes.

PN1704

THE DEPUTY PRESIDENT: Is that the fundamental distinction?

PN1705

MS RICHARDSON: Yes, and I think working with artists quite closely as well, because we do work with obviously living artists, contemporary artists, so our technicians will often be onsite with artists and helping them with our other staff as well to realise their installations and their exhibitions and working with the curators.

PN1706

So I guess the trade fair seems to be a little bit more of a kind of plug-and-play, you know, this is, 'This is the set-up. Install it', whereas our technicians have a lot more involvement in terms of how that's done and how those installations are realised.

PN1707

THE DEPUTY PRESIDENT: And so, in your view, the additional involvement that the installers have with the artist gives rise to a basis to differentiate their work from the work of a rigger more generally who is performing installing work?

PN1708

MS RICHARDSON: That's right, and we also contract specialised services. So if we do need, for example, rigging - I'm sorry. My apologies. That's probably not a great example to use because we do engage professional riggers and builders and things like that.

PN1709

THE DEPUTY PRESIDENT: Yes.

PN1710

MS RICHARDSON: That would be more a, 'This is what we want installed. Please do it.'

PN1711

THE DEPUTY PRESIDENT: 'Build it for us'?

PN1712

MS RICHARDSON: 'Build it for us.'

PN1713

THE DEPUTY PRESIDENT: And then allow these technicians to come along and exhibit the artistic work.

PN1714

MS RICHARDSON: And allowing artists. So, 'Build it for us.' So it's more, it's very much more of a contractor relationship and also carpentry, you know, specialised service in that way, but there's nothing, I guess, creative or consultative about that. It's more about, 'Realise this particular scope of works for us. Quote for it. Please do that', whereas the technician, in working with our team, the curators and the artists, do have a little - do require a bit more specialist knowledge and also experience in realising the different artworks and shifting and changing things and working with the team to be a bit more responsive, I think, to what's required.

PN1715

MS BENSON: Also problem-solving.

PN1716

MS RICHARDSON: Problem-solving. That's a good point. Yes. Definitely.

PN1717

MS BENSON: And (indistinct) the installer.

PN1718

MS RICHARDSON: Yes. Absolutely. Yes.

PN1719

THE DEPUTY PRESIDENT: And your reference to the award really contemplating work akin to the sort of rigging or dismantling or installing work required at a trade fair, is it because the grade 3 of the award, at 4.4(j), just refers generally to erecting or dismantling work, or is there something else in the award that you can take me to that's informed your view?

PN1720

MS RICHARDSON: That's probably the main area.

PN1721

THE DEPUTY PRESIDENT: Yes.

PN1722

MS RICHARDSON: Yes.

PN1723

THE DEPUTY PRESIDENT: It's the general nature of something like 4.4(j) where it explains that installation and dismantling work?

PN1724

MS RICHARDSON: Yes, and also the definition, I think, of 'exhibition employees' which means:

PN1725

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.

PN1726

So I think the award's definition of an exhibition is quite different to how we, in the arts industry, would define an exhibition as well.

PN1727

THE DEPUTY PRESIDENT: I see. That definitions says 'for the trades and public promotions industry'.

PN1728

MS RICHARDSON: That's right, and it talks specifically about exhibition stands which seems very specific.

PN1729

THE DEPUTY PRESIDENT: Yes. Thank you. Please continue.

PN1730

MS RICHARDSON: I'm just looking through my notes. I think in terms of the enterprise bargaining agreement as well, so it does - the roles that it does cover did fit a little more neatly under the Amusement, Events and Recreation Award.

PN1731

So it was things like our front of house team. Our retail, who also might invigilate an exhibition space. They will welcome visitors. They will open and close the gallery. They will work or sell things from the book shop. Also, event staff. So bar staff then hire staff as well, and then coordinator level as well. So that's the grade 2 of our new award is more of a coordinator level who do supervise other teams. So they might open and close the gallery on a weekend, for example, when the back of house staff aren't there.

PN1732

I think in terms of how our enterprise agreement differs from the award, I think the key areas were certainly that classification and also pay. So it is at least 5 per cent higher than the minimum award rates, plus 2.5 per cent increases each year.

PN1733

THE DEPUTY PRESIDENT: Yes.

PN1734

MS RICHARDSON: And actually the grade 3 in our award is higher still because of the educator roles.

PN1735

THE DEPUTY PRESIDENT: Yes.

PN1736

MS RICHARDSON: It has a bit more clarification about the classifications because in the schedule of pay it often refers to, you know, the golf pros or things like that which - so it wasn't really fit for purpose.

PN1737

THE DEPUTY PRESIDENT: Yes.

PN1738

MS RICHARDSON: And it was quite tricky to particularly determine which grade an employee might be in. Also, the standard hours and breaks has been elevated. So I guess there isn't a span of hours currently in the Amusement, Events and Recreation Award and so the span of hours helps with overtime entitlements.

PN1739

Breaks have been expanded in the enterprise agreement, so casual staff are entitled to 30-minute breaks and 15-minute breaks, depending on the shifts that they work, whereas under the award it was a 20-minute break from memory.

PN1740

They were also, the delegates, in negotiating the enterprise agreement, were particularly interested in opportunities to prioritise for ongoing employment. I think a lot of the arts industry tend to work on fixed term contracts based on funding a lot of the time, and so that clarity was certainly something which I think the Better Job, I think it is, the recent legislation in terms of not being able to roll over fixed term contracts will be very beneficial, but also they were very conscious of prioritising part-time and full-time work over casual work.

PN1741

So we have, in the enterprise agreement, an option or an opportunity to request flexible part-time and that's a new model that we devised because there wasn't any opportunities really for our front of house staff, in particular, to convert to part-time or full-time, the reason being that we, as a gallery, and a lot of smaller galleries also, need to close when we're changing over exhibitions. So it means that we're closed for upwards of 12 to 15 weeks a year.

PN1742

THE DEPUTY PRESIDENT: I see.

PN1743

MS RICHARDSON: And so there's no opportunity for front of house or visitor engagement staff during those times. So the new flexible part-time arrangement is - we developed as an opportunity to kind of convert existing casuals under those restrictions knowing that it will close for this amount of time. It was almost - it was looked to an annualised salary arrangement. That was also spoken about. So I think that desire for casuals to have an opportunity to move to part-time and fixed time - full-time employment was very much a driver for the enterprise bargaining as well.

PN1744

Also, opportunities for training and professional development which are not in the award as much, and I think, you know, Tracy and Claire both spoke to the idea that, particularly in the small to medium, we are seen to do a lot of the initial work and train people up and then they might go on to state agencies or local government or private sector development and things like that because I think just

the remuneration. We just can't compete with the remuneration. So it was really important to include commitments to training and professional development within that enterprise agreement as well.

PN1745

THE DEPUTY PRESIDENT: And in terms of your decision to exclude from the terms of the enterprise agreement the exhibition employees, what is it that you would say in response to the proposition that grade 4 of the Amusement Award does pick up an employee who is engaged as an exhibition technician?

PN1746

MS RICHARDSON: I think, as well, because we were paying above grade 4, because of that consideration that there are potentially more skills and expertise that we consider part of that role, that isn't reflected in the Amusement, Events and Recreation Award, and also that our exhibition technicians are paid, for example, it's, I think, 45 or 48, including casual loading. So around 40, so quite a bit higher than the front of house or visitor experienced staff. So I think it was also, just in terms of a structure, we weren't entirely sure where they - where they might fit.

PN1747

THE DEPUTY PRESIDENT: Okay.

PN1748

MS RICHARDSON: Also, it was the case that there weren't any members that represented that group of casual employees. It was just brought to us by members of our visitor experience team as well.

PN1749

THE DEPUTY PRESIDENT: Yes. Okay. So if I were to pose a question of you then about what you might consider, or the roles that you might consider fall into cracks and are not covered by the Amusement Award, would you be able to speak to the roles that are of priority issue to you?

PN1750

MS RICHARDSON: Yes. I think the majority are our other roles I must say, so unless it is about that kind of front of house or recreation or onsite role that can be a little bit more clearly defined. Our other roles in our organisation, for example, do have executive roles, so an artistic director and CEO, executive director and then also a director of development and marketing, in terms of one area.

PN1751

There's also curatorial roles, so a senior curator and two other curators that also are engagement roles, so a visitor experience manager who doesn't - we don't see to - again, we kind of see them falling above the award given the management level, and our education department as well. So artist educators and educators that have school groups, host school groups and engage with the Education Department as well.

PN1752

Then we also have an operations manager role, which certainly would be one role that might fall a little bit more clearly under the award, but we do pay above the award. Then there's also graphic design in terms of publications and publishing, and also we do have a contract accounts coordinator, so I guess finance, and then the more administrative roles as well, but certainly development and fundraising, media, and I guess it's to Tracy's point, that idea that a lot of roles, being quite small organisations, do - their scope is quite broad. It would mean that sometimes it's difficult to fit under just one - one award.

PN1753

THE DEPUTY PRESIDENT: Okay. So if I just work through those - - -

PN1754

MS RICHARDSON: Yes. Of course.

PN1755

THE DEPUTY PRESIDENT: - - - with you in a general sense. The first item was the artistic director, the CEO, executive director and director of development, for instance. Do you regard those roles to be sufficiently senior that they would not be covered by the Modern Award system?

PN1756

MS RICHARDSON: Some of them potentially. Certainly not by the Amusement, Events and Recreation Award, and then in terms of the Miscellaneous Award, I think my understanding was, yes, they don't fall under other awards and so we have gone to NAVA's code of practice and tend to use that.

PN1757

THE DEPUTY PRESIDENT: The reason I'm asking you is because section 143(7) of the Award identifies that there might be employees who are traditionally not covered by awards, and a modern award must not be expressed to cover classes of employees who, because of the nature or seniority of their role, have traditionally not been covered by the award system, Commonwealth or state level, and so I was just interested in understanding whether it was your view that these roles - artistic director, CEO, executive director and the like - fall through an award crack or if they're so sufficiently senior that it's not intended that they be captured by the Modern Award system at all?

PN1758

MS RICHARDSON: I think the later. So, I'm sorry, the former. So I think they do fall through. A lot of our roles I think do fall through the cracks with some of the awards.

PN1759

THE DEPUTY PRESIDENT: Okay. So you don't regard the CEO as sufficiently senior as to be excluded from the award system because that's obviously the top of the tree?

PN1760

MS RICHARDSON: Not to my knowledge. I don't think so. Yes. No, I don't.

PN1761

THE DEPUTY PRESIDENT: So in relation to all of those employee types that you have mentioned then - artistic director, CEO, executive director, director of development and then moving on to the curators, engagement roles, educators, operations manager, graphic design, accounts and finance, development and fundraising - is your position the same that they all fall within a gap and are not adequately covered by the current award system?

PN1762

MS RICHARDSON: Either within a gap or that they are - that the award that they would fall under they are above grade 10, for example, of the Amusement, Events and Recreation Award.

PN1763

THE DEPUTY PRESIDENT: And so if they're above grade 10 does that suggest that they're sufficiently senior that they ought not be covered by a modern award system in your view?

PN1764

MS RICHARDSON: I'm not as familiar with the Clerks Award and things like that, so I would need to take that on notice and have a look at those other awards as well.

PN1765

THE DEPUTY PRESIDENT: Okay.

PN1766

MS RICHARDSON: Yes.

PN1767

THE DEPUTY PRESIDENT: Look, that's fine. I think, for present purposes, I understand that you feel relatively comfortable that the onsite roles, so the front of house roles, and perhaps also the educator because that's contemplated by your enterprise agreement, are sufficiently covered by the Amusement Award because you have aligned them to that award for the purposes of benchmarking for the (indistinct), your enterprise agreement, but then any other roles that are used within the organisation potentially fall through an award gap because there's no sufficient coverage, in your view, for any of those?

PN1768

MS RICHARDSON: That's right.

PN1769

THE DEPUTY PRESIDENT: Okay.

PN1770

MS RICHARDSON: But also I think that would be - that's very much particularly the front of house and also the educator roles - that's very much based on our organisational loan, whereas I would suggest that across the sector I don't necessarily know that those roles would sufficiently be covered by the Amusement, Events and Recreation Award, as you know, individual artists or, yes

in the university sectors, in teaching sectors in particular, but also I think in terms of visitor experience and public engagement they are just - it's such a broad scope that I think would benefit from unpacking because I have no doubt that in a lot of other organisations, or in a lot of other instances, even those roles might be seen to kind of fall in the cracks.

PN1771

THE DEPUTY PRESIDENT: All right. Is there anything else that you wanted to speak to today?

PN1772

MS RICHARDSON: I think I have covered everything. Just that I would reiterate, I think, having a singular award in order to advocate for the professionalisation of the sector is - it would be very important, particularly things like the Live Performance Award is such a good example because it does really deal with that breadth and that complexity and the specificities of that industry, and I think having something like that for the visual arts and crafts would really benefit both the workers, but also the organisations and the employers that are trying to navigate things like superannuation legislation and different ways of engaging quite unique roles, and so I think just even in terms of guidance, even in terms of minimum standards and also transparency are all things that I think could benefit the industry greatly.

PN1773

I think NAVA's code of practice is fantastic in those regards because we can use that in terms of benchmarking, in terms of minimum standards, and it also helps with transparency, but I think it is just that, in terms of making it compulsory or, you know, a legislative requirement is important as well, I think, in those instances where, again, to support workers and artists so they also are aware of their entitlements because I think it's such a complex landscape that it can be very difficult for workers to navigate all of those different legislations and ensure that they are receiving their minimum entitlements.

PN1774

So I think just that idea of having a one, a capture all, so that you're not needing to, as an employer or as an employee, go to, you know, be an expert, I guess, in all of these areas or engage a HR consultant or a legal expert in order to help you navigate how you engage. It could be very, very beneficial for the professionalisation of our industry.

PN1775

THE DEPUTY PRESIDENT: Thank you for your submissions.

PN1776

Ms Benton, is there anything that you would like to add today?

PN1777

MS BENTON: Thank you. I would really just like to thank my colleagues here for their submissions and thank you for allocating the time to listen.

PN1778

THE DEPUTY PRESIDENT: Of course.

PN1779

MS BENTON: And take on board the various different ways that people are working and the very similar issues that they all have. Thank you.

PN1780

THE DEPUTY PRESIDENT: Thank you, Ms Benton.

PN1781

Ms Thornton-Smith, was there anything else that you would like to contribute having now heard from the other participants this morning?

PN1782

MS THORNTON-SMITH: One thing I forgot to say before that's just an example I thought of that NAVA might have already written about it. There is a gallery in Queensland called Home of the Arts and they, I don't know if it was a trial or a temporary thing.

PN1783

MS BENTON: They're going into their third year.

PN1784

MS THORNTON-SMITH: Third year. Yes. They essentially, I think they take on artists over six months.

PN1785

MS BENTON: Yes. We have mentioned it in our submissions.

PN1786

THE DEPUTY PRESIDENT: Yes. It is mentioned.

PN1787

MS THORNTON-SMITH: So I guess that just is like a kind of example of how theoretically artists are treated, like workers, like how it could function.

PN1788

THE DEPUTY PRESIDENT: Yes.

PN1789

MS THORNTON-SMITH: But even, I mean sometimes exhibitions are much shorter than that period, but even if it's, yes, artists with the model and somewhat taking them on fixed term contracts. So, yes, they get super and they get a minimum amount of pay. That's just something worth exploring.

PN1790

THE DEPUTY PRESIDENT: Thank you. I will give that consideration. Is there anything else that anybody else would like to contribute today? By anyone via Microsoft Teams or present in the courtroom this afternoon?

PN1791

Ms Simmons.

PN1792

MS SIMMONS: No. Thank you, deputy president.

PN1793

THE DEPUTY PRESIDENT: Thank you.

PN1794

Ms Minster.

PN1795

MS MINSTER: No, thanks, Deputy President.

PN1796

THE DEPUTY PRESIDENT: All right. Thank you very much for your attendance this morning. I really welcome the opportunity to hear from you. We will now adjourn for lunch, but before doing so I wanted to understand from you, Ms Benton, whether there were any particular matters that you would like to use the session this afternoon to explore, or whether there is other useful work or conversations that you would like to use the time for, such that a joint session may not be required this afternoon. Do you have a view?

PN1797

MS BENTON: I think I, in terms of this afternoon, I think I have some processing to do as to the conversations that we have had this week and what's been discussed this morning to consolidate some thinking for a further submission.

PN1798

THE DEPUTY PRESIDENT: Thank you.

PN1799

Ms Minster, I understand that you are working on the production of some supplementary written submissions which you had anticipated might arrive today for the purposes of oral submissions by you tomorrow, today end. Is there anything that you would like to use this afternoon's session to discuss?

PN1800

MS MINSTER: No, Deputy President. We will just be finishing off those submissions. They're almost finished now, so I imagine that I will send them to the Commission and file them this afternoon and send them to MEAA and Theatre Network Australia, and we would be - we would be ready tomorrow to speak to those submissions. It only really addresses three key points.

PN1801

THE DEPUTY PRESIDENT: Thank you. Well, that would be wonderful.

PN1802

Ms Simmons, is there anything that you sought to address in the session this afternoon, or consistent with perhaps the way things are appearing, that time this afternoon might be more appropriately spent doing some private work,

considering supplementary submissions and various positions before we return today or tomorrow?

PN1803

MS SIMMONS: Yes. I think that that's the case, Deputy President. Thank you.

PN1804

THE DEPUTY PRESIDENT: All right. Thank you very much. Well, on that basis, I propose that we adjourn until 10am tomorrow. Thank you everyone for your attendance. We're adjourned.

PN1805

MS MINSTER: I'm sorry, Deputy President.

PN1806

THE DEPUTY PRESIDENT: Yes, Ms Minster.

PN1807

MS MINSTER: I'm sorry. I know that we're adjourned, but does that mean, providing we file those submissions this afternoon, that we would be scheduled for tomorrow?

PN1808

THE DEPUTY PRESIDENT: Yes. On the basis that that is, as I understood, the correspondence that you had provided to the Commission which referred to being able to speak to those submissions on Thursday.

PN1809

MS MINSTER: Yes.

PN1810

THE DEPUTY PRESIDENT: Is my understanding accurate?

PN1811

MS MINSTER: Yes.

PN1812

THE DEPUTY PRESIDENT: I don't have the document or your email before me, but is that what you had intended?

PN1813

MS MINSTER: Yes, that's the intention.

PN1814

THE DEPUTY PRESIDENT: Yes. All right. So you're comfortable then appearing tomorrow to address the written submissions which you propose to file this afternoon?

PN1815

MS MINSTER: That's correct. Yes.

PN1816

THE DEPUTY PRESIDENT: Wonderful. All right.

PN1817

MS MINSTER: Okay. We will see you tomorrow.

PN1818

THE DEPUTY PRESIDENT: I think we're right, Ms Minster. We will see you then.

PN1819

MS MINSTER: Okay. Bye-bye.

PN1820

THE DEPUTY PRESIDENT: Thank you. Thank you, everyone. I appreciate your attendance and the contribution that you have made to this really important discussion.

ADJOURNED UNTIL THURSDAY, 25 JANUARY 2024

[12.24 PM]