



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

**DEPUTY PRESIDENT MILLHOUSE**

**AM2023/21**

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

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

**Melbourne**

**10.00 AM, TUESDAY, 23 JANUARY 2024**

**Continued from 22/01/2024**

PN596

THE DEPUTY PRESIDENT: Good morning. Please be seated.

PN597

MR KEMPPPI: Thank you.

PN598

MS BUCHANAN: Thank you.

PN599

THE DEPUTY PRESIDENT: Good morning to those present in the courtroom with me today and those that are appearing online. I'll start by taking the appearances for the purposes of the record. Mr Kemppi, you continue your appearance for the ACTU.

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MR KEMPPPI: Yes, thank you.

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THE DEPUTY PRESIDENT: And you're joined this morning by Ms Buchanan, who's representing Professionals Australia.

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MS BUCHANAN: Yes.

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THE DEPUTY PRESIDENT: Welcome. Thank you. I also understand, appearing by Microsoft Teams, Ms Angus continues her appearance for Screen Producers Australia.

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MS ANGUS: Thank you, your Honour.

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THE DEPUTY PRESIDENT: Good morning. And, Ms Simmons, you're appearing on behalf of ABI and Business New South Wales.

PN606

MS SIMMONS: That's correct. Thank you, Deputy President.

PN607

THE DEPUTY PRESIDENT: Thank you, and good morning. Parties, as foreshadowed yesterday afternoon, we had earmarked the consultation process this morning for speaking about an aspect of the joint submission of the ACTU, Professionals Australia and the Media, Entertainments and Arts Alliance, insofar as it concerns the proposed coverage gaps relating to employees that work in video gaming.

PN608

We're joined this morning by Ms Buchanan on behalf of Professionals Australia. I understand, Ms Buchanan that this aspect of the joint submission is

largely driven by the views that Professionals Australia has been able to elicit from its membership base, and we're hoping this morning that you might be able to speak to some of those issues and the basis for including this aspect of the submission in relation to this aspect of the Arts Culture review.

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MS BUCHANAN: Certainly. Thank you, Deputy President.

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THE DEPUTY PRESIDENT: Thank you.

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MS BUCHANAN: So I might just begin by refreshing ourselves about the classifications that we put forward in the submissions. So that is the designers, artists, animators, writers, audio workers, producers, in the video game development sector. It has been expressed that these roles may in fact be covered by the Professional Employees Award and I'd like to address that contention to start off with. I don't know if the Commission has a copy of Professional Employees Award in front of them.

PN612

THE DEPUTY PRESIDENT: I do not have a hard copy of that, but I can very readily draw one up, thank you.

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MS BUCHANAN: Yes. Great. I think if we go to clause 4 initially, with the coverage.

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THE DEPUTY PRESIDENT: Sorry, just give me one moment - - -

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MS BUCHANAN: Yes, of course.

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THE DEPUTY PRESIDENT: - - - just to draw that up.

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MS BUCHANAN: And this is really just for the purposes of understanding the contention that we are indicating needs to be a bit more fleshed out.

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THE DEPUTY PRESIDENT: Ms Angus?

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MS ANGUS: Yes, your Honour?

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THE DEPUTY PRESIDENT: I can hear a little bit of feedback - - -

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MS ANGUS: I'm sorry. I'll turn off - - -

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THE DEPUTY PRESIDENT: - - - and I suspect that it's coming from your line.

PN623

MS ANGUS: It is.

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THE DEPUTY PRESIDENT: Might I just invite you to pop your line - - -

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MS ANGUS: I'm on mute.

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THE DEPUTY PRESIDENT: Thank you very much.

PN627

MS ANGUS: Yes, apologies.

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THE DEPUTY PRESIDENT: It's much appreciated. All right. Thank you. I have a copy of the Professional Employees Award before me.

PN629

MS BUCHANAN: So clause 4.1(b), you'll see that that clause refers to employers throughout Australia principally engaged in the information technology industry, the quality auditing industry or the telecommunications services industry, and then it goes on to say, 'And their employees who are covered by the classifications in schedule A, classification structure and definitions.'

PN630

So we don't disagree that the Professional Employees Award covers the employers in the information technology industry, but it is limited to the classifications that are then set out in schedule A. If we go to schedule A, we'll see that there are - I've got that on page - it starts on my page 36, which is - - -

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THE DEPUTY PRESIDENT: I don't have page numbers on this electronic version.

PN632

MS BUCHANAN: Okay, yes.

PN633

THE DEPUTY PRESIDENT: Are you looking - - -

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MR KEMPPI: Schedule A.

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THE DEPUTY PRESIDENT: Yes.

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MS BUCHANAN: Schedule A. Correct.

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THE DEPUTY PRESIDENT: Schedule A. Yes, I have that before me, thank you.

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MS BUCHANAN: You'll see that under A.1.1 there's level 1. Graduate professional includes graduate engineer, graduate information technology employee and qualified scientist, and then it goes through to four levels. So there's a graduate professional. That's just the initial first few years of working. Then we go to level 2, experienced information technology employee, and then level 4 is simply described as 'professional'.

PN639

If we go back - apologies. It is necessary to jump around a bit here. If we go to clause 2, the definitions, there's a couple of definitions I'd like to take you to. Clause 2.3 sets out the information technology and telecommunication services stream, and this was referred to, I think, in one of the submissions, but when you go through each of those categories, when it comes to roles such as artists, writers, audio workers, and then we'll put animators in their own category and designers in their own category, and producers, it really depends on whether or not it can be argued that someone comes within 2.3(i), activities which are incidental, ancillary or complementary.

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THE DEPUTY PRESIDENT: That's 2.3(i).

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MS BUCHANAN: Yes. So if someone is simply writing a script contained of non-computer language but our sort of human language, then they won't be covered by this here unless it could be argued that it would. That is not traditionally covered, so we have many information technology comes where it's well established that our coverage will extend to those who perform IT duties but not to non-IT duties, even if it is in a supportive role towards the IT duties. Designers may, in certain circumstances, be covered by this award if you just look at this part of the definition, and arguably similar with animators.

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THE DEPUTY PRESIDENT: Would you pinpoint one of (viii)(i) for the purposes of the work performed by a designer?

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MS BUCHANAN: That's correct. It would most likely be - if it does come within it, it would come within 2.3(i), but this is where we need to then look at the meaning of experienced information technology employee which immediately follows.

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THE DEPUTY PRESIDENT: Just before we move on to that one, obviously (a), (b) and (c) talk about the design and manufacture of computers,

telecommunications equipment and computer software. Then we move on to the installation and maintenance, provision of computer related consultancy and program, and then a broader, perhaps, systems analysis services at (g), and then (h) talks about the design, development and maintenance of online Internet architecture and the facilitation of online content management. Do you have any views - question without notice, of course - about the sort of duties or roles that might readily fit into the provision of 2.3(h)?

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MS BUCHANAN: So most likely that is to cover your web designers, your web page designers and so on, and the more elaborate aspects of that. In terms of video games being part of the Internet, that can vary as to whether they're set up for that purpose.

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THE DEPUTY PRESIDENT: Right.

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MS BUCHANAN: But I would like to come back to you with more details on that question of how that - for example, who typically would come within that category.

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THE DEPUTY PRESIDENT: Yes, thank you.

PN649

MS BUCHANAN: This clause pre-dates the emergence of video development games, so that's the other thing to remember about it. It's being applied to an emerging sector.

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THE DEPUTY PRESIDENT: Yes.

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MR KEMPPI: If I may - - -

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THE DEPUTY PRESIDENT: Yes, Mr Kemppe?

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MR KEMPPI: I think it also pre-dates what video games are now. I mean, if you think back to the games of my age, we're talking about Pong and - - -

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MS BUCHANAN: Yes.

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MR KEMPPI: - - - you know, very little games with stick figures, effectively, running around. So I don't think that designers - if you look at modern video games, they look very realistic. I don't think the level of design that went into it was probably contemplated when this award was struck.

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MS BUCHANAN: Yes. I mean, it's often seen these days as much more analogous to film production but of an interactive nature, yes.

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THE DEPUTY PRESIDENT: Yes. We'll come back to working through the Professional Employees Award, but would you like to share with the Commission just your general understanding of the video game industry, the development of that, and what you understand in terms of that transition process and what these employees are engaged to do, because obviously it is an emerging type of industry and I'd just be interested in what kind of information you have about where it's come from and how it's operating.

PN658

MS BUCHANAN: Yes, okay. So my understanding of the structure of the industry is that you'll have the larger game companies, and the more - almost start-up companies. So it's very much an area of creativity. Often people have - their initiation into the games industry is from their love of playing games and getting involvement in, 'Well, how do I produce and create games?' and so on. In terms of their typical size, you may in fact be looking at companies that will have potentially no more than 20 employees, but there will be others that will be 50, 80, and if it is part of a number of functions that they do, then they will be part of a larger company as well.

PN659

In Australia it's mainly been Melbourne and Sydney where the game workers tend to work in Australia. Australia is seen as relatively still what might you might call independent game worker companies. There are multinational gaming companies, but they tend to be based in places like Singapore and the US and so on.

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THE DEPUTY PRESIDENT: Right.

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MS BUCHANAN: In terms of the work that is done, is that it really is just the creation of a game which will involve elements of - it will involve extensive elements of - they will draw on, for example, computer engineers, electrical engineers, then you also have your - and there will be an overlap, potentially, with what those engineers might do with fully qualified IT people that have done specific IT qualifications and so on, and that is all, if you like, the infrastructure of the game.

PN662

What we might think of as the more traditionally associated with creative elements such as the what is this game about, what is the story, what is the challenges and what does this look like, tends to be by people that have come from non-IT backgrounds, and definitely non-engineering backgrounds. They probably do see themselves as creatives.

PN663

In terms of the producers of all of this, there is a significant marketing aspect to the launch of video games, so there will also be those people involved as well, and that's where - the producers are likely to be interacting with those, because the marketing and the launch is often quite significant to the overall success of the game. So there may be teasers for months that X game will be launched as at a certain date.

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THE DEPUTY PRESIDENT: Right.

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MS BUCHANAN: In other proceedings we've raised the intensity of the work that occurs around the video game production because of the nature of the tight deadlines that apply that is necessary in order for the game to be a profitable enterprise for the owners and the producers of those games.

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THE DEPUTY PRESIDENT: And you've run those types of proceedings on behalf of your members in the context of 739 or related applications that concern their hours of work, or in something more fundamental?

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MS BUCHANAN: No, it was in terms of the - there as a Professional Employees Award hours of work claim that was resolved early last year.

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THE DEPUTY PRESIDENT: I see.

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MS BUCHANAN: It had been kicking around for some years, but our evidence in that matter also - - -

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MS SIMMONS: Excuse me, your Honour. Can I just ask if Ms Buchanan could put her mouth just a little closer to the mic, please?

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THE DEPUTY PRESIDENT: Yes, of course.

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MR KEMPPI: I'll have this one.

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MS SIMMONS: Thank you.

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THE DEPUTY PRESIDENT: Thank you, Mr Kemppe.

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MR KEMPPI: That's all right.

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THE DEPUTY PRESIDENT: Yes, thank you. Thank you.

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MS BUCHANAN: Thanks, your Honour.

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THE DEPUTY PRESIDENT: Please proceed.

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MS BUCHANAN: So in the Professional Employees Award matter that was concluded early last year, that related to an hours of work claim, and the evidence that was put forward in that by one of our witnesses describes the video game industry and touches on that, so that witness statement may be of interest to the Commission in this matter.

PN680

THE DEPUTY PRESIDENT: Yes. Thank you. Thanks for drawing that to my attention. So in terms of those particular roles, then, the list that you've identified seeks to encapsulate employees that you say work across the broad range of the types of duties that you've just discussed, designers, artists, animators, writers, audio workers and producers.

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MS BUCHANAN: Yes. They're the ones that are not directly involved in so much the IT elements of the game but the other elements that, in a way, make it a game. When we go to the definitions of the different IT employees, it becomes clear that one is required to either have qualifications or experience equivalent to those qualifications in information technology or as recognised by the Australian Computer Society. The Australian Computer Society does not recognise qualifications that relates to this range as apply to the gaming worker industry.

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THE DEPUTY PRESIDENT: So you don't need those computer related qualifications in order to - - -

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MS BUCHANAN: Correct.

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THE DEPUTY PRESIDENT: - - - get a job, in your view, in one of these roles in the video game industry.

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MS BUCHANAN: Exactly, yes. You will be working alongside others that do, but you don't need it, as you say, in order to get a job. It will be more your graphic arts ability, for example, that might come into - for the designers and the artists and the animators.

PN686

THE DEPUTY PRESIDENT: Yes. I did turn up a copy of the Graphic Arts Award before coming here. It is very specific in terms of its proposed coverage. I

assume that in your consideration of award coverage gaps you've turned your mind to the potential application of the Graphic Arts Award to these categories of employees?

PN687

MS BUCHANAN: That's right, and it's the same issue, really. While it hasn't been tested in the Commission, I should say, our view is that it's unlikely - it's got low prospects of success if we were to bring an award based claim for workers under either the Graphic Arts or the Professional Employees Award if they're in these roles.

PN688

THE DEPUTY PRESIDENT: We might turn it up, for completeness, in a moment. I did interject as you were working through the Professional Employees Award, but that context that you've just been able to provide has been very helpful. Do you want to keep working through, then, those aspects of the Professional Employees Award that you were drawing attention to?

PN689

MS BUCHANAN: Sure. It was just that when you go to the definitions of the employees who are covered by the award - so while, yes, the description of the employers is a wide net, once you go to the employees, it's a much narrower group that are actually covered.

PN690

So when you go to experienced information technology employee or graduate information technology employee, you'll see that they are required to hold a university degree with a science or information technology major, and that for the experienced information technology employee, they must have four years' experience on the professional information technology duties, so those duties that we've just gone through, in terms of different elements.

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THE DEPUTY PRESIDENT: Based on the information that you've been able to elicit from your membership base, consistent with your position that you expressed a moment ago, it may be that those employees do not hold those information technology skills, let alone have performed work for four years within that information technology sector, or is it a slightly more nuanced approach when you're considering the experienced IT employee there?

PN692

MS BUCHANAN: Yes, sorry, I should have been a little bit clearer. So with the four levels that are available, the three levels, graduate information technology, experienced information technology and professional information technology employee, all involve holding or being able to establish equivalent experience to holding those graduate qualifications in IT, or science also, I see, for the professional information technology duties.

PN693

The backgrounds of those performing the roles that we've put forward in this review very rarely would have this experience. I would not say that everybody

that's an animator, for example, may not have done an information technology degree, but it's highly unlikely, and that's partly because of the pathway that people come through to getting involved in the game worker industry generally.

PN694

We have got to go to the audio workers, for example - so this is the sound, the music, that kind of thing. They're typically involved in the production and recording of music, is their background. You might occasionally have someone who is an acoustic engineer that will be involved in a development of a game. Yes, they would be covered, but it's not necessarily the pathway that someone takes to perform those duties, and you would certainly not consider the recording of music and so on, or the production of sound, as necessarily a computer related or IT related function under this award.

PN695

THE DEPUTY PRESIDENT: Yes, I see.

PN696

MS BUCHANAN: Yes. So there will be people with quite specialist skills that they've developed, but often it's from industry experience that they've developed this. So they may have done a degree at university, but it's not related to their industry experience in a direct way. Your producers, I mean, they can range from being the person that is essentially the coordinator to the person who has had the initial game concept.

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That will be largely determined more by what is the nature of the company that has grown around this game, because often they start off with a particular game that they're developing, and then, with some success, they then go on to continue in the industry and develop other games. So it depends a lot on where they're starting from, in terms of what the role of a producer might be.

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THE DEPUTY PRESIDENT: So does it follow that there is some scope for the person who is at the top of the tree with the game concept to perhaps be excluded from any system of modern awards by nature of their seniority, in your view?

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MS BUCHANAN: There would be some circumstances that that would be the case.

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THE DEPUTY PRESIDENT: Yes.

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MS BUCHANAN: They've probably also got significant financial responsibilities, if that's the case, as well, and they're clearly in that key management decision-making role about, well, everything, everything from, 'How many employees do we need?' to all the rest. They may in fact be the - - -

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THE DEPUTY PRESIDENT: Employer.

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MS BUCHANAN: - - - CEO, the employer of that.

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THE DEPUTY PRESIDENT: Yes.

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MS BUCHANAN: So if it's that role that they're performing, yes, I would see potentially that possibility.

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MR KEMPPI: (Indistinct) say - I think from conversations Margaret and I have had, that there might be that person at the top level who has the overall idea, 'Let's have a video game about X, Y, Z', but the person story-lining the game might just be a much lower down the line person - - -

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MS BUCHANAN: Yes.

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MR KEMPPI: - - - who is writing this story line. They're not necessarily the conceiver or the financial backer of the game.

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MS BUCHANAN: Exactly.

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THE DEPUTY PRESIDENT: Yes.

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MS BUCHANAN: Yes.

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THE DEPUTY PRESIDENT: So one might differentiate the role of a producer, perhaps, from the other employees that are in your list.

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MS BUCHANAN: I wouldn't go that far, and I think we might draw on the Professional Employees Award to this extent. So with the professional engineer categories, the Commission made a decision there that where someone's duties were primarily managerial, that they would not be covered by the award, and that was assuming they were holding a senior position and that primarily the duties were managerial in nature.

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THE DEPUTY PRESIDENT: Yes.

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MS BUCHANAN: I think that that wording is useful for this distinction as well. So there may be producers whose duties are primarily managerial as distinct

from the production, in terms of ensuring that the different elements of the game come together as a kind of a lower level role being separate to that.

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THE DEPUTY PRESIDENT: Yes, I see.

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MS BUCHANAN: So it all depends on how the duties have been bundled together. Is the producer their primary role or is it fundamentally the management of the whole business that's going on.

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THE DEPUTY PRESIDENT: Yes, I see. And much would depend upon how one differentiates the types of duties that are allocated to the very broad occupation title of producer.

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MS BUCHANAN: Yes, exactly. In this industry, yes.

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THE DEPUTY PRESIDENT: I see.

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MR KEMPPI: Which doesn't seem completely dissimilar to other aspects of media as well, where you have executive producer but then you have producers who are kind of show-runners or that are news producers and so on that are not - - -

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THE DEPUTY PRESIDENT: Yes.

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MS BUCHANAN: Exactly.

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MR KEMPPI: - - - a high-level executive producer.

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MS BUCHANAN: That's a good analogy, I think, for this context.

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THE DEPUTY PRESIDENT: Yes.

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MS BUCHANAN: We could certainly, if it would assist the Commission, come back with more wording around each of these roles and the typical qualifications, if any, and backgrounds that people would have and the duties they perform. We could certainly put that forward in this to assist.

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THE DEPUTY PRESIDENT: I do indeed think that that would be helpful, and consistent with some requests that have been made of other parties in the scope of this review, an understanding of the nature of the employer would be helpful.

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MS BUCHANAN: Yes, certainly.

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THE DEPUTY PRESIDENT: What types of organisations are we talking about? Is there any type of information that you can provide that drills down into that in a little bit more detail

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MS BUCHANAN: Sure.

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THE DEPUTY PRESIDENT: So that that also provides some helpful context in relation to that relationship.

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MS BUCHANAN: Yes. No, I'm conscious that today it's been more of an, at best, overview level that I've been able to provide you, but we could certainly provide a much greater level of detail.

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THE DEPUTY PRESIDENT: Another issue that seems to be coming through a little bit in this stream of the review is a recognition that some employees - and it may be a little more linked to the visual arts, craft and design component of the review, but the engagement of those types of employees on a contractor basis.

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MS BUCHANAN: Yes.

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THE DEPUTY PRESIDENT: In the interests of obtaining the most fulsome understanding in the time available of the video game industry and the way in which employees are engaged, if you have some information or understanding about the types of methods that those employers are utilising to engage with its employees - - -

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MS BUCHANAN: We do.

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THE DEPUTY PRESIDENT: - - - I think that would also be - - -

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MS BUCHANAN: Yes. We've done some surveys in this area on (indistinct) leadership.

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THE DEPUTY PRESIDENT: That would be helpful.

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MS BUCHANAN: So we could certainly provide even typical hours of work and that sort of thing, if that's helpful, yes.

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THE DEPUTY PRESIDENT: I anticipate that it may be, yes -perhaps the hours of work in a more limited way.

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MS BUCHANAN: Of course, yes.

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THE DEPUTY PRESIDENT: But as a matter of context and as a matter of understanding - - -

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MS BUCHANAN: Yes. Just terms and conditions of employment, or if it is in fact employment or some other, and whether it's typically casual or - - -

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THE DEPUTY PRESIDENT: That's right.

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MS BUCHANAN: Yes. No, we've got that - - -

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THE DEPUTY PRESIDENT: That's right.

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MS BUCHANAN: - - - which would be useful.

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THE DEPUTY PRESIDENT: Because one of the matters that was raised at a preliminary level yesterday was, in the context of some of these employment relationships, a big question about, well, they're not employment relationships. These employees have been engaged as contractors, and my very general inquiry at this stage about, well, is that because that's the way they're always going to be engaged, there's that practice of engaging in that way, or whether that's because there is some deficiency identified or advanced for consideration with respect to the way the modern awards apply, in that sense.

PN751

MS BUCHANAN: Yes.

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THE DEPUTY PRESIDENT: I'm not sure that this process or the information that you're able to provide me in this context is going to provide a definitive answer to that question, but the more information, I think, that the Commission has about those issues and understanding perhaps the extent of the nature of engagement as contractors, then that might just be helpful to start to understand and unpack the industry.

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MS BUCHANAN: Yes, I understand. We should be able to assist in those ways.

PN754

THE DEPUTY PRESIDENT: Could I trouble you to take me to the Graphic Arts Award, and appreciating that you perhaps didn't propose to speak in detail about that award today, but just to give me a sense about how you view the application of clause 4 and its coverage.

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MS BUCHANAN: Sure. I may not be able to get in.

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THE DEPUTY PRESIDENT: Are you seeking Wi-Fi access?

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MS BUCHANAN: Yes.

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MR KEMPPI: Yes.

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THE DEPUTY PRESIDENT: You are able to request that.

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MS BUCHANAN: I have, but it requires a sponsor email.

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THE ASSOCIATE: If you put in the chambers email address I can access - - -

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THE DEPUTY PRESIDENT: So that's chambers.millhouse.

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MS BUCHANAN: Thank you.

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THE DEPUTY PRESIDENT: M-i-l-l-house, dot DP.

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MS BUCHANAN: Dot DP at - yes. So I've just got a messaging just saying it's been sent.

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THE DEPUTY PRESIDENT: Thank you.

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THE ASSOCIATE: You should now have access.

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MS BUCHANAN: Thank you. Yes, that's all worked. Thank you.



PN769

THE DEPUTY PRESIDENT: Just as you're drawing up a copy of the Graphic Arts, Printing and Publishing Award, the reason that I sought to take you to that award this morning is because the Commission's discussion paper did broadly recognise, having regard to the ANZSCO classifications, the role of a multimedia specialist.

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MS BUCHANAN: Yes.

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THE DEPUTY PRESIDENT: Which I think is a very broad classification or name that was intended to capture game developers.

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MS BUCHANAN: I see.

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THE DEPUTY PRESIDENT: In the Commission's very indicative table about potential award coverage, it was suggested that there may be award coverage under the Graphic Arts Award for a multimedia designer. Now, that again is a different term, specialist multimedia designer, but all of which was intended in a very broad way to capture the concept of people who are performing work in video gaming. So I would just be interested in understanding how you have approached the Graphic Arts Award.

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MS BUCHANAN: How we look at it.

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THE DEPUTY PRESIDENT: Yes.

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MS BUCHANAN: Yes, for sure. So it is the definition of 4.2?

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THE DEPUTY PRESIDENT: Yes.

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MS BUCHANAN: I see. Yes, that's right. Most of those, we would say, clearly don't apply to the development of video games.

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THE DEPUTY PRESIDENT: Yes. You're looking at the list that appears at clause 4.2 of the award, which speaks to the industries or occupations that form part of the graphic arts, printing, publishing and associated industries and occupations.

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MS BUCHANAN: That's right. Paragraph (m) is the one - - -

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THE DEPUTY PRESIDENT: Yes. That was the one I was going to ask you about.

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MS BUCHANAN: Yes, is the one that if there is any coverage of those who are outside the coverage of the Professional Employees Award and its IT coverage. It depends on whether or not a game is conceived to be commercial and industrial art, fundamentally, is where we've been concerned about, well - - -

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THE DEPUTY PRESIDENT: Commercial art.

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MS BUCHANAN: Is a game commercial art?

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THE DEPUTY PRESIDENT: 4.2(m) is about creation of designs, concepts or layouts, so it starts off sounding perhaps promising.

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MS BUCHANAN: Yes.

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THE DEPUTY PRESIDENT: 'Used or intended to be used in the advertising or marketing of commodities or service or for other uses in or in connection with the industry of commercial and industrial art.'

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MS BUCHANAN: That's right.

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THE DEPUTY PRESIDENT: And then proceeds by referring to the execution of finished art, that is:

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*The preparation of individual components of finished art, including illustrations, borders, retouching of photographs, photographic reproportioning and lettering by hand or transfer, and the final assembly of these components, including the paste-up of reproduction type, profiling illustrations, key line drawings, et cetera.*

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There's a lot to unpack in (m).

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MS BUCHANAN: Yes. So the first, the way we would read it, as you read it out then, was that the creation of designs, concepts or layouts, and then we would say the next part doesn't apply for advertising or marketing of commodities, or for other uses. This the part that we think, if it were to apply, would apply here, 'In or in connection with the industry of commercial and industrial art.'

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THE DEPUTY PRESIDENT: Yes.

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MS BUCHANAN: Then the question that we've not been able to easily resolve as, yes, this provides coverage, is whether or not a video game is considered commercial - - -

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THE DEPUTY PRESIDENT: Commercial art.

PN796

MS BUCHANAN: Yes, because when you look at, well, what is the purpose of the game, and typically commercial art is around the advertising or marketing, whereas the purpose of a game, a video game, there's usually no - sorry about that. I didn't know that was on - there's no other reason than to purchase a game and play it, we would say.

PN797

THE DEPUTY PRESIDENT: Does the award - - -

PN798

MR KEMPPI: May I - - -

PN799

THE DEPUTY PRESIDENT: Yes, Mr Kemppi, of course.

PN800

MR KEMPPI: Thank you. I might just add one thing to that. The coverage rule, is actually quite a clever coverage rule, in the sense that it covers industries, parts of industries and occupations.

PN801

THE DEPUTY PRESIDENT: That's right.

PN802

MR KEMPPI: And - - -

PN803

THE DEPUTY PRESIDENT: Industry and Occupational Award.

PN804

MR KEMPPI: Yes, which I think is - it's only because of that occupation reference there that we could probably even have this conversation.

PN805

THE DEPUTY PRESIDENT: I agree with you.

PN806

MR KEMPPI: Exactly.

PN807

THE DEPUTY PRESIDENT: There is capacity to simply look at this award in the context of the occupations only.

PN808

MR KEMPPI: Exactly.

PN809

THE DEPUTY PRESIDENT: I agree.

PN810

MR KEMPPI: But what I would add to that is that in (m) there's the creation of designs, concepts, layouts, and there's probably some of the graphic designers that are doing that for video games, but then, as Ms Buchanan was saying, that limb is knocked out by way of advertising or marketing, so you turn to the next limb, which is the industry of commercial and industrial art, and I would say that even if the final product there of the video game laid out is commercial and industrial art, it would have to be the industry of commercial and industrial art or in connection with the industry.

PN811

MS BUCHANAN: Yes.

PN812

MR KEMPPI: So the industry rule kind of comes back in a little bit there, which is why I would have some doubts that actually that first part of (m) does cover - but even if the occupation is to do with the creation of commercial or industrial art, it's not enough to satisfy (m) because of that industry reference again in (m).

PN813

THE DEPUTY PRESIDENT: So following on from that theme, let's assume then that there is a colon after the word 'with', 'in connection with'.

PN814

MR KEMPPI: Yes.

PN815

THE DEPUTY PRESIDENT: Would you read this to say that the colon would belong following the word 'with', such that you would say, 'With (1) the industry of commercial and industrial art, (2) the execution of finished art', and then proceed to read the clause in that way?

PN816

MR KEMPPI: It could potentially be read that way. That's a good point. Then I guess you get to what Ms Buchanan was speaking - to potentially whether or not it's the execution (indistinct).

PN817

THE DEPUTY PRESIDENT: So if that's right, if we do read it as if there is a colon there after 'with', then the next question, if we assume that your submission just now is correct, Mr Kemppi, that the industry of commercial industrial art -

would this be the creation of designs, concept or layouts for uses in connection with the execution of finished art?

PN818

MR KEMPPI: Here I will confess, I am so far out of my depth to have an art conversation, but there - - -

PN819

THE DEPUTY PRESIDENT: It's an interesting question, isn't it?

PN820

MS BUCHANAN: Yes.

PN821

MR KEMPPI: Yes. I think that's the question, really, is it art?

PN822

MS BUCHANAN: Correct. I would agree with that.

PN823

MR KEMPPI: Is it recognised as - need to be recognised as art.

PN824

THE DEPUTY PRESIDENT: 'The execution of finished art.'

PN825

MS BUCHANAN: Because I think we would say - we're not saying it's not art.

PN826

THE DEPUTY PRESIDENT: No. I think that - - -

PN827

MS BUCHANAN: But we're saying that whether or not it comes within this description of art as under this award, that's, I think, the - - -

PN828

MR KEMPPI: And then I think there's a question of if, say, some of the design components or the designers fit into this (m) - say what they do is art, but (indistinct) it's art, is this the best fit.

PN829

MS BUCHANAN: So it may pick up with designers, maybe.

PN830

THE DEPUTY PRESIDENT: Designers.

PN831

MR KEMPPI: It would be hard to fit (indistinct).

PN832

MS BUCHANAN: I think so. I think, like, your animators, your writers, your audio workers, those other groups. So I think we are just talking about the designers with this in mind.

PN833

MR KEMPPI: Yes.

PN834

THE DEPUTY PRESIDENT: And perhaps then that is why the table in the Commission's discussion paper at page 28 referred to the multimedia designer.

PN835

MS BUCHANAN: Yes.

PN836

THE DEPUTY PRESIDENT: Is there anything useful that also comes from any of the other definitions in the award?

PN837

MS BUCHANAN: I don't think so, because the way this award is - - -

PN838

THE DEPUTY PRESIDENT: I'm sorry to interject, but can I just take you to 2.2, classification definitions, and there is a reference to art and/or designing. It includes writing, writing and lettering.

PN839

MS BUCHANAN: So we would submit that doesn't extend to script or plot narrative writing.

PN840

THE DEPUTY PRESIDENT: Yes.

PN841

MR KEMPPI: Yes.

PN842

THE DEPUTY PRESIDENT: So perhaps some more useful analysis can be undertaken with the benefit of that supplementary information that you're proposing to provide.

PN843

MS BUCHANAN: Yes.

PN844

THE DEPUTY PRESIDENT: Once we have a better understanding of the types of duties that are performed by the broad categories that you've identified in your joint submission, then it might be at that point we're more able to interrogate the application of the Graphic Arts Award to some, perhaps, of those employees that you have identified.

PN845

MS BUCHANAN: No. I appreciate that.

PN846

THE DEPUTY PRESIDENT: I do think that will become an important inquiry in terms of understanding - - -

PN847

MS BUCHANAN: Agreed.

PN848

THE DEPUTY PRESIDENT: - - - whether all of those roles are pressed by you as part of this process or whether it can be narrowed in some way, and any meaning that might have, or issues that we could take from that.

PN849

MS BUCHANAN: Yes. That sounds good.

PN850

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

PN851

MS ANGUS: Yes.

PN852

THE DEPUTY PRESIDENT: Please go ahead.

PN853

MS ANGUS: So haven't met Ms Buchanan. Nice to meet you, Ms Buchanan. I, on behalf of Screen Producers Australia - we do have - so we represent the film and television makers. A number of our members have been making games over the course of the last half a decade as an exercise. Particularly our children's television producers, or our digital, online content makers, have been making games as an activity incidental to, for example, a television program, or as a kind of a spin-off activity.

PN854

We do have a small number of members who are games producers as standalone activities. Predominantly the industry of game production in Australia is either - I understand they tend to be represented by an organisation called Interactive Games and Entertainment Association, IGEA, who aren't here, and maybe it's appropriate that we get their views on this matter.

PN855

But from the perspective of screen producers, independent screen producers in Australia - I can't see anyone, but that's all right, I guess - I would say the following. It's always been SPA's view, and our members' view, that game production is a form of a motion picture activity, motion picture production, and falls with part 13 of the BRECA.

PN856

I've listened with interest to this discussion about the extent to which the Professional Employees Award or the Graphic Art Award applies, and I guess I want to exercise caution, because certainly it's our view, as a matter of fact, that games production, at least in terms of our members, is operating under the presumption that it falls within the BRECA as a work activity, and following the discussion that you've been having, it does seem that there is some synergies, particularly with occupations in the Graphic Arts Award, but as an industry, the making of games is an act of making an audiovisual screen production - well, there might be some relevant occupations.

PN857

So I need to reflect a bit more on those comments, but I think it sounds like SPA would be in accord with what I take to be Ms Buchanan's position, and that is that the type of work should appropriately, and we say does, fall within the coverage of the BRECA, and that is part 13. So the first point we would make is that in fact those classifications and that type of work is already covered by part 13 of BRECA. I think there's a separate discussion to have, certainly, about whether that's sufficiently clear, and we'd accept perhaps not.

PN858

Part 13 is the terms and conditions section of the BRECA that is matched up with schedule G, which is the classifications structure. The classifications structure at schedule G, and we can go to it, as we discussed earlier, is sort of skills based, so it doesn't list occupation titles. I can't remember offhand how many tiers it is, but at level 4 is the trade equivalent, and then beyond that are the specialist skills, and that's where you start to see duties that do encompass the sort of duties that a games employee would do. I say a couple of things - - -

PN859

THE DEPUTY PRESIDENT: Ms Angus, I don't like to interrupt, but I might just slow you down. I've just provided a copy of my version of the hard copy of the Broadcasting, Recorded Entertainment and Cinemas Award to Ms Buchanan. Would you like to take Ms Buchanan to those particular provisions? Is it appropriate to start at schedule G, or would you take her first to part 13 of the award?

PN860

MS ANGUS: I don't think we're having a debate here about the - just as when we looked at the Professional Employee Award and the Graphic Arts Award we didn't look at the substantive terms, we looked at the coverage and the classifications.

PN861

THE DEPUTY PRESIDENT: Yes.

PN862

MS ANGUS: The coverage of the BRECA, when we talked about that at 4.2, it clearly covers audio and audiovisual production.

PN863

THE DEPUTY PRESIDENT: Yes.



PN864

MS ANGUS: As I indicated to Mr Kemppi yesterday, we wouldn't oppose adding the word 'games' in there. I don't think it's necessary, but that sort of an idea that's on the table for further discussion. But let's have a look at the schedule G, which is that part of the award that applies to motion picture production.

PN865

THE DEPUTY PRESIDENT: And, sorry, just for my part, you're saying from a coverage point of view clause 4.2.

PN866

MS ANGUS: Yes. Let's go - - -

PN867

THE DEPUTY PRESIDENT: And it's a reference to the production of - - -

PN868

MS ANGUS: Production, broadcasting, distribution, showing, make available and/or sale of audio - - -

PN869

THE DEPUTY PRESIDENT: Audio and audiovisual content.

PN870

MS ANGUS: - - - and audiovisual content, including but not limited to films, television, news, current affairs, sports, video clips, digital video discs, television commercial, training films and the like.

PN871

THE DEPUTY PRESIDENT: Yes.

PN872

MS ANGUS: As an industry description, it seems to me - I'd suggest it's kind of inarguable that the making of an audiovisual game that is distributed and made available on screens wouldn't fall within this as part of the industry. So certainly we accept that at SPA, and all our members who are engaged in making games - and I do make the point again that our members who are making games tend to be making it sort of incidental to another project, but this is absolutely an emerging sector, and I do note that last year the gaming industry is now eligible for a 30 per cent tax rebate on all of their development expenditure, so we will see more of it. So it is important that the workers in this sector clearly know where they are located in the award system.

PN873

So our view would be that 4.2 coverage clause is sufficiently broad to capture game work, and if not, we are open to resolving that, and then that means that - and can I just make this point in passing, your Honour, because this was raised yesterday. There are parts of this award that relate to radio broadcasting, there's parts of this award that relates to television broadcasting.

PN874

We can go back to this when there are others at the table, but those are actual technical terms. The term of 'broadcasting' is defined in the Broadcasting Services Act. So those parts that are not television broadcasting or radio broadcasting capture the remainder of the coverage of the award, and that's where we go to motion picture production.

PN875

THE DEPUTY PRESIDENT: All right.

PN876

MS ANGUS: So then the classification structure, schedule G, now, here I concede I think there is, in my view, a bit of a deficiency in the classification structure. If you look over that all of that classification structure, I think the drafters have envisaged a shooting crew arrangement. So if you look at it, they will talk about screen productions where you've got a cast and a crew and they're filming and they've got a camera crew and then they've got post-production.

PN877

So a lot of the descriptors talk about - let's see, say, for example, level 3 is the trade equivalent level, and so you'll see there that - let's have a look. 'Carry out repairs to equipment, props, costumes', et cetera. It becomes less of an issue at the higher levels, but I'm certainly open to a discussion. Maybe there's some benefit in this.

PN878

I reserve a formal view, but it may be that what we need to do to address Ms Buchanan's concerns is to ensure that the descriptors at each of these levels adequately capture the work of what I'm going to describe as non-shooting productions. If you think about animation, which a lot of our members do, it is very, very similar to games production, and in fact animation productions will engage designers, artists, animators, writers, audio workers and producers, and they are covered by part 13 of the award.

PN879

I'd probably accept that it might be a slightly awkward fit in terms of the classification structure until you get past level 3. Once you hit level 4 you will see we're now in the specialist skills base of motion picture production. It still talks about liaising with cast and agents and the casting process, liaising with performers. Some of things are relevant, as I say, to scripted productions. I'm sorry, I can't see anyone on my screen. I'm just looking at your empty chair, your Honour, so I feel a little bit like I'm talking to - that's much better.

PN880

THE DEPUTY PRESIDENT: Yes.

PN881

MS ANGUS: So I don't know quite - the moment's to pause, but so that's the sort of broad thing I would say. I'll take the opportunity to say I think there are a couple of problems with the ideas that have been put in the way they're put.

PN882

I take it that the essential thrust of what the union's advancing here is that to the extent that there's any ambiguity about where the games industry and employees who work in games fall within award coverage, it should be in this award, I think is what they're saying, and that we don't take issue with, and that they're seeking to add somewhere the following half a dozen occupations. I think that's what's being put. I've pointed out that I don't think that there's a coverage problem, and nor do I think necessarily that adding these following six occupations to the classification structure at schedule G is necessarily the way to go about it.

PN883

I've pointed out that the classification structure at schedule G is not about listing job types. Just to explain the operation of this award a little bit, because each of the schedules has a classification structure that applies to television broadcasting, for example, if you're working in news production or a panel show, directly engaged by Channel 9, you will fall within a particular part of the award and schedule A.

PN884

So there are various different classification structures, and then at clause 13 of the Act there is an integrated classification structure that contains job titles. So it may be that there is a relevant discussion to be had to insert some job titles that might be missing at the integrated classification at clause 13, but it's a different exercise than adjusting the classification structure to schedules.

PN885

The problem that I have with these listed occupations is the following. I think there are a number of classifications that are missing, and I think that there are classifications that aren't distinguishing between levels. For example, an animator will be engaged at - of course, you'll have a background animator, you'll have different levels of animation. You'll have 3D animators, you'll have 2D animators. An artist is not just - well, it may be a job title, but if you're looking at more appropriately where they are classified, they will be classified according to experience and skill, and so they will fall anywhere between levels 3, 4, 5.

PN886

There's also a whole lot of kind of missing occupations. So there's visual effects, there's story-boarding, there's colourists, there are stylists, and I think in part this is a difficult exercise, because I think part of the problem with this very exercise is that the ANZSCO occupations that the Commission has referred to in your background paper are themselves deeply flawed when it comes to adequately describing screen production work.

PN887

THE DEPUTY PRESIDENT: Right.

PN888

MS ANGUS: They miss at least half of the occupations in our industry. The descriptors attached to the occupations are commonly so generic, because what the ANZSCO drafters are seeking to do is to pick an occupation and then apply it to both live performance and screen production as a sort of a catch-all, when in fact when that title exists in live performance, it's a very, very different occupation

than if it exists in screen. For example, your Honour, you raised the multimedia designer. If you look at the descriptor of that, there are a lots and lots of people in the screen production industry who are doing exactly that work, but none of them are called multimedia designers.

PN889

So the gap between the descriptors in the ANZSCO occupations, the missing occupations, where a whole lot of people are desperately, in order to access skilled migration, or whatever it might be, trying to shoehorn occupations into the wrong fit, I just think we need to - all of that is a roundabout way of saying that we need to be very careful about just adding occupation titles, and I'm going to say particularly occupation titles that line up to ANZSCO incorrect titles, and probably even ones that don't, is even just a - so I guess I'm expressing a desire to be very cautious about occupation titles. I do note that Ms Buchanan said that she was interested in adding some descriptors to them. I think certainly I could do a discussion about that.

PN890

Maybe I'll pause there. Let me say - producers. So producers, in our view, do not fall within the scope of the award. On a screen production they are entirely managerial, and if we're talking about - so here's another example of one of the deficiencies in - the ANZSCO classification talks about a stage director in one of those occupations, and if you read the descriptor attached to that occupation of stage director, there could equally be a set director, because they're about determining the schedule, they're about allocating resources and - I don't think I've got immediately to hand, but the sort of role that I think Ms Buchanan was describing when she was talking about sort of a supervisory function.

PN891

Coordinating the work of, for example, a colourist, a story-boarder, and the flow of work will not be a producer, but there might be a proper occupation or title that more resembles something like, bizarrely, a stagehand under the ANZSCO titles, which is completely counterintuitive, and one of the submissions that we are making to the ABS as part of a review of those ANZSCO titles is that a stagehand needs to also be a stage and set hand, and there should be things like associate - so the occupational titles, I have to say, are in such a woeful state of disarray that it just makes our life very difficult here when we're trying to work out what occupations should be inserted into the classification structure.

PN892

THE DEPUTY PRESIDENT: All right.

PN893

MS ANGUS: I think that was a bit of a flow of consciousness on my behalf. So I think that there may be better ways - if there is a concern, which obviously there is a concern, that game production is not adequately covered, then I'm very happy to work with the parties to work out how that can be addressed. Our view is game production is covered, it is covered by part 13 of BRECA, and it may be that there are certain things that we can do to make that clearer.

PN894

THE DEPUTY PRESIDENT: Thank you very much, Ms Angus. Ms Buchanan, you had the opportunity to have a look through a copy of the Broadcasting, Recorded Entertainment and Cinemas Award as Ms Angus was speaking. Is there anything that you'd like to say in response, and had you considered the application of the Broadcasting Award to these employee classifications?

PN895

MS BUCHANAN: I might just let Mr Kemppi speak first.

PN896

MR KEMPPPI: I might respond - - -

PN897

THE DEPUTY PRESIDENT: Yes.

PN898

MR KEMPPPI: First off, just for Ms Buchanan's benefit, there was an extended discussion yesterday about this award in relation to audio book recorders and where the schedule G fits.

PN899

MS ANGUS: Mr Kemppi, sorry to interrupt. Do you mind just swinging that mic slightly towards you?

PN900

MR KEMPPPI: I will move the mic towards myself.

PN901

MS ANGUS: Thank you.

PN902

MR KEMPPPI: Is that better?

PN903

MS ANGUS: Yes, it's - - -

PN904

MR KEMPPPI: I just saying, for Ms Buchanan's benefit, there was an extended discussion yesterday around the audio book recorders - apologies to everybody else who gets to hear very similar things again, but at least this is new for one person.

PN905

I think the first challenge here with respect to the video game workers is 4.2. If that clause ended simply after 'content', so the last words were 'audio and audiovisual content', it would be quite a widely applicable award and there would be no real issue there, but I think the first interpretative issue is when it says 'including but not limited to' and then speaks of a range of things that are clearly contemplating some sort of physical production, a movie, a film, a television show, that kind of thing. So that's, I think, the first hurdle there, that after the word 'including' there's really nothing that looks like a video game.

PN906

So that would then raise a question about how you interpret audio and audiovisual content and whether a court or the Commission would take a very broad view that does include video games and, for that matter, audio books, or if in fact they'd take a quite narrow view of what this award is intended to cover.

PN907

MS ANGUS: Sorry, can I just interrogate that a little further, Mr Kemppi? Are you suggesting that - video game production is a form of physical production, in the same way as animation is. It's just not - - -

PN908

MR KEMPPI: No, I'm saying it is not. Sorry, perhaps 'physical' was the wrong word there. I understand that there are people who do things in relation to the production of a video game. It's not an abstract or an esoteric exercise. What I mean is after the word 'including', everything there seems to countenance some level of a person being in front of a camera or a person reading something out, or something along those lines - a film, for example.

PN909

So I'm saying there's a distinction between the end product of a feature film and the end product of a video game. They're very different things and it's a very different nature of production that goes into producing a feature film as to what goes into producing a video game.

PN910

MS ANGUS: I accept that. I accept that. What about animation? Sorry - - -

PN911

MR KEMPPI: Animation would be more similar.

PN912

MS ANGUS: Yes.

PN913

MR KEMPPI: It would be more similar. So I think that if this was the award that we went forward with for video games, there would definitely need to be some work on 4.2. I think that it would be highly debatable whether or not video games come into 4.2 in the first place, and that's the first hurdle.

PN914

Then moving to schedule G, there's again that similar interpretative problem of whether or not a court or the Commission would find that G has any application, given simply that it's headed Motion Picture Production. There would be a serious risk that the view taken would be a video game is not a motion picture, therefore schedule G has no work to do whatsoever.

PN915

I understand that the submission from yesterday and today has been that G does cover video games, and at any rate that is the industrial practice on the ground, is to put people in G, which my response to - once again, apologies for repeating - is

it's the rooster and duck issue, that simply classifying people in a particular classification isn't itself necessarily determinative of what the correct classification is.

PN916

The other issue that I think arises with respect to G, and this is perhaps unique to the video games, is that there do seem to be two very different streams of activity going on in the formation of a video game. You've got this sort of IT component to it and then you've got this artistic component to it, and so if G were said to cover some of the artistic components or the artistic occupations, it would still probably then leave a gap with respect to the more information technology heavy aspects of video game production. So for that reason, as distinct from the audio book production, it could well be that even if G had some application, it's a bit of an imperfect fit because of the totality of video games production.

PN917

MS ANGUS: Yes. No, that was a good summary. I understand that argument.

PN918

MR KEMPPI: Thank you.

PN919

THE DEPUTY PRESIDENT: Thank you, everyone. That was a really helpful discussion. From here, I think it really does highlight the importance, taking into account what Ms Angus said about occupations and the way in which the titles are used interchangeably and differently, drawing some focus upon types of duties that Professionals Australia contemplated would form part of these roles that you've identified as coverage gaps is going to be really important so that we can identify at least whether they might have a different role if Ms Angus looks at them in the context of screen production and the like.

PN920

Secondly, in the context of collating the material that you have proposed to put together for us, Ms Buchanan, there might be some capacity - and I recognise that we will be seeking quite a tight turnaround time in the production of this information, so I appreciate that capacity might be confined, but some analysis as to the potential application of either the Graphic Arts Award or the Broadcasting Award in the way in which we've just worked through today.

PN921

You might be able to take, for instance, on notice, some of the matters that have been raised as part of the discussion about the Graphic Arts and Ms Angus's views about the Broadcasting Award and provide, where possible, Professional Australia's responsive views to those matters, and as part of that, I would encourage you, of course, where you consider that it would be helpful, to reach out to Ms Angus.

PN922

MS BUCHANAN: Sure.

PN923

THE DEPUTY PRESIDENT: One of the really helpful benefits of this consultation opportunity is that it provides capacity for parties who might not have otherwise spoken or had the capacity or knowledge to reach out to these particular parties to speak about these issues. You might find yourself in a position to be better informed about the matters that you'd like to press in relation to these particular roles.

PN924

When it comes to all of that work, it's appreciated that we're in a period of consultation now, and issues like this continue to arise. There is obviously an enormous benefit in being able to turn answers to some of these questions around quite quickly so that there's some capacity to address them throughout the balance of the week or indeed into next week, which comprises the totality of the remaining aspect of this consultation phase of the review.

PN925

MS BUCHANAN: I see.

PN926

THE DEPUTY PRESIDENT: So whilst I'm not going to put a specific deadline on when that material might be the subject of further submission, the sooner the better, because it allows us to continue a dialogue about it.

PN927

MS BUCHANAN: Yes. I can see that. I'd like to be able to make a commitment by close of business Thursday, but I just don't know who's around at the moment.

PN928

THE DEPUTY PRESIDENT: Yes, I understand. It's that time of year.

PN929

MS BUCHANAN: Yes. So the outer limit would be this time next week.

PN930

THE DEPUTY PRESIDENT: Yes.

PN931

MS BUCHANAN: But we'll aim to, at least - in terms of the details of the roles and the terms of employment, we should be able to get that back by Thursday. I think we might need a little bit longer on the coverage issues.

PN932

THE DEPUTY PRESIDENT: Sure.

PN933

MS BUCHANAN: We'll draw on a couple of individuals, but on material that we've already got available that we can draw on for the Thursday deadline.

PN934

THE DEPUTY PRESIDENT: And you're anticipating that that information would be provided by way of a specific supplementary written submission.



PN935

MS BUCHANAN: Yes.

PN936

THE DEPUTY PRESIDENT: And that would then allow interested parties to consider and provide any oral supplementary submissions that they might like to make to address it.

PN937

MS BUCHANAN: Certainly.

PN938

THE DEPUTY PRESIDENT: All right. I think that's going to be really helpful. For completeness, Ms Simmons, were there any matters that you sought to raise for discussion or address in terms of any of the matters that have been raised this morning?

PN939

MS SIMMONS: No, thank you, Deputy President.

PN940

THE DEPUTY PRESIDENT: I had a little bit of difficulty hearing you just now, but I think that you said, 'No, thank you', there's nothing that you sought to raise.

PN941

MS SIMMONS: That's right. Thank you..

PN942

THE DEPUTY PRESIDENT: Thank you very much. Are there any other matters that you would seek to raise this morning, Ms Buchanan, in support of this aspect of the joint submission?

PN943

MS BUCHANAN: I imagine it's already been said, but we've certainly approached it on the basis of if there is any lack of clarity on award coverage, then our approach was to set out those roles that we thought that there wasn't clear award coverage upon, and by that I mean - and not only the coverage aspects as broadly defined but how the award actually operates in practice, in terms of which employees it covers, and so on. So to that extent, that was the approach that we've brought to this.

PN944

THE DEPUTY PRESIDENT: That's great. With the supplementary material that you're going to provide, and perhaps with the benefit of some further discussion, what I'm envisaging is that, where possible, we get to an understanding from Professionals Australia as to whether it maintains that all of these roles might fall into a coverage gap or whether there is a more narrow focus on some roles, and perhaps an opportunity to discuss with other interested parties about mechanisms to cure any issues that you might have identified.

PN945

MS BUCHANAN: Thank you.

PN946

THE DEPUTY PRESIDENT: Thank you very much for your attendance this morning.

PN947

MS BUCHANAN: My pleasure.

PN948

THE DEPUTY PRESIDENT: That was very helpful. Mr Kemppi, are there any other matters that you would like to raise in relation to the joint submission?

PN949

MR KEMPPI: No, thank you, Deputy President.

PN950

THE DEPUTY PRESIDENT: Can I ask you then, specifically, Mr Kemppi, we raised yesterday the issue of dance teachers, which is dealt with on page 4 of the joint submission, and my understanding is that Mr Borgeest was going to take on notice the question of whether MEAA continued to hold a view that dance teachers might fall into a coverage gap. Is that also your understanding of the situation insofar as it concerns dance teachers?

PN951

MR KEMPPI: Yes.

PN952

THE DEPUTY PRESIDENT: All right. Are there any other matters that we should discuss as part of the morning session, Ms Angus?

PN953

MS ANGUS: I'm just wondering, Deputy President, if you could give us your thoughts on how the next - what are we - Wednesday and Thursday and indeed even next week are likely to proceed. I'm just thinking for my own self whether - I'm happy to just keep dialling in each morning, or whether I need to organise a flight, because if there's a discussion, I'm open to coming down - a discussion like about the games or about the BRECA award and generally, if it's - - -

PN954

THE DEPUTY PRESIDENT: Yes.

PN955

MS ANGUS: With some notice, I'm very happy to come on a plane and do it all in person, which might be more efficient, but it would be good to have a sense of - because it's obviously a moving feast. People are lodging stuff and it's not necessarily clear to me what, for example, is on tomorrow for discussion.

PN956

THE DEPUTY PRESIDENT: Yes. I think that is the issue, in terms of agenda setting for this aspect of the review. We are really driven by the issues that fall out from the matters that are discussed and where that generates the requirement

to do supplementary work, providing at least a reasonable amount of time within this very tight time frame for that to occur, and allowing parties to return to convey their responses to particular issues raised.

PN957

So with that said, and as you've recognised, it is difficult to identify with great specificity an agenda for each day. We had foreshadowed that this afternoon's session would focus upon interrogating the NAVA position and some of the classifications that have been identified as potential coverage gaps for visual arts, craft and design. Separately, I have been informed, for the purposes of Thursday, I understand that Live Performance Australia anticipates being in a position to respond orally to MEAA's supplementary submissions insofar as it concerned the Live Performance Award, and that would follow provision in writing by Live Performance Australia of written submissions in reply tomorrow.

PN958

Ms Benton from NAVA is not present in the courtroom or online this morning, but you might recall that yesterday she had anticipated the potential to see if there are other stakeholders in the visual arts base that sought to attend to provide some views, and to that end I understand that this afternoon there will be an attendee from Public Galleries Association Victoria who might speak to some of the issues that are addressed in NAVA's written submission.

PN959

So all of that is to say that it's not immediately clear to me at this stage of the day what tomorrow might encapsulate, and there will certainly be some further submissions that I understand parties might like to make, but that might follow next week, once some membership views have been canvassed.

PN960

I think that would broadly address the position that you have advanced, Ms Simmons, in terms of addressing some of the classifications that have been identified by NAVA as falling into coverage gaps. Is there anything that you'd like to say about that time frame when you anticipate being in a position to make oral submissions?

PN961

MS SIMMONS: Yes, thank you, Deputy President. As you're aware, we wrote to chambers yesterday afternoon to advise that we intend to put our position in writing and that we'd require a reasonable period of time to consider the information set out by the parties in the further submissions filed.

PN962

You may have also noticed that Ms Vincent dropped off the line yesterday. She's unwell and remains unwell. So in terms of our participation over the next few days, it's unclear. We intend to participate, we intend on appearing, but in terms of providing responsive views or submissions, it is our intention that we'll put these in writing. It's not clear to us yet exactly how long or how much time we will require, but we will endeavour to do this as soon as practicable.

PN963

THE DEPUTY PRESIDENT: And as soon as practicable within the next week, at least, so that there is an opportunity for oral submissions to be made in response to that written material, Ms Simmons?

PN964

MS SIMMONS: Yes. That's the intention, Deputy President, and we will endeavour to do it as quickly as possible, noting what you've just mentioned then. It might be the case that it's next week, and it may be the back end of next week, but I'm hearing what you're saying, and we want to make sure that we're using time as efficiently as possible so that the parties have an opportunity to respond, so we'll be endeavouring to do it as quickly as possible.

PN965

THE DEPUTY PRESIDENT: Yes, thank you. Thank you for that indication.

PN966

MS SIMMONS: That's okay. No trouble.

PN967

THE DEPUTY PRESIDENT: With all of that said, Ms Angus, I think you might appreciate that the Commission will continue to provide the opportunity through these sessions over the course of the two-week period for interested parties to appear and raise issues that are important to them and that they would like to canvass, and that opportunity will always be provided.

PN968

We will be responsive to some of the supplementary materials as they're received, and that might mean that if you think it's desirable, upon receipt of Professionals Australia's supplementary written submissions, to jump on a flight and attend in Perth in person, then of course you would be very welcome, but that might be a decision you might need to make at relatively short notice, and that's probably the best indication that I can give to you at this stage.

PN969

MS ANGUS: Yes, that's terrific, in which case I'll just request to be excused for the afternoon, and my practice will be, unless I've either learnt something directly from a party, is to check in in the morning at 10 o'clock but not necessarily attend, depending on the nature of the consultation that day.

PN970

THE DEPUTY PRESIDENT: Very well. Thank you, Ms Angus. That's fine.

PN971

MS ANGUS: Thank you, your Honour.

PN972

THE DEPUTY PRESIDENT: Thank you. Mr Kemppi, Ms Buchanan, is there anything that you would like to supplement in terms of that discussion and the very general timetable that we're talking to today?

PN973

MR KEMPPI: For my part, no. I just had a timetable question, but that can be offline.

PN974

THE DEPUTY PRESIDENT: Yes.

PN975

MS BUCHANAN: No, nothing, thank you.

PN976

THE DEPUTY PRESIDENT: All right. We might adjourn, having regard to the helpful information that has been shared. We'll wait to hear from you, Ms Buchanan.

PN977

MS BUCHANAN: Of course.

PN978

THE DEPUTY PRESIDENT: I appreciate that I'm putting you under some time pressure with some homework to go away with, but I think that it's very apparent to me that there is some supplementary work that needs to be done here, and I look forward to doing that with you.

PN979

MS BUCHANAN: Thank you.

PN980

THE DEPUTY PRESIDENT: Thank you very much. We'll adjourn on that basis.

PN981

MR KEMPPI: Thank you.

PN982

THE DEPUTY PRESIDENT: Thank you.

**SHORT ADJOURNMENT**

**[11.41 AM]**

**RESUMED**

**[2.07 PM]**

PN983

THE DEPUTY PRESIDENT: Good afternoon, thank you for your attendance. I'm noting that the appearances have changed a little since this morning. I will take your appearances. Mr Kemppe, you continue your representation for the ACTU this afternoon?

PN984

MR KEMPPI: I do, thank you.

PN985

THE DEPUTY PRESIDENT: Ms Benton, you're appearing for NAVA.

PN986

MS BENTON: Correct.

PN987

THE DEPUTY PRESIDENT: Thank you. And Ms Robertson, you appear for Public Galleries Association of Victoria?

PN988

MS ROBERTSON: That's correct.

PN989

THE DEPUTY PRESIDENT: Thank you very much. And Ms Simmons, you continue your appearance for Abi and Bnsw?

PN990

MS SIMMONS: Yes, thank you.

PN991

THE DEPUTY PRESIDENT: Thank you very much.

PN992

Ms Robertson, welcome. This is the first time that you've been present, physically, for some of the consultation sessions. I'm excited to have the opportunity to ask you some questions about your experience. I understand that you operate a public gallery or you act for the Association, which oversees others that operate public galleries in Victoria.

PN993

MS ROBERTSON: That's correct, yes.

PN994

THE DEPUTY PRESIDENT: Would you be able to tell me a little bit about your organisations and the work that you do?

PN995

MS ROBERTSON: Sure. Thank you for the opportunity to be present today.

PN996

The Public Galleries Association Victoria, we're the peak body for the gallery sector here. We represent over 60 galleries, including 19 regional galleries. Our members span estate agencies, local government galleries, university art museums and the independent sector. The sector combined, some of the - on an annual basis they're presenting over 500 exhibitions, 3500 public programs and education programs and they're attracting 5.3 million visitors.

PN997

THE DEPUTY PRESIDENT: Gosh.

PN998

MS ROBERTSON: They're also providing employment opportunities for over 7000 visual artists each year, and this is just Victoria.

PN999

THE DEPUTY PRESIDENT: Right.

PN1000

MS ROBERTSON: So our role is provide support and professional development to build their capacity to do what the do better.

PN1001

THE DEPUTY PRESIDENT: Yes.

PN1002

MS ROBERTSON: We do benchmarking, and we've been doing that since 2010, which is where we draw a lot of the information I'll provide today but also we consult regularly with our members about what their needs are.

PN1003

THE DEPUTY PRESIDENT: Okay. So tell me a little bit about what your members say their needs are?

PN1004

MS ROBERTSON: So the sector currently employs 688 full-time equivalent staff.

PN1005

THE DEPUTY PRESIDENT: And that's an employment relationship?

PN1006

MS ROBERTSON: Yes, that's an employment relationship, and they're supported by 1200 volunteers. So you can see it's disproportionate. The actual roles to deliver what they do, they require double the number of people in voluntary roles. That's their biggest need is workforce development. There's great capacity, particularly around First Nations staff, education staff. Key roles at galleries are actually being fulfilled by contract staff, so gallery installers, front house staff, you know, when people come into the gallery every - throughout the day. They're open seven days most galleries. When they're coming in the doors they're being greeted by people who are contractors or casuals, usually casuals, some contractors.

PN1007

The gallery workforce itself, they're highly skilled roles. They're looking after, as I say, 5.3 million visitors coming through the doors and 7000 visual artists, but they're also caring for \$4.4 billion collection, in Victoria alone.

PN1008

THE DEPUTY PRESIDENT: Is that \$4.4 billion?

PN1009

MS ROBERTSON: Billion, yes. So you go to - that includes the NGV's collection, but they have major holdings of Australian art, as well as international art. This is where the specialised, highly specialised roles come into play because they're caring for those works while they're on site but also when they're lending from major institutions. They have to make sure that their galleries have the right

environments to be able to ensure that those works, when they're coming in and out of the galleries, are safely cared for and not damaged in any way, through being on presentation in the galleries.

PN1010

THE DEPUTY PRESIDENT: Noting the highly specialised nature of the role, or the work that's being performed, are there requirements for any tertiary skills or qualifications that come with that?

PN1011

MS ROBERTSON: Because there are set awards, there are no specified roles, but what usually happens is they have multiple degrees. They're usually coming up either through visual arts, fine arts, or art history and then they'll supplement that with arts management degrees and, yes, they often will have PhDs in some of those roles as well. So they're holding multiple university degrees and hence multiple university debts and then often, if they're going into the sector, they're often having to do free internships because the sector is so poorly supported generally.

PN1012

I should explain. So the local government galleries, across the state, they vary widely between your larger galleries like Ballarat and Bendigo, versus your small galleries like Counihan Gallery and Merri-Bek. So they - the operations are largely funded by local government and the staff are employed by local government but Merri-Bek is a perfect example, they have three staff managing an exhibition program often turning over once a month, as well as extensive public programs and caring for a collection. They're just doing too much with too little.

PN1013

This is part of the problem with not having set awards. So what happens is that local government will - the gallery staff will work with local government to say what is needed in the role and then that is somehow fit within the Local Government Award structure.

PN1014

Within our independent sector, there is no award, so they're just drawing upon any award they can so what, generally, is happening is that the roles that they're doing are far more specialised than what their position descriptions are but also they're not fitting into a specific award. So this leads to people doing way too much within a role and also the payment - the remuneration is very low, compared to their skill level.

PN1015

I was just discussing earlier, with Penelope, our gallery directors, within local government, it's a very weird fit because they take the title of a director of a gallery, which is what they need for their national - you know, working with state and national directors - state and national galleries, that position is understood within the gallery sector but within a local government context it's not understood at all.

PN1016



So what happens is, their salaries are actually capped at up to \$120,000 yet the work they're doing is more akin to what a CEO is doing. They're doing fundraising, they're doing setting the exhibition program, they're doing the marketing - like they're the figurehead for the organisation. Yes, they're caring for the collection, making sure that there's oversight, managing the staff. They're very complex roles and yet the maximum that they can earn, under the local government, is around \$120,000.

PN1017

Then you go into the independent sector and that's where - it's the worst paid sector in our industry. So I can give a perfect example, I've been in the role for 13 years. This year - - -

PN1018

THE DEPUTY PRESIDENT: In your director role?

PN1019

MS ROBERTSON: I'm the key role within the organisation. I am just about to go to work four days a week and I will, this year, just make \$80,000.

PN1020

THE DEPUTY PRESIDENT: All right.

PN1021

MS ROBERTSON: And I have a very complex role. I'm doing advocacy, consultation support, professional development planning and that's the maximum I'm earning, after 13 years in the role.

PN1022

THE DEPUTY PRESIDENT: All right.

PN1023

MS ROBERTSON: It is the nature of the independent sector that is most concerning, especially with the need for an award.

PN1024

So we have this highly skilled specialist workforce, they're presenting exhibitions, they're caring for significant collections, they're managing loans from major institutions, they're engaging audiences and providing lifelong learning opportunities for kids, through to adults, and yet they are not getting the pay that they should be, or the conditions that they should be. They're often working, as I say, seven days a - they probably work five days, but over a seven day period, so they'll be working weekends, they'll be working evenings, when there's openings and things like that. Often that time is treated as time in lieu, when it should really be time plus. So there's all these kind of weird things that are allowed to happen because they don't have an award that fits and reflects what their duties are.

PN1025

THE DEPUTY PRESIDENT: I see.

PN1026

MS ROBERTSON: As I say, the biggest issue for our sector is our small to medium gallery sector, the majority of our galleries in Victoria are operating with less than five staff. They're subject to high burnout, stress, because they're doing too much with too little staff. The biggest issue for us is growing the workforce but we urgently need a modern award to ensure that remuneration is commensurate with their actual skills.

PN1027

I know that it sounds a bit strange, but it is one of those processes where setting an award will enable the galleries to work with their stakeholders, either local government or state funding and federal funding agencies, to ensure that they're paying their staff correctly and that they can incrementally ensure that what they're currently paying is moved up to what it should be, because it's definitely nowhere near what it should be, for the skill level and the specialist knowledge that they have.

PN1028

What we're seeing is this weird fit, they're being made to fit into these weird awards, or drawing from multiple awards that don't reflect what they're doing. They aren't being paid properly but they're also not being respected properly within local government, in particular, because they're seen as - their banding, et cetera, is much lower than what their duties are.

PN1029

That's the workforce within the arts workers, but then there's the artists. So what we're seeing is that the majority of our galleries strive to pay NOVA rates of pay, that is the benchmark and we've very lucky to have that. But many galleries, especially, find it hard to pay at NOVA rates and so they go into negotiation with artists and artists are often working for very low rates, or no money, for the opportunity to exhibit their work.

PN1030

Having an award would make it very clear to all galleries and their stakeholders that this is the rate and these are the conditions and it will ensure that this sector starts actually paying the artists what they should be paid. I know - this is anecdotal evidence, but our galleries, members within local government, they're very embarrassed that they're not paying all their artists, so artists at NOVA rates. They might pay some, but not all, and they strive very hard and advocate very hard, within local government, but local government doesn't see art as a profession.

PN1031

So this is the other reason why we need an award, so that local governments, state government, any agency they're working with, does see them in the same way, especially local government, same way they would see a plumber or a builder, or a live performer. A contractor, basically, rather than someone who's doing it for - because they're passionate about their practice. I mean artists are often - I trained as a visual artist, you go through your four-year degree and then often people are going through masters and on to PhDs and the - it's very difficult to make a living as a visual artist in Australia, there's not (indistinct).

PN1032

So having an award will at least ensure that the public gallery sector is supported in outlining proper budgets to pay for the artists and proper rates. Yes, everything from exhibiting work, commissioning new work, delivering workshops, selling the work through the gallery stores, et cetera. So this is really fundamental to this sector, which is a highly professionalised, highly skilled sector, but it doesn't have its own award so it really - that's why we strongly support NOVAs submissions and why I'm here today to help and strengthen that case.

PN1033

THE DEPUTY PRESIDENT: Thank you. In terms of the artists, what's your experience about the way in which they're engaged? You referred to the commission-based work, how is it, in your experience, that artists are engaged, perhaps outside the local government space?

PN1034

MS ROBERTSON: They'll be engaged through - there'll be contractual arrangements for them to deliver work, if there is a fee being paid, and sometimes when there's not been a fee paid at all, say what they will get in exchange for presenting and developing new work. But really they should be paid for, you know, the material costs and their time to develop the new work for exhibition.

PN1035

Galleries don't - public galleries generally don't sell work, that's usually done through the commercial sector. Some do, but they largely hand in any - they don't take a commission, or it's a very low commission to go through to the artists. But, yes, it's usually an engagement through a contractual one-off kind of experience is how they've been employed.

PN1036

THE DEPUTY PRESIDENT: That's an important piece of information because, to the extent that those employees are not - those artist are not engaged as employees, then the award - any award has no work to do.

PN1037

MS ROBERTSON: Okay.

PN1038

THE DEPUTY PRESIDENT: So to the extent that the issue - and I'd like to spend a little bit of time unpacking some of these issues, because you raised a lot of important issues that I have questions about a lot of them. But to the extent that there is an element of your submissions which identify concerns in relation to the payment and the entitlements to individuals that are engaged as contractors and not as employees, then this process is unlikely to result in any assistance to resolve that particular concern.

PN1039

MS ROBERTSON: Okay.

PN1040

THE DEPUTY PRESIDENT: Whether there's an award that already applies, albeit imperfectly, an award that doesn't apply or an award is created specifically to cover, for instance, a visual artist, if those artists accept arrangements to be employed on a contractual basis, to come in and do a project specific task, for instance, then the award system, whichever award might sit there, has no work to do.

PN1041

So, at that very general level, where does that then take your concerns, in respect of the artist? Do you still consider that there is a need to discuss some coverage gaps for the artist and is it possible for us to narrow the scope of the inquiry somewhat?

PN1042

MS ROBERTSON: I do think so and I think NOVA is best placed to discuss that. But, yes, for our members the issue of not - underpayment or non payment is because they cannot secure the budgets, either through local government or through their funding agencies, when they apply for their multi year funding, that's the biggest issue, is that they are - NOVA has set this benchmark. Some galleries pay above, some don't pay it, and that's a bit issue.

PN1043

So what happens is, you know, galleries will then go for - it effects - it leads to this cycle were people undermining one another, inadvertently, so that they will go for people that will accept no fee, versus those that will argue for a fee. So it's not a healthy industry. We need something to change to ensure that artist are actually - and their skill levels and what they're delivering is acknowledged and recognised across the industry and that the galleries can then secure the funding required to pay artists appropriately.

PN1044

THE DEPUTY PRESIDENT: Yes.

PN1045

MS ROBERTSON: So I don't know what the best mechanism is.

PN1046

THE DEPUTY PRESIDENT: No. No. And that's the nature of my inquiry also. To the extent that this process has been able to elicit some concerns that arise with respect to the engagement of the artist, then that's important. They're very important matters to be drawn to attention. The extent to which this aspect of a modern awards review process has capacity to cure that issue, having regard to the nature of the engagement and perhaps the way that those individuals will continue to be engaged, then it may be that the focus of our inquiry here is more so on the arts worker.

PN1047

Ms Benton, Mr Kempfi, anyone would like to speak to that?

PN1048

MR KEMPPI: I will just say a couple of things. Do you want to go first, or do you want me to?

PN1049

MS BENTON: You can.

PN1050

MR KEMPPI: I equally had first questions when I first came into this matter about that exact - Ms Benton and I had a conversation. Before I get to that, though, there is a potential change, or than potential, it's before parliament at the moment, it's the definition of employee as you know, of course, and I have a feeling that whereas the employee like provisions were dealt with quite extensively in our subs and we also have agreed they don't really have too much work to do. The employee definition could have a bit of work to do here.

PN1051

The other more factual consideration and, no doubt, Ms Benton will go to this in greater details, is that while they are a cohort of artists who might produce a painting and then sell that painting to a gallery, there's no employee relationship in that, or might do some work as a contractor, then there's again no employment relationship in that.

PN1052

It appears to be the case that there are artists that might produce a painting and sell that painting, on the one hand, but then might also work at a different gallery or there are artists who might have an exhibition and during the course of that exhibition, whether that's employment or not, or even if it's not employment, they might then engage in some work on the side of that, so be at the gallery running tours talking through their works, which is fairly close, I would say, to employment activities. So there is capacity that even if an award didn't capture a particular artist throughout all of their production, I guess, it might capture them at certain stages of that production. So I think there's still some work for an award to do, even for the artists. Then, of course, there's the broader arts workers, more generally, who don't seem to be covered by should be covered.

PN1053

So I think there's different times and different things that artists to wherein they might be employees or should be employees, particularly under a new definition, rather than contractors, even if part of what they're doing is contracting. It's all quite complicated, I think. For the complex part, I'll happily through to Ms Benton's difficult bit.

PN1054

MS BENTON: I'm happy - I'm not going to let Mr Kemppi off the hook in those matters just yet.

PN1055

It's certainly worth unpacking this idea that there might be some work around the edges. The immediate question I think that comes to my mind is whether that work is being done for the master, insofar as it would give rise to an employment relationship or whether it is in connection with their own business, which is the

selling and marketing of their own product. I think that's the distinction that would need to be borne out if we were to progress an avenue of inquiry that related to that supplementary work around the edges.

PN1056

MR KEMPPI: I think that's right. It's a shame (indistinct) and perhaps, to an extent, the legislation has departed from whose business as they are running, as the key question, but I love that question and I think it is quite key. There are times when the artist will be standing next to their painting, running their own business saying 'Buy my painting', but then there will be times where the artists will be standing next to their painting, talking about it, in a way that is running the business of the gallery by bringing people in and providing an experience.

PN1057

MS ROBERTSON: Most definitely.

PN1058

THE DEPUTY PRESIDENT: Let's assume that the running of the gallery, through the experience process, is covered, one might - well, I suppose there's some general questions about the extent to which that might differ from an arts worker role, and perhaps we can have a closer look at some of the arts worker roles, because it's not apparent to me that if they're doing that part of - those sorts of duties, which is different to the selling and the marketing of their own business, that they might actually then not be engaged as an artist but as an access coordinator or something similar, that is engaged on a causal basis, for instance, to perform that supplementary work around the edge.

PN1059

I think that's where I'm having a little bit of difficulty because even if that work does become employment related, is it employment as an artist any long?

PN1060

MS ROBERTSON: I think an example would be Art Gallery of Ballarat. So at the moment there is a - the sector - (indistinct) sector is engaging First Nations curators, or First Nations staff, I should say, generally, across the gallery sector. So what they then do, they employ - the galleries are engaging First Nations artists to come in and provide First Nations cultural knowledge and experience to access First Nations art. So it's not necessarily their work but they are there talking about other First Nations artwork that is on display in the gallery to audiences.

PN1061

THE DEPUTY PRESIDENT: That 's a great example and one that probably then makes me further think that whilst I am an artist I am not engaged as an artists with this gallery, rather I draw upon my considerable skills and experience as an artist to perform that work, as an arts worker, under whatever label it might be given, for the benefit of my master, which is my employer. I think that's the distinction that starts to become a little bit more apparent to me, with your example, which really helps to illustrate the point.

PN1062

Ms Benton?

PN1063

MS BENTON: Yes. I think there's a few things going on here and I think, in our original submission, we make a very short note that there are artists who make work and sell it commercially and that's not the type of practice that we're talking about when we're looking at this opportunity, through award coverage, because I know that will never be covered by an award because they have a form of making income through selling their work.

PN1064

There are many artists who don't make commercial work so have no opportunity to sell it in that same way. But even if they did, there are multiple situations in the public gallery sector particular, but also, you know, in public facing, you know, festivals or artists in residence programs or educational or anything where they are engaged and they'll be - at the present time they're engaged as an artists, you know, as Joe the artist, to perform labour. That won't be making artwork, necessarily, for exhibition, but that will be - it would be supplementary to the exhibition, as Ms Robertson pointed out. It could be giving talks. We talk about this in our submission too; working on written material for an education pack. They could be giving advice, as a larger theme. There's lots of other activity that artists are doing, that is just their labour.

PN1065

In the same way, or in a different way, when they're being commissioned to make something, sometimes for exhibition but sometimes even for acquisition, that is still their labour. I think there are existing situations in other awards that recognise either gig work or per piece that they might be producing something - there's some complexities, yes, that probably do need to be unpacking. I don't think an award process is going to solve every answer where artists are not recognised as workers at all, but I think it could address some of them and even some of them would make a tremendous difference, not just in how artists are able to make income from their work but also how they're recognised as real workers and I think that there still will need to be some elements of practice that will be the basis of contractual negotiations like any other contract. There's definitely - and as I mentioned yesterday, increasingly there are galleries and organisations who are engaging artists as artists in residence or to be on the payroll in the gallery, for three months to a year, to just be an artist and influence the galleries thinking and contribute to strategic planning, contribute to - or just offer perspectives on things, and they're doing that as Joe the artist. There is no title for that, at this moment, other than artist in residence, or I don't know what other people are calling it.

PN1066

MS ROBERTSON: Home of the Arts did that.

PN1067

MS BENTON: Hodder(?) are doing it now, had the art keeper program, which they've been running for three years, I think they do now, where they employ four artists on a three-month basis, to turn up to work every day, at the gallery, and just be there to influence with creative thinking.

PN1068

MS ROBERTSON: Another example is Elders in Residence. They have First Nations Elders being on site, helping gallery staff, as well as playing a role in terms of an educative role in the gallery to audiences.

PN1069

MS BENTON: (Indistinct) Statistics employed an artist for a whole year. They were encouraged to make work at that time, make artwork and invite people in to talk - to listen to the artist about their process, but they paid them on a weekly or fortnightly basis, like all their other staff, to turn up and just be in the organisation, as an artist. So that type of - there's only probably a handful of galleries who are doing it in this moment, because it's a new concept but I think it is increasing in organisations, in that capacity. But there has been a long-term arrangement where artists are brought in to be an artist in residence and there are residential studios where artists can go and be in a space, that's away from their home and work in another environment, for another organisation. Engage with the public, promote what they're doing, promote the facility. There may or may not be an exhibition outcome expected from that period of time. Usually there'll be an expectation that if the artist was influenced to make work that is shown later, from that time, that they acknowledge the inspiration developed during their time as artist in residence. But in all other ways they're a worker in a space, employed by an organisation for a fixed term.

PN1070

MS ROBERTSON: I wonder if I could add that the notion of public gallery, in and of itself, it's a social reason and it's a public good reason and it's about what the arts - you know, the benefits of the arts across a whole range of areas, from education to visual awareness and understanding, et cetera. But the whole reason the galleries are - the public galleries are there is for the public to come in and engage and have a deep experience. And when they're engaging artists in any way, they're fulfilling that mandate of the gallery. I think that's quite different to a commercial gallery. So a commercial versus public is a very big defining difference between the two.

PN1071

The artist, when they're engaged with a public gallery, they know that their work, for the majority of the time, is not for sale, it is there for delivering a public good, which is helping, you know, enabling people to come in and explore their work, the artists work and the ideas that are the heart of it, rather than a commercial exchange.

PN1072

MS BENTON: So when the artist provides their work to a public gallery is that just typically on the commission basis, or is that for the purposes that you've just explained, which is a voluntary provision of art?

PN1073

MS ROBERTSON: It may be under a contractual arrangement because that's the mechanism that we've had to use, but really ultimately is about doing what the gallery is there to do as well, which is about that public role that galleries play. It is much broader than purely - it is not a commercial enterprise, it is very much



about learning and engagement kind of process. So their work is doing both but the mechanism that we've had to use to kind of compensate artists has been through this contractual mechanism. So it's definitely about the role of what a public gallery is doing and these public entities and whether they're incorporated associations or local governments or state governments, that's what their remit is very much about, an educative and art form development, all those kind of roles. They're not there for a commercial reason.

PN1074

MS BENTON: So where those galleries have engaged artists in an employment like, sorry, I shouldn't say employment like, in an employment relationship, how have they engaged them? That is, what awards, in your experience, are they drawing upon, for the purposes of benchmarking - - -

PN1075

MS ROBERTSON: Those were not the words.

PN1076

MS BENTON: - - - they're using our code. And our code of practice - our code of practice has been around for 22 years and was - has been revised multiple times, I think six. There's - lots of previous versions of the code were benchmarked against awards that has similar practices to what an art - what different types of artists might do. Like it was drawn on the Architectural Award. There were, I guess, similarities that researchers found then between the Architecture Award and what a public artists would do. So numbers were worked on for that. There was a Graphic Award - Graphic Design, I think, Award, that a different type of artist or a different type of arrangement was drawn on.

PN1077

I could probably find, in my notes, the thinking between how an award in a different type of activity or type of engagement could loosely connect and for all other reasons an organisation or an employer wouldn't think to look at that award to make that connection, so NAVA had made that connection and wrote about that in its methodology to explain how those numbers came to be.

PN1078

Over the time, awards changed in that 22 year period of time, so there had to be a change in approach because the numbers didn't match anymore. In the most recent work that we did we, again, looked at the similar types of awards that you could say were some different creative practice, including the Live Performance Award, which is directly referenced in the current code, particularly for visual artists who are working in a live performance practice, but under a visual arts umbrella. So they don't consider themselves to be live performers, in a theatre or a music context, they consider themselves to be visual artists but their practice is live performance.

PN1079

So a gallery will not look to the Live Performance Award traditionally for how to pay them, they will be paid visual arts rates and what we hear a lot from organisations who pay live performers and visual artists at the same time is, like it's very confusing how to pay visual artists who are doing similar work to live

performers because the Live Performance Award is so clear about how much you should be paying people as a baseline and that you would need to be paying superannuation. But in the visual arts case that's not clear and, actually, there's some terms in the Superannuation Act that actually suggest that you shouldn't be paying visual artists superannuation, which I think need to change, but that's a whole other conversation.

PN1080

So there's those examples, and I've just lost my train of thought. Coming back to - so we benchmarked all those and then we had many, many, many consultations with the sector, on a national basis, to look at what people are currently paying and benchmarking the fees that, the one-off fees or the hourly rates that they might be paying somebody for short-term work and had lots of conversations. We also put it through, I guess, a formula because we had found that the loan fees and the commission fees in the previous iterations of the code had been changed over some years and went a bit out of whack and for some reason loan fees, which is when an artist already has a piece of work in their studio and the gallery asks to borrow it, to put it on exhibition. The artist lends them the work, so there is a loan fee. That wouldn't be covered under an award but I think any associate work that the artists is required to do, to support the loan of that work, could be considered a labour and be - that could include the packing of the work, for example, for postage. It could include the preparing of a new artist's statement, you know, the writing of or the participation in a public program. So that kind of supplementary work, around the artwork, which has already been made and wouldn't fit in an award.

PN1081

Anyway, I segued, but the point was, we put it through a formula so that there was a tiered system to the artists fees. WE also recognised, after multiple surveys, that the major institutions, state and national galleries, were paying less - were paying artists less than the small to medium sector. That's largely, comparatively, because they were paying the same minimum standard that the code had set, which was the same amount that a small gallery, with a budget of \$300,000 was paying. So we made the argument, in the current code, that if you have millions of dollars you probably should be paying artists a bit more money. You're likely to attract a lot more visitors, the artists will be expected to do a lot more public facing work around the exhibition to promote it and they should attract a higher rate. So there has been changes to the code that acknowledge that a large institution should be paying more than a small one. They're the major changes in the current code.

PN1082

Aside from that, we still have recognition of career stages, in the same way as an award, recognising that an artist at the beginning of their career will not have the same level of skill and expertise as an artist who is in a mid career or an established role, who have developed acquired skill and expertise in their practice, which should deserve a greater amount of pay, like any other worker.

PN1083

THE DEPUTY PRESIDENT: So in the context of the artist, NAVA's supplementary submissions provided some indicative duties, including the

development of the ideas, the artistic medium, the preparation of materials, all of those things, I'm still just trying to make the connection to an employment relationship.

PN1084

MS BENTON: Sure.

PN1085

THE DEPUTY PRESIDENT: Is it the case, having regard to the discussion that we've just had, that the artist is further qualified, for the purposes of this review, to an artist in residence, or something more specific?

PN1086

MS BENTON: I think - I don't know it can be reduced to artists in residence, I think that is definitely one thing that could be included in the report. I think those first few points that you mentioned, from our second submission, I agree, they contribute to the making of a work. But then the following dot points, towards the bottom of the list, I think are much more labour connected to the type of activity that could be considered to be work. And that may be - it may be only a one-off, but it could be ongoing, particularly if you think about a travelling exhibition. (Indistinct) mentioned that sometimes a tour will travel for three to five years.

PN1087

THE DEPUTY PRESIDENT: Just looking at bullet point 4 then, that is the transformation of the materials into the art, the desired shape, that is, the work product that the artist seeks to present to the audience. So in what - - -

PN1088

MS BENTON: Yes.

PN1089

THE DEPUTY PRESIDENT: In what sense is there an employer that is directing that individual to do that work? Maybe that's more so the focus of - - -

PN1090

MS BENTON: Okay. So that would be a curator, who will say, 'I want you to make something that has to do with cake', and the artist is like, 'I can't make anything to do with cake', so they may have to go and research how their practice might connect to cake and spend time thinking about that and then think about, 'What materials will I need to use?'. Then they'll meet with the curator and say, 'This is where I'm at', and the curator will say, 'Yes, that's sort of not really what I was thinking', so the artist will go back and keep developing their ideas. So there'll be to and fro with that, and then they'll get to a proposal that the commissioner or the curator will say, 'Yes, that sounds good'. So they'll start developing that and then they'll need to be involved in meetings about how the work will install. So they'll meet, sometimes, with an installation team or production manager, to have conversations about how this thing will hang from the ceiling, or where it should be placed, in the context with the rest of the work in the exhibition. So there's lots of those kind of meetings.

PN1091

Then they'll need to meet with the marketing people to say when the work will be ready. Liaise with the photographer to have photographs of the work taken. Then they'll probably produce some writing that will go into an invitation or a catalogue, or something, so there'll be back and forth in negotiating what that says. I don't know what else. Then be involved in the installation, so the artist will be on site.

PN1092

Sometimes an artist can work one to two years on a piece of work, particularly if it's a major commission, so they'll attend meetings, they'll attend the installation of the exhibition and make sure, probably either install it themselves or work with an install team making sure that it looks the way that they intended it to look.

PN1093

In some situations they'll have to be in attendance for a VIP tour, to talk to donors of the exhibition or somebody who has funded the work, about what their process was to come up with this thing. So all of this is quite an ongoing term, I suppose, that could be considered.

PN1094

THE DEPUTY PRESIDENT: So probably two questions again from that. Aer any of the arrangements, such as those that you've just spoken about, currently being engaged on an employment basis?

PN1095

MS BENTON: No. Nobody is employing - well, aside from the ones who are putting them on the payroll, no. Currently you refer to NAVA's code of practice, because that's the only place that you can find out what you really should be paying an artist. It depends, some galleries will say, 'Okay, I'm going to need you to do this many meetings with me. You'll need to do all of this', so then there's the set of rates in here of how much you should be paid for research and development time, the hourly rates. How much you should be paid to produce or research and develop a talk that you'll present to the public, all of that kind of activity. So they'll draw on those. In some situations the gallery might say, 'This is the fee and that will include three meetings'.

PN1096

THE DEPUTY PRESIDENT: That was going to be my next question.

PN1097

MS BENTON: Sometimes.

PN1098

THE DEPUTY PRESIDENT: Does the commission based approach contemplate or recognise that it's inevitable, in this process, that not only will you have to come up with the ideas for approval and then develop the art and then the associated tasks that come with it, so the fee is negotiated on the basis of the likelihood of this being a six-month project or a 12-month project, or beyond?

PN1099

MS BENTON: Absolutely. So for artists that have been doing this for a long time, they're pretty confident at negotiating that, like any other, I guess, established practitioner in any occupation. You know, you get to a level where you feel confident in asking for what you're worth. But there are artists who might be established, or mid career, and especially in their early career, who don't have that confidence and they are the ones, most particularly, who, I guess, are vulnerable and suffer from there not being anything legal to support them in asking to be paid at all or to be paid fairly. There is no - there's nothing, anywhere, that says what is reasonable.

PN1100

THE DEPUTY PRESIDENT: But aren't we talking now about the reasonableness of the commission fee, as opposed to the reasonableness of the ordinary hourly rate, based on a 38 hour working week, if you're a full-time employee in a like? So the difficulty for me is that we start to loop back to a scenario where the issue that arises from the example that we've been discussing are issues that are relevant to vulnerabilities associated with less established artists and the confidence to negotiate commission fees that represent the extent of the work that they're doing and the value that that holds. The question then becomes, in the context of this review, does that equal an award gap for artists? Or is that a different issue which certainly might require much focus, but is that focus appropriately directed here?

PN1101

MS BENTON: I will say one quick thing. I hear you, yes, I agree that, as I said, not everything is going to be solved by this process, and it's not going to be an appropriate fit, but I think there are some activities that, as a baseline, should be recognised through an award process and have a baseline hourly rate attached to them in the same way that a live performer will have hourly rates attached to them.

PN1102

THE DEPUTY PRESIDENT: Okay. Mr Kemppe, do you want to add something to that?

PN1103

MR KEMPE: Thank you, yes. I was going to say part of this is, I think you're right in pointing out, is like the problem of I could contract a private plumbing company to remodel my entire bathroom for \$100. The nature of contract law is particularly unforgiving and if there's a remedy there it's around unfair contract and so on and so forth, but not (indistinct).

PN1104

Perhaps one way to look at it, just to pick up a point, an earlier point from you, Deputy President, is that if we think about it not so much as artists being covered by an award or not being covered by an award, and sort of focus on arts workers, there seems to be a point in time where the artists is an artist, but an artist could also be an arts worker, in a sense. So some of the things that Ms Benton was talking about that go with an exhibition, all those sorts of things, you know, fitting, the painting, putting it up, talking about it, and so on. I imagine, through

some terrible hiring decisions, I was engaged to do that job I would be an art worker.

PN1105

THE DEPUTY PRESIDENT: Because you're not well equipped to - - -

PN1106

MR KEMPPI: Completely not well equipped. But, hypothetically, if I was engaged to do that job, I'd be paid as an arts worker, I suppose.

PN1107

THE DEPUTY PRESIDENT: Yes.

PN1108

MR KEMPPI: So I imagine that if there's a point in time, and it needs to be grey, I imagine, because you do get those business question, because it's your art, but there could be a point in time where the artist, irrespective of the fact that they produced the art, then transitions into being an arts worker, instead of simply handing over the goods and going, as you'd expect in an ordinary commercial transaction. So maybe that's the - I guess the way of looking at it.

PN1109

MS BENTON: That makes sense.

PN1110

THE DEPUTY PRESIDENT: Yes. I feel like we need to narrow the scope of the inquiry somewhat, in relation to artists. I don't think the boundaries are going to be clear. I think that much is clear.

PN1111

MR KEMPPI: I think there will still be some grey, yes.

PN1112

THE DEPUTY PRESIDENT: Yes. But perhaps just approaching this issue in a manner that - the example that we've just gone through really bears out the circular nature of the concern that I keep coming back to, regrettably, but where it's a contractor relationship and an award doesn't fix that problem.

PN1113

MS BENTON: Yes.

PN1114

THE DEPUTY PRESIDENT: But your submissions also deal with various art workers and related duties and, as Mr Kemppi has identified, it may be that, at a point in time, the artist is engaged to do duties akin to those sorts of roles, in connection with whatever the gallery needs from them, at a particular point in time.

PN1115

MS BENTON: Yes.

PN1116

THE DEPUTY PRESIDENT: Now, that's just throwing ideas for discussion, at this stage, but that's what this process is designed to achieve, to share ideas and concerns and issues and issue spot. That might be something that we can give a bit of thought to, perhaps by working through some of the arts worker roles. I thought we might be able to do that by reference to whether there are any awards, albeit imperfect, that have capacity or scope to apply to the work that's being performed, having regard to the duties that you've identified.

PN1117

Does it make sense to move on to the arts worker now, or are there any other matters that you'd like to share about the artist?

PN1118

MS BENTON: I mean there - I think there are some more people from the visual arts coming tomorrow, so we could come back to parts of the - - -

PN1119

THE DEPUTY PRESIDENT: Visual arts tomorrow.

PN1120

MS BENTON: I think so. And I - - -

PN1121

THE DEPUTY PRESIDENT: I think that they've contemplated being available for an hour or two, from 10 am, in the early part of the day, so that will work.

PN1122

MS BENTON: Yes. I guess one final point on that is that I think, through any, I guess, traditional means of getting an award established, we probably wouldn't have discussed the artists so much. It's the way that the arts has been considered as part of the modern awards review, through the dialogue in revive and the addressing of that in your discussion paper, has raised some questions about where the artist might fit, recognising that there are many situations where they would not be considered to be an employee, but also recognising that they - well, (indistinct) again, not recognised as a worker, but should be. Thinking about the closing loopholes bill, even though it's for a digital platform, it was an opportunity to be thinking about employee-like forms of work or something else, but we don't know what it is yet, I suppose.

PN1123

THE DEPUTY PRESIDENT: And I suppose the discussion paper raised those concepts and sought views about it. I think that Mr Kempfi already talked before, everybody was pretty well aligned, that closing the loopholes doesn't have any work to do here, and without speaking on behalf of the employer organisations, I think some of them are really focused upon not considering law that is not currently enacted, for the purposes of our assessment of any employees that might fall outside the scope of modern award systems in the arts and culture sector.

PN1124

MS BENTON: Yes.

PN1125

THE DEPUTY PRESIDENT: The two attendees that have given the Commission notice that they intend to appear. I think the first works in ceramics, and that's Ms Thornton-Smith.

PN1126

MS BENTON: Yes.

PN1127

THE DEPUTY PRESIDENT: The second, my associate, Sophie, might remind me.

PN1128

THE ASSOCIATE: There were two more, the - - -

PN1129

THE DEPUTY PRESIDENT: That's good to know.

PN1130

THE ASSOCIATE: So that's the Australian Centre for Contemporary Art and also Gertrude (indistinct). Then the other person was, that organisation was the National (indistinct) Touring Support (indistinct).

PN1131

THE DEPUTY PRESIDENT: That's helpful. So it sounds as if we'll have four individuals tomorrow morning that might be able to speak to other lived experiences about some of these matters, that can contribute to the discussion.

PN1132

The Touring Support Victoria, I anticipate that that's in relation to those exhibitions that move across Australia.

PN1133

MS BENTON: That's right, yes.

PN1134

THE DEPUTY PRESIDENT: We can obviously pick this up tomorrow morning, but is it the case, on your understanding, that there is a contract for the provision of an artists work to that exhibition and the artist then accompanies their work on that tour?

PN1135

MS BENTON: Sometimes, yes.

PN1136

THE DEPUTY PRESIDENT: And sometimes the artist might not, it depends upon the nature of that engagement, does it?

PN1137

MS BENTON: Yes.

PN1138



MS ROBERTSON: And sometimes the works are long-term collections as well. So the work's been acquired by a gallery, a public gallery or a lender, and becomes part of the tour as well.

PN1139

THE DEPUTY PRESIDENT: So in circumstances like that, is the artist who has produced that work invited to collaborate on the tour?

PN1140

MS ROBERTSON: Sometimes. Yes, sometimes.

PN1141

THE DEPUTY PRESIDENT: All right.

PN1142

MS ROBERTSON: And also the (indistinct) to be able to discuss that in detail.

PN1143

THE DEPUTY PRESIDENT: Yes, about how such work is remunerated. All right. Well, I think that there's going to be a lot of value in those discussions. So they are contemplated for tomorrow morning. I'll give an indication or a note to say that they will be appearing from 10.

PN1144

THE ASSOCIATE: I'd say between 10 and 12. Gertrude (indistinct) between 10 and 11.30, and the Centre for Contemporary Art (indistinct).

PN1145

THE DEPUTY PRESIDENT: Has also said from 10 am till 11, I think.

PN1146

THE ASSOCIATE: Yes, first thing.

PN1147

THE DEPUTY PRESIDENT: All right. Well, with the benefit of being able to inquire of those attendees tomorrow morning, about some of these additional issues, would you like to take the opportunity to move on into the arts workers?

PN1148

MS BENTON: Yes.

PN1149

THE DEPUTY PRESIDENT: Before we do so, Ms Simmons, is there anything that you would like to contribute to the discussion, insofar as it concerns the artist, at this stage?

PN1150

MS SIMMONS: Not at this stage, Deputy President, thank you.

PN1151

THE DEPUTY PRESIDENT: Thank you. All right, the art workers.

PN1152

One of the things that you helpfully drew a distinction between, Ms Robertson, when you were making your submissions, is between the independent galleries and the local government galleries. Have you seen the supplementary submission that NAVA produced this week, sorry - - -

PN1153

MS ROBERTSON: It was this week, it was last week.

PN1154

THE DEPUTY PRESIDENT: Last week, on 15 January, in which NAVA has identified artists and art workers that it considers are relevant for discussion as part of the review?

PN1155

MS ROBERTSON: Yes.

PN1156

THE DEPUTY PRESIDENT: And the art workers are narrowed down, by reference to various occupation or classification types.

PN1157

MS ROBERTSON: Yes.

PN1158

THE DEPUTY PRESIDENT: Now, can I ask a broad question first, in terms of the list of occupations that are represented under the title of art workers, do you broadly agree that that reflects, they might have slightly different names at times, but that reflects the types of workers that a gallery, perhaps, might engage? Advisors, they're business operators, there's curator, there's development manager.

PN1159

MS ROBERTSON: Yes, we definitely support that. I brought along our staff and position titles of (indistinct) they're very aligned.

PN1160

THE DEPUTY PRESIDENT: Very similar, are they?

PN1161

MS ROBERTSON: Just the terminology may shift, but those are the key roles within a gallery.

PN1162

THE DEPUTY PRESIDENT: Okay. So when we're looking, first, at the local government galleries, I think that part of your submission presupposed that the Local Government Awards might have some application, albeit, is it the case that you hold some reservations about that?

PN1163

MS ROBERTSON: I do, because of the nature, the specialist nature of gallery operations, which are very different to local government operations. Even though

they're service providers of a sort, it is - they're dealing with artists and artworks and their role is very much about providing social, cultural and economic returns to their communities.

PN1164

THE DEPUTY PRESIDENT: So is it possible that we turn up a copy of the Local Government Award, I just want to make sure that I have an adequate understanding of the position. Now, would you like to take a hard copy and I can draw up a soft copy, if that would assist?

PN1165

MS BENTON: I've got - I'm looking for it.

PN1166

THE DEPUTY PRESIDENT: You've got a soft copy there.

PN1167

All right. So the first step typically involves looking at clause 4, which identifies the coverage of the award. 4.1 recognises the Local Government Industry Award as an industry award covering employers throughout Australia, in the local government industries, and their employees in the classifications listed in schedule A. So that provides some broad scope as to the application of this award. Local government industry is defined, at 4.2 as:

PN1168

*All activities undertaken by local government entities, including activities undertaken by corporations controlled by one or more local government entities.*

PN1169

MS ROBERTSON: Yes.

PN1170

THE DEPUTY PRESIDENT: Now, my first question would be, for those galleries that are operating in the public sector, do you form the view that the coverage clause of this award would apply to those galleries and that it's an issue related to the classifications in schedule A that present a problem for the engagement of arts workers, or is it something different?

PN1171

MS ROBERTSON: It would, with the exception of what the award doesn't cover. I note the CEOs and also the element of Local Government Associations and their employees, so some - no, that's correct. So local government industry, it would cover them, bar those more senior roles.

PN1172

THE DEPUTY PRESIDENT: Yes.

PN1173

MS ROBERTSON: Even though they are covered, under the local government - that general one, but I would argue that they're probably, you know, the scope of

the work that they're doing would have them more akin to a CEO, in terms of the actual work that they're delivering. So I feel that the - yes, (indistinct) terminology and that it isn't - those directors, in particular, aren't being recognised for the breadth and scope of the work that they're doing, as well as the specialised nature of their work, within the Local Government Act.

PN1174

THE DEPUTY PRESIDENT: Okay.

PN1175

MS ROBERTSON: But all the other roles that we listed would fit within those ones, it's just the directors that are an odd fit. Technically they would fit under that, but the actual - they're more akin to the CEO roles, which aren't covered by the award.

PN1176

THE DEPUTY PRESIDENT: Okay. So if we then have a look at schedule A, classification definitions of the award, that then provides some guidance about the different levels.

PN1177

MS BENTON: Where is that?

PN1178

THE DEPUTY PRESIDENT: If you scroll down, you're looking at a soft copy online of the award, are you, Ms Benton?

PN1179

MS BENTON: Yes.

PN1180

THE DEPUTY PRESIDENT: If you scroll down, on the left-hand side there should be an index.

PN1181

MS BENTON: Yes, it's in the end. Yes.

PN1182

THE DEPUTY PRESIDENT: For your - I don't have a page number on this version.

PN1183

MS BENTON: It's after 33.

PN1184

THE DEPUTY PRESIDENT: Yes. Thank you.

PN1185

Now, you'll see that the award, under schedule A classification definitions, recognises that this is a structure that consists of skill-based classifications and it sets out various skills that employees at different levels may possess and where employees possess those skills, they're most closely aligned to that particular level

and then paid in accordance with the rates that are prescribed earlier in the award, associated with that level classification.

PN1186

Now, you'll see, just by looking through the levels and the descriptors, they don't actually list occupations by title but, rather, the award takes the approach of identifying, perhaps, qualifications and experience to recognise the sorts of qualifications that a person might bring to bear. But otherwise, when you're looking at, perhaps if we looked at level 5 right now, that's recognising that a person who is engaged at level 5 might hold a post-trade certificate or extensive knowledge gained on the job.

PN1187

MS ROBERTSON: And a degree or a diploma, yes.

PN1188

THE DEPUTY PRESIDENT: And a degree, that's right.

PN1189

MS ROBERTSON: That's where most - I'd say bar the front of house staff and retail staff, the other roles within the galleries, the majority of roles would start at a minimum of 5, but the banding that they actually - the actual band that they're put under is very different to this, often, and it ranges a lot between local government areas. So it's very subjective, according to the local government - the size of the local government and its catchment and the amount of income that's coming in. That definitely effects the bandings. One person might - one person doing a curator's role might be on a band 5 and another might be on a band 7.

PN1190

THE DEPUTY PRESIDENT: So is that starting to identify a different type of issue? That rather than, at least for the public galleries, that there is an award gap, the concern that you've raised there seems to be more about a compliance point with the award. Have I understood your submission correctly?

PN1191

MS ROBERTSON: That's one part of the issue, yes.

PN1192

MS BENTON: Yes, and that not all public galleries are run by local government.

PN1193

THE DEPUTY PRESIDENT: Absolutely. So this inquiry, at this stage, is focused only upon those galleries that are run by local government, where this award has some application, by reference to clause 4.2.

PN1194

So does it follow then that where a gallery is run by local government you would feel comfortable that the Local Government Industry Award would cover the work performed by the arts workers, with the exceptions you identified before of the CEO, who is expressly excluded.

PN1195

MS ROBERTSON: Yes.

PN1196

THE DEPUTY PRESIDENT: Because you'd be able to align each of the art workers to a classification within this award, at levels 1 through to, I think it goes to - - -

PN1197

MS ROBERTSON: To 11.

PN1198

THE DEPUTY PRESIDENT: - - - 11.

PN1199

MS ROBERTSON: Yes.

PN1200

MS BENTON: I think a large number of local government galleries are using this award.

PN1201

MS ROBERTSON: Yes, the local government galleries would be.

PN1202

MS BENTON: Not all of them, but most of them.

PN1203

MS ROBERTSON: Yes. The other - and, again, the application of time in lieu and out of hours work is where there'll be compliance issues as well.

PN1204

MS BENTON: That's right.

PN1205

MS ROBERTSON: They're doing above and beyond.

PN1206

THE DEPUTY PRESIDENT: Yes, okay.

PN1207

MS ROBERTSON: Because they might be doing - with our smaller galleries, the gallery director would probably be doing the role of a director, a curator and a collection's manager. So three roles, effectively.

PN1208

THE DEPUTY PRESIDENT: So perhaps then if I were to summarise that, where the gallery's run by local government there's broad acceptance, by the local government, that the arts workers would be covered by this award and, in broad terms, the award is applied. The concern that you've raised today really is focused upon issues that you consider relate to potential award compliance issues?

PN1209

MS ROBERTSON: Yes.

PN1210

THE DEPUTY PRESIDENT: All right. So that's category 1, galleries run by local government. How would you define number 2, galleries that are not run by local government and who would they be run by?

PN1211

MS BENTON: It's a mix. So in that submission that I made yesterday, it is a mix of public companies, incorporated associations, other incorporated entities, unincorporated associations or entities. There's a small group of university, there are a few that also are a cooperative or a partnership.

PN1212

THE DEPUTY PRESIDENT: So I think, based on your research, just over half the public galleries are run by local government, the rest of them are a mix of - - -

PN1213

MS ROBERTSON: Yes, we have 54 per cent are local government galleries. Independent galleries are 30 per cent of the sector and - - -

PN1214

THE DEPUTY PRESIDENT: So it's still a large number.

PN1215

MS ROBERTSON: It's a large percentage. Then university art museums are 8 per cent and state institutions 8 per cent as well.

PN1216

MS BENTON: I might just get those figures from you.

PN1217

MS ROBERTSON: Yes. So local government is 54 per cent, independent galleries at 30 per cent, university art museums are 8 per cent and state institutions are 8 per cent.

PN1218

THE DEPUTY PRESIDENT: So a state institution, there is a State Government Agencies Award.

PN1219

MS ROBERTSON: Yes.

PN1220

THE DEPUTY PRESIDENT: Are you familiar with that one as well?

PN1221

MS ROBERTSON: I know of it, but that's it, and the staff will often come by the VPS, the Victorian Public Service, yes.

PN1222

THE DEPUTY PRESIDENT: Yes. So the coverage award of the State Government Agencies Award says:

PN1223

*It covers state public sector employers that are incorporated bodies established for a public purpose or by law of the state.*

PN1224

MS BENTON: There's only one state gallery in each state.

PN1225

THE DEPUTY PRESIDENT: Yes, that makes sense. So for the employees that are engaged to perform work as an art worker in the state galleries, that represents the 8 per cent, to which you've just referred?

PN1226

MS ROBERTSON: Yes.

PN1227

THE DEPUTY PRESIDENT: And do you have any views about the application or concerns that this award might not be adequately applied to the arts work that's performed by the state institutions?

PN1228

MS ROBERTSON: Other than the same issues as before, in terms of that they will be doing far more hours than what they're actually - how it's applied. But, no, it - I agree that it would cover them in the same way that the local government does.

PN1229

MS BENTON: The only issue that we found when we were doing our code research is that all of the state and territory galleries are covered by their state-based award, except for in the Northern Territory, because there isn't any inclusion of gallery-based work in - - -

PN1230

THE DEPUTY PRESIDENT: Okay.

PN1231

MS BENTON: The museums and galleries in the Northern Territory are adapting the Amusement Award for some of their staff, some of them, and the rest are on an enterprise agreement or they're referring to NAVA's code. That's the only state gallery, or territory, rather, that isn't working to the state-based award.

PN1232

THE DEPUTY PRESIDENT: Okay. So there is an enterprise agreement that - - -

PN1233

MS BENTON: For staff who started before 2014.

PN1234



THE DEPUTY PRESIDENT: Okay, and that doesn't apply to new employees, after 2014?

PN1235

MS BENTON: No.

PN1236

THE DEPUTY PRESIDENT: And for new employees after 2014 it's a combination of NAVA's code and you said the Amusement Award?

PN1237

MS BENTON: That's right.

PN1238

THE DEPUTY PRESIDENT: All right. So what about arts workers employed in university art museums? Have you given some thought to whether there are any university awards that have some application?

PN1239

MS BENTON: There are. I hear that they are covered by the University Award. But, again, it's not a huge number of university galleries either.

PN1240

THE DEPUTY PRESIDENT: Yes. Based on the numbers that Ms Robertson's provided, that's at 8 per cent of - - -

PN1241

MS BENTON: Yes.

PN1242

THE DEPUTY PRESIDENT: Perhaps we won't spend a significant amount of time in delving into that, that might be something that I can take offline. But if you are broadly satisfied, Ms Benton, that for those 8 per cent art workers employed in university art museums, there is likely to be award coverage, under the relevant University Award?

PN1243

MS BENTON: Yes.

PN1244

THE DEPUTY PRESIDENT: All right. I won't take time to unpack that one just now, because I'd like to focus upon the one that really is probably pertinent to the submission that you've made, and that's the independent galleries.

PN1245

Now, NAVA, not NAVA, the New South - I withdraw that. The Northern Territory, you said a moment ago, has been applying the Amusement Award, together with NAVA's code. The Amusement Award was an award that I wanted to discuss with you. Just while I've got the hard copy and then I'll share it with you, Ms Robertson, and I can draw up a soft copy again. Yes, that's a grade 8 employee, under the schedule. Let me just turn that up and we can just work methodically through that.

PN1246

*The Amusement, Events and Recreation Award applies as an industry award to employers throughout Australia in the amusements, events and recreation industry and their employees in the classifications set out in this award.*

PN1247

THE DEPUTY PRESIDENT: 4.2 of the award contains a definition of amusement, events and recreation industry and refers, at (v) to museums and galleries.

PN1248

MS BENTON: That's right.

PN1249

THE DEPUTY PRESIDENT: Now, when we go then to the classifications, in order to understand if there's a classification that has scope to cover the arts workers to whom you've referred, we go to schedule A. Again, I don't have the page number on my soft copy, but I did take you to - - -

PN1250

MS BENTON: Is it the classifications, is it 12?

PN1251

THE DEPUTY PRESIDENT: That's it. That's part of it. That is the tail end of schedule A that you're looking at now, Ms Robertson, and you can go back a couple of pages to start at introductory level employee, grade 1, and onwards.

PN1252

Now, it might be worthwhile just taking a moment to have a look through that. Because, unlike the Local Government Industry Award, for instance, that we looked at a moment ago, this award is a little more prescriptive, in terms of some indicative roles that might fall within each of the award levels. But it also then provides some broad duties, like the Local Government Industry Award did, so must some very general duties that can be applied to the employees, in order to assist with the classification of them.

PN1253

Now a grade 4, without rushing you through it, does specifically refer to a craftsperson - - -

PN1254

MS ROBERTSON: And an exhibition technician.

PN1255

THE DEPUTY PRESIDENT: Indeed. And I would understand the exhibition technician would be the role that Mr Kemppe said that he was ill-equipped to perform.

PN1256

MR KEMPE: Amongst others.

PN1257

MS BENTON: So this particular point, I suppose, is one that I've discussed at length with the sector because I also like why is nobody using this award to pay their technicians. I have a mix of responses and there are the smallest handful, like a couple of galleries, referring to this award to pay their technicians. But otherwise, they're making up the numbers and when I've tried to understand why, looking at the history, I suppose, of this award and the exhibition technician, I have questions about is it because this, is it an exhibition, in the context of an exhibition in a convention centre or a trade fair and that type of skill, which is different to an art handler.

PN1258

MS ROBERTSON: Most definitely.

PN1259

MS BENTON: And even though it says 'museum and galleries' in the dot point, initially, what I hear from the gap, it's about 27 per cent of independent galleries applying this award, what I'm hearing from them is that they can't match it to the current roles and duties, in any clear way, for the types of workers that they have in their gallery. So even though they're referring to this in various ways, it's not a neat fit.

PN1260

MS ROBERTSON: I see that grade 6 refers to a museum technician, so it's going up two grades at least. But I would agree, because there's definitely no mention - they're basically tradespeople rather than specialist art handlers.

PN1261

THE DEPUTY PRESIDENT: But remember these are indicative and they're designed to be indicative only.

PN1262

MS ROBERTSON: Yes. But these are also level 1 in the engineering tradespeople. So for an exhibition technician of grade 4, they would have to be someone who is working with a more experienced person, because that would be very base level. But I agree with you, Ms Benton, that it is - the exhibition definition is very broad. It's not a gallery exhibition technician.

PN1263

THE DEPUTY PRESIDENT: But the award is expressed to cover museums and galleries.

PN1264

MS ROBERTSON: Yes.

PN1265

THE DEPUTY PRESIDENT: So one might say that these indicative duties need to be read or understood in that context.

PN1266

Now, once you then get to a grade 8 employee, you start moving away from indicative role types, or titles, and simply referring to employees who possess

qualifications or experience. It goes on to say, 'Such as' to provide some indication and guidance, 'Such as advanced engineering or technical skills or post trade or diploma level, or', and this is very general, 'who undertakes duties of a more advanced or complex level'.

PN1267

MS ROBERTSON: That's the issue, these are very - it's like the general catchall and the majority of roles within a gallery. This really only covers attendance and a technician, possibly, versus all the other roles within - - -

PN1268

MS BENTON: I mean if I'm looking at the exhibition technician rates in here, probably a large reason that people aren't paying this award is because they can't afford those rates.

PN1269

THE DEPUTY PRESIDENT: Therein lies a different issue. That's not an issue about gaps in award coverage. That's a very different issue about coverage exists and there's issues of potential non compliance across the industry.

PN1270

MS ROBERTSON: That's huge. I can't see - other than that general catchall thing, which I don't think is very - based on this, every gallery person would be working at a grade 10 level, because - - -

PN1271

THE DEPUTY PRESIDENT: Grade 10 is - grade 8 I think you mean. Grade 10 is a golf professional.

PN1272

MS ROBERTSON: Sorry, grade 8. The grade 8 - does that include - 'Possesses qualifications or experience, such as advanced engineering technical skills or advanced or complex level -'.

PN1273

THE DEPUTY PRESIDENT: So a grade 8 hourly rate, under this award, is \$30.02 per hour. The minimum hourly rate, that's the base rate.

PN1274

MS ROBERTSON: But I don't see how this relates to a curator. Like that's your general role within a gallery, is the curator who is working out an exhibition theme, is then liaising with artists, is developing up - working with them to develop the work, commissioning work, researching work in order to then - to, you know, other works that are in collections, other artists. They're liaising with their colleagues at a peer to peer level, nationally. Those kind of - they're kind of key - and then they develop up the exhibition and manage it's installation and its delivery. They're also managing artworks coming in and out of the gallery as well, and managing their own collection. So that is - this level is so much lower than what their actual responsibilities are. So, as I mentioned, they're dealing with very - the collection value is extremely significant. But also it's the nature of artworks that once damaged that's it, they only ever exist in a damaged state from

that point onwards. So there is a whole lot of responsibility in caring for a national collection, basically.

PN1275

THE DEPUTY PRESIDENT: Okay. So is it the case that - let's accept, for the moment, that a curator is more adequately covered by the Amusement Award.

PN1276

MS ROBERTSON: Yes.

PN1277

THE DEPUTY PRESIDENT: Firstly, that might mean that the scope of NAVA's submission has evolved somewhat and there may be a narrowing of occupation types that arise for consideration in this process.

PN1278

Secondly, to the extent that a curator does not fall under the scope of coverage of the amusement award, is that because they are so senior that they are excluded from the award system entirely, having regard to the issues that we've raised, or is it something different? Because I imagine that that's going to be the immediate response that arises if the focus then becomes on this very specialised niche, important, role of a curator - - -

PN1279

MS ROBERTSON: I think that the Local Government Award would be more applicable because it was much more general in how it's described and its working off roles and responsibilities. That's more appropriate for the professional gallery sector. Whereas this is much more - this is very much about it's - it's like they're tradespeople, you know, working for - within the lower kind of skilled areas. So, therefore, the majority - you would only really get three roles that would fit - that is probably a Retail Award, so that's separate, it separates those out. A gallery person invigilating a gallery, I don't know how they would easily fit within this, even though it is amusement and they talk about ticketing and things like that. That's not what an invigilator does, because they're also often describing that work and talking to people on the ground. So there's - - -

PN1280

THE DEPUTY PRESIDENT: But remember the award system is not intended to specifically account for every duty that every role performs. That's simply not the way that the system works. It's meant to be broad, to invite coverage. The process of award modernisation is sought to reduce the number of awards that were in existence, but rope them in a manner so as to allow them to apply as broadly as possible with general language, so that various employers who fit within the scope and coverage of industry awards, where necessary, can apply, generally, those levels to different employees.

PN1281

MS ROBERTSON: I agree. I think the issue is - like taking a gallery invigilator is a good example here. They are often people who come through an art history background, or a fine arts degree, and that's what the gallery is relying upon. They need them to have that specialised knowledge around art history to be

able to talk to people walking into the gallery about the work that's on display. It's not simply selling tickets or taking a ticket from someone as they go in and out of an exhibition. They have - they are being engaged for their knowledge of Australian visual art, and to be able to communicate that to audiences. So that's why they don't fit under these awards.

PN1282

THE DEPUTY PRESIDENT: Well, my question then becomes, how does it not fit under grade 8?

PN1283

MS BENTON: I think that might be too high for that type of work.

PN1284

THE DEPUTY PRESIDENT: That doesn't necessarily mean that there's not coverage for them under this award, if they have that skill and experience.

PN1285

MS ROBERTSON: What's so weird about this award is that these areas are so diverse under one, but I understand. So for the nature of the work here is the engagement with audiences as well as - yes. I understand - I don't think the invigilator will fit easily into either of those, because of the nature of their work, which is where the reason for wanting a Visual Arts, Craft and Design Award is to acknowledge the very specialised knowledge and they're getting that through university courses, it's not like they're - - -

PN1286

MS BENTON: Also to give an end-to-end award that gives clarity. So there's a lot of, I guess, components of different roles in the visual arts that overlap across these different grades. So you couldn't put an invigilator in grade 8 and a curator in grade 9, because it's the hierarchy of occupations actually would put an invigilator somewhere closer to - - -

PN1287

MS ROBERTSON: Grade 3 or 4.

PN1288

MS BENTON: - - - grade 3 or 4.

PN1289

THE DEPUTY PRESIDENT: So talking about this role of the invigilator, what would you align that to, in your submission?

PN1290

MS BENTON: We're front of house.

PN1291

MS ROBERTSON: Yes, front of house.

PN1292

THE DEPUTY PRESIDENT: Front of house.

PN1293

MS ROBERTSON: Yes.

PN1294

MS BENTON: I mean even grade 3 includes supervisors and operators, which is not - and if we go back to curator, as I said, there's three tiers to a curator. You have an assistant curator, a curator and then a senior curator. So that is also not - this is why people are using this award and just trying to make it fit, because it isn't clear. And when they've sought legal advice, neither of us are legal experts, so reading this, but when they've sought legal advice, the advice then, or even advice from the Fair Work, is like - - -

PN1295

THE DEPUTY PRESIDENT: The Fair Work Ombudsman?

PN1296

MS BENTON: Yes. It's like, 'It doesn't really fit', that's the answer that I've gotten from Arts Law, from the two industrial law experts that I've received advice from and it's - and from the galleries that I've talked to, if they've sought advice, the advice that they've all been given, by people who are supposed to have this knowledge, is that it's not quite the right fit, but it's the closest one. That really - it does say 'galleries and museums' in the top and I have looked at this several times to try to understand why - why there is an ongoing issue. But I think it's because, as you say, their expertise and the roles don't match up with the grades and the descriptions of those.

PN1297

MS ROBERTSON: A good example is the Victorian government has introduced a sick pay for contract staff in Victoria and, despite our best efforts and working with the ANZIC(?) codes, gallery technicians are not eligible for that program. However, a theatre technician is eligible for that program.

PN1298

MS BENTON: Did they give you a reason?

PN1299

MS ROBERTSON: No. Even though they both have ANZIC codes, or ANZUS codes. So it's the specific nature of what they're doing.

PN1300

MS BENTON: But wouldn't the technicians - we're drawing up particular roles at the moment that you think might not fit neatly into the grades. But certainly, I thought, some of the technician roles fitted quite readily into some of those grades. So if they're working in a gallery, in one of the independent galleries, the application of that code for contractors would obviously - it's a relevant issue for individuals that have a contractor relationship but there might be some scope to start educating the galleries about the application of the Amusements, Events and Recreation Award to these technician roles and then they get all of the terms and conditions of the award and all the protections that come with it.

PN1301

THE DEPUTY PRESIDENT: Would you consider adjustments to this award so that - let me just clarify. At the moment an interested party can make an application to vary or make - any award at any time, provided they satisfy the requirements for making that application, as an interested party and the discussion paper obviously deals with that. This currently is not such an application but a process for generating discussion and dialogue about the extent of the concerns in the industry, where they might go to, whether those concerns can be narrowed, as part of the scope of these discussions. And, ultimately, with the provision of a final report, whether that provides or generates a desire on the Commission's own motion, or a party's own motion, to make an application, having regard to the issues that arise from the material that is outlined there.

PN1302

So in terms of your question about would I consider it, that's not quite the right question, but I'd like to answer in a way that says, the Commission will consider any application that is before it and it's open to those applications to be made to vary, if the nature of this exercise identifies to you that perhaps some of these art worker roles are actually no longer in issue. It might not be perfect, but they might not be in issue for the independent galleries, in the way that we thought that they were.

PN1303

The focus then becomes upon some niche, specific roles and we'd like to see potential amendments to the classifications in the Amusement Award to accurately reflect those types of roles. Then that's going to be, perhaps, where your focus starts to shift to.

PN1304

MS ROBERTSON: Sure. I mean we have looked at that in the past, as an option. The advice that we've been given is that it's likely to be more than \$100,000 in legal advice to do that work. That's more than our core operational funding. As a sector, or, I guess, a representative body, we don't have the capacity to do that, so we'll just continue with an award that's not quite the right fit and - so people just don't use it. That's not effective.

PN1305

THE DEPUTY PRESIDENT: It's like the heritage, tourism and cultural centres, and museums and galleries, it's like they've been put in here to provide some sort of safeguard and yet when the sector goes to this award it doesn't make sense to any of the roles, because they're crossing over so many to try and make what they're doing fit because the roles that they are delivering are very specific to the industry that they're working. It's, you know - that, I think, is an issue with this award, because it is - museums and galleries, when you're reading through this, none of - and I've only done this briefly, the examples, very few of them relate to museum and gallery practice. It's as though they've been added, as I say, to cover that. And that what this means for the sector is that - - -

PN1306

MS ROBERTSON: There's no meaningful coverage.

PN1307



THE DEPUTY PRESIDENT: Yes, there's no meaningful coverage. And the issue against you is that - a submission that says that there's no meaningful coverage does not mean that there's no coverage at all.

PN1308

MS ROBERTSON: But I guess if I was working under this and I was to negotiate a higher rate of pay, based on my experience, et cetera, there's no - it's like they don't build on another because they're dealing with three different areas. The last one, 9, is dealing with groundskeeping. I mean that makes absolutely no sense, and yet most of the gallery staff, above the invigilators and the retail, would be sitting in up to an 8 or 9, because of their level of education and their experience.

PN1309

THE DEPUTY PRESIDENT: So I can indicate to you that the levels 9 and 10 were the subject of introduction, as a consequence of an application to vary this award, and that's dealt with in the discussion paper, if you'd like to have a look at how the Full Bench approached that exercise.

PN1310

Would you like to hold on to the hard copy?

PN1311

MS ROBERTSON: That's okay, I can - - -

PN1312

THE DEPUTY PRESIDENT: You can draw it up?

PN1313

MS ROBERTSON: Yes, thank you.

PN1314

THE DEPUTY PRESIDENT: All right.

PN1315

MS ROBERTSON: I don't know if I have clear thoughts, just - - -

PN1316

THE DEPUTY PRESIDENT: With a comparison between the local government and this, the local government is more applicable to the visual arts sector. And I think that, on a cursory review, the Local Government Award, in fact, pays slightly higher rates.

PN1317

MS ROBERTSON: Yes. And just in terms of how it's worded that the roles would fit more easily within that kind of an award, because it is open enough. Whereas these awards, I can see why the sector has difficulty explaining to their staff how their role fits within a particular grade. Also, as I say, the progression upwards through that, they're almost starting - you know an early person should be starting at a 4 or 5, going into a gallery, 3, 4 or 5, but they'd be starting at an 8 or 9, because they're highly qualified, highly educated. So I don't

feel that is a very good fit at all, for the complexity of the sector and roles and duties that have to be undertaken.

PN1318

THE DEPUTY PRESIDENT: That's because, in your view of the byproduct of aligning the employees to a level under the award, then the rates of pay become too high for compliance with?

PN1319

MS ROBERTSON: Yes. That's not - yes. I mean there are lots of galleries who are paying more than this, but - - -

PN1320

MS BENTON: In the independent sector probably now.

PN1321

MS ROBERTSON: - - - also lots who are not.

PN1322

MS BENTON: The rate of pay - the looseness of those terms means that they can move in and out of employment, or not?

PN1323

MS ROBERTSON: That's right.

PN1324

THE DEPUTY PRESIDENT: Sorry, what was that last piece?

PN1325

MS BENTON: The lack of easy fit with this award, the - - -

PN1326

MS ROBERTSON: It just leads to non compliance.

PN1327

MS BENTON: Yes. Especially when they're working with fixed budgets that they then will go, we don't really fit that, so we're going to pay less.

PN1328

MS ROBERTSON: Doesn't fit.

PN1329

MS BENTON: I can see why it would be very easy for them to argue that the role doesn't fit. You would expect that half of your roles would fit within one of those descriptions, but it doesn't. So because they're three different things put together the examples are just - and the general descriptions aren't useful or directly applicable and also the level of qualifications are not applicable as well. Save for that one. I can see why they have significant issues with that award.

PN1330

THE DEPUTY PRESIDENT: All right. Ms Simmons, is there any questions that you would like to ask, in relation to the matters that have been discussed about the art workers classifications this afternoon?

PN1331

MS SIMMONS: Not at this stage, Deputy President, thank you.

PN1332

THE DEPUTY PRESIDENT: Thank you. Mr Kemppi, is there anything that you want to add to the discussion?

PN1333

MR KEMPPI: No, thank you.

PN1334

THE DEPUTY PRESIDENT: All right. I think that there might be some utility, given the hour, it's about time for the adjournment of the consultation this afternoon. But we've foreshadowed speaking further about the artist tomorrow, with the benefit of the additional attendees tomorrow morning. Then I have a general question about whether if there is anything that is sought to be discussed tomorrow afternoon or whether we proceed on the basis that tomorrow involves the morning only? What is your view, Ms Benton? And I raise that because - I should provide you with a fulsome view. Separately there were some matters discussed yesterday that Live Performance Australia sought to respond to issues raised by the NEAA. We're anticipating written response from Live Performance Australia tomorrow, and they'll be speaking to their submissions on Thursday. So I anticipate that that's what we will commence with, when we return on Thursday. My general inquiry is whether there is productive work that can be done, as part of the joint session, tomorrow afternoon, or whether there is other individual work that will be done during that period? We can, of course, revisit that tomorrow, once we see what falls out of discussions with some of the other individuals that attend.

PN1335

MS BENTON: I think that would be good, thank you.

PN1336

THE DEPUTY PRESIDENT: You're happy to proceed on that basis?

PN1337

MS BENTON: Yes.

PN1338

THE DEPUTY PRESIDENT: All right. Is there anything else that you wanted to pick up with today? You look like you've got a bit of thinking to do.

PN1339

MS BENTON: I do have some thinking to do because there's - as I've said, this review has given people a lot of hope and there isn't any consistent award application at this time and has not been for a long time. The reason that NAVA has a code of practice that sets base, minimum standards rates of pay for arts

workers, for 22 years, is because of the lack of consistent, clear, end-to-end coverage for the visual arts. I can't, in this moment, accept that 22 years worth of work is resolved by, 'Just keep working with the Amusement Award', which is how I feel we've landed this afternoon.

PN1340

So I do need some thinking to do about what we could do to resolve that gap because it is actually a crisis and I can't let it continue being such a mess, I suppose.

PN1341

THE DEPUTY PRESIDENT: All right. I understand.

PN1342

MS BENTON: Thank you.

PN1343

THE DEPUTY PRESIDENT: Anything else, Ms Robertson?

PN1344

MS ROBERTSON: No, I just concur with Penelope's position, having worked in the sector for almost 30 years.

PN1345

THE DEPUTY PRESIDENT: Yes, all right.

PN1346

MS ROBERTSON: It is - - -

PN1347

THE DEPUTY PRESIDENT: A mess.

PN1348

MS ROBERTSON: It's very hard and it leads to a lot of exploitation in the independent sector because of this not fitting within awards and - - -

PN1349

THE DEPUTY PRESIDENT: To the extent that the award applies and election not to comply.

PN1350

MS ROBERTSON: Yes. And also, as I say, when you go to funding agencies for your annual funding and you're - the feedback is, 'You're asking for too much', that's very hard, when you're staff are being underpaid consistently, in the not independent sector.

PN1351

MS BENTON: That's right. The state and national funding bodies are not telling the galleries to refer to the Amusement Award, they're telling them to refer to NAVA's code of practice. At least that's only - - -

PN1352

THE DEPUTY PRESIDENT: Yes, but that might be an education campaign.

PN1353

MS BENTON: Yes, but who does that? That's huge. But we would still need greater clarity, I think, in the Amusement Award before an education campaign.

PN1354

MS ROBERTSON: It doesn't fit properly.

PN1355

MS BENTON: Yes, we'd need at least a little clarity, more clarity and tidying up of the grades or a new grade.

PN1356

MS ROBERTSON: And qualifications.

PN1357

THE DEPUTY PRESIDENT: Just so that it's clear, that wasn't an outcome of the review. The review was for the purposes of identifying these issues.

PN1358

MS BENTON: Yes.

PN1359

THE DEPUTY PRESIDENT: That's an important first step. In the event that significant issues are identified, or minor issues are identified or no issues are identified, whatever the outcome, as I said to you before, the next step would be that unless the Commission elects to commence proceedings of its own motion to vary an instrument, then that would occur by way of an application in the usual way.

PN1360

So that process always looms large at the conclusion of this process or, indeed, at any stage, if that was desirable.

PN1361

MS BENTON: Sure. Yes, I think that's, as I said, it's just capacity to do that. There is no capacity in the sector to do that at this time, or probably ever. But that's not to say that it shouldn't happen. Yes.

PN1362

THE DEPUTY PRESIDENT: Yes. All right.

PN1363

MS BENTON: Thank you.

PN1364

THE DEPUTY PRESIDENT: Pleasure. Is there anything else today?

PN1365

MS ROBERTSON: Thank you.

PN1366

THE DEPUTY PRESIDENT: We'll adjourn until 10 am tomorrow. Thank you very much for your attendance.

**ADJOURNED UNTIL WEDNESDAY, 24 JANUARY 2024**

**[4.04 PM]**