

31 January 2024

Dear Deputy President Millhouse,

Modern Award Review 2023-24 / Arts and culture sector [AM2023/21]

These submissions of Screen Producers Australia address several matters that have arisen during the FWC consultation into whether Modern Awards adequately meet the needs of workers in the Arts and cultural sector.

Screen Production

1. Screen Producers Australia (SPA) is an employer association registered under the *Fair Work (Registered Organisations) Act 2009*. We represent the independent screen production sector – small to medium businesses that are commissioned by broadcasters, streamers or studios to produce the Australian drama, light entertainment, documentary and factual television Programs and Feature Films that are released on our screens.
2. Producers are responsible for engaging the cast, shooting crew, production team, post-production technicians, animators, editors and other practitioners that are employed on any given screen production (the mix will depend on the type of production). People working on film and television are generally engaged as employees on a fixed term contract for the duration or part-duration of the production and are covered by the *Broadcasting, Recorded Entertainment & Cinemas Award 2020* (the BRECA). The BRECA has quite broad coverage. The relevant Parts of the BRECA that apply to screen production activity are:

Part 11 – Artists (for persons engaged by the producer to take part audibly and/or visually in the production including performers, dancers, doubles, extras, stand-ins and stunt artists [63]), being those classified under **Schedule E** as either Bit Player, Double, Extra or Performer (class 1 or 2).

Part 12 – Musicians (for musician employed in the making of feature films, documentaries, telemovies and television mini-series [72.1]), classified under **Schedule F** as either singers (ensemble or sessional) or instrumentalists (including Principals or Leaders).

Part 13 – Motion Picture Production for employees classified under **Schedule G** within the 10 Level classification structure, based on the employee's level of experience "in the industry" and their being able to *satisfactorily fulfil or perform relevant indicative standards and tasks* set out for each level.

3. SPA members also develop and produce immersive media, virtual reality titles and games. This immersive media sector is still relatively small, highly specialized and bespoke. The introduction in July 2023 of the Digital Games Tax Offset (which provides eligible game developers with a 30% refundable tax offset) is likely to see the Games sector further evolve, with larger audio/visual production companies also expanding into digital games.

Screen Production vs other activity

4. SPA represents production businesses that operate outside/independently from the commissioning Media organizations (broadcasters, streamers). That means that SPA does not have an interest in those

Parts of the Award that cover employees engaged (inhouse) in radio or television broadcasting, or who are engaged in Cinemas or as journalists:

Part 7 – Television Broadcasting (classifications at schedule A)

Part 8 – Radio Broadcasting (classifications at schedule B)

Part 9 – Journalists (classifications at schedule C)

Part 10 – Cinemas (classifications at schedule D)

5. During the FWC Consultation, the Deputy President requested that SPA provide written submissions describing the intersection or otherwise between the Motion Picture Schedule G (Part 13) and the Broadcasting Schedules A (Television, Part 7) and B (Radio, Part 8). Television Broadcasting and Radio Broadcasting are activities undertaken by media companies. “Broadcasting” has both a plain English, common usage meaning as well as a technical meaning under the Broadcasting Services Act. Broadcasters will produce news, current affairs, sport and some panel-shows inhouse, but will commission independent production companies to make most other screen content. Whether a Program is made by the television broadcaster or an independent production company will determine which Part of the Award applies. For example, a program made *inhouse* by a television broadcaster like ABC’s *Spicks & Specks* will be covered by Part 7; a program commissioned from the *independent* sector for the ABC, like CJZ’s *Gruen*, will be covered by Part 13.
6. SPA also takes this opportunity to respond to the following submissions made by union parties to this matter that **other activities** are not covered by the Award:
 - MEAA supplementary submission of 20 January 2024 – that **audio book recording** is *one example of an activity or enterprise involving potentially a number of different occupations, illustrating a coverage gap*; and
 - ACTU and Professionals Australia’s submissions (summarized on 4 December 2023) that various roles working in **video game development** are not covered by a modern award but should be - Designers; Artists; Animators; Writers; Audio workers; and Producers.
7. SPA members do develop and produce immersive media and digital games. For some production companies this work is part of their broader production and/or post-production slate. During the FWC consultation, SPA commented that when undertaken as an adjunct, or by the same workforce, it is likely this work could be covered by Part 13 – Motion Picture Production.
8. SPA and MEAA have been in discussion to explore whether these **other activities** can, with minor amendments, be incorporated into Part 13 – Motion Picture Production. In SPA’s submission they cannot.
9. SPA would not take issue with the claim that **audio book recordings** and **digital game development** falls or may fall within the BRECA Coverage clause – 4.2 Broadcasting, recorded entertainment and cinema industry.
10. The problem arises at BRECA clause 13.1 - *All employees covered by this award must be classified according to the structures set out in Schedule A —Television Broadcasting to Schedule G —Motion Picture Production and paid the minimum rates set out in clause 13 for their classification.* Audio book recordings and digital game development are sectors that have emerged since the commencement of the Award and currently do not properly fall within any Schedule.

11. We refer the Commission to the classification structure at Schedule G. While there is no express definition of “Motion Picture Production” in SPA’s submission it is apparent from the indicative tasks listed at Schedule G that Motion Picture Production is the production of feature films and programs (one-off or mini/series) that are made for television, streaming or online; of all formats, from scripted (drama) to unscripted (light entertainment, reality, factual); and entails the different stages of production which includes physical or principal photography for live action as well as production for animation, and post-production.
12. At every Level of the Schedule G classification structure, there is a lead reference to the employee being assessed according to their **experience in the industry** (see Schedule G.1.1 to G.1.10). In our submission, the “industry” is not the whole of the industry as outlined in the Coverage clause, rather it is the industry of Motion Picture Production. While there are generic indicative standards and tasks (supervise others, exercise good interpersonal skills, allocate priorities for a work team) that could apply to the **other activities** most of the indicative tasks clearly relate to film and television production. Here are some extracted examples:
- **Level 1** indicative tasks include: *maintenance of equipment used in the film production process; preparation of location, studio and/or unit base; handling of props.*
 - **Level 2** *department assistant; supervised maintenance of costumes; assist casting extras.*
 - **Level 3** *consultation with performers, loading/unloading props, scenery and equipment.*
 - **Level 4** *cast extras and liaise with agents; co-ordinate facilities for cast and crew; operate software related to sound & lighting; assist in the post-production process.*
 - **Level 5** *assist Production Manager; assist First Assistant Director, liaise with production office and location/set, monitor schedule, supervise extras; operate and perform SFX sequences*
 - **Level 6** *design of sets, floor plans, construction plans; still photography; co-ordinate SFX sequences*
 - **Level 7** *assist in the solution of budgetary difficulties; First Assistant Director, supervise post-production, supervise SFX, design costumes*
 - **Level 8** *key creative control photography, sound and production design*
 - **Level 9** *animation director*
 - **Level 10** *director working in feature film, mini-series and one shot drama/telemovie productions.*
13. The attendant terms of engagement at Part 13 are tailored to the nature of film and television production. Examples of the particular arrangements include: hours of work start/finish from the “nominated place of call”, standard contracted working week of 50 hours, living away from home and working on location provisions, bespoke film/TV daily and weekly turnaround provisions, meal break penalties apply for extended shoots, scheduled/pre-contracted versus unscheduled overtime. These terms and conditions are noticeably different from other Parts of the Award. It should not be assumed that these provisions fit or are appropriate to other types of activity that fall within BRECA coverage.
14. We note the submissions of Professionals Australia filed 31 January 2024, setting out proposed new roles (and their descriptions) for video game development. SPA will need time to consult on the proposed roles. We’d suggest that the more difficult exercise will be to determine what are the appropriate terms and conditions to apply to these employees. Put another way, what does a **Part 14 – Games** look like.

15. SPA appreciates the time set down by the Deputy President for consultation. It does appear that this fortnight will conclude with several matters not resolved. We would support the scheduling of another round of targeted consultation, sensibly after all interested parties have set out their views in detail in writing, and prior to these matters being dealt with formally.



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