



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

DEPUTY PRESIDENT MILLHOUSE

AM2023/21

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

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

Melbourne

10.00 AM, THURSDAY, 25 JANUARY 2024

Continued from 24/01/2024

PN1821

THE DEPUTY PRESIDENT: Good morning, everyone, thank you for your attendance. I will start with the appearances. Mr Borgeest, you continue your appearance?

PN1822

MR BORGEEST: I continue to appear for MEAA.

PN1823

THE DEPUTY PRESIDENT: Thank you. Welcome. Ms Minster, you appear with Ms Floyd for Live Performance Australia?

PN1824

MS MINSTER: Yes, thank you.

PN1825

THE DEPUTY PRESIDENT: Thank you. And via Microsoft Teams today, Ms Simmons, you continue your appearance for ABI Business NSW?

PN1826

MS SIMMONS: Yes, thank you, Deputy President.

PN1827

THE DEPUTY PRESIDENT: And, Mr Kemppe, you continue your appearance for the ACTU?

PN1828

MR KEMPE: Yes, thank you.

PN1829

THE DEPUTY PRESIDENT: Thank you, everyone. You will recall during our consultation on Monday that Mr Borgeest spoke to supplementary submissions that MEAA had filed in respect of the matter, and it was understood that Live Performance Australia would be providing a response to those matters. That response has been filed by way of a further supplementary reply submission yesterday afternoon by Live Performance Australia, and I understand that you will be speaking to those issues this morning, Ms Minster.

PN1830

MS MINSTER: Yes, I can do that. Thank you.

PN1831

THE DEPUTY PRESIDENT: Thank you very much.

PN1832

MS MINSTER: I firstly probably should just point out that in regards to chaperones, which is actually the last point which is starting at paragraph 20, is that LPA does concede that chaperones are covered by the Live Performance Award at two levels.

PN1833

THE DEPUTY PRESIDENT: Yes.

PN1834

MS MINSTER: We do go through in our submissions like the role of the chaperone, and we have suggested some levels in the award where they do fit. So after consultation with our members and the industry across a broad section of organisation type there was a firm consensus that this is actually how chaperones are engaged. So we do concede that. I am not really sure whether we need to write chaperones into the award or we can have a chat with MEAA about that, but there seemed to be a consensus also about where they were classified. So when there's like just one or two children on a show there would be probably level 4, 5 or 6, depending on the complexity of that work, because sometimes chaperones still have to have quite a good knowledge of the theatre and how a show works, because they have to present the child basically to the stage when they're ready to go on. So they have to understand the show and how it works.

PN1835

So a chaperone can only have generally two children in their - supervise two children at once. So generally that would happen - often there's two children present in case one child for whatever reason can't go on with stage fright or nerves or illness or something, and so both of them would go up to the stage and the chaperone has to have eyes on the child the whole time. So they're still meant to stand in the wings in the stage and watch the child on stage, and then have to collect them from whatever their exit point is in the wings to take them down to their dressing room. So when they're doing that that (indistinct) can be level 4, 5 or 6.

PN1836

On a show where there would be many children, so an example of such shows would be a musical like Matilda or School of Rock, something like that, there would also be a head chaperone because there would have to be quite a few chaperones engaged on a show like that because there's a lot of children, mostly child performance. And so there is a classification at level 8 which is expressly the head of department. So in our industry someone who is like the head chaperone would be classified into level 8 because it expressly says head of department. I am not sure if Mr Borgeest wants to respond to that. We go chaperone, and then maybe he would like to say something in reply and we go through each one.

PN1837

THE DEPUTY PRESIDENT: Sure. I think that's a logical way of proceeding. Mr Borgeest?

PN1838

MR BORGEEST: Yes. Thank you, Deputy President. That's very helpful that LPA has done that, (indistinct) consultation of all those views about what might be appropriate levels. I can indicate that that assessment appears fair. I would propose that we write to LPA by say close Monday with the comments just about those levels as are articulated just to confirm that we're of one mind about that, and then consider where we go from here in the context of the review, whether the parties might propose to the Deputy President that something in particular be

inserted in the report, whether it be that the Commission embrace the idea of just a no motion variation to insert in the provisions as proposed by the parties jointly, or some other approach. I don't have a strong view today, but I think as a first step if we can raise with you any queries about them. Four, 5 and 6 were those you've mentioned, and 8, and then we consider what we propose to the Deputy President might be put in an award.

PN1839

MS MINSTER: If I can go further, I would propose that we meet on Monday afternoon to maybe have a discussion about how that could proceed, and I'm in the hands of you, Deputy President. I am not sure what you would like. If we propose some kind of variation to the award whether you would like us to draft something like that, what we think it would look like in terms of the classifications.

PN1840

THE DEPUTY PRESIDENT: Well, of course at this stage it's not the application, but to the extent that setting out the information akin to the material that you would otherwise provide, were it an application to vary, I think that provides a greater level of specificity, and therein a greater level of understanding on the part of the Commission about the extent of the consent amendment that is sought and/or requested for the purposes of including those considerations in the report. So the more specific the better I think is the key take away.

PN1841

MR BORGEEEST: I don't cavil with any of that, but just to be clear what we're talking about, we're talking about the idea of inserting something indicative rather than a classification as such. There's classifications in schedule A and what we're aiming to is to reflect some description of different kinds of chaperones with different responsibilities as indicia in the list of indicia for existing classifications.

PN1842

MS MINSTER: Yes. I think probably if we like do an examination together, because perhaps we might both come to the conclusion that it's sufficient now considering it seems to me that the industry is applying it correctly, or whether we think that has to be clearer. So I think considering there was - what I did was yesterday basically, and the day before (indistinct) days calling a lot of members, because we didn't have time to do a lot of consultations.

PN1843

So we've spoken to a lot of people and it was pretty much the same repeated story to every single person that I spoke to. So to me it seems like it's very clear that they're covered and where they're classified. So I guess the consensus would be does the award actually require variation or does it not. If everyone is applying it correctly they're covered and it seems clear. I mean that's what we I think need to talk about offline and then maybe come back with some proposal of what we think.

PN1844

MR BORGEEEST: Thank you.

PN1845

THE DEPUTY PRESIDENT: Thank you very much.

PN1846

MS MINSTER: So I think I can proceed to - I will go backwards, sorry, from the way I have written my submissions. I guess I did the longest one first. So to go to choreographer - I think we're really repeating our submissions. This is starting at paragraph 15 of our written submissions. Choreographers are not covered by the Live Performance Award, and so in addition to those submissions already made we are referring to the submission made by Joshua Lowe on Monday from Theatre Network Australia, who not only is a representative of certain companies across industries, also a choreographer himself, and made an oral submission that a choreographer is generally exclusively engaged in senior leadership positions such as an artistic director.

PN1847

So to give you an example of that it would be kind of like an artistic director of say for example something like the Sydney Dance Company. So the artistic director there is responsible for the creation of Sydney Dance Company works, and he would be choreographing all of those shows. So that's what that leadership position is.

PN1848

That's kind of one aspect. And another aspect is that a company even like Sydney Dance Company or the ballet or someone like that they might have commissioned a choreographer to do the work in the same way pretty much as the artistic director makes it work. So they will come in with full artistic control to choreograph a dance work I suppose. And the same happens in large scale musical theatre where someone is engaged as a choreographer. Obviously a lot of dancing going on in those musical numbers, and they have control over that.

PN1849

So our view remains the same, and there's not really any utility in exploring that classification definition for choreographer in the Live Performance Award, because there's no instances where it applies in the industry as an employee.

PN1850

THE DEPUTY PRESIDENT: And so in your experience you haven't been able to identify occasions where a choreographer is directly employed?

PN1851

MS MINSTER: No. No, we haven't.

PN1852

THE DEPUTY PRESIDENT: Really?

PN1853

MS MINSTER: No. So there's a few ways dancers are engaged. Often dancers are a company of dancers, so it's different to a theatre company, a dance company. So those dancers often - like they settle on whose part of the company

at the start of the year, they work for the entire year, and then those dancers perform in nearly all of the shows.

PN1854

THE DEPUTY PRESIDENT: Yes.

PN1855

MS MINSTER: Like some in (indistinct). It's like a career progression and they might be called on, but that's covered in the Live Performance Award where the artistic director calls them in to do extra kind of work or work as a dance captain or ballet master, or whatever. They get an extra allowance to do that kind of work.

PN1856

THE DEPUTY PRESIDENT: Right. Mr Borgeest, would you like to comment on those matters?

PN1857

MR BORGEEST: It's largely a restatement of what was seen in the original reply submissions to the effect that there's contentions about legal exclusion that 143(7) operates in respect of that occupation, as well as contentions of fact about the patterns of engaging with people in the industry. It appears that there's no consensus about those particular matters and no basis for the Commission to say that arising from consultation there's a consensus that there's a gap and it should be addressed in any particular way.

PN1858

This forum as I understand it is not really the place to resolve conclusively the legal issue, and the parties can't give you evidence to resolve the factual issue. So to the extent that anyone including MEAA wishes to push that further I just think it would be a matter for the MEAA to make an application with the benefit of feedback we have elicited from LPA here. But I would say there isn't a basis arising from the consultation to say either that there is or is not the coverage about with respect to choreographers, and that if that contest is to be resolved it would require a variation application.

PN1859

THE DEPUTY PRESIDENT: I understand. Thank you. Ms Minster.

PN1860

MS MINSTER: I think there is kind of a legal basis under 143(7) because it is traditionally not covered by an award and they are in senior positions. So I think it fully covered that section of the Fair Work Act. We know this, we know there's no coverage. We know that the position is senior, and I think sometimes it can be a little bit difficult to equate that kind of seniority with someone who's engaged in a creative enterprise. So we think if senior people as like managers kind of in full control of like a business sort of thing, but they are really in full control of this enterprise which is the creation of the work. So I do think there is a basis for that.

PN1861

THE DEPUTY PRESIDENT: Yes, all right. I understand your positions. Thank you.

PN1862

MS MINSTER: So next is intimacy coordinator. Now, everyone in the industry that I've consulted is adamant that intimacy coordinators are not and should not be engaged as employees, and there's many reasons for that, and one is, definitely, is the kind of work that they do and the importance of that work, and that they're indefinitely in a managerial senior kind of role. In some ways they don't really report to anybody when they're doing this kind of work and they need to have that arm's length, I think, and in these guidelines, which we have not accepted yet, they do say on page 6 that they work as a third party advocate, and their role is very much of a consultant.

PN1863

I really don't think that like it's a contentious issue here. The contentious issue seems to be across the industry, although I don't think that really happens any more, is when or should an intimacy coordinator be brought into a project. So now I think it's well and truly accepted that there is a role and they are engaged on like a lot of shows, and they should be, but I don't think that there's any basis to say that they're an employee, they're just clearly not.

PN1864

THE DEPUTY PRESIDENT: Yes. It's such a specific role that it becomes obvious when there is a need, I imagine, to have the intimacy coordinator present, and it may be, as I understand it, only for elements of that production - - -

PN1865

MS MINSTER: It can be, yes.

PN1866

THE DEPUTY PRESIDENT: - - - as opposed to the entirety of the production.

PN1867

MS MINSTER: That's correct.

PN1868

THE DEPUTY PRESIDENT: Mr Borgeest, I am interested in your views in relation to that matter, and in particular the guidelines which LPA says it wasn't involved in the preparation of and doesn't yet accept, but recognises that your own guidelines identify the intimacy coordinator as a third party advocate or in a consultancy role. What can you provide in relation to those observations?

PN1869

MR BORGEEST: The question of whether or not a classification appears is not an assertion that an intimacy coordinator could only be engaged as an employee. The existence of a classification doesn't affect in the way the mode of engagement that's chosen by the producer and coordinator in any given instance.

PN1870

To that extent it's not how the introduction of a classification would operate. The guidelines were referred to in the supplementary submission to give some indication of the nature of the role as MEAA has sought to support it, and that is a role that exists, the indication that was sought to be made by including that.

PN1871

Third party advocate is a phrase which points to one part of the functions of the role which is distinct from the choreography role. As we have said and as LPA have said in different ways one part of the role is a kind of assistant director role in the production, and another part of it is protective of the welfare and interests of the performer, and that's the sense in which actually the guidelines are embracing when it refers to third party advocate.

PN1872

There is nothing about the use of that phrase in the guidelines which necessitates that a person be engaged as an employee or as an independent contractor. It's certainly consistent with modes of employment that an employee have a role protective of the welfare and interests of another worker. Safety roles in all sorts of industries are of that kind. Yes, that's what I would say in response to that question. Thank you, Deputy President.

PN1873

THE DEPUTY PRESIDENT: And so recognising your position as I understand it that the use of those terms in the guidelines doesn't confine the manner in which intimacy coordinator may be engaged, do you have some knowledge that you can bring to bear that demonstrates that intimacy coordinators are being engaged as employees in the industry?

PN1874

MR BORGEEST: I don't have those particulars.

PN1875

THE DEPUTY PRESIDENT: No. So at this stage if I understand MEAA's submission it is to identify that this role exists, and that's accepted, but otherwise to say it's not apparent whether those individuals might be employed or engaged as contractors. But you maintain that to the extent that there is an employment relationship then they would fall within the classification of Live Performance Award as production staff?

PN1876

MR BORGEEST: Yes.

PN1877

THE DEPUTY PRESIDENT: And so if we follow that route, if I understand your position, there is no issue insofar as it concerns an intimacy coordinator falling through the gaps in award coverage, because in your submission they are already covered by the Live Performance Award?

PN1878

MR BORGEEST: Yes, that's the way it was put. It was put to draw out whether there is disagreement about that, and we have achieved that objective, and so now

in the absence of - had there been agreement that it was a position that fell within those classifications, similar to the situation with chaperone, then the discussion could have moved in the direction the chaperones discussion has moved.

PN1879

THE DEPUTY PRESIDENT: Yes.

PN1880

MR BORGEEEST: But in the absence of that there's both the - well, there are the legal contractual contentions that have been given here, and the confirmation that LPA does not accept the intimacy coordinator falls within the generic classifications. So we understand that we're in the same position as with respect to choreographer.

PN1881

THE DEPUTY PRESIDENT: Yes. Ms Minster, is that also the view that you have adopted?

PN1882

MS MINSTER: Yes, that's the view I have adopted. I don't think that they fall within the classifications of the Live Performance Award. I think that they're skilled (indistinct) and what they do is beyond that level. There's also like a practical risk that's aside from like those contentions, is that if somehow they were wrangled into a classification, where I don't think they can be because I don't think those classifications go high enough to deal with this role, is that people will be engaged as intimacy coordinators who don't have the appropriate qualifications or experience. And that is a huge danger in this industry, which has previously come up against some very public matters where intimacy on stage or - well, sexual harassment in the industry was like widespread, and this is something that is to protect that.

PN1883

And so the people who are performing these roles need to be highly trained and very good at their job, and very skilled. The skill level is much higher I think than what it actually sounds like, and it's even been a challenge in the past for the industry itself and some performers and some directors to accept that this is necessary. It's much more high level I think than even it reads on paper, because if someone's skill, their knowledge, their experience, but then there's kind of another level of understanding that they have to like - sometimes they're the person who has to get the relationship and the comfort and the culture of a cast in what can be a difficult and intimate show to perform. They're responsible for that. To me that's a very high level of skill.

PN1884

THE DEPUTY PRESIDENT: And how would you set that apart from the general stage manager role, which obviously is recognised within the terms of the award as an indicative position?

PN1885

MS MINSTER: So the stage manager is a very technical role.

PN1886

THE DEPUTY PRESIDENT: Yes.

PN1887

MS MINSTER: So they're doing very like technical kind of - basically what a stage manager does is they have sort of - how do I explain it - like all the cues and all the lighting of the show. So they have to have an awareness of what music is played when, what lighting cues come on when it sets a mood. So they're basically doing the show (indistinct). It sounds like another language. The stage manager where they say 'L 4', which means the lighting person hits the button for a certain light, though it's like, you know, something else they say in some kind of technical code that I don't particularly understand, and then a set piece will move on.

PN1888

THE DEPUTY PRESIDENT: Yes.

PN1889

MS MINSTER: So it is highly skilled, but it's a different kind of skill.

PN1890

THE DEPUTY PRESIDENT: Yes. Yes, I understand.

PN1891

MS MINSTER: I mean most things in the industry I think are skilled and people have some kind of training, but I think an intimacy coordinator is a different kind of skill.

PN1892

THE DEPUTY PRESIDENT: All right. Mr Borgeest, is there anything that you would like to contribute to that?

PN1893

MR BORGEEST: No, thank you.

PN1894

THE DEPUTY PRESIDENT: All right. Ms Minster, that I think captures the supplementary submissions that Live Performance Australia filed yesterday evening. Are there any other matters that you would like to raise this morning?

PN1895

MS MINSTER: Just that we've had some other discussions with TNA, and we are probably going to come back to with where we have landed on the risk position some time this week.

PN1896

THE DEPUTY PRESIDENT: That would be wonderful.

PN1897

MS MINSTER: So there's consensus I would say, and now we are just trying to come up with some sort of recommendation as to how we feel the issues that they raised, I think it was arts administrator and arts producer should be dealt with.

PN1898

THE DEPUTY PRESIDENT: That's right.

PN1899

MS MINSTER: In addition - we have been reading all this - we found a couple of like errors in the award, typographical errors.

PN1900

THE DEPUTY PRESIDENT: Yes.

PN1901

MS MINSTER: So I am not sure how you would like to deal with those, but we are going to tell you what they are anyway. One is the production and support staff level 4B, so it's at A.4.1 in the classifications, and it refers to level 4 when it should say level 3. So it says I believe, 'An employee at this level performs work above and beyond the skills of an employee at level 4', but it is level 4.

PN1902

THE DEPUTY PRESIDENT: Yes, I agree.

PN1903

MS MINSTER: So it should say, 'An employee at this level performs work above and beyond the skills of an employee at level 3.' So I think we can fix that classification so that people understand what it says. Obviously we all read it all the time and bypassed it ourselves. And then - this was brought up quite a while ago to me, but given that we're here - there's also at clause 41.2(f)(vi) is that when the award was changed from 2010 to 2022 for ease of reading one sentence was a bit jumbled. So there was no reason, the parties didn't agree to change any of this, but it's just that two words are left out of the sentence. So it reads, 'The provisions of this clause 41.2(f) shall not apply to archival and/or recording as defined.' But it's meant to say, 'The provisions of this clause 41.2(f) of this award shall not apply to an archival and/or reference recording as defined.'

PN1904

THE DEPUTY PRESIDENT: 'Shall not apply to an archival and' - - -

PN1905

MS MINSTER: 'And/or reference recording.'

PN1906

THE DEPUTY PRESIDENT: 'Reference recording.'

PN1907

MS MINSTER: So that's what it says in the old award.

PN1908

THE DEPUTY PRESIDENT: I see. So this omits two words.

PN1909

MS MINSTER: Yes.

PN1910

THE DEPUTY PRESIDENT: The word 'award' between 'this' and 'shall', and the word 'reference' between 'or' and 'recording.'

PN1911

MS MINSTER: Yes. We have set it out for you, so I can hand it up to you if you like.

PN1912

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

PN1913

MS MINSTER: So just for your benefit. Archival recording is just something that's not shown to the public. It's just kept for the producers' benefit to see what the show looks like should they say remount. And the same with the reference recording, it might be used say for example you're recording because you will get the crew in and you need to show them how everything works sometimes for an occupational health and safety matter, or to show them how the lights operate in a show, something like that, or even to show a new cast member the choreography of the show, something like that.

PN1914

THE DEPUTY PRESIDENT: Have you provided Mr Borgeest with a copy of this?

PN1915

MS MINSTER: We can email it to - - -

PN1916

THE DEPUTY PRESIDENT: Noting the confined nature of those matters that have been raised is there anything you would like to say about those errors at this stage, Mr Borgeest?

PN1917

MR BORGEEST: I will have a look at it, but it sounds innocuous to me, the table.

PN1918

THE DEPUTY PRESIDENT: All right. Thank you. Ms Minster, anything else?

PN1919

MS MINSTER: We don't have anything else to raise today.

PN1920

THE DEPUTY PRESIDENT: Thank you. Mr Borgeest, is there anything else that you would like to raise?

PN1921

MR BORGEEST: Yes. This is in relation to the Broadcasting, Recorded Entertainment and Cinemas Award. Just by way of report back after some discussion on Monday afternoon, Deputy President, you might recall that Ms Angus for the SPA offered some initial observations, including some statements about the operation and application of the award, and particularly concerning

schedule G. Deputy President, you might remember that there's a series of schedules to that award and there was discussion around what was the scope of operation of schedule G in particular. That conversation is limited in its usefulness in part I think because the supplementary submissions had been delivered that morning - - -

PN1922

THE DEPUTY PRESIDENT: Yes.

PN1923

MR BORGEEST: - - - to some extent, and no criticism (indistinct), there was some improvisation in her contribution. At the end of that discussion, Deputy President, you might recall it was asked of Ms Angus that she set out in a document something to elaborate on her submission that schedule G had a certain operation, and she agreed to do that.

PN1924

In the intervening time we have given that a bit of thought and discussion between us, between MEAA and SPA, and we have identified a potential common view in a potential form of consent proposal that might be put to the Commission next week, and if that's adopted it would substantially resolve the issues between SPA and MEAA. But we're both consulting with others and anticipate subject to those consultations formalising a consent position to bring for the Commission's consideration.

PN1925

THE DEPUTY PRESIDENT: And that concerns the audio worker - I forget the title - the audio book recording issue specifically, or has your discussion with Ms Angus or SPA taken that issue a little bit further beyond audio book - - -

PN1926

MR BORGEEST: It was opened up through the discussion around that occupation.

PN1927

THE DEPUTY PRESIDENT: Yes.

PN1928

MR BORGEEST: But our appreciation is of a more general ambiguity in the schedules to that award, and the proposal that's been developed is at a more general level than any particular occupation. But it would resolve the question concerning the audio book technical roles.

PN1929

In the meantime we for our part don't press that SPA be expected to deliver the form of document that was discussed on Monday. The discussions between ourselves have moved beyond that, so we understand what Ms Angus was putting on that occasion and have sort of moved our attention to the next step which is addressing what we think is an ambiguity that can be fixed. I apologise for speaking in very general terms, but we anticipate having something quite specific in writing early next week.

PN1930

THE DEPUTY PRESIDENT: Thank you. I appreciate that indication. So just to then recap on what might be anticipated as between the parties at the Bar table this morning for the purposes of next week. It appears that as between Ms Minster and Mr Borgeest or your respective organisations you might arrange a time to meet on Monday afternoon or thereabouts in some capacity to discuss the issue of chaperones, and you will come back to the Commission in relation to anything that arises from that discussion.

PN1931

Separately, Ms Minster, as between yourself and Mr Lowe representing TNA you anticipate reverting to the Commission with a position insofar as it addresses arts administrator and arts producer. And thirdly, Mr Borgeest, as between you and Ms Angus representing Screen Producers Australia you anticipate reverting to the Commission with a position as you have just described which addresses potential issues arising in relation to the Broadcast Award.

PN1932

MR BORGEEEST: That's right.

PN1933

THE DEPUTY PRESIDENT: All right.

PN1934

MS MINSTER: Sorry to backtrack - - -

PN1935

THE DEPUTY PRESIDENT: No, that's okay.

PN1936

MS MINSTER: But just in relation to when you asked a question about stage managers and intimacy coordinators, I would say that the stage manager is more operational. So they have like responsibility of kind of that technical aspect of the stage, but it's more kind of an operation role, whereas an intimacy coordinator has direct input into like the composition of the show.

PN1937

THE DEPUTY PRESIDENT: Right.

PN1938

MS MINSTER: And also I would say they have a higher level of input into the creation.

PN1939

THE DEPUTY PRESIDENT: Yes. That's what sprung to mind as soon as you started to explain that distinction. It's a more creative role than an operation role.

PN1940

MS MINSTER: Yes, that's correct. I would go so far as to say creative managerial.

PN1941

THE DEPUTY PRESIDENT: All right, anything else to raise at this stage? I might invite those that are attending via Microsoft Teams if there's anything that they would like to contribute to the discussion. Ms Simmons?

PN1942

MS SIMMONS: No, not at this stage, thank you, Deputy President.

PN1943

THE DEPUTY PRESIDENT: I might enquire of you now, Ms Simmons, is it anticipated that your organisation will be making some oral submissions in relation to the matters that have been discussed during consultations this week?

PN1944

MS SIMMONS: What I can say is it's unclear whether we will make any oral submissions in relation to what's been discussed during consultations this week. But what I can say is that as I indicated earlier during the week we anticipate to file some further written submissions and we're hoping to do that as soon as possible in this next coming week.

PN1945

THE DEPUTY PRESIDENT: Thank you, Ms Simmons. Mr Kemppi, is there anything that you would like to contribute to the discussion that's been held this morning?

PN1946

MR KEMPPI: No, except for timetabling, and that's just with respect to further written materials that is to be put forward by Ms Simmons. We would appreciate an opportunity to then be able to respond to that, not necessarily in writing, but at least during the available scheduled days.

PN1947

THE DEPUTY PRESIDENT: Yes. I think that's a really important consideration, appreciating that if your organisation does put something in writing as a matter of fairness I would like the opportunity for everybody that's been involved in consultations to have an opportunity to address that orally before the consultation process concludes next Friday. I recognise that you've given an indication about filing something in writing next week. Look, I would imagine that in circumstances where we have listing dates and we lose this Friday I would really like to see that material produced ideally by close of business Tuesday, or by midday on Wednesday at the latest to give parties an adequate opportunity to read and consider and prepare any responsive submissions which I would likely invite over the course of Thursday and Friday next week. Is that timetable still appropriate, Ms Simmons?

PN1948

MS SIMMONS: I think so. It's just a little unclear how long we will still need at this stage, but I hear what you're saying and appreciate that you would like an opportunity for the parties to respond. So we will endeavour to do it as soon as we can next week.

PN1949

THE DEPUTY PRESIDENT: All right. Now, another matter that has been progressing and was the subject of some discussion on Tuesday involved the additional work that Professionals Australia were going to prepare in relation to the matters discussed about video gamers. You may be able to assist me in understanding, Mr Kemppi, whether that work is progressing and if you have any line of sight from Ms Buchanan in relation to when we might expect any additional material from Professionals Australia?

PN1950

MR KEMPPI: Unfortunately I am not able to be of much assistance at the moment, but I will endeavour to find out from Ms Buchanan and either have her report back or I can do that.

PN1951

THE DEPUTY PRESIDENT: That would be helpful if you would assist me by just making those enquiries and advising the Commission. It was appreciated that that was going to be a topic that was for discussion next week, but just being able to understand when we might expect those written submissions will allow us to prepare next week's agenda.

PN1952

MR KEMPPI: Certainly. Thank you.

PN1953

THE DEPUTY PRESIDENT: So firstly then are there any supplementary matters that anybody would like to speak to today, and I will just recognise that Ms Benton from NAVA has arrived. Are there any additional issues for discussion today? Not at the Bar table here. Ms Benton, is there anything that NAVA wanted to discuss today?

PN1954

MS BENTON: Thank you. Deputy President, I have nothing to discuss today, but maybe just a question.

PN1955

THE DEPUTY PRESIDENT: Yes.

PN1956

MS BENTON: If it would be useful to you I have other colleagues who weren't available to come yesterday, if you had further questions then it would be useful for me to have them come next week. I'm happy to organise that.

PN1957

THE DEPUTY PRESIDENT: All right. Consistent with my approach today I am not going to curtail anybody the opportunity to come along and share information with the Commission. So if you make those enquiries and you identify that there are some persons who might be amenable or consider it desirable to attend and share their story then perhaps you will do that by communicating with my chambers to let me know of the attendees. That might assist me in terms of some programming for next week.

PN1958

MS BENTON: Okay.

PN1959

THE DEPUTY PRESIDENT: Thank you. So in circumstances where there's nothing else specifically for us to discuss by way of a joint session today I wanted to understand what that might mean for Monday. It's obvious to me that there is some work that LPA is doing both with MEAA and with Theatre Network Australia. Do you anticipate a need to appear in relation to the joint session on Monday?

PN1960

MS MINSTER: Not on Monday. I wouldn't say we would be ready to do that until Tuesday.

PN1961

THE DEPUTY PRESIDENT: Until Tuesday. Mr Borgeest, what is your view in relation to Monday?

PN1962

MR BORGEEEST: I don't think we will have anything to bring forward either between ourselves and LPA or between ourselves and SPA. Yes, there would be nothing that would require us to be here.

PN1963

THE DEPUTY PRESIDENT: All right. Ms Benton, what's your view about Monday?

PN1964

MS BENTON: I am available, and I can see if people are available to come in on Monday, but I won't know that until this afternoon.

PN1965

THE DEPUTY PRESIDENT: I anticipate given the public holiday that's going to be a little bit difficult, and I anticipate that unless there are other material matters to discuss on Monday then a facility just for those individuals might not be provided on Monday, but rather another day that we come together. Mr Kemppe, do you have a view about Monday?

PN1966

MR KEMPE: I don't know we're available, but we're pretty happy to be guided by NAVA and (indistinct).

PN1967

THE DEPUTY PRESIDENT: Thank you. And, Ms Simmons?

PN1968

MS SIMMONS: I flag we're available, but as indicated we will be progressing some written submissions, so in the hands of the Commission.

PN1969

THE DEPUTY PRESIDENT: In those circumstances perhaps having some time and where you're not in attendance during the joint consultation at this stage might allow you to focus the time on the supplementary material that is going to be provided in writing. So to achieve that the ideal (indistinct) is close of business Tuesday if possible. All right. Well, given that we have attendance by most of the parties who have appeared in the consultations today, and recognising that there doesn't appear to be a requirement for the consultations to be called on, on Monday, then I propose that we don't come together as part of the joint consultation on Monday, and rather we adjourn the proceedings until Tuesday so as to allow the preparation of some of the supplementary work that is going to be conducted.

PN1970

By Tuesday I imagine we will have a greater line of sight to where some of these existing matters are, including in relation to the supplementary material that is being anticipated from Professionals Australia. Are there any arising comments? All right, we will adjourn on that basis. I will see you Tuesday morning.

PN1971

SPEAKERS: Thank you.

PN1972

THE DEPUTY PRESIDENT: Thank you.

ADJOURNED UNTIL TUESDAY, 30 JANUARY 2024

[10.54 AM]