



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, FRIDAY, 2 FEBRUARY 2024

Continued from 01/02/2024

PN3102

THE DEPUTY PRESIDENT: Thank you for your attendance, everyone. I'm going to start by taking the appearances. Ms Powell, I understand that you're here representing yourself today.

PN3103

MS A POWELL: Yes.

PN3104

THE DEPUTY PRESIDENT: Thank you very much. Ms Tops, you're an artist, designer and an arts worker.

PN3105

MS S TOPS: Yes.

PN3106

THE DEPUTY PRESIDENT: Ms Benton, you continue your appearance for NAVA.

PN3107

MS P BENTON: Yes.

PN3108

THE DEPUTY PRESIDENT: By Microsoft Teams today, Ms Simmons, you appear for ABI and Business New South Wales.

PN3109

MS C SIMMONS: That's correct. Thank you.

PN3110

THE DEPUTY PRESIDENT: Ms Floyd, you appear for Live Performance Australia.

PN3111

MS L FLOYD: Yes. Thank you.

PN3112

THE DEPUTY PRESIDENT: Thank you, everyone, for your attendance. We are using the time this morning as part of the consultation sessions to hear from each of you today in relation to some information that you would like to share with the Fair Work Commission in relation to this aspect of the Modern Awards Review. May I invite you, Ms Powell, first to provide some information about what it is that has brought you here today and what information it is that you would like to share.

PN3113

MS POWELL: Yes. Do you mind if I just go off some of my notes?

PN3114

THE DEPUTY PRESIDENT: That's perfectly fine. Thank you.

PN3115

MS POWELL: So I wanted to speak from some of my experience as an art installer and technician at different arts institutions and local designers in Melbourne. One of the difficulties with my experience for working for a lighting designer as a technician was these industries don't have a specific award rate, so my experience at one place with more than 10 years' experience doing technician work, as well as a TAFE qualification in engineering, was they put us in a category of engineering and manufacturing. They put us at the award rate that was basically a pre-vocational training apprenticeship wage.

PN3116

They were looking for and employing people with fine arts degrees, industrial design degrees, highly qualified people with more than five years' work experience and they were paying us at the base minimum wage. There was also discrepancies with - - -

PN3117

THE DEPUTY PRESIDENT: Just before you go on from that, may I just inquire - you don't need to tell me the name of the business, but can you give me a little bit of information about what type of employer this was.

PN3118

MS POWELL: It was a private - they were a private company. Do you mean like - - -

PN3119

THE DEPUTY PRESIDENT: Is it a gallery or - - -

PN3120

MS POWELL: It's a lighting designer. It's like a boutique lighting designer where all the fixtures are made in-house.

PN3121

THE DEPUTY PRESIDENT: Okay, lighting designer. Do you know which award it was that they had allocated you to the engineering and manufacturing streams?

PN3122

MS POWELL: C13.

PN3123

THE DEPUTY PRESIDENT: I see.

PN3124

MS POWELL: I looked into this when I was still working there and I believed we were on the wrong award rate, and we were also using hazardous materials like lead and silica and there was no loading on our rate that was added, which in terms of - I did my own research and realised that we weren't being paid correctly.

PN3125

The C13 is a certificate II in engineering which is a qualification that I obtained in year 10 of high school, so I personally would have already been eligible for a higher award rate, and for context that's a three to six-month course to prepare you to start TAFE, and working at this business for more than two years there was only ever a rate increase when staff were very unhappy and looking to leave. There was no you're continually accruing a pay increase.

PN3126

They also would not allow you to have a permanent part-time role even if you were working four days a week, and that was said to be done to motivate people to work full-time. I developed certain injuries and illnesses there, and as a result I had to work less and I wasn't informed of - there was another aspect of it which was I wasn't informed of my rights to put in an injury claim, and they actively tried to block that. I also had not had the opportunity to accrue any sick leave as a casual.

PN3127

Like many situations I have been in, in this kind of work, if you're sick you don't work and you lose money. You're not paid enough to be able to afford the time off, as well, so you're working injured. I actually contacted - I can't remember if it was the Fair Work Commission or ombudsman and asked if it was ever possible for a role to be reviewed if a business has just elected a broad award to put on the job because the specific award rate for studio artists - which is what they called the role - you know, it didn't have an award rate. Fair Work said that there's no scope for having a role - you know, having someone come in and actually review people working at a higher level, therefore they should be paid more.

PN3128

This is a business I was actually bullied out of for being injured, as well, and it took - yes, it took a long time for me to actually find out that you can submit your own claim to WorkSafe, so there was also that - I feel like there's a bit of gap between access to information, as well, and it's really on the individual to have the capacity to find that out.

PN3129

I'm just going to look at some of my notes from galleries. I've also worked for 10 years at several different galleries, either independent, state-funded, and places that I would have been working for for three or more years there was never a pay increase. You would be called - it would be a Monday and you would get home, and you would be called at about 9 pm and someone would say, 'Oh, we don't need you for the rest of the week', so that was quite commonplace where you never knew until the last minute how many days and you - - -

PN3130

THE DEPUTY PRESIDENT: Were you employed in these galleries as an installer?

PN3131

MS POWELL: As an installer, but the supervisors who ran each project - everyone was casual and there was no opportunity for any growth. There were people that I had worked with on the team that had been casual for more than

10 years, so it was abundantly clear that those roles really don't - you know, there's no opportunity for that growth so you're stuck in positions where you're never accruing - yes.

PN3132

That also makes it difficult for - every role that I have had has been either casual or contract work. Contract work, I've had experiences where I've been chasing galleries for more than two months to be paid for work, including the expectation that you, out of your own pocket, are buying tools or fixings that you won't keep, you know, as part of your toolkit; that you're expected to pay out of pocket and then be reimbursed at any given time.

PN3133

They are not industries that you really get paid enough to survive, because there is never steady work and it's really encouraging a scarcity mindset where you feel that you're unable to say no to work. When I personally had experiences where I've had an injury or an allergic reaction to a material that I'm having to work with, it's my financial responsibility to either get medical support, get additional PPE or take time off because I can't work with that material.

PN3134

THE DEPUTY PRESIDENT: Which roles or, you know, role types were you employed as a contractor in?

PN3135

MS POWELL: It's one I'm forgetting. It's a very long name. Exhibitions and - it's like exhibitions and collections operations technician, so it was a gallery technician or a lighting technician or - it's called studio artisan; all production based work or art handler. Yes, so it's not only being trapped into the scarcity mindset of feeling like you have to grab it, all jobs even if they're unsafe or work when you're injured or work when you've having a reaction to something - sorry, I'm losing my train of thought.

PN3136

It's also that working constantly on casual or contract, we also aren't getting any benefits. It's also very hard to ever apply for a mortgage or a loan. I also have my own business as a sole trader as a jeweller, and I'm ineligible for loans due to my financial situation. I also had been - I mean, no one could have expected it, but in COVID it took more than six months for the art installers at major galleries, even state-funded galleries, to be eligible for the JobKeeper. With that, they based it off the last few months of work and work had already slowly closed up before all of those things were put into place, so any money that we would have got wouldn't have been enough to live off.

PN3137

Then being forced to work through COVID where - like, I personally was exposed to COVID and now have a chronic illness from that, and it just - yes, it was quite shocking to be put in the position as a high risk person to just have to work because you need the income. If you apply for JobSeeker help, you know, it's a few months usually before they can, like, process the entire payment. So there

were, like - I know a situation like the pandemic is very rare to ever happen again, but it really highlighted how fragile the industry is.

PN3138

THE DEPUTY PRESIDENT: Can you tell me a little bit about your experience as an installer. Is it the case that you are engaged as a casual or engaged on a contractor basis depending upon the gallery or the employer that is choosing to engage you and that work is for a specific time frame in order to install the exhibition? Then, is it the case that that work comes to an end or are there ongoing aspects of the exhibition that you're required to continue to assist with?

PN3139

MS POWELL: There is very little ongoing. At one gallery I moved into also being able to do lighting installation, because some of that needs to be done daily, but they would be three-hour shifts. Also with that and them always being casual, each gallery will have that. It will be very, very busy for an install, where sometimes they want you seven days a week over time and then for months there will be nothing, so you're juggling working at so many different galleries. Unless you're one of the few who has ever had a full-time contract, which they're so rare, you're constantly trying to juggle several different jobs.

PN3140

THE DEPUTY PRESIDENT: And is it the case that in the work that you're speaking about, the installation work, that full-time contracts are rare because the installation work is, as you've described, quite busy for the install and then there's no requirement for your services or those duties until such time as there is a requirement to then bump out again - - -

PN3141

MS POWELL: Yes, it's definitely the case, but I think that's also the way it has been set up to run. There definitely could be a lot more and there have been so many cases where you would get called at the last minute, and because of that you have already booked other work so you can't take it and then sometimes if you're not available enough you will stop being offered shifts, so it's - yes, that's another layer of what I meant with kind of the breeding the scarcity lines, that you have to take everything - - -

PN3142

THE DEPUTY PRESIDENT: Yes.

PN3143

MS POWELL: - - - or decide which job is going to pay you more and then maybe stop working as much for someone else, yes.

PN3144

THE DEPUTY PRESIDENT: Yes.

PN3145

MS POWELL: And you risk damaging that professional relationship.

PN3146

THE DEPUTY PRESIDENT: Yes. Is there anything else that you wanted to - take a moment to look at your notes if you wish to.

PN3147

MS POWELL: Yes. I mean, there are also other ways of - I wanted to bring up qualifications that are needed that quite often have to come out of the individual's pocket to do this kind of work, like white card training; your elevated work platform licence; forklift licence; rigger's licence; boom licence; yellow card. Quite often you step into these roles for less money because there is the promise of getting qualifications at an institution.

PN3148

I never received my white card, so legally I shouldn't have been working in certain conditions, and you are taking on less pay with the promise of getting a qualification that's \$2000 and that doesn't eventuate, and then there is the expectation that you pay for that yourself if you don't have it. Also any - besides the bare minimum tools or PPE, you have to buy your own and we really don't get paid enough to support that expense, even just like clothing getting ruined.

PN3149

I think that's coming about from putting either an engineering and manufacturing or construction award rate onto a lot of these roles, which they're putting on award rates that require no prior experience or learning, and you're asking people with higher education, with many years of technical training - specialist training, too - you know, you also need a really solid foundation, knowledge of conservation, to work in these spaces. I don't believe what art installers and technicians are getting paid really reflects that.

PN3150

THE DEPUTY PRESIDENT: Is that because in your view the work that you're doing is not just basic installation, but you bring to bear some of your skills and experience in order to convey the way in which that art is exhibited for public consumption?

PN3151

MS POWELL: Yes, and often we have fabricated the work for artists.

PN3152

THE DEPUTY PRESIDENT: What do you mean by that?

PN3153

MS POWELL: You would be doing a lot of assembly for it and conceptualising. So I've done works at galleries where you had several thousands of things in a space. The artist wouldn't be telling each individual person where each thing would be hung. There would be a degree of understanding of art practice - the artist's practice - as you're working with it. That's again why they hire a lot of people coming from visual arts backgrounds, so I'm also a practising artist, yes.

PN3154

THE DEPUTY PRESIDENT: Thank you. Is there anything else that you would like to add?

PN3155

MS POWELL: I think that may have covered it, yes. Thank you.

PN3156

THE DEPUTY PRESIDENT: Thank you for your contribution, Ms Powell. Ms Tops, welcome. You're an artist, a designer and an arts worker. What is it that you would like to share with the Commission today?

PN3157

MS TOPS: Well, firstly, thank you, Deputy President. That was very broad and eloquent. I'm not really sure what more I can add to that. Maybe I will just sort of reiterate some things (audio malfunction) some other of my personal experiences. Basically I've been - after sort of graduating firstly with a visual arts degree and some postgrad studies, and international travel, I've been in the industry since, yes, 2003.

PN3158

When I entered it, I would probably say that 70 per cent of the installation staff (audio malfunction) teams would be full-time or part-time and 30 per cent were casual. To this day I would say that the tables have turned and it would be less than 10 per cent who have full-time or part-time employment. More than 90 per cent and in some - most cases of smaller institutions, a hundred per cent (audio malfunction).

PN3159

I guess also in that I think there has been a dilution or a diminishing of a scope of our work and it has now sort of been divvied out to other departments, so we sort of have lost that opportunity to have the scope of working between (audio malfunction) the installation periods where we're actually delivering an actual project. There definitely is, in my opinion, scope to have ongoing work between all those installation dates of actual install.

PN3160

THE DEPUTY PRESIDENT: Would you like to elaborate on why you say that there is that scope?

PN3161

MS TOPS: I think just the way that the industry has sort of shaped and changed over the decades. There tends to be less people, as my colleague already has mentioned, of our own exhibition understanding on positions in positions of power that are full-time in order to perpetuate and advocate for us as a skilled entity within the institution, and they are being divvied out to, say, under par such as conservation or registration or exhibition management. So we don't have, say, the installation manager in that sort of upper-tier, mid-tier management (audio malfunction) advocating for the team of installers, which did used to happen when I first entered the industry.

PN3162

THE DEPUTY PRESIDENT: Yes.

PN3163

MS TOPS: Again, like I was just asked by Penelope to just sort of highlight some of the skills that we have, there is a very different - like, a lot of the time when you meet someone on the street and they ask you what you do, they sort of imagine you calculating very simply how to put a painting on the wall at the right height, and it's very, very different to that. Sometimes it might be that, but it really isn't on a large scale.

PN3164

So my experiences working are big state galleries, as well as smaller university galleries, and also travelling internationally on big touring shows including working for sort of larger international artists in Europe and America, and also installing at the Biennale. My tickets and experience include ticular (indistinct) which I did in April myself. I took time off work in order to put myself through that course and obviously the ongoing maintenance of those tickets.

PN3165

A lighting design qualification, so I have my own practice, but I also do a lot of welding and exhibition, furniture production artists working and liaising with us to validate their work for site-specific elements of their work where they're sitting very specifically within a show. An exhibition where that work will then be applied by that gallery, and so you sort of step in between the two spaces to help facilitate the production of an actual artwork that will then be applied and put in the collection.

PN3166

Collection management is very high value works, the way that they're stored to maintain their value. Working as an artist's assistant for the same reason of (indistinct) works. Working on the production and preparation, so sort of prior to install. Working with, say, the production coordinator, the artist, curator and exhibition management in order to adequately install work based on the artist's vision, as well as taking in conservation standards and (indistinct) of the standards. Also operating (indistinct) equipment in a pretty high stake environment where there is a lot of degree of care needed for maintaining the works and their safety, and those around us.

PN3167

So that is sort of very roughly what we do. I mean, in many ways it could be akin to a lot of trade skills that we have; anything from electrical knowledge to construction (audio malfunction) that type of equipment. Some of us actually come from trades, as well, or sort of dance between those, which does actually give us the opportunity to realise how well the skills translate, how well they're paid in the trades and how low they are paid in the arts, but the skillset is in many ways identical.

PN3168

So I guess I'm almost talking from the perspective of being formerly employed full-time at a large state gallery and now I've been working as a freelancer, contractor, casual, whatever you want to call me for the last maybe 15 years. I do

believe that there is a way in which we can argue for, say, like a pro rata sick day for people that are sort of mid and long-term considered to be crew or staff in the respects of institutional runnings. There is, I believe, scope for a pathway of an ascension in terms of becoming more integral and working with different departments to allow ongoing hours of work, and not just in the exhibition time frames.

PN3169

I believe theatre does it really well where often it's the argument of the institution, 'Oh, we only need you for these intense periods', but if you have, say, a permanent part-time contract that allowed for this expansion and adaption of those install periods, it's sort of like a time off in lieu or whatever you want to call it. So, you know, if you were to be employed two days, three days a week ongoing, you would have that job security that a lot of people want, particularly now in the post-pandemic world and you could do those full-time hours, but then you can also have that time off that you have accrued in the downtime, so to speak, and then also start preparing for the next show.

PN3170

There is a lot of scope for when people are in production, they may not understand how to liaise with different trades. That is something that's really specific to a particular work going in if you do have that knowledge to be able to chase down leads for, you know, subcontractors, people that can do all sorts of preparation work.

PN3171

THE DEPUTY PRESIDENT: I think it would be helpful to add in context of what you've just said about the length of time you have been with some of the galleries.

PN3172

MS TOPS: Yes, so I work in a lot of galleries that have, like, university ties and so with some of those I actually accrued to a very small extent long service leave. I've seen a lot of permanent people with full-time jobs (indistinct) at a rate of, you know, the cyclic way of maybe every three years and I've been (audio malfunction) as a casual. In that context with one job in particular I've been asked to sign a contract once every three months for 13 years and I have never missed a show.

PN3173

I guess taking stock with my colleagues after I was kindly asked (indistinct) talk to you today, I've sort of taken some time to ring people. At least 50 per cent have asked for the option for job security and the ability to have a permanent part-time position if it was made available to them. I personally still like the ability to work casually purely because of my years of experience. I'm in a very unique and (indistinct) position where I'm considered senior, and I'm given a lot of leeway with that and paid at a higher rate, which does bring me to another point.

PN3174

I've been doing this now for a long time and a lot of other people are in the same boat as myself, and because we don't have a standardised structure of the way in

which we are paid under an award, we also don't have anything that reflects years of experience. Many times I've been asked to be a team leader on a project and I am teaching someone who might have come into the industry a month since I've met them, and we are paid the exact same amount per hour regardless of the different skills that I have, but also the different responsibility and weight on my shoulders as a team leader to bring that particular project to conclusion.

PN3175

THE DEPUTY PRESIDENT: In relation to those roles, are you aware of whether they have been offered and paid in a manner consistent with an existing modern award that applies?

PN3176

MS TOPS: No, no. It has always been instigated by myself and not offered. Like, a lot of the places of work have been very kind in taking leave and have found a way to pay me more, particularly in, say, institutions that are within a university environment or a large state gallery where they are publicly funded - -
-

PN3177

THE DEPUTY PRESIDENT: Yes.

PN3178

MS TOPS: - - - or funded in a particular way. Their rationale - which I believe is true in many ways - would be restricted to find scope to pay any more as a senior something, because that band just doesn't exist. So they find it tricky, even though they might be willing, to figure out how to pay me more based upon more experience. Yes, and it's always self-directed. It doesn't necessarily grow with CPI like the way a full-time job would work either.

PN3179

I've gone into positions as a casual installer - one example comes to mind where when I realised that the pay rate was so low at this new job that I was excited to have, and this is like in 2010, I learnt that the casual rate hadn't been adjusted for 22 years, so we were basically being paid in the 2000s like it was the late 80s. Up until very recently, unions weren't very receptive to advocating for casual staff and we had approached them on many occasions, and we were told - I think we came under the Miscellaneous and something Workers Union at the time, but they just weren't sure (indistinct) the casual staff.

PN3180

THE DEPUTY PRESIDENT: You said until recently, so have you felt that there has been a shift in that regard?

PN3181

MS TOPS: Yes, I believe so. I am not a member of a union any longer because I don't have, say, one particular employer (indistinct) sense any more. You know, I have personally found a better pathway to (indistinct) myself, but I know that I'm lucky. I can talk about my experience and my interpersonal relationships with workplaces, but not everyone is in that boat, yes.

PN3182

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

PN3183

MS TOPS: No, I don't think so, apart from just - I'm very grateful for this occurring. I think it's a long time coming. I guess I want to say that there are a lot of people that will say that working casually or as a freelancer gives them greater flexibility, and that may be true. Occasionally I think it's true for myself, but I definitely can see in my future that I would really love to have some job security even in a part-time capacity. So just sort of to take into account that it's not a one size fits all approach and definitely post-pandemic where a lot of us lost our work.

PN3184

I think there was like a little bit of residual bad feelings watching, say, someone in registration, you know, in an institution with a full-time job keep their position through COVID and a lot of us lost our work (indistinct) there was things built into the system such as if you were publicly funded - so if you were employed through a university you were eligible JobKeeper and I think that was (audio malfunction) built in to kind of cut a lot of university workers out (indistinct) colleagues, as well.

PN3185

So we lived pretty much without JobKeeper whatsoever and then I went back into the trade, so I sort of worked as a rigger - as a construction rigger (indistinct) COVID and just the pay increase for what I did, even though I would say that what I was doing then was sort of at much lower stakes and easier work, it was (indistinct) the pay difference, yes.

PN3186

THE DEPUTY PRESIDENT: What I've heard from each of you today then is a real focus on a desire for job security and then a recognition insofar as pay rates are concerned for the particular skills that are brought to bear by artists and art workers who are performing roles such as installation technicians and the like, when compared to the rates that are paid in other industries.

PN3187

MS TOPS: Yes, definitely, definitely.

PN3188

MS POWELL: I would also second - which I didn't say - that being paid the same rate despite being a senior or a teaching someone has been my experience in both the arts and craft and design industries, so I guess having the rates for us is also creating room for paying people based on their skill and experience.

PN3189

THE DEPUTY PRESIDENT: Yes, noted. Thank you.

PN3190

MS POWELL: Thank you.

PN3191

THE DEPUTY PRESIDENT: Is there anything else that either of you would like to contribute today?

PN3192

MS TOPS: I don't believe so.

PN3193

THE DEPUTY PRESIDENT: Thank you. Ms Benton, would you like to supplement your submissions with anything that has arisen from the discussion this morning?

PN3194

MS BENTON: I would. I guess a couple of things. Thank you, both, for providing that information. I think it has been really helpful. I did mention yesterday that Ms Rubio-Gabriel was reappearing today. I don't know what has happened to her and I hope she is okay, but she did send me what she wanted to say to read over, so I feel like I should read that to you.

PN3195

THE DEPUTY PRESIDENT: I'm very happy for you to do that. Go ahead.

PN3196

MS BENTON: Okay - in her absence.

PN3197

I am an artist, a writer and a curator. I learnt to juggle many plates. I'm an arts worker in a large contemporary gallery and made a small artist-run initiative while donating my time to another digital RE as one of their editors. As I read Business New South Wales and Australian Business Industrial response to NAVA's award submission on 31 January 2024, I have learnt that what we are working with are the issues of scope. Who will this award cover and how do we define the arts and culture sector?

PN3198

She also wrote that:

PN3199

There are no identified gaps in the coverage of workers. That is, the existing awards do not require any significant amendment and, hence, that there is no material need to create any award to rectify any such perceived gaps in coverage.

PN3200

A lot of that is in inverted commas.

PN3201

I agree that there is a multitude of awards already in place across our creative industries, such as the Live Performance Award, the Amusement, Events and Recreation Award, the Book Industry Award, et cetera, however, gaps do remain. For example, through the Live Performance Award it covers musicians, dancers, singers and actors to name a few. This award can fail to

be enforced if the work is not being done in a live performance organisation, effectively evading the need to pay musicians performing in bars, for example.

PN3202

I understand Business New South Wales and ABI note that there may be some confusion on this application in respect of the existing modern award system, but the work done on establishing a fit for purpose EBA at ACCA that we discussed yesterday demonstrates that current awards are not a good fit due to the unique nature of the visual arts, and the varying types of work and programs that each gallery does. It may be that an EBA is needed for each visual arts organisation, but it has been demonstrated that the sector is deeply under-resourced and this proposition is completely impractical as a solution.

PN3203

The modern award system needs to better service the visual arts as a valid and distinct industry with minimum rates of pay and conditions of employment. The Amusement Award which is said to cover museums and galleries fails to cover visual artists who are at the very core of the visual arts industry. It also fails to effectively cover many arts workers.

PN3204

As a worker at the Australian Centre for Contemporary Art - and we have just recently finalised our new EBA as we found their award failed to adequately fulfil the needs of the workplace - the negotiation process highlighted how rigid and out of date the Amusement Award was from the job classifications to pay grades, breaks, allowances, to casual conversion and overtime.

PN3205

Job classifications, as I highlighted yesterday, often fall across multiple grades only to be paid at the lowest one. Our breaks were 20 minutes over almost eight hours of standing and invigilating. We had little to no training about upcoming exhibitions or workplace health and safety practices, no allowances.

PN3206

She gives an example that she had to take home one of their technicians after a public program at 10 pm in the evening and it was never reimbursed. They have since added a Cabcharge clause to their EBA.

PN3207

There is no compensation when upskilling themselves outside the workplace. That is research on an exhibition for an upcoming tour. Casual conversion is seen as an impossibility and overtime would only come into effect after 10 hours of working. We even found that doing back-to-back shifts would not be counted as overtime and many front of house workers would go straight from an invigilation shift during the day into an evening public program shift with no overtime. This was paid promptly due to our negotiations.

PN3208

Casual workers under the Amusement Award actually get paid less to do overtime than a regular shift. The overtime clause was tailored to part-time or full-time employees, but how does one work when the entire front of house

team are now casuals? As I touched on yesterday, we also aim to address the issue of volunteers and the use of free labour. In the case of the Australian Centre for Contemporary Art, many of the front of house employees practise as artists themselves. We are employed in various casual positions at other arts organisations such as the NGV and ACMI. We donate our time on volunteer boards and lead thriving Aries.

PN3209

The work that we do outside of these larger institutions contributes to the overall cultural (indistinct) of the vibrant city of Melbourne and indeed the broader visual arts ecology across Australia. It was our hope in our negotiations that we would create an agreement that would enable front of house workers to have employment stability in one organisation with the opportunity for professional development to create sustainability within this industry.

PN3210

In an attempt to undo the casualisation process workers at ACCA fought for a flexible part-time contract which would allow them to work consistently with the organisation's business model rather than be at the behest of its operating decisions. That is, being unemployed for 10 weeks of the year, but being ill-placed or unable to find other work.

PN3211

Current employees in front of house take on a myriad of roles within the workplace such as the visitor experience team or coordinator, bar manager, venue hire supervisor, public programs assistant, and they sometimes take on all of these roles at once. The Amusement Award is unable to clearly define what pay classifications these should rightly fit into. We also sought to rectify this with the addition of a new set of classifications in our EBA.

PN3212

Unlike submissions in relation to the Live Performance Award or the Broadcasting, Recorded Entertainment and Cinema Award, it is my understanding that no submission has been provided in respect to the adequacy of the Amusement Award. The Amusement Award does not address the roles, responsibilities and required qualifications of many artists or arts workers. Without a fit for purpose award a large majority of the creative population are caught between precarious work, exploitative work -

PN3213

I have just got a message from her. I won't tell you what it says - she slept in -

PN3214

or work that isn't remunerated at all. These week-long strikes that happened across the Victorian Collect of the Arts last year also demonstrates how our arts educators are left behind, made to renew contracts twice, up to four times a year, sometimes over a decade. I have never known so many people who are this highly educated with masters degrees or PhDs who teach others who live off Centrelink.

PN3215

With so many artists and arts workers below the poverty line, I fail to understand what is meant by a perceived gap in our employment system when many cultural institutions are attempting to undertake their own bargaining processes. For example, Cinema Nova, Sydney Festival, Sydney Biennale as of last year or the year before last, are in the middle of their current bargaining processes or have been halted in their momentum by management at the MCA or the Wheeler Centre. If the awards are sufficient, why are we all mobilising?

PN3216

Another prominent perceived gap in coverage that this submission seeks to cover is the denoting of non-employees. The visual arts industry operates with distinct employment dynamics. Though commercial galleries are in a position to sign on a roster of artists, many artists are exhibiting in publicly funded art spaces moved from one exhibition to another, operating under the banner of sole trader as their only current option. Business New South Wales and ABI note that 81 per cent of practising artists are non-employees, but seem to fail to understand that this is precisely one of the biggest motivations for this award submission.

PN3217

An issue that was raised was one of scope. I cannot speak for other awards or other industries, but if you're looking for a specific place to start, it is here between visual artists and galleries. I know that I would rather establish a properly remunerated contract with each gallery who commissions my work, then be a fixed term employee for that period of time with employment protections, rather than a sole trader made to work multiple projects at a time that doesn't even pay me enough to eat.

PN3218

There is an insistent that visual artists are non-employees and therefore don't need an award, but many of us would rather have an award than an ABN. The terms of an employment relationship are established under the following: where there is an intention to create a legally binding arrangement; where there is a commitment to perform work for the benefit of the organisation; if the person receives something in return for their work; or if the person is not doing the work for their own business.

PN3219

If an award was created, artists would no longer need to operate as their own business. They fulfil every other condition for employment. In this context an artist could be considered an employee when they are engaged to create an artwork for exhibition in a publicly funded gallery or other type of space where the artwork is not available for sale, participate in a public program or undertake a residency. They are essentially performing the work for the benefit of the institution that has commissioned them, as well as for the institution's audience and other stakeholders.

PN3220

As an artist, I have created and performed work that has been exhibited for weeks at a time. I have attended meetings associated with this work,

responded to emails, contributed to marketing and publicity, wrapped and packaged the work, transported it, installed it, documented it, participated in a gallery's public programs. I have also curated exhibitions, written exhibition texts and reviews. I believe all of this work could be waged.

PN3221

There is always a time frame within your contract of employment because you have a deadline. If I was approached in February to develop a commission to be exhibited in July, this could be treated as work waged over 24 weeks of employment. Under the current system, I am approached in February for an exhibition in July and paid \$300 as a project fee.

PN3222

With the difficulty of establishing an employment relationship, we argue that under the grounds of being crucial to the core business operations of all galleries and visual arts, and cultural institutions, artists are workers for that institution. Artists are the core business of these cultural institutions. The need to recognise and acknowledge this unique employment relationship with a baseline set of industrial protections is crucial.

PN3223

Currently the industry survives by contractors and casual workers, and for many institutions volunteers. This promotes and fosters an industry of casualisation, noting this is rampant in many industries and intensifies gig work. The materiality impacts the workers in the industry to be left with no sick pay, holiday leave, long service leave, financial stability, job security or superannuation. The present is precarious and the future is not something you are able to prepare for. Alongside this, there an overwhelming amount of burnout and long-lasting impacts on mental health.

PN3224

It is from this deep professionalised industry where artists and arts workers have run out of steam and need structural support. The visual arts industry can no longer continue to ask professional artists to produce work that they are essentially being paid \$3 an hour for. A prominent issue that appears to arise from this is the under-valuation of the creative and/or cultural labour, treating it as work that is unable to be remunerated just like other forms of employment.

PN3225

Speaking to the matter of streamlining awards, we submit that artists have been historically left out of modern awards. Rather than view now this proposal as an additional award within our employment system, it must be viewed as an overdue necessity filling a gap within our working conditions that has persisted over decades. We exist in an industry that is normalised and continues to rely heavily on unpaid or underpaid labour in order to exist.

PN3226

Ninety-seven per cent of Victorians engage in creative and artistic events, yet the same proportion of artists live below the poverty line, being forced to juggle more plates than they can carry just to make ends meet, often having to

choose between having to sacrifice their futures or their careers. Addressing these challenges requires recognising artists as essential contributors to the core business operations of museums and galleries.

PN3227

The lack of industrial or legal framework to recognise artists as workers perpetuates their financial vulnerability, and I emphasise the need for award coverage to recognise artists as integral workers in the visual arts -

PN3228

sorry.

PN3229

MS TOPS: That's all right. It's very well said so I'm glad that it - - -

PN3230

THE DEPUTY PRESIDENT: Thank you very much for doing so, Ms Benton. Ms Benton, is there anything that you wanted to address on behalf of NAVA?

PN3231

MS BENTON: I would, and you have heard from me a lot this last fortnight. I would especially like to thank you for the care, patience and attention that you have shown to my colleagues and to the issues - I don't know why I'm so emotional - that we have raised about the visual arts - it has been a really big time. We feel heard and understood which, in this context, is really rare.

PN3232

I thank the 20 artists, arts workers and employers who have participated alongside NAVA in the in-person discussions this fortnight about the absence of adequate coverage and the impacts of that on the scale of unpaid or underpaid work in the sector, and to the many more who made written submissions late last year. I acknowledge the legacy that I have inherited in this role of 40 years of advocacy to improve on (indistinct) conditions (indistinct) work and practice in the visual arts, craft and design sector. I extend thanks to Minister Tony Burke and the Australian government for their recent recognition of artists as workers, which has led to this investigation by the Fair Work Commission.

PN3233

Establishing a Visual Arts Award is a significant opportunity to enhance remuneration and structures to reflect the proper value of work, improve career pathways and address the attraction and retention crisis for professional working artists and arts workers. Making piecemeal changes without addressing the fundamental issues will only perpetuate noncompliance. The need for a comprehensive solution remains crucial to ensure a more functional and fair system for everyone involved.

PN3234

If I can reiterate some of the outline that we made in our original submission that extending award coverage for the visual arts, craft and design sector will offer clarity and consistency, which is a resolution to confusion and discrepancy for

employee terms and conditions. A legislated safety net which will guarantee access for artists and arts workers to adequate remuneration, benefits and protections that reflect the proper value of their work, supported workforce, will enhance job security and the overall wellbeing for artist and arts workers. Finally, sector sustainability which will improve career paths and structures addressing the attraction and retention crisis for professional working artists and arts workers.

PN3235

I think for students to reasonably contemplate life as a professional artist there needs to be changes to working conditions which makes it more viable for them to be able to achieve sustainable careers in their lifetimes. The rights of professional artists are still lagging behind those of other working people and while there have been some wins, like the regulations covering copyright, moral rights, resale royalties, income tax, claims, conditions, et cetera, there is still a lack of industrial fairness in other areas including the necessity for recognition, the range of professional activities by artists deserve to be paid for.

PN3236

I need to reiterate again that the timing of this consultation has meant a lack of representation from First Nations artists and arts workers. I note the finding of the Productivity Commission's Aboriginal and Torres Strait Islander visual arts and crafts study report from November 2022 that the average measured income for First Nations artists is significantly lower than the average across the sector. The average income for First Nations Artists not working through art centres is about \$6000. Additionally, average incomes for artists working in remote First Nations communities are significantly less than artists working in metropolitan, regional and rural areas.

PN3237

The Gari Yalla report found that 39 per cent of First Nations workers reported having a high cultural load in their workplace. This came in the form of having extra work demands. Sixty-six per cent reported having extra Indigenous-related work demands placed upon them that non-Indigenous colleagues do not, sometimes often or all the time. The expectation to educate others, 71 per cent reported being expected to educate their non-Indigenous colleagues about Aboriginal and Torres Strait Islander peoples and racism, sometimes often or all the time.

PN3238

The expectation to represent all Indigenous people, 69 per cent reported being expected to talk on behalf of all Aboriginal and Torres Strait Islander peoples, sometimes often or all the time. I think there is a lot of work to be done in this space in recognising those skills, knowledge and expertise within an award system, and some of this will be the work of the new First Nations-led Board at Creative Australia.

PN3239

If I can close, establishing a Visual Arts Award is a significant opportunity to enhance remuneration and structures to reflect the proper value of work, improve career pathways and address the attraction and retention crisis for professional

working artists and arts workers. At the very least, I hope we have convinced the Fair Work Commission that something needs to change.

PN3240

THE DEPUTY PRESIDENT: Thank you very much, Ms Benton. Is there anybody via Microsoft Teams today that would like to make any final submissions in relation to the review? Ms Simmons.

PN3241

MS SIMMONS: No, thank you, Deputy President. What I will say is that we thank the Commission for the opportunity to participate in this review.

PN3242

THE DEPUTY PRESIDENT: Thank you very much, Ms Simmons. Ms Floyd.

PN3243

MS FLOYD: Yes, similarly, nothing to add, but, yes, very thankful for everyone's time and yourself, Deputy President. Thank you.

PN3244

THE DEPUTY PRESIDENT: Thank you, Ms Floyd. Can I thank those present today and each person who has contributed in writing, and orally, in relation to this aspect of the Modern Awards Review 2023-2024. The contribution has been enormous and I am grateful for it. I particularly appreciate the efforts that have been taken by you, Ms Benton, to facilitate bringing some individuals to the Commission so that they can share their experience.

PN3245

That brings to a conclusion the consultation period for this aspect of the review and on that basis we will adjourn. Thank you very much, everyone.

ADJOURNED INDEFINITELY

[11.07 AM]