



STATEMENT

Fair Work Act 2009

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

Variation on the Commission’s own initiative – *Amusement, Events and Recreation Award 2020*

(AM2024/37)

Amusement, events and recreation industry

DEPUTY PRESIDENT MILLHOUSE

DEPUTY PRESIDENT BELL

COMMISSIONER FOX

MELBOURNE, 22 NOVEMBER 2024

Amusement, events and recreation industry – list of issues – timetabling.

[1] This matter has been commenced on the Commission’s own initiative pursuant to s 157(3)(a) of the *Fair Work Act 2009* (Cth) (Act) to vary the *Amusement, Events and Recreation Award 2020*¹ (Amusement Award). In a Statement issued on 25 September 2024, we explained the background to the matter and stated our *provisional* view as to the issues that would arise for determination in this proceeding.

[2] The identified issues were expressed in the following way:

“Provisional list of issues to be considered

[6] The following *provisional* list of issues arise for consideration in this matter:

- (1) Changes to the classification structure at Schedule A of the Amusement Award to more clearly identify the roles of ‘arts workers’, set out at [4] above and discussed at [22]-[26] of the Final Report.
- (2) Changing the title and terminology of the Amusement Award to address confusion and systemic non-compliance and to explicitly recognise art as work.”

[3] The Statement also indicated that the presiding member would conduct a case management hearing on 30 October 2024 to hear any submissions as to the *provisional* list of issues and the timetabling of the matter.

[4] The Commission received written submissions from interested parties. The submissions generally focussed upon the indicative roles set out at paragraph [24] of the Final Report issued by the Full Bench in the Modern Awards Review 2023–24.² In the Final Report, the Full Bench observed:

“[24] ... it may be broadly accepted at this preliminary stage that positions such as those set out below, when performed in a museum, gallery or cultural centre, are capable of falling within the Amusement Award but may not be clearly identifiable as covered by the award’s classification definitions:

- (a) access coordinator;
- (b) advisor;
- (c) registrar;
- (d) exhibition/collections employee;
- (e) conservator;
- (f) educator and public programs officer;
- (g) first nations art centre employee;
- (h) front of house/visitor service;
- (i) gallery assistant/attendant;
- (j) gallery technician/installer;
- (k) studio assistant or coordinator.”

[5] As to *provisional* issue (1), the written submissions broadly indicate that the above list of indicative roles ought to be supplemented with additional roles such as, in summary, curator, curatorial assistant, photographer, development and fundraising, First Nations positions, community engagement, general manager, gallery manager/operations/director, marketing/media/communications, public art, and touring/exhibition staff. As acknowledged, these role titles may be used interchangeably.

[6] We also record the submissions advanced by ABI that it does not oppose consideration of changing the title of the Amusement Award to address confusion as to the award’s application. However, it submits that *provisional* issue (2) ought to be reframed so as to omit reference to “systemic non-compliance,” for which there is no evidentiary support.

[7] As to the timetabling of the matter, the general consensus of the parties was that submissions should not be required to be filed prior to March 2025, with a facility provided for the filing of responsive submissions. Additionally, the possibility of a conference before the Commission following receipt of written submissions was discussed.

List of issues

[8] We do not consider it necessary to alter *provisional* issue (1) to specifically identify each of the ‘arts worker’ roles that may be the subject of submissions and proposals in the matter. This is because the list of roles is expressed to be indicative only, demonstrated by the use of the phrase ‘such as.’ The focus of *provisional* issue (1) is upon whether changes to the classification structure at Schedule A of the Amusement Award are required to more clearly identify the roles (not rates of pay) of ‘arts workers.’

[9] The Full Bench will consider the ‘arts worker’ roles advanced by the parties, including within the parameters of s 143(7) of the Act, which provides:

Employees not traditionally covered by awards etc

- (7) A modern award must not be expressed to cover classes of employees:

- (a) who, because of the nature or seniority of their role, have traditionally not been covered by awards (whether made under laws of the Commonwealth or the States); or
- (b) who perform work that is not of a similar nature to work that has traditionally been regulated by such awards.

Note: For example, in some industries, managerial employees have traditionally not been covered by awards.

[10] As to *provisional* issue (2), we accept the submission advanced by Australian Business Industrial and Business NSW (ABI) that this issue be amended to omit reference to “systemic non-compliance” with the Amusement Award, being a matter about which the Full Bench has not formed any views. There was no opposition to the proposal advanced by ABI.

Scope and timetabling

[11] We confirm the scope of the matters to be considered in this matter as follows:

- (1) Changes to the classification structure at Schedule A of the Amusement Award to more clearly identify the roles of ‘arts workers’, set out at [4] above and discussed at [22]-[26] of the Final Report.
- (2) Changing the title and terminology of the Amusement Award to address confusion as to the Amusement Award’s application and to explicitly recognise art as work.

[12] We make the following directions:

- (1) Interested parties shall file proposals for an amended classification structure, changes to the title and terminology of the Amusement Award, and submissions and evidence upon which they wish to rely by no later than **4:00 pm (AEDT) Friday 7 March 2025**.
- (2) Interested parties shall file any proposals, submissions and evidence in reply by **4:00 pm (AEDT) Friday 28 March 2025**.
- (3) The matter will be listed for a case management hearing by video-link using Microsoft Teams at **10:00 am (AEDT) Thursday 3 April 2025**.
- (4) The matter will proceed to hearing before the Full Bench at **10:00 am Tuesday 29 April and Wednesday 30 April 2025**.

[13] The parties are encouraged to confer and reach consent positions as far as possible prior to the case management hearing identified at direction (3).



DEPUTY PRESIDENT

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² Fair Work Commission, [Modern Awards Review 2023–24](#) (Final Report, 18 July 2024)