



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

1056936

**JUSTICE ROSS, PRESIDENT  
DEPUTY PRESIDENT CLANCY  
COMMISSIONER LEE**

**AM2018/18  
AM2018/20**

**s.156 - 4 yearly review of modern awards**

**Four yearly review of modern awards  
(AM2018/18 & AM2018/20)  
Children's Services Award 2010 & Educational Services (Teachers) Award 2010**

**Sydney**

**9.34 AM, TUESDAY, 7 MAY 2019**

**Continued from 6/05/2019**

PN1428

DEPUTY PRESIDENT CLANCY: I can just give an indication with the directions that we made available to the parties yesterday for their review where direction 1 required submissions to be filed the Full Bench has conferred and we will extend the time in the directions from Monday 20 May to Monday 27 May. We'll formally make those directions, but I can give that indication now. Yes?

PN1429

MS SAUNDERS: Just one matter before we proceed. I showed a document to a witness yesterday, [REDACTED]

PN1430

DEPUTY PRESIDENT CLANCY: Yes.

PN1431

MS SAUNDERS: I forgot to tender it. If I could just do that now?

PN1432

DEPUTY PRESIDENT CLANCY: I've gathered mine up in - - -

PN1433

MS SAUNDERS: I can provide another copy to your Honour's associate.

PN1434

DEPUTY PRESIDENT CLANCY: Yes. All right.

PN1435

MS SAUNDERS: It's 16, your Honour.

PN1436

DEPUTY PRESIDENT CLANCY: Sixteen, is it? Thank you. I'll mark that [REDACTED] as exhibit 16.

**EXHIBIT #16** [REDACTED]

PN1437

MS SAUNDERS: Thank you.

PN1438

DEPUTY PRESIDENT CLANCY: Thank you.

PN1439

MR BULL: I don't know whether I should as a further housekeeping matter, I did send an email last night about some documents that I'd like the remote witnesses to have access to.

PN1440

DEPUTY PRESIDENT CLANCY: Yes.

PN1441

MR BULL: So I understand my friend has made them available to their witnesses on the telephone.

PN1442

DEPUTY PRESIDENT CLANCY: Yes.

PN1443

MS WHISH: That's correct. In some cases the witnesses, both in Brisbane and on the telephone will have electronic access but I understand that's not opposed by any party.

PN1444

DEPUTY PRESIDENT CLANCY: I mean, we can obviously confirm with the parties that they've got the documents. If they don't we'll stand the matter down briefly and deal with it that way.

PN1445

MR BULL: I've got some hard copies of the reports if there's anyone in the room who needs one.

PN1446

DEPUTY PRESIDENT CLANCY: Thank you. Are we ready to proceed with Ms Warner?

PN1447

MS DABARERA: Deputy President, before we proceed I understand there's a number of other witnesses in the Brisbane courtroom aside from Ms Warner.

PN1448

DEPUTY PRESIDENT CLANCY: Yes. Could I ask any other witness, that is any witness other than Ms Warner, to step outside, please, until called. Thank you.

PN1449

So who have we got?

PN1450

MS DABARERA: We've got Ms Warner and that's Simon Ong of United Voice, industrial officer.

PN1451

DEPUTY PRESIDENT CLANCY: Thank you.

PN1452

MS DABARERA: Ms Warner, the associate is going to go through your oath or affirmation with you and then I'll ask you a few questions about your statement.

PN1453

MS WARNER: Okay.

PN1454

THE ASSOCIATE: Ms Warner, please state your full name and address.

PN1455

MS WARNER: Preston Tori Warner, (address supplied).

**<PRESTON TORI WARNER, AFFIRMED** [9.38 AM]

**EXAMINATION-IN-CHIEF BY MS DABARERA** [9.38 AM]

PN1456

MS DABARERA: Could I please have you state your full name again?---Preston Tori Warner.

PN1457

What is your occupation?---Childcare educator.

PN1458

You have prepared a statement for the purposes of these proceedings?---Yes.

PN1459

With your statement is that a statement signed by you on 8 March 2019?---Yes.

PN1460

Are the contents of your statement true and correct?---Yes.

PN1461

Your Honours, I seek to tender that statement.

PN1462

DEPUTY PRESIDENT CLANCY: I'll mark the statement of Preston Tori Warner dated 8 March 2019 as exhibit 17.

**EXHIBIT #17 WITNESS STATEMENT OF PRESTON TORI WARNER DATED 08/03/2019**

PN1463

MS DABARERA: Thank you. Ms Warner, you'll now be asked a few questions by the employer representatives?---Okay.

**CROSS-EXAMINATION BY MR ARNDT** [9.39 AM]

PN1464

MR ARNDT: Good morning, Ms Warner. My name is Julian Arndt. I'm a solicitor representing some employers in these proceedings. Can you hear me okay?---Yes, that's fine.

PN1465

I've got a small amount of questions for you. Can I ask first whether you have in front of you - I see some papers. Is one of them the Children's Services Award?---I believe I have an electronic copy available.

\*\*\* PRESTON TORI WARNER

XN MS DABARERA

\*\*\* PRESTON TORI WARNER

XXN MR ARNDT

PN1466

Excellent. I might take you to that a few times in relation to some of my questions. And you also have your statement?---Okay. Yes, yes, I do.

PN1467

Yes. So you're a lead educator, an education leader at St Cecilia's?---Yes.

PN1468

And you're the 2IC, aren't you?---Yes.

PN1469

So that means you're the second most senior member of staff?---Yes.

PN1470

And you're Level 4.2 of the Children's Services Award, that's your evidence?---Yes.

PN1471

If you go to 19 of your statement - - -?---Yes.

PN1472

- - - here you list out your responsibilities as educational leader?---Mm-hm.

PN1473

How did you come up with the list at 19?---That list came about from the responsibilities that are laid out in the National Quality Standards for the educational leader, and also was created with my director as what we thought the role would look like in our service.

PN1474

So where do you understand the responsibilities in 19 to come from? Is it from the National Quality Standard?---Yes.

PN1475

If I asked you to take the Commission to specific sections of that standard would you be able to identify them? Identify the relevant part of the standard against the responsibilities you've listed at 19?---No, probably not specifically.

PN1476

Okay. I won't ask you to do that then. Can we go to 19(a)?---Yes.

PN1477

You say you're responsible for programming and planning for the centre?---Yes.

PN1478

Are you solely responsible for this?---No. I oversee it.

PN1479

Do you do this in consultation with your director?---Yes, and other lead educators.

\*\*\* PRESTON TORI WARNER

XXN MR ARNDT

PN1480

And then you're lead educator - sorry, did you say something?---No.

PN1481

Sorry, I must have heard something. You're lead educator role already requires you to program the junior room, doesn't it?---Yes.

PN1482

If I can ask you to go to the award on your laptop?---Yes.

PN1483

And I think it should be page 54. What I want you to find is a heading named Level 4. Can you see that on 54?---Just finding it now. Yes.

PN1484

You see that. And you see a list of indicative duties?---Yes.

PN1485

Just talking about the first dot point you're already responsible in consultation with the assistant director or director for the preparation of implementation and evaluation of a developmentally appropriate program for individual children or groups, aren't you?---Yes.

PN1486

Can I ask you to go back to your statement, 19(a), please?---Yes.

PN1487

You say that one of your responsibilities is ensuring that evidence of what each child has learnt across a year is documented in observation and photos?---Yes.

PN1488

Preparing observation and photos for each child is completed by the lead educators, isn't it?---Yes.

PN1489

And that's what you do in relation to the room that you're in charge of as lead educator?---Yes, in my room.

PN1490

And that's what the other lead educators do in their rooms, isn't it?---Yes.

PN1491

Can I take you to 19(c)?---Yes.

PN1492

Can you explain what "assisting educators with reflection on their educational practice" actually means?---So that would be through mentoring with each of the educators as well as encouraging and prompting them to think about their space, their program, their children, and how to reflect on that and therefore improve and do better on some things.

\*\*\* PRESTON TORI WARNER

XXN MR ARNDT

PN1493

Isn't that something you would already do as the 2IC at the centre and the second most senior member of staff?---To a degree.

PN1494

Can I take you to 25?---Yes.

PN1495

It says you're expected to stay up-to-date with the latest findings and research on educational practice. Whose expectation is that?---That comes from the NQS.

PN1496

So the NQS in your view requires you to stay up-to-date with research?---Yes.

PN1497

Do you say you're doing this on your own time?---Yes, as well as during work hours.

PN1498

And you do this even though you don't get paid for it?---Yes.

PN1499

Can I take you to 52 of your statement?---Yes.

PN1500

You don't do work at home in your own time, do you?---No.

PN1501

You don't?---No.

PN1502

I thought you said you did research in your own time. Is that not work?---In terms of programming and planning I don't do that at home. But when it comes to perhaps reading I will do a portion of that at home.

PN1503

Is - - -?---But mostly during work hours.

PN1504

So the portion of it that you do at home, do you do it at home without getting paid for it because it's not work?---Sorry, I don't really understand.

PN1505

What I'm trying to understand is at 52 you say that you do not do programming at home because you do not get paid enough to do it at home?---Yes.

PN1506

But in relation to the research that you say that you do at home in your own time, you say that you do do it at home even though you don't get paid anything for that?---Yes.

\*\*\* PRESTON TORI WARNER

XXN MR ARNDT

PN1507

I'm asking why do you do the research at home? Is it because it is not work?---I view it as personal development as well as professionally.

PN1508

Okay. Can I take you to 26?---Yes.

PN1509

Twenty-six and 27 you talk about some more professional development that you undertake in your own time at your own cost?---Yes.

PN1510

Is participation in these courses required by your employer?---No.

PN1511

Is it required by anyone?---To an extent.

PN1512

To what extent?---Again, this is more for my personal, professional development that I undertake for my own purposes.

PN1513

So it's voluntary?---Yes.

PN1514

It's not required?---Some level of research is required but I would also do that in my professional time during work hours.

PN1515

What requires research?---For the NQS standards, for the education leader role do.

PN1516

The NQS standard requires educational leaders to undertake research?---And be up-to-date with recent early childhood findings.

PN1517

Do you know how much research the NQS standards require you to undertake?---I don't think it specifies.

PN1518

Can I take you to 29?---Yes.

PN1519

It talks about your director. About what types of matters do you contact your director when she's not in the centre?---This would include if there have been any incidents, any staffing issues, any parent inquiries that I may not have the answer to.

\*\*\* PRESTON TORI WARNER

XXN MR ARNDT

PN1520



So when you contact her does she provide direction to you?---In some - yes, in some circumstances.

PN1521

And I assume you're required to listen and implement her instructions if she gives any to you?---Yes.

PN1522

Can I take you to 37?---Yes.

PN1523

Talking about your responsibilities as a responsible person. Can I put to you that you are always responsible for ensuring a safe environment is maintained for both staff and children even when you are not responsible person?---Yes.

PN1524

So you agree with that?---Yes.

PN1525

At 40 you say you have responsibility if an incident or issue were to occur while you were responsible person?---Yes.

PN1526

What do you mean by having responsibility?---Well, I am the most senior staff member that's there. It's my responsibility to handle that situation.

PN1527

You don't mean legal responsibility, do you?---As responsible person I am in charge during those times.

PN1528

So you understand that you have additional legal responsibilities as responsible person?---Yes.

PN1529

That's all the questions I have. Thank you?---Thank you.

PN1530

SPEAKER: No questions. Thank you.

PN1531

MR ARRABALDE: I just have one question if I may?

PN1532

DEPUTY PRESIDENT CLANCY: Yes.

**CROSS-EXAMINATION BY MS ARRABALDE**

**[9.52 AM]**

\*\*\* PRESTON TORI WARNER

XXN MS ARRABALDE

PN1533

MR ARRABALDE: Ms Warner, my name is Elizabeth Arrabalde. I'm appearing as an independent in this matter. And I'd just like to take you back to paragraph 19 if I may where you were talking about your responsibilities. And I know that you said that you weren't able to probably locate it in the NQS, but I was wondering if I could please read you a section whether you could say whether or not it aligned with your responsibilities?---Yes, sure.

PN1534

Sure. So I'm just reading part 7.2.2 from the NQS standards that were updated in 2018 which says, 7.2.2, education leadership:

PN1535

*The educational leader is supported and leads the development and implementation of the educational program and assessment and planning cycle.*

PN1536

Does that reflect your responsibilities?---Yes.

PN1537

Thank you so much, Ms Warner. Yes.

**RE-EXAMINATION BY MS DABARERA**

**[9.53 AM]**

PN1538

MS DABARERA: Just a brief question. Ms Warner, you were asked about paragraph 40 and about your responsibilities in relation to if an incident or issue were to occur?---Yes.

PN1539

What would happen if an incident or issue were to occur whilst you were responsible person?---In terms of a child?

PN1540

Whatever example you might wish to give?---Okay. So for example if a child was to fall over and hurt themselves the next steps following that would be I would have another lead educator or whoever happened to be the witness to the incident take care of that child, provide basic first aid. Then an incident report is written, either by myself or by the lead educator that witnessed the incident. Regardless of who writes that I proof read and overlook that form and then sign off as responsible person. The parents are communicated with via phone and also in person when they arrive to collect their child, and then it's my job as responsible person to input that incident report into our online database.

PN1541

Thank you, Ms Warner. That's all.

\*\*\* PRESTON TORI WARNER

RXN MS DABARERA

PN1542

DEPUTY PRESIDENT CLANCY: Thank you, Ms Warner, for your evidence this morning. You can step down from giving evidence there, and you're excused from further attendance?---Thank you.

**<THE WITNESS WITHDREW**

**[9.55 AM]**

PN1543

DEPUTY PRESIDENT CLANCY: Is it Ms Fraser now?

PN1544

MS WHISH: Yes, it is. Mr Fraser is - - -

PN1545

DEPUTY PRESIDENT CLANCY: Mr Fraser.

PN1546

MS WHISH: - - - outside the door, I believe, so he shouldn't be too long.

PN1547

DEPUTY PRESIDENT CLANCY: Thank you.

PN1548

MS WHISH: Sitting with Mr Fraser is a representative of the Australian Childcare Alliance, Mr Brent Stokes; is that correct?

PN1549

MR STOKES: That's correct.

PN1550

MS WHISH: Mr Fraser, I'll just have the associate go through your oath or affirmation with you and then I'll ask you some questions about your statement.

PN1551

MR FRASER: No problems.

PN1552

THE ASSOCIATE: Mr Fraser, can you please state your full name and address?

PN1553

MR FRASER: Jae Dean Fraser, (address supplied).

**<JAE DEAN FRASER, AFFIRMED**

**[9.56 AM]**

**EXAMINATION-IN-CHIEF BY MS WHISH**

**[9.56 AM]**

PN1554

MS WHISH: Mr Fraser, can you hear me okay in Brisbane?---Yes.

\*\*\*

JAE DEAN FRASER

XN MS WHISH

PN1555

Excellent. Could I please get you to state your name and address just once more?---Yes, sure. It's Jae Dean Fraser, (address supplied).

PN1556

Thank you. Could you speak up just a little, Mr Fraser? It's a little quiet in Sydney?---Yes, sure. Is that better?

PN1557

We'll see?---Okay.

PN1558

Have you provided a statement in these proceedings?---Yes, I have.

PN1559

And do you have a copy of that statement in front of you?---I do.

PN1560

And I believe you have some changes that you'd like to make to that statement. I'm aware of two of those changes. The first - - -?---Is that - - -

PN1561

- - -is to paragraph 23 on page 4. Mr Fraser has informed me that he actually manages six centres. There's only five listed there. To avoid having to add an additional centre and any additional details, if we could just have that known that he manages six centres instead of five. Is that correct, Mr Fraser?---That's right, Sophie.

PN1562

And in relation to paragraph 123 is there a change you'd like to make to paragraph 135?---135, that's right. When the statement was prepared we had - some of our centre directors were bachelor qualified. There's since been a change in that situation, and we no longer have bachelor qualified directors.

PN1563

So is the change you'd like to make to that paragraph that some of the directors have had teaching degrees?---That's correct.

PN1564

Thank you. Are there any further changes you'd like to make, Mr Fraser?---No, that's all.

PN1565

Then subject to those changes is your statement a true and correct record to the best of your knowledge?---Yes, it is.

PN1566

I seek to tender that statement into evidence.

PN1567

DEPUTY PRESIDENT CLANCY: Thank you. I'll mark the statement of Mr Jae Dean Fraser dated 15 April 2019 as exhibit 18.

\*\*\* JAE DEAN FRASER

XN MS WHISH

**EXHIBIT #18 WITNESS STATEMENT OF JAE DEAN FRASER  
DATED 15/04/2019**

PN1568

MS WHISH: Thank you. Mr Fraser, some of the union representatives will now ask you some questions.

PN1569

DEPUTY PRESIDENT CLANCY: Mr Fraser, is there a microphone there on the table with you?---Yes, there is.

PN1570

Could you perhaps, if the court allows it, bring it closer to your - thank you. Thank you?---Is that better?

PN1571

And then just speak up. Thank you.

**CROSS-EXAMINATION BY MS SAUNDERS**

**[10.00 AM]**

PN1572

MS SAUNDERS: Thanks, Mr Fraser. If at any point you can't hear me let me know. You might need to speak a little - - -?---No problems.

PN1573

- - -slower than you usually would. We're just having a little bit of difficulty hearing you?---Okay. No problems.

PN1574

Thanks. I just wanted to ask you some questions about your qualifications. You have an advanced diploma in early childhood?---That's correct.

PN1575

Yes. And a bachelor's degree in teaching?---That's correct.

PN1576

Are you a registered teacher?---No, I'm not.

PN1577

Have you ever been?---I think I was once.

PN1578

You don't need to be in Queensland, do you?---That's correct.

PN1579

Yes. And you have in fact worked as a teacher?---Yes, I have.

PN1580

Both in early childhood and in primary school?---That's correct.

\*\*\* JAE DEAN FRASER

XXN MS SAUNDERS

PN1581

Yes. To the best of your knowledge primary schools tend to pay better than early childhood centres for teachers?---I think that there's a varied in - I think it depends on the situation.

PN1582

Sure. Were you paid more in the primary school you worked at than the early childhood centre you worked in?---In my case I was paid more because I was a casual teacher doing relief work.

PN1583

Sure?---So I was not a full-time employee.

PN1584

Your education degree it had a focus on pedagogical technique?---Yes, there were elements of that in my degree, that's correct.

PN1585

Yes. Taught you skills in developing curriculum plans for students?---Yes.

PN1586

There's a practical element to that degree as well?---That's correct.

PN1587

And that's where you learnt the skills you used as an early childhood teacher; that's fair?---Yes.

PN1588

You own seven early childhood centres; is that right?---That's right.

PN1589

And you manage a further six?---Yes.

PN1590

They range from about 50 to about 130 places?---Yes.

PN1591

They tend to be on the larger end of the scale?---The average centre size in Queensland is around 75 places.

PN1592

Sure. Almost all your centres are at or above that, aren't they?---Yes.

PN1593

Is it about 150 employees across the centre?---Across the group of centres?

PN1594

Yes?---Yes. That's right.

\*\*\* JAE DEAN FRASER

XXN MS SAUNDERS

PN1595

They are predominantly female?---Yes.

PN1596

Almost overwhelmingly so?---Yes.

PN1597

Are they predominantly part-time workers?---Yes. Permanent part time.

PN1598

Permanent part time. You do have some directly employed casuals as well?---Yes. Very few.

PN1599

And there's some permanent full-time employees as well?---Yes.

PN1600

Yes. There's a preference not to use casuals because it doesn't provide the same continuity of care for children?---Yes.

PN1601

And it's better to have stable staffing arrangements at each centre; that's right?---Yes.

PN1602

Including having the same staff there on the same days each week?---Yes.

PN1603

Your workforce many of these women have families of their own?---Yes, I would say that's fair.

PN1604

Some of them are studying?---Yes.

PN1605

Just back on casuals, and I want to talk about teachers now, you don't currently employ any casual teachers?---No.

PN1606

If you did, you wouldn't expect them to work for free at all, would you?---No.

PN1607

MS WHISH: Objection. This is a hypothetical scenario.

PN1608

MS SAUNDERS: So is about 80 per cent of Mr Fraser's evidence.

PN1609

DEPUTY PRESIDENT CLANCY: What's the question going to?

\*\*\* JAE DEAN FRASER

XXN MS SAUNDERS

PN1610

MS SAUNDERS: It's about AFEI's objection to the IEU's claim.

PN1611

DEPUTY PRESIDENT CLANCY: It's a fairly bald proposition. I mean, I don't know, ask it if you want, but - - -

PN1612

MS SAUNDERS: I'll repeat the question for you, Mr Fraser. If you did employ a casual teacher you would pay them for all time worked, wouldn't you?---Yes, I would.

PN1613

You wouldn't expect them to perform any work for you for free?---No.

PN1614

I'm going to ask you now about directors. Before I get into it I just want to check you've got access to two documents, which I think you've seen before: one is a position description for directors in your centres?---Yes.

PN1615

And the other one is a job ad for the same position?---Yes, I have both in front of me.

PN1616

Great. Just keep those handy. We'll come back to them in a minute. So each centre is required to have a director; is that right?---Yes.

PN1617

Is that role often coupled with being a centre manager?---Yes. We refer to our centre directors as centre managers.

PN1618

Sure. So the terms are interchangeable basically?---Absolutely, yes.

PN1619

Part of that role is supervisory. They manage staff?---Yes.

PN1620

The staff report to them in other words?---Yes, they do.

PN1621

For example, the teacher would report ultimately to the director?---Yes.

PN1622

It's a more senior role?---Yes.

PN1623

And another part of the role is supervising the delivery - I'm sorry, I'll withdraw that. Part of the role is administering the delivery of the education program?---Yes.

\*\*\* JAE DEAN FRASER

XXN MS SAUNDERS



PN1624

Oversighting it, making sure it's appropriate?---Yes. Yes. Essentially the centre managers are responsible to ensure that the program is occurring.

PN1625

Yes. And that it - - -?---The delivery - - -

PN1626

I haven't asked you about delivery yet. Part of that is ensuring the program provides all aspects of child developments?---Yes.

PN1627

Directors - centre managers, I'm sorry. I will use the terms interchangeably?---That's fine.

PN1628

That's what I'm referring to. They can do contact work?---Yes, where required.

PN1629

Where required. You don't currently employ any teachers now but you have in the past employed teachers as centre managers?---Yes, we have.

PN1630

And when they worked contact they'd be working as teachers, wouldn't they?---So when we - when I refer to my centre managers working contact the only time that they would be required to do that is if in an unusual situation that a teacher or multiple teachers were away and we were unable to replace them with the same qualification.

PN1631

Yes. And if that - - -?---So it's rare but as - - -

PN1632

- - -happened they'd be working as teachers?---It would be a dual role, but at the time that they're delivering the program they are a teacher, that's correct.

PN1633

Yes. And they use their teaching skills as centre managers, don't they?---Not in the role of a centre manager.

PN1634

Have a look at the [REDACTED] first, which - sorry, I'll just provide a copy to the Bench. Okay. So you see the dot points there. [REDACTED], isn't it?---Yes.

PN1635

It's the first dot point, bachelor level qualification or minimum diploma?---Yes.

PN1636

The preference is for a degree, isn't it?---No.

\*\*\* JAE DEAN FRASER

XXN MS SAUNDERS

PN1637

They require a strong understanding of the early years learning framework?---Yes.

PN1638

That's something that teachers gain through their bachelor qualifications?---It's something that any level early childhood educator would gain through their qualifications, whether it's certificate III or diploma or bachelor.

PN1639

Sure. But it is a facet of teaching qualifications, isn't it?---Yes.

PN1640

Sound knowledge and assessment and rating. What does that refer to?---That refers to the ACECQA assessment and rating process where the Australian Children's Education and Care Authority - - -

PN1641

Sure?--- - - -visit the service and assess based across the seven quality areas.

PN1642

Excellent verbal, written and communication skills. That's something that's taught at university. I should say with these questions I'm not suggesting that diploma workers don't have these skills. I just want to see if they're part of the teaching qualification. So teachers - - -?---Okay.

PN1643

- - -they would learn about communications skills at university, wouldn't they?---Yes.

PN1644

You see the bold heading, [REDACTED] ?---Yes.

PN1645

The final three dot points, the top one, oversee and manage the educational programs of the centre?---Yes.

PN1646

That would use skills that a teacher learns at university, wouldn't it?---Yes, it would.

PN1647

I tender that document.

PN1648

DEPUTY PRESIDENT CLANCY: Any objection? I'll mark the Seek job advertisement as exhibit 19.

**EXHIBIT #19 SEEK JOB ADVERTISEMENT**

\*\*\* JAE DEAN FRASER

XXN MS SAUNDERS

PN1649

MS SAUNDERS: Mr Fraser, if you could just look at the [REDACTED] next. I'll hand up a copy of that. You've got that document, Mr Fraser?---Yes, I do.

PN1650

Thanks. Essentially it reflects what you set out in the job ad, doesn't it?---Yes.

PN1651

So key responsibilities, supervising the programs and quality of care. That in part refers to the educational program?---The program's piece. Yes, that's right.

PN1652

Yes. And the second dot point is the same. That's talking in a large part about the educational programs?---Yes.

PN1653

And so the skills teachers have they're relevant to their work as centre managers; that's right?---Sorry, can you repeat the question?

PN1654

The skills that teachers have as a result of their degree can be relevant to their work as centre managers?---Yes. However, the centre managers are responsible for the delivery of the program, and when we talk about overseeing - - -

PN1655

Yes. Yes, I'm not - Mr Fraser, I'm not asking you about delivery?---Okay.

PN1656

Yes. It's a- your answer is not - - -?---So when I talk about overseeing a program I'm talking about the centre managers making sure that their employees, their teachers, their lead educators are delivering the program, are doing a quality program. So it's not about doing the program.

PN1657

And that involves reviewing and assessing the program, doesn't it?---Yes, along with the educational leader, that's right.

PN1658

Yes. And the educational leader would report to the centre manager ultimately?---Yes. Yes.

PN1659

Do you pay your centre managers award rates?---Some are award, some are above award.

PN1660

I just want to ask you about rostering. With your part-time workers are those workers on minimum hours contracts?---How do you mean?

\*\*\* JAE DEAN FRASER

XXN MS SAUNDERS

PN1661

Have you ever heard that phrase before, minimum hours contract?---Yes. So are you asking me if we have a minimum number of hours on the employment agreement that the employee could work on a certain week?

PN1662

Is that how you - I'm asking how you contract your part-time workers. Is that what you have?---Yes. So our employment agreements are documented in a way that we employ our permanent part-time employees for a minimum of 15 hours per week up to a maximum of 37.5

PN1663

And that's the case for all part-time workers?---Yes.

PN1664

Yes. What do you pay them for work in excess of the minimum 15 hours? Ordinary rates?---Yes.

PN1665

Okay. Can you require them to work more than 15 hours?---Yes. With their agreement.

PN1666

Yes, sure. When I say "require" it's going to come up in the questioning, I mean make them do it without agreement. Can you do that with your part-time workers?---I don't think so. If an employee doesn't agree to work I can't force them to.

PN1667

Sure. But you do understand that employees are required to work their minimum hours?---Absolutely.

PN1668

Yes. A full-time worker is required to work 38 ordinary hours a week?---Yes.

PN1669

You don't have to get their agreement every time, do you?---No.

PN1670

No. When you set a roster that has those ordinary hours that worker is required to turn up, aren't they?---Yes.

PN1671

If they don't they won't get paid?---Well, yes, essentially.

PN1672

And it could be a disciplinary matter if someone doesn't show up for their shift?---That's right.

\*\*\* JAE DEAN FRASER

XXN MS SAUNDERS

PN1673

At what roster cycle do your centres work to?---So every centre is different. But typically we operate on a monthly roster. Some centres do a fortnightly.

PN1674

I see. You've set out in your statement the range of considerations that need to be taken into account when setting a roster. One of those is making sure that the educator to child ratio is correct; yes?---Yes.

PN1675

You also need to stagger coverage across the centre's opening hours?---That's correct.

PN1676

Yes. Because they're open 12 hours a day but you only roster employees for up to eight hours?---Yes.

PN1677

I see. With those ratios you don't just roster to the absolutely minimum ratio, do you?---No.

PN1678

You can't. You need a buffer in case people are sick?---That's right.

PN1679

You need a buffer because people will sometimes be on leave?---Yes.

PN1680

And you need floaters for lunch cover, things like that?---Yes.

PN1681

When your centres set the rosters they try and accommodate employee preferences?---Yes.

PN1682

So, for example, if someone requests annual leave for a period you'll try and accommodate that where you can?---Yes, we will.

PN1683

You can't always accommodate everyone?---Not always, but we try very hard.

PN1684

Of course. Ultimately it's the employer's decision, isn't it?---Yes.

PN1685

We'll come back to rostering in a moment, but I want to talk to you about the span of hours. You understand the current span of ordinary hours in the award is 6 in the morning till 6.30 at night?---Yes.

\*\*\* JAE DEAN FRASER

XXN MS SAUNDERS

PN1686

And you also understand that the ACA is seeking to have that extended to 7.30 at night?---Yes.

PN1687

Your centres work a mix of hours, some 6.30 to 6.30?---Yes.

PN1688

That's most of them?---Yes. Only two operate 6 till 6.

PN1689

Yes. And there's one that operates 7 to 6.30 but that's an outlier?---Yes.

PN1690

The point of this change is so you're able to roster staff to work later at night; is that right?---Yes.

PN1691

So it's not about later hours, it's about changing the start and finish time of shifts?---From my perspective it's about providing flexibilities for families who need care later in the day.

PN1692

Yes. But in terms of its effect on employees it would be to allow you to roster people to finish at 7.30 at night?---Yes.

PN1693

So starting at 11.30 in the morning?---Yes.

PN1694

In part that's so you can keep your centres open longer?---Yes.

PN1695

And that's what you're talking about with flexibility, isn't it?---Yes.

PN1696

That might allow you to attract more families into your service?---Yes, potentially.

PN1697

Yes. And that would allow you to make more money?---Not necessarily, no.

PN1698

But it could?---No, because typically parents pay for a session or a booking not per hour. So in effect it actually could cost more money.

PN1699

You haven't done any cost modelling for this proposition, have you?---No, I haven't.

\*\*\* JAE DEAN FRASER

XXN MS SAUNDERS

PN1700

Okay. And you haven't surveyed your staff at all about how they feel about a potential 7.30 finish, have you?---Yes, we have.

PN1701

You haven't included the results of those surveys in any of your witness statements, have you?---No, I haven't. It was only something that we did recently for another exercise.

PN1702

Sure. Part of the effect on staff is that they won't have to deal with the unpredictability of being asked to stay back to work overtime?---Sorry, repeat the question.

PN1703

One of the effects you think the longer hours will have is that it'll stop staff having to do deal with the unpredictability of being asked to work overtime after 6.30?---Yes.

PN1704

Is it fair to say that your centres have core hours?---Yes.

PN1705

Most of the children are there in the middle of the day?---Yes.

PN1706

That's the principal time for delivering the educational programs?---Yes.

PN1707

And that's really the time that you need to be rostering teachers, isn't it?---Yes.

PN1708

So one of the major issues you identify in your statement is late pick-ups?---Yes.

PN1709

So one to two parents each week are late picking up their child?---Yes.

PN1710

But how late they are varies. It can be as much as 30 minutes?---Yes. That's right.

PN1711

I want to take you through some examples which we're just going to talk about the centres that close at 6.30. Don't worry about the other three?---Okay.

PN1712

So first example, the award is as it is now and you've got to work a roster to finish at 6.30. That's something that could happen?---Yes.

\*\*\* JAE DEAN FRASER

XXN MS SAUNDERS

PN1713

That's already a late finish, isn't it?---Yes. That's the latest someone can be rostered.

PN1714

Yes. And many staff don't like working that shift?---Many. Yes, that's right.

PN1715

Yes. So a parent is late for however long it needs to be, and that worker doesn't leave until 7 o'clock at night. That's an even later finish, isn't it?---Yes.

PN1716

What they are paid is their normal shift, the eight hours and 30 minutes at overtime rates?---Yes.

PN1717

And you charge that parent \$5 a minute as a late fee?---Yes.

PN1718

That's as a disincentive to stop this happening?---Yes, it is.

PN1719

Most parents do their absolute best to avoid being late, don't they?---Absolutely.

PN1720

There are a very small minority of parents who see the late fee as a fee for service?---Yes, that's true.

PN1721

So they're willing to just pay it for the convenience of picking up their kid late?---I wouldn't say it's common, but I have heard that before.

PN1722

Yes. All right. So I want to take you to the second example. The awards change you can roster to 7 but you haven't changed the opening hours of your centre. So you've got a worker that's rostered 11 till 7, but your centre closes at 6.30. Does that make sense?---Yes.

PN1723

Okay. The same parent as in the last example is the same amount of time late, but this time this doesn't mean the worker has to stay back; is that right?---Yes. That's right.

PN1724

So they still have to leave at 7 o'clock at night?---Yes.

PN1725

They are only paid for their eight hours at ordinary time?---Yes.

\*\*\* JAE DEAN FRASER

XXN MS SAUNDERS

PN1726



They no longer have an opportunity there to earn overtime payments, do they?---Well, in our situation we use the money that's paid by the parents to give to the staff, so - - -

PN1727

In that situation that worker does not receive overtime payments, do they?---They wouldn't receive the overtime payments but they would receive the money paid by the parent in both situations.

PN1728

The late fee?---That's right.

PN1729

That's paid directly to staff?---Through the payroll, that's right.

PN1730

And when you say "through the payroll" you mean that you're handing over cash but they get it as a bonus?---Correct.

PN1731

In addition to their overtime rates?---In the first situation, yes. In the second they wouldn't receive the overtime rate, so it's just the payment from the parent.

PN1732

Sure. The award doesn't require you to do that, does it?---No, it doesn't.

PN1733

You do that as partially to reward your staff?---Yes, and also I feel bad that they've had to stay back.

PN1734

And partially - - -?---When they weren't aware of it.

PN1735

- - -to make it a good place to work?---Absolutely.

PN1736

So paying your staff more helps you retain them, doesn't it?---I guess you could say that.

PN1737

Okay. I want to take you through a third example where the award changes as you'd like it to, and you also change your centre hours. So your centre now closes at 7 o'clock at night?---Yes.

PN1738

And you've rostered your worker from 11 till 7, the close shift?---Yes.

\*\*\* JAE DEAN FRASER

XXN MS SAUNDERS

PN1739

The parent is late and the worker doesn't get to leave until 7.30. Does that make sense?---Yes.

PN1740

So they get, under the award, leaving the late fee to one side, they get paid eight hours and overtime, don't they?---Did you say earlier that the award has changed?

PN1741

Yes?---So they don't get the overtime.

PN1742

Yes, but they're only rostered till 7 o'clock?---Okay, yes.

PN1743

Yes. We can make it 7.30 and they're late - - -

PN1744

MS WHISH: Objection. This is a hypothetical scenario that's getting quite complicated for Mr Fraser to be able to answer.

PN1745

MS SAUNDERS: I accept that I have mucked up one of the premises. I can start again, but I - - -

PN1746

DEPUTY PRESIDENT CLANCY: I think we're following it, so - - -

PN1747

COMMISSIONER LEE: It seems fairly straight forward to me.

PN1748

MS SAUNDERS: Mr Fraser, crucially, are you following my example?---Yes.

PN1749

Okay. So the worker is rostered till 7 but they ultimately don't end up leaving till 7.30 because a parent is late?---Yes, okay. Yes.

PN1750

Under the award they'd get eight hours pay and then 30 minutes at overtime, wouldn't they?---Yes.

PN1751

The cost would be exactly the same for your centre as it is now?---Yes.

PN1752

The uncertainty for that worker is exactly the same as it is now?---Well, the cost wouldn't be the same, because I would be paying overtime, wouldn't I?

PN1753

The cost would be the same as in the first example?---Yes.

\*\*\* JAE DEAN FRASER

XXN MS SAUNDERS

PN1754

Yes, and the uncertainty for the worker would be the same as in the first example?---Yes.

PN1755

The only difference is they're finishing even later?---Yes.

PN1756

And they're not being compensated in any way for that, are they?---No, but they're starting later.

PN1757

Sure. They could be starting as late as 11.30 in the morning, couldn't they, Mr Fraser?---That's right. Yes.

PN1758

When would you put a lunch break in that shift?---Well, it depends on what the award stipulates for the - you know, for the period, but we'd follow the award, so if it requires a certain amount of hours into their shift then that's when they would have their lunch break.

PN1759

So assume for the moment that the award says you can only work five hours without a break - - ?---Yes.

PN1760

- - -the earliest you could put the lunch break is three hours into that shift?---Yes.

PN1761

So 2.30?---Potentially.

PN1762

That's quite a late lunch?---Well, sure.

PN1763

You'd have to - - ?---But they may have already had lunch before they've arrived at work.

PN1764

Sure?---It might just be a break.

PN1765

Sure. Yes, they'd have to have eaten later in the morning, wouldn't they?---If that was what their preference was, yes.

PN1766

And they're going to eat dinner later at night, aren't they?---Potentially, that's right.

\*\*\* JAE DEAN FRASER

XXN MS SAUNDERS

PN1767

They're going to have to adjust their entire routine?---They would, but a lot our staff prefer the late shift for a range of reasons.

PN1768

Their routine - your current late shift, but this theoretical 7.30 one that routine is going to be completely different to most families?---For 30 minutes.

PN1769

No, it's going to change breakfast, lunch and dinner, isn't it?---Potentially.

PN1770

At least one of those meals is a family meal, isn't it, Mr Fraser?---I don't know the details of every family but sure.

PN1771

Sure. Do you think they should be compensated for that time adjustment at all?---Well, no, I don't.

PN1772

Yes. Can we talk about rostering changes now? This is the second ACA claim. Can you just explain to me your understanding of that claim?---Yes. So my understanding of the claim is that we are able to work with our employees to make changes to the roster without providing seven days' notice of the change.

PN1773

When you say work with your employees do you mean get them to agree to changes?---Yes.

PN1774

So you're not looking for a change that requires you to - sorry, I withdraw that. What's your understanding of the requirements for educators at the moment? Workers covered by the Children's Services Award?---In relation to changes to roster?

PN1775

Yes?---Yes, that we need to provide seven days' notice of the change in roster or they need to agree to the change.

PN1776

And you want a change that allows you - and isn't that the same as the change you're seeking now?---Well, we want to be able to make changes based on the organisation. So if we have extra children arrive earlier than planned or if we have children stay later than previously planned or what our trends show us, we want to be able to make the necessary change to meet our obligations under the national standards without having to ask the employee to agree or make them - or ask them to wait or - - -

PN1777

So you don't - - -?---We need to make quick change to meet the regulations.

\*\*\* JAE DEAN FRASER

XXN MS SAUNDERS

PN1778

You don't want the employee to have to agree?---No, if we - a potential of being in breach of the regulations, then, no, we don't have an opportunity to wait for them to agree.

PN1779

So when you said before that you - your evidence before that you did want to, that it was only subject to agreement that's not right?---Sorry, say that again?

PN1780

You understand the claim to be changes to people's roster, the hours they have to work without their agreement with no notice; that's right?---Yes.

PN1781

Okay. What's your understanding of how you change teachers' rosters at the moment? How can you change teachers' rosters?---I'd have to refer to the award, but I believe it's the same.

PN1782

So you mentioned before the NQF ratios. A lot of this is to do with sick leave, isn't it, Mr Fraser?---Not necessarily.

PN1783

It's about when people are unavailable at short notice?---Yes, or if there's a changes in our enrolments unexpected or unplanned.

PN1784

We'll come back - and more children want to come to the centre than you planned for?---Or less children.

PN1785

So you also want to be able to cut people's hours without notice?---If required. If there was nothing more for anybody to do we can't just have staff standing around.

PN1786

Does that just affect part-time workers or do you want to be able to do that to full-time workers as well?---Just permanent part-time workers in my understanding.

PN1787

Having one person call in sick doesn't usually put you under your ratios, does it?---No, because I choose to over-roster my centres.

PN1788

Yes. Well, you have to do that to manage the risk of people taking personal leave, don't you?---No. If I was running a centre that had very low enrolments and I didn't have a lot of money to spend on rosters, which a lot of our members do, I would - - -

\*\*\* JAE DEAN FRASER

XXN MS SAUNDERS

PN1789

No, not your - - -?--- - - -not be able to do that.

PN1790

- - -members, Mr Fraser, you? You'd - - -?---So if I was operating a centre with very low occupancy.

PN1791

No, the centres you - - -?---And I didn't have - - -

PN1792

- - -currently operate. You have to have a buffer to safely meet the ratios, don't you?---No, I don't have to. I choose to.

PN1793

Okay. Say you do have a situation where there's a number of people on personal leave, and this puts you under the ratios?---Yes.

PN1794

You could do a number of different things. The first thing you would do is call staff and ask them if they wanted to swap shifts?---Yes.

PN1795

Your staff are very accommodating in this respect?---Yes.

PN1796

They usually agree?---Yes.

PN1797

If no one is willing to swap you might offer some of your part-time workers an extra shift?---Yes.

PN1798

If you can't get that you could offer people overtime?---Yes.

PN1799

You could use - I know you don't have many, but you do have some, you could use a casual?---Yes.

PN1800

You could engage an agency casual?---Yes.

PN1801

So let's look at that hypothetical, say you've got a part-time worker who you've rostered to work Monday, Wednesday, Friday. That's something that could happen?---Yes.

PN1802

You've given them that roster in advance and essentially said to them this is when you're going to have to turn up to work?---Yes.

\*\*\* JAE DEAN FRASER

XXN MS SAUNDERS

PN1803

Pretend for a moment that that centre is one of these very small ones where one person being sick will mean they're under the ratios, okay?---Okay.

PN1804

Tuesday morning the person rostered to open the centre calls in sick at 5.30. That can happen?---Yes.

PN1805

What you want to be able to do is call that first part-time worker and say to them at 5.30 in the morning, surprise, you now have to turn up to work today and you don't have your Friday shift any more?---No, in my scenario that wouldn't be what we'd do.

PN1806

You want to be able to do that, don't you, Mr Fraser?---My understanding is not that. We want to be able to make changes to the roster. So, I guess, yes. The answer is yes. Yes.

PN1807

The answer is yes. You are struggling with it, and that's because it's pretty unreasonable, isn't it?---No, it's not. It's because there are millions of different scenarios in situations that occur, and I want to make sure that I'm understanding it correctly.

PN1808

Yes. I'm just asking you about what your claim is and what you want to be permitted to do under the award. You want to call that part-time worker and tell them they either have to come in at one hour's notice or lose a day's pay?---So, yes, we want to be able to call them, but I don't understand why they would lose their day's pay.

PN1809

One of the things you could do under your claim was just swap their shift from Friday to Tuesday. You understand that?---Yes, but why would we not require them on the other day?

PN1810

Pretend you didn't?---Okay.

PN1811

If you told them you have to come in today and they didn't show up, they could potentially lose a day's pay, couldn't they, Mr Fraser?---Sure.

PN1812

Do you think that's fair?---I don't think the situation you've presented to me is fair, but I also don't think that that would occur.

\*\*\* JAE DEAN FRASER

XXN MS SAUNDERS

PN1813

Why do you think you need to be permitted to do it in that case?---Because the employee wouldn't lose the extra day, because we need them. They're rostered for that.

PN1814

Why do you need to be able to do that if it's not fair and it would never happen?---Sorry, say that again?

PN1815

You don't think the situation I've put to you would ever happen; that's right?---The later part of the situation, that's correct.

PN1816

You wouldn't use this new award power to simply swap someone's shift?---No, not if they had been rostered for a shift that we need them for.

PN1817

What if later in that week your enrolments drop? So, 20 parents called you and said, "Actually we're not bringing our child in on Friday", you could call that part-time worker and say, "No work for you today", couldn't you?---That's true.

PN1818

That's what you want to be able to do?---Depending on the situation, yes.

PN1819

Do you propose to pay these workers any compensation for this?---No.

PN1820

This would be extraordinarily uncertain for your part-time work force, wouldn't it, Mr Fraser?---I don't think that it would be very common, so I don't know. I don't think that it would create a high level of uncertainty for them.

PN1821

It wouldn't be very common because you can't predict when these things are going to happen, can you?---No.

PN1822

In practice it could happen any day of the week?---Yes.

PN1823

They would have to in practice be on-call every single day, wouldn't they?---I don't see it that way.

PN1824

Yes. Nothing further. I'm sorry, I forgot to tender the [REDACTED]

PN1825

DEPUTY PRESIDENT CLANCY: Yes. I'll mark the [REDACTED] as exhibit 20.

\*\*\* JAE DEAN FRASER

XXN MS SAUNDERS



PN1826

Thank you. Mr Bull, yes.

**CROSS-EXAMINATION BY MR BULL**

**[10.38 AM]**

PN1827

MR BULL: Mr Fraser, my name is Stephen Bull. I'm an industrial person for United Voice, so I'm going to ask you a few questions. Now, have you got a copy of the Children's Services Award in front of you?---Yes, I do.

PN1828

I also ask that you have in front of you two documents, which are summary documents: one is about the role of the educational leader, and the other is about - it's titled Responsible Person Requirements for Approved Providers. Do you have those documents?---Yes, I do.

PN1829

Thank you. You run quite a sophisticated business; that's a reasonable statement?---Yes.

PN1830

You've got almost 250 staff; is that correct, in the two groups?---Yes, so across the two, yes.

PN1831

And a significant part of those 250 people you employ could be described as back office staff?---Did you say a reasonable number?

PN1832

You have about 200 employees engaged under these awards; is that correct?---Yes.

PN1833

And the remainder are persons you engage on common law contracts or not under these awards. So you have people working in human resources?---Yes, but it's not 50 people.

PN1834

Right. Yes, but you've got a payroll system?---Yes.

PN1835

With your staff do you pay electronically?---Yes.

PN1836

Do you pay weekly, fortnightly or monthly?---For my centres that I own I pay fortnightly, and for the centres I manage they're all different.

\*\*\* JAE DEAN FRASER

XXN MR BULL

PN1837

Okay. Do you pay any of the cohort within the two groups monthly?---No.

PN1838

So in relation to the award covered employees the biggest increment between a pay would be a fortnight; is that correct?---That's correct.

PN1839

You've got an electronic system that deals with pay and leave; is that correct?---Yes.

PN1840

Can you tell us what that system is?---It's called DiffuzeHR.

PN1841

So in relation to the largest cohort of your staff, which is the educators, they're paid fortnightly?---Yes.

PN1842

Now, you said you roster monthly; is that correct?---In some centres, yes.

PN1843

So it's fair to say that when you run a payroll it's never as anticipated when the roster was drawn. That's a correct statement?---I don't think it's fair to say never, but it's common that there are changes.

PN1844

It's common for example that you've got to include sick leave in relation to employees going off sick; that's correct?---Yes.

PN1845

There will be inevitably changes in hours?---In some circumstance, yes.

PN1846

There'll be people who might not just turn up some days or turn up late?---Yes.

PN1847

So if a staff member turns up an hour late, do you dock their pay?---Depending on the circumstance, yes.

PN1848

But there is provision in your business operation model to do that?---Yes.

PN1849

And obviously sick leave is a - it's an issue for any business, but in childcare it's common place for staff get sick quite often; that's correct?---Yes.

PN1850

So you have to deal with, in terms of managing your payroll and your leave records, unanticipated absences because of sickness?---Yes.

\*\*\* JAE DEAN FRASER

XXN MR BULL

PN1851

And that needs to be entered in your systems and so forth?---Yes.

PN1852

You've said in answer to some of the questions put by my friend that in relation to late payments levied against parents that you provide these to the staff member who had to stay late?---Yes.

PN1853

And such payments are intrinsically ad hoc and unplannable. You'd agree with proposition?---I would.

PN1854

And they're also small payments?---Yes.

PN1855

It might be 20 or \$30 additional money going to an employee in a fortnightly pay; is that correct?---I think it would be more than that, but, yes.

PN1856

It might be 50 or 60?---Yes.

PN1857

But there's no defined amount, is there?---No, because it's subject to however late the parent is.

PN1858

So you're trying to compensate the employee for the dimension of the inconvenience caused by the parent being late?---Yes.

PN1859

And you're able to accommodate these additional payments within your fortnightly payroll?---Yes.

PN1860

You've given some evidence about our claim for allowances. You're aware that United Voice is claiming to insert two allowances into the award?---Yes.

PN1861

One is for responsible person. That could be for as little as an hour change in the employee's status. And the other is for an educational leader which will basically be a weekly allowance. You're aware of those two claims?---Yes, I am.

PN1862

And a general complaint you've made about these claims is that it will be impossible for you as the employer to administer these additional payments. That's a fair characterisation of your evidence?---Yes.

\*\*\* JAE DEAN FRASER

XXN MR BULL

PN1863

How is that different from the current scheme you administer providing ad hoc and diverse compensation to employees who have to stay late because parents are late picking up their children?---Because the payment we're referring to in relation to the late payment is a one-off and it's for one person or two people. The allowance that has been put forward or the proposed allowance that's been put forward must be multiple payments across multiple people across five days a week. So across the fortnight it's 10. So I could have three responsible people on on one day at one centre, so across seven centres that would be multiple payments across the payroll period at different levels.

PN1864

Let's put aside the issue of what it costs. I'm talking about the administrative burden, because you've said that it's too complex for you to administer. Surely in comparison with ad hoc payments for late parents having a relatively uniform allowance that has to be paid at certain times is far less administratively complex?---No, I disagree. I wasn't referring to the amount of money earlier, I was referring to the number of payments that would be required. In any one day I could have three responsible people work in one centre.

PN1865

Right. And that would simply mean that you would have three sets of hourly payments to three employees?---That's right.

PN1866

How is that more complex than administering a system of ad hoc payments for unplanned late parents pick-ups?---Because I need to determine that those people are actually the responsible people and then I need to determine what periods they were responsible for and then I need to do that across seven centres.

PN1867

That isn't - - -?---Plus the six that I manage.

PN1868

Well, sick leave is another example. Sick leave will be unplanned absences where people just don't turn up. That needs to be entered after the event into your systems, doesn't it?---Yes.

PN1869

And you obviously have a cutoff date where things need to be put into the system for the next pay run; that's correct?---Yes.

\*\*\* JAE DEAN FRASER

XXN MR BULL

PN1870

How would these allowances differ from sick leave in that you have to essentially adjust what was the ideal roster to what actually occurs in practice? How would these allowances be administratively different?---Because administering the responsible person allowance would mean that we need determine who was the responsible person at any one point of the day. So I gave the example before that potentially we could have three. If our centre managers are moving about the centres or they're going out to do other things and we are

putting other responsible people in charge I have to make sure that that allowance is being paid to the correct people for the right periods.

PN1871

Are you aware of your responsibilities under the national law in relation to record keeping and having a responsible person?---Yes.

PN1872

Doesn't that currently entail maintaining a record of who the responsible person is, and in fact doing more than that, having that on display so parents and third parties who interact with your centres will know who the responsible person is?---Yes.

PN1873

So currently you need to, so to speak, have a real time record keeping in relation to knowing at any centre who the responsible person is?---Yes. That's a very manual process.

PN1874

But you're required to do that now, aren't you?---Yes.

PN1875

So there's no additional requirement to keep a record of the responsible person, because you already have to do that?---Yes.

PN1876

So it simply would be a matter of inputting this material into your electronic systems as you would a sick leave absence?---Provided my payroll system allowed for that, yes.

PN1877

Your centres stay open all year; that's correct?---Yes.

PN1878

You've indicated in your evidence that as with most businesses most of the staff want to take leave around Christmas/New Year?---Yes.

PN1879

So if a family wants to put their child into care on 3 January they can do that in one of your centres?---Yes.

PN1880

And you don't apply the shutdown provisions of the Children's Services Award to your workforce?---No.

PN1881

So if our claim was agreed by the Commission it would have no effect on the way you manage your business?---In relation to the allowances?

\*\*\* JAE DEAN FRASER

XXN MR BULL

PN1882

No, I'm talking - - -?---Or the shutdown?

PN1883

- - -about shutdowns?---No.

PN1884

One of the issues about the early childhood education care sector is that it's an occupancy based industry; that's correct?---Yes.

PN1885

There's also significant continuity in the placement and the fees paid in relation to parents who organise for their children to be looked after in one of your centres; that's correct?---Yes.

PN1886

And parents in effect pay for a place; that's a reasonable characterisation of how you and most other providers operate?---I would say they pay for a booking.

PN1887

The point is if they don't actually utilise the booking if the child doesn't attend or whatever they often still pay the fee; you'd agree with that?---Yes.

PN1888

So you do get paid even when the child doesn't turn up, and obviously when a child doesn't turn up that affects ratios in a positive sense for you as an employer; you'd agree with that proposition?---I would. I would also say the legislation requires parents to pay for that booking. That doesn't mean that they do.

PN1889

Do you recover fees from parents who don't pay fees?---Not always.

PN1890

Right. But you've got debt collectors and you can send invoices that are in arrears to your debt collectors and you recover them?---Not always.

PN1891

If the parents were to maintain their child in your centre they'd be well advised to pay their arrears; that's correct?---Yes.

PN1892

You've been involved in the ECEC sector for some time, and your involvement has traversed the introduction of the national quality framework?---Yes.

PN1893

You'd agree that was a significant regulatory change for the sector?---Yes.

PN1894

It created quite complex and demanding quality standards that need to be complied with?---Yes.

\*\*\* JAE DEAN FRASER

XXN MR BULL

PN1895

One of the features is that the quality standards permeates the entire manner in which the service conducted its operation?---Yes.

PN1896

So it demands involvement of all the educators and so forth in maintaining quality for want of a better term?---Well, my belief is that was always the case. It just wasn't documented or legislated.

PN1897

But the point about the national quality framework is that it requires you to document these things and that it also puts it in a legislative framework; that's correct?---That's correct.

PN1898

So whereas before it could've been optional, it was a matter of a good provider doing a good job. Now it's far less optional; you'd agree with that proposition?---Yes.

PN1899

And probably one of the most telling changes is that the national quality framework made qualifications or working towards a qualification a mandatory requirement of being an educator in a childcare centre?---Yes.

PN1900

You'd agree that having more senior and well qualified staff at a centre most of time is a desirable state of affairs?---Yes.

PN1901

But you want senior and well qualified staff when centres open and close?---Yes.

PN1902

Because they're danger periods. That's when things go wrong; you'd agree with that proposition?---Yes. Yes, sure.

PN1903

And the current regulatory requirement that there's a named and known responsible person in a sense places in stone what was for the good providers the way of operating which is they have a responsible person there all the time; you'd agree with that proposition?---Yes.

PN1904

There's some capacity, because of the way you operate, were there to be an award based allowance for a responsible person that it would be absorbed within over-award payments that you make to your centre directors?---Sorry, can you rephrase the question?

PN1905

Yes. Your centre directors are also frequently responsible persons in the centres you operate; that's correct?---Yes.

\*\*\* JAE DEAN FRASER

XXN MR BULL

PN1906

That's because you acknowledge that being a responsible person involves some additional duties and responsibility?---Well, the responsibilities of the role have not changed.

PN1907

You make centre director, where you can, the responsible person under the regulations; that's correct?---Yes.

PN1908

And you do that because it's a significant role within a centre?---No, I do that because I recognise their skills and experience and ability in the role.

PN1909

Because being a responsible person requires skills and abilities?---Yes.

PN1910

A lot of your centre directors are paid above the award; that's correct?---Yes.

PN1911

So where that person is a responsible person you would not have to pay the allowance because they're on an above-award payment; you'd agree with that?---In relation to the proposed changes?

PN1912

Correct?---I'm not 100 per cent sure.

PN1913

You've done some calculations of what our allowance claims will cost you; that's correct?---Yes.

PN1914

And you've done some calculations in relation to what the responsible person claim is going to cost you?---Yes.

PN1915

I believe if you go to your statement - - -?---Page 23.

PN1916

Yes, I've got it. Yes, paragraph 116?---Yes.

PN1917

And you've costed it at approximately \$330 per week, 17,000 per centre annually and 120,000 over your seven centres. You see that?---Yes. Yes, I can.

PN1918

That costing is done on the basis that every moment that there is a responsible person on premises somewhere in your operation that you're paying the allowance, isn't it?---Yes.

\*\*\* JAE DEAN FRASER

XXN MR BULL



PN1919

So it's not taking into account that there will be persons who'll be the responsible person, who were being paid above and beyond what the award requires them to be paid?---I'm not following what you're asking me.

PN1920

A number of the centre directors are paid significantly above the Children's Services Award?---Yes.

PN1921

You choose to pay them more for various reasons, because you value their skills, you find good directors hard to retain and so forth?---Yes.

PN1922

The point is the centre directors who are paid above the award you would not be obliged to pay them a responsible person allowance under the award. Do you understand that proposition?---Yes.

PN1923

So what I'm just asking you is your costing of what you say the allowance will cost you is on the basis that you'd have to pay it all the time. Do you agree with that proposition?---Yes. Yes.

PN1924

It doesn't take into account the fact that you may not have to pay it because some of the persons who were going to get it are paid well above the award. It doesn't take that into account, does it?---No, it doesn't. But I don't believe that it would be reasonable for an award to be allowance and an employee not receive it.

PN1925

That's fine but if you decide to pay it to someone who's paid above the award, that's your decision?---Sure.

PN1926

Now have you been through the quality assessment process?---Yes.

PN1927

And it's quite an arduous process?---Yes.

PN1928

And the sort of things that they look at are the programs that you're running in your centres?---Yes.

PN1929

And how those programs develop and the continuous change that takes place in the learning environment?---Yes.

\*\*\* JAE DEAN FRASER

XXN MR BULL

PN1930

And this is part of the demands of the National Quality Framework, that you've got to continuously reassess and fine tune the way you conduct your business or

conduct yourself as a provider of early childhood care and education. That's correct?---Yes.

PN1931

Now, you're aware that in relation to each centre you've got to appoint an educational leader?---Yes.

PN1932

That's a fixed requirement?---That's right.

PN1933

Who typically do you appoint as the educational leader?---Typically I appoint our assistant centre managers as the educational leader in the service.

PN1934

So that's a recognition that it's a significant, an important function within a centre?---It's - well, yes.

PN1935

And the assistant director or educational leader doesn't get paid any more because they get that role, do they?---The reason I choose the assistant centre managers is because they're paid at a Level 6 so it encompasses certain requirements of the role under the award.

PN1936

Okay, well, could you look at - - -?---So essentially they are paid for it.

PN1937

All right, could you look at the copy of the award you should have? If you go to page 56 I think. So you're saying that your assistant directors are - assistant directors are Level 5 aren't they, Mr Fraser?---Yes, so Level 5 - sorry, I said Level 6 and I meant Level 5. Sorry.

PN1938

Okay, you probably know it better than I do. Anyway can you go to page 55?---Yes.

PN1939

Part of the role of the - and if you can, if it's possible, look at the summary document which is called 'Role of the Educational Leader'. Educational leaders have this somewhat - - -

PN1940

DEPUTY PRESIDENT CLANCY: So, sorry, which is the other document you're referring to?

PN1941

MR BULL: I think it's exhibit 4 or 3.

\*\*\* JAE DEAN FRASER

XXN MR BULL

PN1942

DEPUTY PRESIDENT CLANCY: Right.

PN1943

MR BULL: So it's just the summary document. It's from the Australian Children's Education and Care Quality Authority. Exhibit 2.

PN1944

DEPUTY PRESIDENT CLANCY: Exhibit 2. Thank you.

PN1945

MR BULL: Sorry, your Honour.

PN1946

DEPUTY PRESIDENT CLANCY: Thank you.

PN1947

MR BULL: Educational leaders have this sort of ongoing role to sort of lead discussion and thought within a centre. You'd agree with that proposition?---Yes.

PN1948

So the regulatory body talks about they've got a - 'Their role is primarily to' - this is on the second page - 'collaborate with educators and provide curriculum direction and guidance. They're also required to support educators to effectively implement the cycle of planning to enhance programs and practices'. Now just looking at the indicative duties at a Level 5, where does that function - where do you find that within the indicative duties?---Well, it talks about 'coordinating and directing the activities of employees engaged in implementation and evaluation of a developmentally appropriate program'.

PN1949

But any employee under this award, any educator, can be the educational leader?---True.

PN1950

Doesn't that suggest that it's an additional task?---No.

PN1951

Well, I put it to you that by appointing someone, an educational leader, that's an additional duty that employee has to do in addition to their award classification?---Sure.

PN1952

Do you agree with that proposition?---I don't agree that it's additional work. I don't agree that it's additional work for them. It's around supporting the educators to do what they do.

PN1953

But you could have an assistant director at one of your centres who's not an educational leader. That's not uncommon?---For me it is uncommon but for other services it's not uncommon.

\*\*\* JAE DEAN FRASER

XXN MR BULL

PN1954

The lead educator may be the educational leader?---Sure.

PN1955

So the assistant director will be paid under the award the same money but won't have the responsibility of being the educational leader?---Okay.

PN1956

And if the assistant director for whatever reason, because the lead educator left, became the educational leader that would involve the assistant director undertaking additional work and responsibility?---Sure.

PN1957

You generally hire staff who are fully qualified. That's correct?---Depending on the role that we're recruiting for. If it's a lead educator role, yes.

PN1958

If there's a particular course for example that you want your educational leader to go on because you think it's going to benefit the centre in terms of its assessment or just generally how it's able to provide a quality service, if you direct the person in that educational leader role to go on a course, do you think that your company should pay for the course?---If I believe that that educator requires the skills that that course will give them then yes.

PN1959

So you believe it's the employer's responsibility to pay for training that they want the employee to do for their benefit?---Yes.

PN1960

And the time in training should be work time?---If we can, sure. But a lot of the time that's very difficult because we're a ratio based business.

PN1961

But the course will be a professional course. It is work essentially isn't it?---Yes.

PN1962

Do you pay the laundry allowance to your employees?---No.

PN1963

Why don't you pay the laundry allowance?---Our uniform is not compulsory and we provide laundry facilities at every service if our staff choose to use it.

PN1964

Do you have a uniform that you expect staff to wear?---There is a uniform that they can choose to wear.

PN1965

And the laundry facilities are the same facilities that are used by the centre to basically launder the linen and so forth that's soiled by the children who use the centre?---No, we don't launder soiled items at our centres.

PN1966

Okay, so - - -?---It's actually a breach of the regulations.

PN1967

But you use the laundry services - you don't have a washing machine and laundry which is dedicated only to staff, do you?---No.

PN1968

And you do an amount of laundry for your own purposes on the premises. That's correct?---Yes.

PN1969

And it can get busy at busy periods?---The laundry?

PN1970

Yes?---No, I would not - I would say no.

PN1971

Okay, I've got nothing further - just a minute. So you say you pay the late fees to staff? Mr Fraser?---Yes.

PN1972

Could you - - -?---Yes.

PN1973

- - - go to paragraph 55 of your statement?---Yes.

PN1974

So you charge a late fee of \$5 per minute?---Yes.

PN1975

And forgive me if I've misread what you're saying here. You charge it to decentivise parents but you also charge it to essentially indemnify yourself against the cost of overtime. That's correct?---Yes, so for centres where our occupancy is very low and our revenue is low we do often sometimes use it - sorry, sometimes use it for that purpose.

PN1976

But if you're using it to recoup the cost of paying overtime how can you also be using it to give a - well, compensate staff for the disutility of an inconvenience of having to stay late unexpectedly?---Yes, so where our centres are performing well at high occupancy levels and covering our wages each week isn't an issue. That's what we do. But where our services aren't performing well and have low occupancy and we do struggle to cover wages we may need to use that fee to cover the cost of the overtime.

PN1977

So you're saying that - when you say you give a bonus to the staff who stay late, that's only sometimes?---Where we can.

\*\*\* JAE DEAN FRASER

XXN MR BULL

PN1978

Right, and where you can, does that mean always or very rarely?---Well, it depends on the situation and the centre.

PN1979

Okay, but you always charge the parents a late fee, don't you?---Not always.

PN1980

Anyway, those are my questions. Thank you.

PN1981

DEPUTY PRESIDENT CLANCY: Anything, Ms Shaw? Ms Arrabalde?

PN1982

MS ARRABALDE: No further questions.

PN1983

DEPUTY PRESIDENT CLANCY: Thank you. Anything in re-examination?

**RE-EXAMINATION BY MS WHISH**

**[11.13 AM]**

PN1984

MS WHISH: Yes.

PN1985

Mr Fraser, just a few questions from me. Ms Saunders asked about directors assisting in the delivery of an educational program. What is the difference between assisting in the delivery and simply delivering?---Well, the - - -

PN1986

Administering, sorry?---Yes, the difference would be that the teacher would be writing the program based on the individual needs of each child in order to help them achieve certain developmental milestones. If a centre director went into a room for a day for a reason, they would simply be delivering the program that the teacher had already created.

PN1987

Thank you. Ms Saunders asked about registration of a degree qualified teacher in Queensland. Could you explain why it's not necessary to be registered in Queensland?---I can't explain that. It's just a regulatory - it's not a regulatory requirement in Queensland for teachers to be registered. I can't explain why.

PN1988

Ms Saunders also asked about an employee survey in relation to working later. What were the results of that survey?

PN1989

MS SAUNDERS: I object to the question. That's new evidence.

\*\*\* JAE DEAN FRASER

RXN MS WHISH

PN1990

MS WHISH: Ms Saunders did ask additional questions about - - -

PN1991

MS SAUNDERS: No, I asked if he had surveyed. I asked him nothing about the result.

PN1992

DEPUTY PRESIDENT CLANCY: All right, we'll allow the question.

PN1993

MS WHISH: Mr Fraser, what were the results of that survey?---The results without having them in front of me were that the staff were okay to work later. They were okay provided that flexibility goes both ways, which it does in our organisation. The employees understood why we were trying to do what we were trying to do. The original intent of the survey was surveying staff about how they would feel about working on weekends. So the intent was not about the late shift but we did add that question in there because this review is happening. So staff were open to the change. There was absolutely not a definitive no.

PN1994

MS SAUNDERS: I call for the document, your Honour.

PN1995

DEPUTY PRESIDENT CLANCY: We'll be asking for the document, yes.

PN1996

THE WITNESS: That's fine.

PN1997

MS WHISH: Thank you, Mr Fraser. Mr Bull asked about late payments and late fees. Is it common for ACA Queensland members to charge a late fee?---I believe so.

PN1998

Only two more, Mr Fraser. Mr Bull asked about shutting down over Christmas. Could you explain whether that's common amongst the ACA members to close down over Christmas?

PN1999

MR BULL: I object to this. I don't think it arises. I asked him about his business and whether the claim would affect him.

PN2000

DEPUTY PRESIDENT CLANCY: I don't know what he's going to be able to say about any other business.

PN2001

MR BULL: Since it's sort of opinion and hearsay.

\*\*\* JAE DEAN FRASER

RXN MS WHISH

PN2002

DEPUTY PRESIDENT CLANCY: I've just said I don't know what he's going to be able to say about any other business or what weight we can give to that.

PN2003

MS WHISH: As the vice president of ACA Queensland, Mr Fraser has unique experience interacting with businesses of Queensland childcare centres.

PN2004

DEPUTY PRESIDENT CLANCY: But how are we going to test what - I mean he might have had a discussion with another ACA member but we're just not going to get anything that's of high probative value I would have thought.

PN2005

MS WHISH: I withdraw the question.

PN2006

Mr Fraser, Mr Bull gave you the example of a Level 5 assistant director who was not an educational leader but then became an educational leader. What additional duties would that employee be doing when they became the educational leader?---None because the role - the duties that they would be undertaking would already be entailed in the role. They're already overseeing the programs. They're already supporting the team and they're already checking to make sure that we're meeting our regulatory requirements.

PN2007

Thank you, no further questions.

PN2008

DEPUTY PRESIDENT CLANCY: Thank you.

PN2009

COMMISSIONER LEE: Mr Fraser, it's Commissioner Lee. In answer to some questions that you were asked by Ms Saunders you talked about the basis upon which you engage your part-time employees?---Yes.

PN2010

And if I understood your evidence it was to the effect that - but I just wanted to get you to clarify this, if I've got it wrong. As I understood it you engage them on a minimum of 15 hours but a capacity to be employed up to 37 and a half hours, and that's a common basis upon which you engage part-time employees in your businesses. Is that right?---Yes.

PN2011

So all part-time employees are engaged on that basis?---Yes.

PN2012

All right, and if I could just ask you to have a look at the award. Just bear with me for a minute. If you could just have a look at clause 10.4. Have you got that there?---Yes. Yes.

\*\*\* JAE DEAN FRASER

RXN MS WHISH



PN2013

And in particular 10.4(c), just read that to yourself. It starts with 'At the time of engagement'?---Yes.

PN2014

Does this standard - I'll call it a standard template contract if that's okay - that you offer, how does that deal with the requirement in 10.4(c) or is that dealt with in some other way?---Yes, so the purpose of the minimum hours of engagement in our employment agreement is during the periods of very low occupancy. So December, January, February where we lose 60 per cent of our enrolments, where kindergarten children go off to school and particularly our occupancies can drop down to, you know, 40 or 50 per cent, it allows us with notice to say to our educators that we need to make changes to the roster subject to our ratios and potentially reduce their hours for the - for each week down to 15 hours as a worst case scenario. But 10.4(c) we impart with our rosters. So it's very uncommon for us to reduce our employees' hours down to 15 but it just allows us to have flexibility in those very quiet periods where occupancy does drop considerably.

PN2015

Yes, I'm not sure if that answered the question. I understand the basis of you wanting - you engaging on a minimum of 15 gives you the capacity you say to reduce them to the 15?---Yes.

PN2016

But I'm just asking in terms of 10.4(c) which requires agreement on the regular pattern of work - - -?---Yes.

PN2017

- - - at least the hours worked each day, which days of the week the employee would work - - -?---Yes.

PN2018

- - - and their starting and finishing times each day. How do you go about reflecting that in - - -?---Apologies, your Honour, I misunderstood the question. So we provide a letter of offer to the employee at the time of employment which states those conditions.

PN2019

All right, understood. Thank you.

PN2020

DEPUTY PRESIDENT CLANCY: Anything arising from that?

**FURTHER CROSS-EXAMINATION BY MS SAUNDERS [11.22 AM]**

PN2021

MS SAUNDERS: Yes.

\*\*\* JAE DEAN FRASER

FXXN MS SAUNDERS

PN2022

That letter of offer, Mr Fraser, might that set out for that part-time employee's initial engagement at least hours of work above 15?---Potentially.

PN2023

Okay, and what do you rely on in the award to reduce those hours later on?---The notice period requirement.

PN2024

Is that in 10.4(d)(ii)?---Yes.

PN2025

Which says 'Change the days'?---Yes.

PN2026

It doesn't refer to reducing hours, does it, Mr Fraser?---Well, if the employee doesn't agree then we can't change the hours.

PN2027

Okay, nothing further.

PN2028

DEPUTY PRESIDENT CLANCY: All right, thank you, Mr Fraser. You may step down now and you're excused from further attendance?---Thank you.

<THE WITNESS WITHDREW

[11.23 AM]

PN2029

DEPUTY PRESIDENT CLANCY: So with the survey, how are we going to deal with that? Can you get a copy of that?

PN2030

MS WHISH: Yes, I think I'll request that of Mr Fraser and then I can distribute that to the parties and the Commission.

PN2031

MS SAUNDERS: It may be that he needs to be recalled. It depends on the document.

PN2032

DEPUTY PRESIDENT CLANCY: Well, let's just see what it says and if there are matters arising. So when do you think - could you speak to Mr Fraser now in the break - we're going to take a short break - about that?

PN2033

MS WHISH: Yes.

PN2034

DEPUTY PRESIDENT CLANCY: We'll adjourn now to 25 to 12.

**SHORT ADJOURNMENT**

[11.24 AM]

\*\*\* JAE DEAN FRASER

FXXN MS SAUNDERS

**RESUMED**

**[11.43 AM]**

PN2035

DEPUTY PRESIDENT CLANCY: Thank you, Ms Whish, yes.

PN2036

MS WHISH: Your Honours, in relation to the survey from Mr Fraser he has advised he can have those materials to me by tomorrow.

PN2037

DEPUTY PRESIDENT CLANCY: Thank you.

PN2038

MS WHISH: The ECEC employers now call Ms Katy Paton in Brisbane.

PN2039

Katy, I'm just going to have the associate take your oath or affirmation and then I'll ask you some questions.

PN2040

MS K PATON: Sure.

PN2041

THE ASSOCIATE: Ms Paton, please state your full name and address?

PN2042

MS PATON: Katy Louise Paton (address supplied).

**<KATY LOUISE PATON, AFFIRMED**

**[11.44 AM]**

**EXAMINATION-IN-CHIEF BY MS WHISH**

**[11.45 AM]**

PN2043

MS WHISH: Ms Paton, could you confirm your name and address?---Katy Louise Paton (address supplied).

PN2044

Thank you, and have you provided a statement in these proceedings?---Yes.

PN2045

Do you have a copy of that statement with you?---Yes.

PN2046

And did you want to make any changes to that statement?---No thank you.

PN2047

Great. Is your statement a true and correct record to the best of your knowledge?---Yes.

\*\*\* KATY LOUISE PATON

XN MS WHISH

PN2048

I'll seek to tender that statement now.

PN2049

DEPUTY PRESIDENT CLANCY: Thank you. I'll mark the witness statement of Katy Paton dated 14 March 2019 exhibit 21.

**EXHIBIT #21 WITNESS STATEMENT OF KATY PATON DATED  
14/03/2019**

PN2050

MS WHISH: Ms Paton, some of the union representatives will now ask you questions?---Sure.

**CROSS-EXAMINATION BY MS SAUNDERS**

**[11.46 AM]**

PN2051

MS SAUNDERS: Thank you, Ms Paton. If at any point you can't hear what I'm saying please just let me know. I wanted to ask you quickly about your qualifications. You have a Bachelor of Education?---Bachelor of Education Early Childhood, yes.

PN2052

Yes and - - -?---And a Masters.

PN2053

And a Masters of Learning Innovation, that's right?---Correct.

PN2054

What does learning innovation entail?---It's an education based Masters from Queensland University of Technology. It's similar to doing a Masters of Education.

PN2055

I see. Thank you, and you've worked as a teacher as well?---I have. I've worked in state and independent schools before designing and building childcare centres and now managing one.

PN2056

Did you work in childcare centres yourself as a teacher?---Yes.

PN2057

Yes, and of course you used your degree skills as a teacher while you did that?---When I was working in kindergartens and childcare centres it was during my studies.

PN2058

Sure?---So I wasn't yet a fully qualified teacher whilst I was working in childcare.

\*\*\* KATY LOUISE PATON

XXN MS SAUNDERS

PN2059

Why didn't you go to early childcare after you graduated? Why did you go to primary and secondary instead?---So once I finished my degree I went and essentially flew the coop. I'd worked in childcare during my studies and then

went to experience all different education settings. I taught in a one teacher school and I taught in state schools, and I taught in private grammar schools and at the - during all of those experiences decided with my family that we would build an early education facility because I was interested in that as my niche area of early childhood education.

PN2060

And that centre is the Eastwood facility?---Correct. We're about to build - or are building a second centre.

PN2061

I'll come to Wyreema but just on Eastwood for the moment, 75 children?---Sure.

PN2062

It's authorised for a 75 children?---Correct.

PN2063

Can I just get you to have a look at paragraph 11 of your statement?---Sure. Give me just a moment. I've got an electronic version.

PN2064

I see?---Eleven? Yes.

PN2065

Usually 75 to 85 per cent occupancy. Where it says 'low as 55 children' should that perhaps read 55 per cent?---No, it is correct at 55 children which would be about 73 per cent.

PN2066

I see, and you're currently in the process of opening the second centre at Wyreema. Is that right?---Correct.

PN2067

And that's licensed for 115 children?---Intended to be, yes. We haven't had our licensing visit yet.

PN2068

But they're not all going to be early - sorry, they're not all going to be preschool aged children, are they?---The intent is from birth to before and after school care and vacation care, with a hundred of those predominantly being eventually - it's a very small community for now but eventually to cater for a hundred children below school age and only 15 intended to be outside school hours care.

PN2069

Okay, and you currently have 20 staff at Eastwood?---Yes.

PN2070

Most of those are part-time?---Yes, predominantly part-time. My director is full-time.

\*\*\* KATY LOUISE PATON

XXN MS SAUNDERS

PN2071

How many teachers do you employ there?---We have one full qualified teacher and we have a second who's starting her Bachelor, so not yet qualified.

PN2072

That qualified teacher, is she full-time?---Yes - well, she's permanent part-time. She works up to seven - 37 and a half hours a week. She's not full-time.

PN2073

She usually works 37 and a half hours a week?---Correct.

PN2074

More often than not?---Yes.

PN2075

When do you drop her hours?---Of all of my staff the Bachelor qualified teacher we aim to be the most consistent. I find for the care of the children she would always be one where we would try to maintain her hours more than anyone else. There is a very low occupancy in her classroom one day a week for some reason, a Monday. Only 11 children attend and so we roster her team teacher to be the one not attending on that day. She's the one studying her Bachelor, so that that kindy teacher is there every day of the week for those children.

PN2076

So you've recently dropped the teacher's hours?---No.

PN2077

So she's currently working 37 and a half hours a week?---Correct.

PN2078

And for some reason you haven't made her a full-time employee?---Because I don't have the ability to offer RDOs to all of my staff whilst maintaining consistency for the Children. So by working a 37 and a half hour week we're not taking an educator away from a group of children each fortnight.

PN2079

So you're under the impression that you would have to give her an RDO if she was a full-time employee?---Just that once I go over more hours for her - well, yes, that's - I'm not an expert in this but, yes, my impression was that if she continued to increase hours I would be inclined to give her a rostered day off.

PN2080

Inclined is different to required. Have you sought any - - -?---Sorry, required.

PN2081

Have you sought any advice on the Teachers Award?---I had advice some time ago when I first started, regarding my contracts, but I have not recently. No.

\*\*\* KATY LOUISE PATON

XXN MS SAUNDERS

PN2082

You should have a copy of the Teachers Award with you. Would you mind just going to that?---Sure. Sure. Is there a particular page you'd like me to - - -

PN2083

There is. You'll just need to bear with me one moment?---Sure.

PN2084

Okay, page 13?---Yes.

PN2085

You see 10.4(a)?---Yes.

PN2086

'A part-time employee' - your full-time employees work 38 hours a week. Is that right?---Yes.

PN2087

And you see at 10.4(a) 'If the hours of a part-time employee rise above 90 per cent, the employee will be considered to be full-time'?---Sure.

PN2088

Just for the transcript, that was a slightly surprised noise. This is news to you, Ms Paton?---Sure. Look, I don't claim to be an expert on the award and am quite happy to be made aware of something that I'm - I can improve on.

PN2089

And over the course of this teacher's employment you've sometimes reduced her hours from 37.5?---Not intentionally, no. Not - so if I - on that day when there's minimal numbers in that classroom it's one of the other educators that is not rostered for a day because she's studying her Bachelor. But this teacher hasn't been sacrificed.

PN2090

I don't suggest that?---Right.

PN2091

Have you ever rostered her for less than 37.5 hours a week?---Sure. Yes. Yes I have rostered her for less than 37 and a half hours.

PN2092

Other than at her request?---I would say by negotiation if it's been necessary.

PN2093

Okay, you should have two documents with you, the first two contracts, or access to them. The first is a contract of [REDACTED] an employment agreement?---Mm-hm.

\*\*\* KATY LOUISE PATON

XXN MS SAUNDERS

PN2094

I'll just hand up a copy. Just bear with us while we distribute that around the court room. Okay, you should be looking at a document that says [REDACTED]

Employment Agreement Children's Services Award 2010'?---I know - I'm sorry, I've lost my Wi-Fi connection here. If I - if you can give me a moment I can hotspot my phone to get it. I'm sorry. I have the Teachers Award, the [REDACTED] one open.

PN2095

We'll come to - - -?---Sorry, I seem to have - - -

PN2096

Keep that one open. We'll come to that next?---Sure. Would you like to discuss it while I get the other one open?

PN2097

Perhaps your support person can take over opening the document while we talk about the teacher's contract?---I could - yes, sure.

PN2098

You almost certainly can't see one document while that's happening. We'll just wait?---Sorry.

PN2099

That's all right. I might take this opportunity, if I can just hand up the next document while we're waiting.

PN2100

THE WITNESS: My apologies.

PN2101

MS SAUNDERS: That's all right. It's not your fault?---Okay, I have it. I'm sorry for the delay.

PN2102

No, that's quite all right. If I can just get you to go to the first actual page, where it says 'Page 1' down the bottom. I should say this is a standard contract you give your part-time employees, isn't it?---Yes.

PN2103

You see at 3.1?---Yes.

PN2104

Employed 'a permanent part-time basis'?---Yes.

PN2105

Okay, can you go to page 3?---Sure.

PN2106

Clause 8, 'Hours of work' and then you tell them they'll be required to work up to 37.5 hours per week?---Correct.

\*\*\* KATY LOUISE PATON

XXN MS SAUNDERS

PN2107



And then following that you identify the days and times as rotating weekly roster from 6 am to 6 pm. That's right?---Yes. Yes.

PN2108

Really for these part-time educators their roster changes week to week, doesn't it?---It does, yes. We do a six month prediction to try to give them some idea of where in that six till six they'll be.

PN2109

And your contract contains no minimum hours?---I don't believe so.;

PN2110

No. You do your best, you give them as much work as you can. Is that fair?---Yes, absolutely.

PN2111

They'll usually work the same or similar patterns each week?---We try our best. It obviously is reflective of parent bookings and occupancy.

PN2112

And sometimes you have to drop their hours?---Not necessarily drop hours. I always try to give - you know, I would never promise that I can have a - I suppose a maximum number of hours. I would more like to promise that I could give someone - or not promise, intend to give someone a minimum number of hours that I can try and make work for them.

PN2113

But you don't guarantee these workers any minimum, do you?---I can't, no.

PN2114

No. Just on that same page, the base rate of pay [REDACTED]. You see that?---Sorry, was that the same page?

PN2115

Yes, clause 6 up the top?---Yes, up the top. Yes.

PN2116

Yes, that's the award rate for that position?---I would assume at the time that I wrote it, yes it was. I wouldn't have amended it if it's gone - increased since then.

PN2117

You just pay the award rate, don't you?---I do.

PN2118

And you don't pay a casual loading for these workers at all?---Not if they're permanent part-time. When they're on casual, yes, they get a casual loading.

PN2119

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

PN2129 How familiar with the Children's Services Award are you?---Fairly familiar.

PN2130 Are you aware that it requires you to tell - to come to agreement with permanent part-time employees about their hours and days of work before they start?---Yes.

\*\*\* KATY LOUISE PATON XXN MS SAUNDERS

PN2131 Are you aware that it does not permit you to reduce a permanent part-time employee's minimum hours without their agreement?---So I - when someone starts with us on permanent part-time and I commit to say giving them two hours - sorry, two days a week worth of work, I can increase and - but I wouldn't take



[REDACTED]

PN2146

Have you told your current teacher what her ordinary days of work are?---Yes, she works Monday to Friday.

PN2147

That's in her contract?---I would have to have a look.

PN2148

I call for the document, your Honour.

PN2149

THE WITNESS: Sure.

PN2150

MS SAUNDERS: Yes, sorry, I did by that mean we're going to ask you to produce it, Ms Paton.

PN2151

DEPUTY PRESIDENT CLANCY: Sorry, which document?

PN2152

MS SAUNDERS: The contract for the current early childhood teacher.

PN2153

DEPUTY PRESIDENT CLANCY: Okay, this is interesting but where is it all arising out of?

PN2154

MS SAUNDERS: It goes to the - it's about to go to the hours of work rostering claim and the need for that in these businesses.

PN2155

DEPUTY PRESIDENT CLANCY: Okay.

PN2156

MS SAUNDERS: I tender the [REDACTED] at this point.

PN2157

DEPUTY PRESIDENT CLANCY: So the contract of [REDACTED] will be exhibit 23.

**EXHIBIT #23** [REDACTED]

PN2158

[REDACTED]

[REDACTED]

[REDACTED]

PN2161

And you pay teachers the award rate under the Teachers Award, don't you?---Yes.

PN2162

Thank you. I'm going to come back to rostering and those patterns of work but I want to ask you some questions about the first ACA claim to extend the ordinary hours of work under the award. Can you just explain to me what your understanding of that claim is?---We'd just like to have some flexibility to those hours so that we can offer families more opportunity for care without making it unaffordable, I suppose, taxing them for their hours of work.

PN2163

Sure. You want to be able to roster your workers later at night without paying them overtime?---Starting them later and finishing later, yes. Not extending their hours to make them work longer hours.

PN2164

Yes, so it's not about longer hours. It's about - - -?---No, not about longer hours. It's about, yes, a later start, later finish. Correct.

PN2165

If it was longer hours you'd have to pay them more?---Well, yes, that's what's happening now.

PN2166

Yes?---Yes, we're paying overtime to support families.

PN2167

Okay, so at Eastwood the centre opens at six and closes at six. Is that right?---Correct.

PN2168

You've got staggered shifts throughout the day so no one's working more than eight hours?---Correct.

PN2169

Yes. The last shift finishes at 6.30 pm, that's right?---The last shift finishes at 6 pm.

PN2170

Can you just have a look at paragraph 29 of your statement?---Perhaps I was - so my Wyreema centre will close at 6.30.

\*\*\* KATY LOUISE PATON

XXN MS SAUNDERS

PN2171

Okay, no - - -?---It could be - - -

PN2172

So that bracketed six should be - - -?---That should be six. Yes, regarding Eastwood we do finish at six.

PN2173

Six. But you could roster workers there till 6.30 without paying overtime, couldn't you?---I could.

PN2174

There is work to be done after the last child leaves the centre?---Predominantly most of that's finished by the time the last child - we have a session of care that finishes at 5.30 and that enables a bit of work to get done between 5.30 and six.

PN2175

Okay so there's - - -?---So there's not very - - -

PN2176

So there's only - - -?---Without - - -

PN2177

Sorry?---Sorry.

PN2178

Please finish?---Yes, without - now I've forgotten what I was going to say, sorry.

PN2179

Let me go back to it. You have a session of care that finishes at 5.30, yes?---Yes, official - yes.

PN2180

Yes and then there's, what, is there a smaller session that finishes at six?---Then we have a 12 hour session that would normally be 6 am to 6 pm and there are - so there are less children typically from between 5.30 and six, depending on the ratio of children who are left that at times can enable our teacher to prepare for the end of the day sooner.

PN2181

So about once a week a parent is late picking up their child?---Correct.

PN2182

That's not concentrated in the 12 hour session. That can be one of the kids that finishes at 5.30?---Yes. We have the same late pick-up rules for outside of session as we do for late collection.

PN2183

Of course. But it doesn't always push you past the centre's closing time, does it?---No, but it does cause staff who would normally be rostered to finish at 5.30 to stay and that's causing overtime on theirs.

\*\*\* KATY LOUISE PATON

XXN MS SAUNDERS

PN2184

Sure, but that could be fixed by rostering someone by changing their roster to six?---Except that I don't know that that parent is going to be late.

PN2185

Of course. So you wouldn't really roster someone regularly just in case someone was late, would you?---No.

PN2186

No, so if the hours are extended, the ordinary hours, you might extend the hours of the centre. Yes?---Yes. Yes.

PN2187

You're not - - -?---Yes, the more flexibility I can provide parents the better.

PN2188

You're not currently using the full span of hours at Eastwood?---No I'm not.

PN2189

You do charge late fees, don't you?---Correct.

PN2190

\$20 for the first five minutes?---Yes.

PN2191

And then \$5 a minute thereafter?---Yes.

PN2192

That does go some significant way to covering any overtime doesn't it?---It does.

PN2193

That's part of the point?---Yes, it needs to contribute to that and the fact that I've got an eighteen hundred square metre building that still needs to be operational.

PN2194

Yes, of course, you've got to keep the lights on for another half an hour?---Yes.

PN2195

Part of the other reason for charging those high late fees is that the idea is to deter parents from picking their kids up late?---This is correct.

PN2196

Most people in reality try their best to get there in time?---Absolutely.

PN2197

Yes. It's only there might be a very vanishingly small number of recidivist parents, parents who are late all the time?---Yes.

\*\*\* KATY LOUISE PATON

XXN MS SAUNDERS

PN2198

Some of them see the late fee as more of a fee for service?---No, not necessarily. Everyone's fairly respectful of the fact that those staff have worked a very long day and have somewhere that they also need to be.

PN2199

Yes, but you've heard of this happening?---The - sorry, are you asking me - - -

PN2200

Yes, sorry. You've heard of - you've had yourself situations where despite the late fee being charged there are parents who are consistently late?---No, not by intent. Not as if they would say 'They'll just stay and I'll just pay the fee every time'.

PN2201

Okay, but there are parents who are consistently late?---There have been in the past, yes.

PN2202

Yes, okay, so I want to ask you a hypothetical question. I'm going to take the proposition slowly. If it doesn't make sense let me know. So, say the award changes in the way the ACA wants; you change your centre hours to finish at 7.30 at night, you'd have to roster a worker to work from 11.30 to 7.30 wouldn't you?---Yes.

PN2203

Many of your employees are female?---Yes.

PN2204

Almost all of them?---Yes.

PN2205

A lot of them are young mothers themselves?---Yes.

PN2206

Particularly the part-time workers. They're attracted to part-time work because of their family responsibilities?---I'm not sure for their reasoning for wanting it but, yes, generalised. Yes.

PN2207

You might have had some discussions with your staff where they've told you that?---Yes. So is there a - - -

PN2208

Yes so - - -?---Sorry, do you have a question?

PN2209

Yes. Have you had discussions with any of your staff where they've said 'I'm happy to work part-time. I've got family responsibilities'?---It suits everybody. I'm sure, yes, there are staff who work - who prefer different shifts for all sorts of reasons and - or and one of them is, yes, that they have family.

\*\*\* KATY LOUISE PATON

XXN MS SAUNDERS



PN2210

It's already difficult to find people who are consistently happy to work the closing shift, isn't it?---Did you say it's difficult?

PN2211

Yes?---No, I have a staff member who would prefer if I rostered her on permanently on a 10 till six on our existing.

PN2212

Sure?---Because it enables her to drop her youngest children at school because she doesn't have before school care, but she can access after school care. So she would prefer if I would give a permanent closed shift to her.

PN2213

Seven thirty is quite a bit later than 6 o'clock isn't it?---It is.

PN2214

For young parents that means they're going to miss their children's dinner?---Well, if there are children in our service at that time of the evening they need appropriate care because obviously their family is - work is - means that they need to be somewhere else and we can provide that care.

PN2215

I mean your employees. If they have to work till seven - - -?---Sure.

PN2216

If they have to work till 7.30 they're likely to miss out on a lot of family time?---Yes.

PN2217

You talk a lot in your statement about working families. Your employees, many of them are working families too, aren't they?---They are, but starting at 11.30 still provides balance.

PN2218

What time would you give a worker starting at 11.30 lunch?---Well, between two and 3 o'clock of an afternoon perhaps.

PN2219

That's later than any of the children are eating lunch, isn't it?---Yes.

PN2220

Often your lunch breaks are staggered around when the children are eating, to make coverage easier?---No, I cover a hundred per cent of my lunches. So we don't typically - our roster currently is that staff lunches start from 10 am for someone who opens.

PN2221

Yes?---And finish at two.

\*\*\* KATY LOUISE PATON

XXN MS SAUNDERS

PN2222

So someone who's eating lunch at 2 o'clock, they'd have to have breakfast quite late in the morning, wouldn't they?---They could choose to have lunch at 11 before they started work and have their lunch break as an afternoon tea. They are adults.

PN2223

Yes, they'd have to - it's not a standard pattern is it?---No.

PN2224

No, and do you think they should be - it could cause some inconvenience to people?---I'm - potentially.

PN2225

Do you think they should be - - -?---If that's something that - - -

PN2226

Do you think they should be compensated in any way for working such an inconvenient shift?---No.

PN2227

Would you rotate people through this shift?---Yes.

PN2228

All right, so you've got this worker working 11 till 7.30. Your centre closes at 7.30. It's still possible that a parent could be late?---Yes, possible.

PN2229

That worker is still going to be required to stay back?---Yes if there is a child who's late, two workers are required to stay back.

PN2230

Yes, so they're still going to - in that circumstance you're still going to have to pay them overtime?---Yes.

PN2231

So that doesn't save you any money?---No.

PN2232

And it's no more predictable for that employee, is it?---I would say the proportion of people who are going to be late at six or 6.30 is far greater than people who would be late at 7.30.

PN2233

And you're basing that on people who finish work at five and need to travel to get to the centre?---Yes.

PN2234

If you're - - -?---And that the work hours are - meaning that a lot of our professional families are taking meetings now at 5 pm, not finishing till six.

\*\*\* KATY LOUISE PATON

XXN MS SAUNDERS

PN2235

Yes, so people who need the later hours of childcare might be working different patterns of work?---Yes.

PN2236

So you couldn't say with any certainty how likely they would be to be late or not?---Nor can I say how likely they would be at 7.30 pm.

PN2237

Precisely. You haven't done any market analysis on this idea, have you, of opening till 7.30?---Not personally, no.

PN2238

You're not aware of any?---No.

PN2239

No. Your centres are authorised to open till 10 pm. Is that right?---I have council approval, not licensing approval.

PN2240

Okay, sure. Would you like to get licensing approval to open till 10 pm?---Yes I think it would provide a service for the hospital that I'm across the road from.

PN2241

You'd have to roster workers to work till 10?---Yes.

PN2242

Would you like to see the ordinary hours of the award expanded to that?---I think we'll take this first step for the moment. Look, if it was for families to be able to afford it, yes that would have to happen.

PN2243

That would have to happen. But you don't - - -?---That ordinary hours were extended because it's not affordable for families.

PN2244

And you wouldn't compensate your workers for that in any way?---I can't say that with any sort of certainty, I'm sorry.

PN2245

Your preference would be not to?---No, I'm not saying that.

PN2246

Let's go back to notice. We talked about the way you roster workers. Is it week on, week off?---No, they're on - do you mean work week on, week off?

PN2247

No, sorry. I'm sorry, I withdraw the question. You spoke before about a six month projection?---Yes.

\*\*\* KATY LOUISE PATON

XXN MS SAUNDERS

PN2248

Can you just explain that; how does that work?---Sure. So we have shifts that rotate from six till two, 7.30 till 3.30, eight till four all the way through, through the nines to - nine to five style through to 10 till six, and what we do is pencil a projection of everybody rotating through those different shifts for a six month period so that you can anticipate whether you would be a morning shift, a middle shift or an afternoon shift in a few months' time or in a few weeks' time so that you can do your best to plan as your family needs or appointments, all sorts of things.

PN2249

Yes, I mean that's important. That's important to your workers, having some certainty about when they will and won't be required to work?---We try to give them as much of a prediction as we can.

PN2250

How frequently do you adjust it?---Adjust the six monthly rotation prediction?

PN2251

Yes, it's a - - -?---Obviously staff changes impact that because of the qualification requirement. We have to have 50 per cent of the people qualified on the floor at all times so if someone is on leave or we lose a staff member, or people who are capable of holding a responsible person's role - - -

PN2252

I think we've got - sorry, it's my fault, it was a confusing question. You've got this projection, but it's just a prediction, is that right?---Yes.

PN2253

Yes. When do you tell people, how far in advance to you tell people what they'll actually be working each week?---A week.

PN2254

So for the week starting on Monday you'll tell them the Monday beforehand?---Correct.

PN2255

When you set that roster you try and accommodate employee requests for time off as the best you can?---Yes, we are a very transparent, negotiable employer.

PN2256

Employees themselves are very flexible. They're often willing to swap shifts with each other?---So we are quite happy for them to discuss with each other as long as their qualifications and the responsible persons, all of those types of things, regulations are always met and that the quality of care - we're not - we've not got two teachers on opens from the same class.

\*\*\* KATY LOUISE PATON

XXN MS SAUNDERS

PN2257

Yes, so you want to try and accommodate people but it's not always possible?---Correct.

PN2258

Ultimately it's your decision?---Yes.

PN2259

Once that roster is set, employees are obliged to work those days?---Yes.

PN2260

They have to turn up unless you agree or they take leave?---Yes.

PN2261

If they didn't work their rostered ordinary hours they'd lose a day's pay, for one thing?---If they were not sick or taking leave they would be - yes.

PN2262

Yes?---Yes.

PN2263

And it might be a disciplinary issue for you?---If they failed to turn up for a shift then, yes, there would be a show cause or a 'We need to chat'.

PN2264

Okay, so what's your understanding of the current Children's Services Award - - - ?---In what way? In what aspect, sorry?

PN2265

Sorry, I'm going a bit slowly. Give me a minute. Your understanding of how much notice you have to give an employee before you change their roster without their agreement?---Seven days.

PN2266

Yes. Is there any limit, to your knowledge, on changes you can make with agreement?---Sorry, is there any limit to how soon I could make changes, or how late?

PN2267

How late?---So I am aware that we need to give notice - my staff and I often negotiate if there is something for either themselves or for us.

PN2268

Yes if the employee agrees, you don't need to give them notice do you?---As a - no, if we've agreed.

PN2269

A lot of the - so do you roster to minimum ratios?---To, do you mean as in if there is only five children in a room I only have one educator when the ratio is one to five?

PN2270

Exactly?---I roster to my ratios, yes.

\*\*\* KATY LOUISE PATON

XXN MS SAUNDERS

PN2271

Do you have a buffer at all, an extra person there?---Yes.

PN2272

Yes?---Yes.

PN2273

Yes, you describe this as over-staffing in your statement I think?---Yes.

PN2274

That's what you mean, having someone there to cover just in case someone is unexpectedly ill?---Yes. So I have staff who can be - who are qualified undertaking other roles so like my chef, who I can redistribute elsewhere if required.

PN2275

Yes, it's a fact of life people get sick. That's right?---Correct.

PN2276

They're entitled to take personal leave?---Yes.

PN2277

It's something you have to plan for?---I can't necessarily plan when someone's going to be sick.

PN2278

It's a risk you have to plan for. It could happen at any time so you - - -?---Yes.

PN2279

Yes. So you do need to lose a couple of staff before you fall under the ratio, don't you?---Yes.

PN2280

How often does that actually happen?---I have come very close in the past when we've had a health outbreak where I've lost more staff than I can replace, because we have a limited pool of casuals. So I have never not been on ratio but I have come scarily close to being - having to call families to collect their children because I couldn't meet national requirement for ratios.

PN2281

Was that a one-off?---That experience was, yes.

PN2282

Yes, a gastro outbreak or something?---Correct.

PN2283

Now let's imagine this happens again. You do usually have options to cover absences. You could call staff to swap shifts?---From a whole day perspective, I don't know, swapping shifts might help cover - or if someone would start early or finish later that may help, yes.

\*\*\* KATY LOUISE PATON

XXN MS SAUNDERS

PN2284

Yes?---But as a whole number of staff for the day, perhaps not.

PN2285

You can offer people who aren't rostered on additional hours?---Yes.

PN2286

You could offer overtime?---Yes.

PN2287

You do have a pool of casuals you can use?---A small group, yes.

PN2288

Yes, they know the centre don't they?---Yes.

PN2289

And the children know them?---Yes.

PN2290

You yourself can step in?---Yes.

PN2291

You count towards the ratios?---Correct.

PN2292

Conveniently both as an educator and a teacher, so that's quite helpful?---Yes.

PN2293

And finally, you can call agency casuals?---Whilst that may be possible they're not in my - I'm in a regional town and we don't have agency casuals.

PN2294

So that's not available for you. When you call your staff, you do from time to time call staff to try and fill gaps in the roster don't you?---Yes.

PN2295

And they do their best to help out?---Absolutely.

PN2296

They usually only refuse if they've got a decent reason like an appointment or family responsibilities?---Yes.

PN2297

I just want to ask you another hypothetical question. Say you've got a part-time worker who you've rostered and confirmed the week ahead to work Monday, Wednesday and Friday. Those are their usual days, do you understand?---Yes.

PN2298

Okay, you have on Tuesday someone rostered to open who calls in sick at 5.30 in the morning. That can happen?---Yes.

\*\*\* KATY LOUISE PATON

XXN MS SAUNDERS

PN2299

Yes. Is it correct that you want to be able to call that first part-time worker and tell them at 5.30 in the morning that their roster has changed and they have to come in to work that day?---No, that's not correct. I would like to be able to call them and ask if they would come in to work.

PN2300

And you can do that under the - - -?---I would not - - -

PN2301

You can do that under the current award can't you, Ms Paton?---But I wouldn't demand that of them. They're still entitled to say 'No'.

PN2302

You don't want to be able to demand?---I - that wouldn't make me a very fair employer.

PN2303

No. Nothing further - - -?---I would - - -

PN2304

I'm sorry, I didn't meant to interrupt you. It's the video link. Please finish?---Sure. No, that's fine thanks.

PN2305

You don't need to have that ability, do you?---I would love to have that ability, yes. I would like to clarify that what I said before was about the type of person I am. I should - I would always seek to request something of someone before demand it, as a human.

PN2306

As an employer you want to be able to demand that that person comes in?---Yes.

PN2307

Do you think that's fair as an employer?---Yes I do.

PN2308

But not as a person?---I personally would have a great relationship with my staff and if I rang someone and they couldn't do it I would ring the next one. I would respect that if they couldn't. But at the same time if I'm going to not legally be able to open my centre I would say 'You have to be there'.

PN2309

Yes, would you compensate them for that in any way apart from paying them ordinary hours?---No.

PN2310

This circumstance could arise at any moment, couldn't it, Ms Paton?---Yes.

\*\*\* KATY LOUISE PATON

XXN MS SAUNDERS

PN2311



The employee would have to be on call essentially every day of the week?---Yes.

PN2312

Would you compensate them for that in any way?---No.

PN2313

Nothing further, your Honour.

**CROSS-EXAMINATION BY MR BULL**

**[12.29 PM]**

PN2314

MR BULL: Ms Paton, it's Stephen Bull. I'm from United Voice. Can you hear me?---Hello, yes.

PN2315

Hello. I'll try not to be as long as my learned friend was with you. Have you got a document, it's the [REDACTED] [REDACTED]?---Yes.

PN2316

And it's dated - - -?---Give me just a moment.

PN2317

- - - 3 August last year. Have you got that - - -?---Yes.

PN2318

- - - in front of you?---Yes.

PN2319

Your Honours, I've got copies if you would like a copy. We've used bull clips so no dangerous staples. I was just going to ask you - just briefly - so you have two centres. There's the Eastwood Centre and the Wyreema Centre?---Yes. Wyreema is not yet licensed and operational.

PN2320

Okay. So, really, it's Eastwood. That's the one which is being reviewed and assessed periodically?---Yes, correct.

PN2321

And you would - you're in a regional centre?---Correct. We're two hours west of Brisbane.

PN2322

Okay. But you'd hold yourself out as a high quality provider within the context of the community which you operate?---Yes.

\*\*\* KATY LOUISE PATON

XXN MR BULL

PN2323

Because you're certainly well qualified. You've got two degrees. One of them is a post-graduate degree in Education. So you'd be in terms of your local community one of the better qualified child care operators. Is that a reasonable

statement?---I have - there are other operators in my town equally as qualified as I am. I don't think I'm better than anyone else.

PN2324

But you're engaged with your professional association?---Yes.

PN2325

You're an interested and active participant in the sector?---Yes.

PN2326

Now, can you just turn to the [REDACTED]  
[REDACTED]

PN2327

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

PN2332

And you've got an educational leader appointed and up and running in that centre?---Yes.

PN2333

And you've obviously - you've had that - a person in that role since you've had to have someone in that role. That's correct?---Yes. We - it hasn't always been the girl - [REDACTED] - that it is now but she's been in that role for some time.

PN2334

So who's the person who's in the role? You don't need to give the name. Just give the job description?---So she's an educational leader and she holds an advanced diploma in Children Services.

PN2335

And she's a valued member of your staff at Eastwood?---Yes.

\*\*\* KATY LOUISE PATON

XXN MR BULL

PN2336

And by virtue of her having the role of the educational leader there would be additional responsibilities that this person undertakes?---I wouldn't necessarily say additional. It is her role but she's I suppose apportioned her role as part classroom work or part - there's no differently to the educator who's in charge of the outdoor program. They're given - it's not on top of her normal job.

PN2337

Okay?---It is part of the job.

PN2338

Do you use the jargon of the sector as an educator she has no less time on the floor than another person in the equivalent role in your centre does she?---Educational leader has time out of the classroom for the role of educational leader.

PN2339

And that's an acknowledgement the role involves additional duties?---But I'm not on - no, I think you misunderstand what I mean. Instead of her requiring to do 20 observations of child that may be in her class her time is redistributed and given to the role of educational leader.

PN2340

So that means she does an observation of all the children under your care. Is that correct?---Not necessarily observation of all of the children. No, it's a very multi-faceted role - the educational leader. It might be mentoring the staff. It could be working directly with a teacher or a child who may have a particular set of needs. It could be working directly with me on the development of a separate philosophy or theory. It's quite diverse.

PN2341

So it's a work in progress?---It's just a job that doesn't have a very strict job description I would say.

PN2342

But it's still very much a job?---Correct.

PN2343

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

PN2357

Okay. But the point about - I'm just pointing out that standard 7.2 is all about the educational leader. You'd agree with that?---Yes. Yes.

PN2358

And you obviously - you've got a good educational leader working at your Eastwood Centre - that's fair enough? A fair statement?---Yes. Yes.

PN2359

[REDACTED]

PN2360

But you can't in this collaborative never-ending process - you can't be part of it unless you have an educational leader, can you?---Yes, that's correct.

PN2361

So where the piece of string stops and starts the system demands that you have a person in the role as an educational leader?---Yes.

PN2362

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

PN2368

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

PN2377

Okay. So Eastwood you shut down for about three weeks over the Christmas period?---Yes. Two weeks.

PN2378

Two weeks. So, what in the - basically the week before Christmas?---The week of Christmas and the week of New Year.

\*\*\* KATY LOUISE PATON

XXN MR BULL

PN2379

Okay. So it means you were open in - what - the 3 January? Around then?---Yes.

PN2380

And that coincides with when most staff also when they have their holidays?---Not necessarily most staff. They're fairly scattered throughout the year with their applications for leave.

PN2381

But you only have - there's only a two-week period where you need to direct staff to take annual leave. Is that correct?---Correct. Yes.

PN2382

Okay. So if you were deprived of the facility to direct staff to take annual leave or other leave at other periods that wouldn't affect your operation?---If I were - say that - sorry, I just want to clarify what you're asking me again.

PN2383

A bit wordy. You don't need - currently the award allows you to direct your employees to take leave at other times of the year. You don't need that facility?---Do you mean if they've accrued too much leave?

PN2384

No, no. Put it to one side?---And I have the - - -

PN2385

Their school holidays and the entire time goes elsewhere and you don't - there's no need for childcare where you are?---No.

PN2386

Right. So you don't need that facility to direct people to take leave other than at the Christmas/New Year period?---Other than Christmas. No. Correct.

PN2387

Okay?---I understand what you're saying now. Sorry.

PN2388

Sorry about that. Okay. Those are the only questions I wanted to ask you. Perhaps if I could tender the assessment report?

PN2389

DEPUTY PRESIDENT CLANCY: I'll mark the [REDACTED]  
[REDACTED] as Exhibit 24.

**EXHIBIT #24** [REDACTED]  
[REDACTED]

PN2390

MR BULL: Thanks, Ms Paton?---Thank you.

\*\*\* KATY LOUISE PATON

XXN MR BULL

PN2391

DEPUTY PRESIDENT CLANCY: Any questions, Ms Shaw?

PN2392

MS SHAW: No questions.

PN2393

DEPUTY PRESIDENT CLANCY: Ms Arrabalde?

PN2394

MS ARRABALDE: Just one question if I may?

PN2395

DEPUTY PRESIDENT CLANCY: Yes.

**CROSS-EXAMINATION BY MS ARRABALDE**

**[12.46 PM]**

PN2396

MS ARRABALDE: Ms Paton, my name is Elizabeth Arrabalde. I'm appearing as an independent in these proceedings and I just wanted to ask you about the ACECQA documents that are published from time to time. How important are those documents in terms of guiding your practice? So how much do you rely on them? For example, the latest ones - the Educational Leader Resource?---Sorry, it's a little difficult to hear you. How much do I rely on the ACECQA publications did you say?

PN2397

Yes, that's right. And in particular I was wondering about ones like the Educational Leader Resource?---Sure. They're a wonderful resource but I don't think 'rely' is the correct word. They're a great additional resource.

PN2398

Yes. What word you use? What other words would you use to describe them?---Informative, supportive.

PN2399

And do you think that they influence the assessors at all? In terms of what they're looking for when they assess you?---I'm not sure. I probably couldn't answer that I'm sorry.

PN2400

No, that's fine. Thank you so much, Ms Paton.

PN2401

DEPUTY PRESIDENT CLANCY: Anything in re-examination? Right, thank you, Ms Paton. You're excused now from further attendance. Thank you for your evidence?---Thank you.

**<THE WITNESS WITHDREW**

**[12.47 PM]**

\*\*\* KATY LOUISE PATON

XXN MS ARRABALDE



PN2402

MS SAUNDERS: Just in terms of programming today, your Honour - Commissioner - we're at fair bit of pace in terms of the witness schedule which is primarily my fault I accept. I understand from my discussions with my friend that the WA witnesses aren't coming back till this afternoon but we're in the Commission's hands. I think we could possibly - - -

PN2403

DEPUTY PRESIDENT CLANCY: Sorry, what did you say about the WA witness?

PN2404

MS SAUNDERS: They're available throughout the afternoon.

PN2405

DEPUTY PRESIDENT CLANCY: Thank you.

PN2406

MS SAUNDERS: So it's not a disaster. Is that right?

PN2407

MS ARRABALDE: Could I just make one comment? It would be much easier for Ann Marie to come forward and switch places with Ms McPhail because she's actually present at the Fair Work Commission and we could call Ms McPhail in the afternoon via telephone.

PN2408

MS SAUNDERS: I don't have a view on order. It's just a question of what we do with lunch and timing from here.

PN2409

JUSTICE ROSS: Well, what's the projection with Ms Maclean? Just a moment. We're just discussing programming here at the moment. So perhaps if you could just step outside for a moment please?

PN2410

SPEAKER: Me too?

PN2411

DEPUTY PRESIDENT CLANCY: Yes, please.

PN2412

SPEAKER: Thank you, your Honour.

PN2413

DEPUTY PRESIDENT CLANCY: Thank you.

PN2414

MS SAUNDERS: Thanks. Look, I can speed up what we've been doing with Ms Maclean at least and I think we could get through it subject to Mr - - -

PN2415

DEPUTY PRESIDENT CLANCY: Bull.

PN2416

MS SAUNDERS: - - - Bull. Sorry, Mr Bull's views, I think we could get it done by 1.30 if your Honour's Commission are inclined to a late lunch.

PN2417

DEPUTY PRESIDENT CLANCY: Yes.

PN2418

MS SAUNDERS: I will ask that Mr Stokes not remain in the room. I think inadvertently - I don't put it any higher than that but he's engaging a lot with the witnesses and it's undesirable.

PN2419

DEPUTY PRESIDENT CLANCY: Okay. How do we get them back here. Thank you.

PN2420

MS WHISH: Ms McClean, it's Sophie Wish here. Can you hear me?

PN2421

MS MACLEAN: Yes, I can. Thank you. You're a little bit quiet, but I can hear you.

PN2422

MS WHISH: I'll do my best to speak up.

PN2423

MS MACLEAN: That's better. Yes, thank you.

PN2424

MS WHISH: Could you do a favour, as you're speaking today and just try to keep the rustling of your papers to a minimum. It was quite loud just then.

PN2425

MS MACLEAN: Okay.

PN2426

MS WHISH: Ms McClean, the Associate is going to ask you for your oath or affirmation and then I will ask you some questions.

PN2427

THE ASSOCIATE: Ms Maclean, state your full name and address?

PN2428

MS MACLEAN: Pamela Avril Maclean (address supplied).

PN2429

THE ASSOCIATE: Do you wish to give an oath or affirmation?

PN2430

MS MACLEAN: An affirmation. Is my level of volume okay for you?

PN2431

THE ASSOCIATE: Yes. Can you hear us okay?

PN2432

MS MACLEAN: Yes. Certainly, thank you.

PN2433

THE ASSOCIATE: Thank you. So that was an affirmation?

PN2434

MS MACLEAN: Yes, thank you.

**<PAMELA AVRIL MACLEAN, AFFIRMED [12.53 PM]**

**EXAMINATION-IN-CHIEF BY MS WHISH [12.53 PM]**

PN2435

MS WHISH: Ms Maclean, could you please state your name and address, again?---Yes. It's Mrs Pamela Maclean at (address supplied).

PN2436

And can you confirm that you have provided a statement in these proceedings?---Yes, I have.

PN2437

And do you have a copy of that statement?---Yes, I do.

PN2438

Is that the statement dated 15 April 2019?---I'm just having a look. Where will I find that? Sorry whereabouts is the date on - - -

PN2439

The very back page?---I'm sorry. Sorry. Yes, it is.

PN2440

And do you have any changes you'd like to make to that statement?---Not really. Only that perhaps we have one or two more casual staff since the statement was made but nothing that's particularly material to any of the content apart from that.

PN2441

So there's no paragraph that you'd particularly like to change?---Not that I'm aware of, from memory, no.

PN2442

Thank you. And is your statement then a true and correct record to the best of your knowledge?---It is.

PN2443

I seek to tender that statement.

PN2444

DEPUTY PRESIDENT CLANCY: Thank you. I'll mark the statement of Pamela Avril Maclean dated 15 April 2019, Exhibit 25.

**EXHIBIT #25 WITNESS STATEMENT OF PAMELA AVRIL  
MACLEAN DATED 15/04/2019**

PN2445

MS WHISH: Ms Maclean, you'll now be asked some questions from the union representatives?---Thank you.

PN2446

MS SAUNDERS: Thank you, Ms Maclean. If at any point you can't hear me. Please just let me?---I will.

PN2447

I won't keep you terribly long. You operate two child centres, is that right?---Yes.

PN2448

About 60 staff across the two?---Yes, that's right.

PN2449

Half of them - about half of them are permanent part-time employees?---I would have to refer to my statement to be sure but approximately, yes. Sure.

PN2450

Do you offer those - do you guarantee those permanent part-time employees minimum hours?---We have in their contracts - we certainly do. We put a small range of hours. We don't make it minimal. We try to make it very reasonably but within - around the - you know - 28 to 32, something like that - to make sure that they have a reasonable number of hours. Most of the time they're required for all of their hours.

PN2451

Okay. So you have - and you say will employ you for up 38 hours was it?---No. We normally would have, if they're permanent part-time it would be a range, because most of ours or many of ours work a four-day week.

PN2452

Sure. So you say - - -?---So it would be something like to 28 to 33 hours or something like that, dependent on needs of the service.

PN2453

I see. So you guarantee the 22?---Yes. We guarantee more than that, yes.

PN2454

Yes?---Unless they are someone who maybe works two hours - two days or three days or something like that.

PN2455

Sorry, Mrs Maclean, it's just an example. For say one of your employees?---Uh-huh.

PN2456

The contract says - a range 22 to 33 - yes?---Yes. Well, it might say 28 to 33.

PN2457

All right. Let's start with that. The example is 28 to 33?---Yes.

PN2458

That's right?---Yes.

PN2459

Okay. So that employee is guaranteed to get 28 hours every week?---Yes. Yes.

PN2460

And you might sometimes roster them?---We certainly try to - yes.

PN2461

You certainly try to?---That's not hard to do because our centres are very busy.

PN2462

You certainly try to. Sometimes you don't succeed? Very rarely?---Well, I would be unaware of any that we've not succeeded in because our centres are very high capacity and very highly occupied with the children.

PN2463

Do you tell them when they start what their days of work are going to be?---We try to. Our directors will sit them down and work out a roster with them because we also include a discussion about their family needs and their own particular commitments.

PN2464

When you - - ?---Whether that be study, or family or children or whatever that may be.

PN2465

When you say 'We try to', does that mean sometimes you don't?---Well, we do have that conversation. Yes.

PN2466

Okay. You should have been provided with a document. It's an example [REDACTED]  
Do you have that?---Uh-huh.

PN2467

Okay?---I will have that. Which centre are we looking at?

PN2468

[REDACTED]

PN2469

[REDACTED]

PN2474

You pay your employees - almost all your employees' award wages?---Yes, there are some who achieve higher than award.

PN2475

Sure. But [REDACTED]

PN2476

Okay?---She's the assistant director if that's - - -

PN2477

[REDACTED]

PN2482

How much notice do you give people before changing their hours?---As much as possible but as explained in my statement that isn't always possible if someone rings in sick or something last minute occurs we must maintain our ratios.

PN2483

Do you order people to come in?---We can't order them, no. Certainly not. We ask - we look at who is on the roster that day, who may be spare. Who may be as a casual or perhaps is on a day off. Some of them ask to pick up extra hours if able. If they have extra expenses in their lives from time to time so we know who would like us to call and we offer them the hours first. If they aren't able we say, "Thank you." And call the next person.

PN2484

You don't want to be able to order?---We can't order people to do that.

PN2485

You don't want to be able to order people to come in, do you?---No. No. I would never do that.

PN2486

Of course not. And you don't need to, to cover your absences. You fill them in all these other ways?---We have a number of regular float staff and relief staff so we manage with who we have.

PN2487

Thank you very much. I want to ask you about the ACA's claim in respect of extending hours. Do you know what I'm talking about there?---Is this the 7.30 pm finish?

PN2488

That's right?---Uh-huh.

PN2489

You haven't done any market analysis in your area and see if there is demand for the later hours child care have you?---No. I could only anecdotally suggest that in both our centres we have around 98 percent working parents. So they're all very much engaged in regular hours of employment.

PN2490

Sure?---And we have had possibly in the last four years, again, anecdotally, possibly five families ask if there was any chance of staying open a little bit later because they start work a little later and finish it. So they rush to achieve a 6.30 pick-up time.

PN2491

Sure. But most parents do, in fact, achieve that 6.30 pick-up time don't they?---The majority, yes.

\*\*\* PAMELA AVRIL MACLEAN

XN MS WHISH

PN2492

The most of your staff are female?---Yes. We have two male chefs.

PN2493

Yes. And the educators they're all women?---Yes.

PN2494

Many of them have families of their own?---Yes, indeed.

PN2495

They have family commitments as a result?---As - yes, and study commitments of their own as well.

PN2496

And so a 7.30 finish would cut into their family time wouldn't it?---It may do. However, as usual is our practise to have a conversation with anybody that we need to change any rostered days or shifts with and ask if that works for them.

PN2497

Yes?---We have a very collaborative approach to our rostering.

PN2498

You haven't asked any of your employees if they would be happy to work till 7.30, have you?---No, not particularly. Although we have, on occasion, had that happen if a family is late collecting their child.

PN2499

Yes?---From time to time.

PN2500

Yes. And they're paid overtime in that situation aren't they?---Absolutely, yes.

PN2501

You have two directors, at the moment, that's right?---Yes, we do.

PN2502

They have teaching qualifications?---Yes, they do.

PN2503

They're not registered as teachers?---No.

PN2504

You do not need to be registered as teachers as a teacher in Queensland, do you, to work in early childhood?---No. Not to be a director, no.

PN2505

Okay. Part of their responsibility is overseeing the implementation of the educational program?---A small part of it, yes.

PN2506

It is part of it?---I beg your pardon?

\*\*\* PAMELA AVRIL MACLEAN

XN MS WHISH



PN2507

It is part of it?---Yes, a small part though. It's not a priority for them because they have an educational leader. In this case that's me.

PN2508

And apart from you they supervise the other staff?---Yes, they do.

PN2509

They supervise the - - -?---With the assistance of - with the assistance of their assistant directors.

PN2510

How many early childhood teachers do you employ?---We have eight across the two centres which is about what's required.

PN2511

Yes?---At this time.

PN2512

The directors supervise those teachers don't they?---They supervise all the staff.

PN2513

Yes?---Generally.

PN2514

Yes?---Yes.

PN2515

It includes the teachers?---Yes, but those are not only those who were employed as ECT's are employed as teachers.

PN2516

Could you say that again, Ms Maclean?---Some of them - I'm sorry, I'll clarify that. The two ECT's in our centres. One in each centre are employed and engaged as teachers. The others are engaged as room leaders at their own request.

PN2517

They can count towards teacher ratios in a pinch though can't they?---They could, I guess, yes. And we would certainly pay them as that should they work in that capacity at any time.

PN2518

Yes. They use - you've got an education degree yourself, is that right?---Yes, I have a Masters degree in education.

PN2519

Yes. And you in the course of that degree learned how to deliver an educational program?---Yes.

\*\*\* PAMELA AVRIL MACLEAN

XN MS WHISH

PN2520

Yes?---I was also - I had a teaching degree prior to that.

PN2521

Yes?---And have worked in the sector for 30-odd years.

PN2522

Yes. And you use those teaching skills in your day to day work at the centres?---I would assume knowledge gained during those qualifications are certainly implemented or used to inform my choices and practises.

PN2523

You couldn't possibly switch it off, could you?---I wouldn't think so.

PN2524

No. And none of the teachers you employ could either?---I wouldn't think so.  
No. I would - I think we all learn and use that knowledge as we work.

PN2525

Yes. Have you sought detailed advice about the coverage of the Educational Services Award - Educational Services Teachers Award I'm sorry?---In what way do you mean? I'm sorry, I'm not sure what you mean.

PN2526

Have you sought specific legal advice about the coverage of the Educational Services Teachers' Award?---No. We have from time to time engaged with Employer Services to check that we are correct in what our interpretations are because sometimes it's difficult to tell.

PN2527

Right. Thank you very much. Nothing further?---Pleasure.

PN2528

Sorry. I tender the roster.

PN2529

DEPUTY PRESIDENT CLANCY: Yes, I'll mark the [REDACTED] as Exhibit 26.

**EXHIBIT #26** [REDACTED]

PN2530

Yes, Mr Bull?

**CROSS-EXAMINATION BY MR BULL**

**[1.06 PM]**

PN2531

MR BULL: Ms Maclean? My name is Stephen Bull. I'm from United Voice and I'm going to ask you some questions, principally focused on the claims that we're making in relation to this award in this process?---Yes. Okay.

\*\*\* PAMELA AVRIL MACLEAN

XXN MR BULL

PN2532

So, you're an ECEC veteran. You've been in the sector for a long time?---Yes.

PN2533

You were, in fact, before the establishment of the National Quality Framework an assessor?---I was in the previous system. The NCAC - QIAS system - for about 13 and a half - nearly 14 years.

PN2534

Okay. I'd be interested to hear your view about the National Quality Framework. It was a significant change wasn't it?---Yes, it was quite an empirical shift for many of our educators. It was basically a shift from what activities and experiences do you provide to a system where it wanted to know what were the outcomes achieved for children. So it was quite a different way of looking at what we did each day in our practise.

PN2535

So it was sudden - a bit of a - it's a reference point. A recent one at least in terms of significant change in the sector. You'd agree with that statement?---Absolutely, yes. In 2012 when it was launched it was a bit of a tsunami of change for those of us in the sector.

PN2536

There's before and after?---Mm.

PN2537

They seemed to have redacted where you are. You're somewhere in Queensland. I don't want to know your precise address. I don't even know which town you're in but are you in a regional centre? Or are you in a country centre or are you in the metropolitan centre?---I'm regional.

PN2538

Okay. Evidently, quite a bit regional centre?---Yes.

PN2539

Are you prepared to tell us which regional centre you're in?---Sunshine Coast.

PN2540

Okay. All right. So it's got a lot of young families, evidently quite high demand for child care?---Yes. Our area is a little bit unusual in that we are a holiday destination place, therefore we have very busy all-year round because many of our parents work in hospitality and the associated industries with a destination area. So we have very few slowdown times.

PN2541

DEPUTY PRESIDENT CLANCY: Was there some redactions done to this stuff?

PN2542

MR ARNDT: My guess is that - are you taking it off the website?

\*\*\* PAMELA AVRIL MACLEAN

XXN MR BULL

PN2543

MR BULL: Correct.

PN2544

MR ARNDT: Occasionally, the website uploads have addresses and signatures redacted. So if you print it directly from the website. I don't think there's any issue in identifying.

PN2545

MR BULL: It's nice to know roughly where people are.

PN2546

DEPUTY PRESIDENT CLANCY: Yes. No our copies here aren't redacted.

PN2547

MR BULL: Well, just a sort of way to break up the tedium of my questions really.

PN2548

DEPUTY PRESIDENT CLANCY: I've got a visual on where Ms Maclean is.

PN2549

MR BULL: Right. So we've got beaches. We've got ocean breezes and so forth. That's where you are Ms Maclean?---Yes.

PN2550

And one of the issues is that you operate 52 weeks a year?---Yes.

PN2551

And that's because you pick up essentially the tourist trade in your facility?---Oh, no. It's not from terms of children attending are tourists. It's our families work in those tourism industries and that is, really, particularly Christmas holidays and so on are their busiest times of year.

PN2552

I thought you might get parents offloading their children when they're on holidays but that doesn't happen?---No, no. We don't do casual care and we don't have spaces available anyway.

PN2553

Okay. But the point is you operate 52 weeks a year?---Yes.

PN2554

And you have no requirement or need for a shutdown provision in the award?---Well, we really can't because all our parents are working parents. I think 98 or 99 per cent of our families are both working families - our parents - and as I said because we're in a destination area all of the holiday periods throughout the year, such as Christmas, Easter and so on are very busy for us. So they still require care.

\*\*\* PAMELA AVRIL MACLEAN

XXN MR BULL

PN2555

Okay. So you have extensive experience as an assessor and obviously as an operator and provider you have been assessed?---Yes.

PN2556

And that's the National Quality Standard, National Children's Education and Care Quality Authority. That's the current assessor in your sector. That's correct?---Yes, that's right. And the local Department of Education officers conduct the assessment visit.

PN2557

Okay. So when last was the - your facility - you've got two. Are they separately assessed or individually assessed?---Separately.

PN2558

Okay. Which is the bigger one? You've got BD Springs and BD Breeze- - - ?---One hundred and three.

PN2559

Sorry, I didn't mean to interrupt you?---Yes. That's okay. BDO Springs - it stands for Big Day Out - and it doesn't relate to the concerts. It's Big Day Out Springs and Big Day Out Breeze. Big Day Out Springs is 103 capacity and Big Day Out Breeze is 97.

PN2560

Okay. Which centre was last subject to assessment?---Big Day Out Breeze was last November because it's the nearest centre and it was going through its first assessment. Big Day Out Springs was assessed in 2017 in November.

PN2561

Okay. Just in relation to - well, maybe let's look at Big Day Out Springs?---Yes.

PN2562

What rating did you get in 2017?---Exceeding.

PN2563

Exceeding. So that means you're off the hook for three years?---Yes. If you put it bluntly, I suppose that does mean that.

PN2564

And Big Day Out Breeze?---Yes.

PN2565

What assessment did you get in November - last year rather?---It achieved a meeting assessment and I can explain the differences - - -

PN2566

Does that mean you're - - -?---- - - if you'd like?

\*\*\* PAMELA AVRIL MACLEAN

XXN MR BULL

PN2567

Does that mean you're off the hook for three years or you have to have another assessment?---Probably for another couple of years yet. Do you want me to explain the difference though, of what occurred between those times?

PN2568

Please do?---The previous assessment at Springs occurred in 2017 as we discussed. It was the first version of the National Quality Standard Assessment and Ratings Indicators. Since that time they have amended those and included three new qualities that they are looking for and those are called their concepts which has kind of raised the bar significantly because over 30 per cent of centres achieved exceeding on the previous version and they wanted to tighten that up. So Breeze - BDO Breeze, the second centre - has come into fruition and been assessed as one of the first through the new amended sessions. So it achieved two quality areas out of seven at exceeding. Two others that we were told were about 99 per cent exceeding and the other three at meeting. So overall that gives us a meeting rating, rather than an exceeding one. However, they have acknowledged at the Department of Education it was extremely close to exceeding.

PN2569

So you're unfortunate in that you - - -?---Oh, just unlucky timing but there are a number of centres will have that situation. We all have that each time the cycle goes round. There's nothing you can do about that. You just accept that everyone does a great job and move on.

PN2570

So you obviously - you're familiar - you've seen a few of these National Quality Standard Assessment - - -?---Yes.

PN2571

- - - and Rating Reports and they go through the seven quality standards?---Yes.

PN2572

There'd be a bit of subjectivity, I assume, with the assessors but you can't avoid - - -?---Yes.

PN2573

- - - the process of going through the various standards, can you?---No. Not at all.

PN2574

And a service would at its peril avoid it - give it lip service or not pay attention to these standards?---Absolutely. I think it - well, my attitude has always been we always have rules and regulations. They are there to help us to go where we wanted to go anyway which is high quality.

PN2575

And it is indicative of high quality good assessment but there's also broader reasons why you need to take these assessments seriously. They're made public, that's correct?---Yes, that's right.

\*\*\* PAMELA AVRIL MACLEAN

XXN MR BULL

PN2576

So the people - your prospective parents and it can impact on your commercial viability if you have a poor rating?---I supposed it could. They are able to be viewed on a ACECQA's website and parents can look that up at any time if they wish. We're also obligated to display our result on the - in the foyer or somewhere where parents may peruse it at any time.

PN2577

And the important part - the first quality standard relates to the general quality of education?---That's right. The programming.

PN2578

And then there's a specific quality standard that relates to the embedding of the educational leader within the culture of the service. You'd agree with that? That's standard seven?---It's certainly mentioned in quality area seven, yes.

PN2579

And you understand the significance of the educational leader role, don't you?---Yes.

PN2580

And that's because you do it yourself at one of your centres?---I do it at both centres.

PN2581

Okay. So you're the educational leader at both centres?---Yes.

PN2582

Are the centres next to each other?---They're about three minutes' drive from each other at maximum.

PN2583

Okay. But you do them yourself because you understand the significance in the - for various reasons - the role of somebody like the educational leader?---I do this - well, it came about - I guess you could say organically when we opened Big Day Out Springs our director and I had a conversation about those people we had interviewed and it isn't until whilst people may present themselves extremely well at an interview, it isn't until you see them in action on the floor with the children and families that you really get a gauge on how well they understand their role. How well they could explain it to others and so on. And those are attributes that a very good educational leader needs. So we discussed it and she asked if I would prefer or if I could for her become the educational leader until we had ascertained who would be appropriate to take those roles.

PN2584

So you need to talk the talk and walk the walk so to speak?---Yes, that's right.

\*\*\* PAMELA AVRIL MACLEAN

XXN MR BULL

PN2585

And because of the importance and the complexity of the role you're doing it for both centres which you operate?---Yes, I do. I've spent time each week in both centres.

PN2586

You're also the responsible person often times for at least one centre?---Only from time to time as needed because we have enough people there. Our directors and assistant directors are there to cover that role. I am only used as a back-up if needed.

PN2587

The responsible person - - -?---In that role.

PN2588

Sorry. The responsible person will generally be the director?---Yes.

PN2589

Well, for most of the time?---Yes.

PN2590

At the particular centre?---That's right.

PN2591

So obviously when the director is on the premises they're the responsible person?---That's right. Even if I'm there I don't undermine their role as the director come manager of our business.

PN2592

And you pay a number of your directors above award wages?---Yes.

PN2593

Because you - in order to attract talented good people you've got to pay them more than the minimum?---I've always just believed that. I guess to explain my thinking and approach to this is to explain that having been in the sector for so long I have been in all of their positions. So I understand how valuable it is to be acknowledged and appreciated by those that you work with and work for and that's the approach that I take.

PN2594

Do you understand if you pay an employee above the award they don't necessarily get all the award entitlements because you bought yourself out of the award. Do you understand that concept?---I don't understand what you're getting at there.

PN2595

Well - - -?---Sorry.

PN2596

- - -if you're obliged to pay a director 69,000?---Mm-hm.

PN2597

And you pay her 75,000?---Yes.

\*\*\* PAMELA AVRIL MACLEAN

XXN MR BULL

PN2598



That may also mean that you're not obliged to pay certain allowances and penalties and so forth because you're paying over award payments. Do you understand what I'm saying?---Yes. Can you explain which penalties and allowances you might refer to there just so that I'm clear.

PN2599

Well, it all depends on your contract of employment?---Right.

PN2600

It can be a complex industrial problem?---Yes.

PN2601

But I'm just putting to you as a general proposition that when you pay people a significant degree above the award that means that some of the award allowances you may not be obligated to pay them. Now, I just wanted to ask you a few questions - - -?---Yes.

PN2602

- - -because you've costed in your statement what you say some of the allowances were asking for will cost you. And I just - with that - - -?---Yes.

PN2603

So if you look at your statement?---Well, can I suggest - if you're talking about extra allowances, such as laundry allowances and so on we still pay them on top because I believe we should.

PN2604

Well, thank you. Well, because it's a significant inconvenience having to launder clothes regularly if you're working in this sector?---Oh, not particularly but I just feel if it states in the award that we are obligated to pay these things, like paying for staff meetings and so on, we do that and we also pay for their dinner at the staff meetings. Just because I prefer to treat our staff with respect and courtesy.

PN2605

Well fair enough. We applaud the practise. If look at paragraph 08 of your statement, you've just done some costings of what you think being a responsible person are this might cost you business if this Commission were to agree to what we've asked them to insert into the award. Have you got that in front of you?---Yes. It's 108, you said, wasn't it?

PN2606

Yes. Just out of curiosity, the idea to cost the responsible person allowance in this manner did that come from your professional association?---No. I haven't had any conversation with them regarding that. I just worked out from what I understood you to mean in the question and looked at - and I believe I'm - and you can correct me if I am wrong - but I believe in terms of the responsible person you would be talking about, in our roster, the person who does the open shift and then the director through the centre of the day for their hours and the person who's on the late shift after the director finishes. Is that correct?

\*\*\* PAMELA AVRIL MACLEAN

XXN MR BULL

PN2607

Well, it's yes - it's why the centre is operating?---Yes. yes.

PN2608

And what I was going to ask you - - -?---Yes, so that's what I interpret it as. Yes.

PN2609

What I was going to ask you whether your costings assume that you're going to have to pay the allowance at all times that there's a responsible person on the premises. Is that the assumption that you're - - -?---Yes, I took that to mean that. Yes.

PN2610

Okay. So, if for example you were the responsible person. It takes into account that you're being - paying yourself the allowance?---Well, I don't ever take a wage from the centre. So I'm sorry I don't include myself in that. I worked it out based on a typical roster and calculated what it would cost for those who often do an early and those who often perform late duties and then what it would cost for our director in the middle of the day.

PN2611

But the centre directors are the ones who you pay the greatest increment above what you have to. That's correct?---That's right, yes. But I still included that because if it was required I would pay them that.

PN2612

But in relation to the - - -?---In addition - - -

PN2613

- - -centre directors who you pay above award wages to they're also the people who are most frequently the responsible person at the centre at which - - -?---Yes.

PN2614

- - - they're the director. Thank you?---Certainly for the core hours of each day, yes.

PN2615

You'd agree that it's a useful thing to have theoretically under the awards. I withdraw that. Under the regulations you can have quite junior people as the responsible person opening and closing a centre. You're aware of that, aren't you?---Yes. Theoretically. But I would not do that.

PN2616

It's not good practise is it?---No. We always aim for best practise. In - you know - in alliance with ACECQA's guidelines and for our own standards. So, whilst it is theoretically possible it's not a practise of ours.

\*\*\* PAMELA AVRIL MACLEAN

XXN MR BULL

PN2617

And this is maybe putting your sort of expert cap on. Attaching some money to the role would encourage those less - a culture rated to quality to make sure that

there's always someone senior in the responsible person role. You'd agree with that proposition?---Possibly, although I tend to look at our staff and work with our directors and assess who is coming along well. Who is ready to take on that mantle of leadership to a small degree for a small part of the day to - and who manages well with families and who is able to be a decision maker. So, you know, there are lots of attributes that we may look for. It doesn't necessarily mean it's the oldest or the most qualified or whatever. We also look at this question with regard to those team members personal commitments who may or may not be able to be available earlies and lates and so on. So, again, as I said earlier, it's a collaborative approach for ours - our rosters.

PN2618

But it's not desirable to have a sort of cascade at the beginning or the end of the day where a number of staff for the responsible person. You'd agree with that proposition?---Yes, that's right. We minimise that. We have a sign-in sheet to that effect and each of us who comes on as the responsible person is as required - signs on and off and it's usually simply the early person, the director and the late person. Sometimes, occasionally, I might be in there if the director needs to go to an appointment or a meeting during the middle of the day where I might be an additional responsible person to cover that time. But most of the time it's just the three.

PN2619

Okay?---And that again speaks to quality and consistency.

PN2620

Okay. In relation to just, I suppose, the training you say it's fair that if you, as an employer, direct one of your employees to do a particular course which is going to benefit you as their employer that it's fair that you should pay for that course?---Yes. I don't direct them to go to - I would like to just clarify that wording there. I don't direct them to go to anything. I ask if that is interesting to them, if it would support them in their own growth. We set goals for each team member at our appraisals and I will bring everything to their attention and ask if anyone would like to attend and then I pay for them to attend.

PN2621

Do you count - if it's during - do you count the attendance as work time?---Yes, they often are during work time and we bring in another person to cover their shift.

PN2622

Okay. Look, thanks very much for your time Ms Maclean. That's all I wanted to ask you. Thank you?---You're welcome.

PN2623

MS WHISH: No questions.

PN2624

MS ARRABALDE: No further questions.

\*\*\* PAMELA AVRIL MACLEAN

XXN MR BULL

PN2625

DEPUTY PRESIDENT CLANCY: Anything? All right. Thank you, Mrs Maclean for your evidence. You're now excused from further attendance?---Thank you, your Honour.

**<THE WITNESS WITHDREW**

**[1.26 PM]**

PN2626

DEPUTY PRESIDENT CLANCY: All right. So from the conversation before was it the case that you'd like to start with Ms - is it Cemello or Chemello?

PN2627

MS WHISH: Chemello. Like 'chemist'.

PN2628

DEPUTY PRESIDENT CLANCY: Chemello. Yes. And she's in the Commission premises in Perth.

PN2629

MS WHISH: Yes, she is.

PN2630

DEPUTY PRESIDENT CLANCY: All right. What we might do is resume at quarter past two, eastern time, so could you please contact her and just say we'll start 15 minutes later than what she might have anticipated.

PN2631

MS WHISH: Certainly.

PN2632

DEPUTY PRESIDENT CLANCY: All right. Thank you. We'll adjourn now till quarter past two.

**LUNCHEON ADJOURNMENT**

**[1.27 PM]**

**RESUMED**

**[2.20 PM]**

PN2633

MR ARNDT: Deputy President, Commissioner, may I seek leave to absent myself from the rest of today?

PN2634

DEPUTY PRESIDENT CLANCY: Yes.

PN2635

MR ARNDT: Thank you.

PN2636

MS WHISH: I believe we have Ms Chemello in Perth there. Can you hear me, Ms Chemello?

PN2637

MS CHEMELLO: Yes, I can.

PN2638

MS WHISH: Excellent. Thank you. If you can't hear, just feel free to let us know. I'll ask the associate to go through your affirmation, I believe, with you, then I'll ask you some questions.

PN2639

MS CHEMELLO: Okay.

PN2640

THE ASSOCIATE: Ms Chemello, please state your full name and address.

PN2641

MS CHEMELLO: Ann Marie Chemello of (address supplied).

**<ANN MARIE CHEMELLO, AFFIRMED [2.21 PM]**

**EXAMINATION-IN-CHIEF BY MS WHISH [2.21 PM]**

PN2642

MS WHISH: Ms Chemello, could I get you to confirm your full name and address again for the record?---It's Ann Marie Chemello of (address supplied).

PN2643

Have you provided a statement in these proceedings?---Yes, I have.

PN2644

Do you have a copy of that statement?---Yes, I do.

PN2645

Are there any changes that you would like to make to that statement?---Yes, I have. It's just my staffing; the amount of staff that I had full-time, part-time, casuals, in both the diploma and certificate III. Being the beginning of the year that fluctuates, so I've just done an updated table of the three services.

PN2646

Could you take us to the paragraph that that would impact in your statement?---Paragraph 23.

PN2647

And you would just like to change some of those numbers. Is that correct?---Correct.

PN2648

Do you know what changes you would like to make to those numbers? Do you have a record there?---Yes, I do. Would you like me to read them out?

\*\*\* ANN MARIE CHEMELLO

XN MS WHISH

PN2649

That would be wonderful?---So for Warriapendi, the full-time updated is eight full-time qualified; part-time five in the qualified; part-time cert III three; casual cert III two; and we have one part-time cook. Malvern Springs, we have 11 qualified full-time; one part-time; six full-time cert IIIs; two casual cert IIIs; two full-time trainees; and two part-time cooks.

PN2650

DEPUTY PRESIDENT CLANCY: Sorry, could we just go through those again, please. There are 11 - - -?---Malvern Springs?

PN2651

Yes?---Yes, 11.

PN2652

Yes?---One part-time qualified; six full-time cert IIIs; two casual cert IIIs for relief; two full-time trainees; and two part-time cooks.

PN2653

Thank you?---Then from Ellenbrook we have 12 full-time qualifieds; five full-time cert IIIs; two casuals; two full-time trainees; and one part-time cook.

PN2654

MS WHISH: Thank you. Are there any further changes to your statement?---No, there isn't.

PN2655

Then subject to those changes, is your statement a true and correct record to the best of your knowledge?---Yes, it is.

PN2656

I seek to tender that statement.

PN2657

DEPUTY PRESIDENT CLANCY: Thank you. I'll mark the statement of Ann Marie Chemello, dated 1 March 2019, as exhibit 27.

**EXHIBIT #27 STATEMENT OF ANN MARIE CHEMELLO DATED  
01/03/2019**

**CROSS-EXAMINATION BY MS SAUNDERS**

**[2.27 PM]**

PN2658

MS SAUNDERS: Thanks, Ms Chemello. You referred to some of your staff as qualifieds there. Does that mean people with diploma qualifications?---Correct. Included in that is my ECT teacher.

PN2659

I see. Just the one teacher?---For Warriapendi I have one teacher, for Malvern Springs I have one teacher and for Ellenbrook I've got one teacher.

PN2660

Thanks very much. They're all full-time staff?---Correct.

PN2661

In fact almost all of your staff are full-time, aren't they?---Correct.

PN2662

You pay those full-time staff above-award wages?---I do, yes.

PN2663

That's a conscious decision you've made to reinvest profit back in staff?---Correct, and to retain.

PN2664

Yes. So partly it's to reward staff and recognise them for their work. Is that right?---It's just my vision to be able to have staff that are happy to stay with me.

PN2665

Yes, that's the other part. It's about retention?---Correct.

PN2666

You've got quite a high retention rate in all your centres?---Yes, I do.

PN2667

That's not always the case in this industry, is it?---Correct.

PN2668

Retention can be quite a challenge, particularly for qualified staff?---I wouldn't really know because I'm in my own little bubble, but I hear that that may be the case, but not in all cases.

PN2669

Not in all cases. You've heard that from time to time centres can find it difficult in particular to retain teachers?---Again, I can only answer on my case and on my services, so my answer is that I can retain my teachers.

PN2670

Okay. That high retention rate, it's good for your services, isn't it?---Yes.

PN2671

It provides continuity of care for the children?---Yes.

PN2672

Families like it more when they see the same people there every day?---Yes.

PN2673

It brings more business to your centre, as well?---We hope so, yes.

PN2674

Keeping your staff happy, it's not just about money. It can be about their conditions, as well?---Correct.

PN2675

Giving them family-friendly rostering arrangements if they need them?---We're flexible with their requirements from day to day.

PN2676

You try and accommodate people where you can?---Correct.

PN2677

Your staff are mostly female?---Yes.

PN2678

Almost all?---All.

PN2679

Yes. Many of them are mothers themselves?---Correct.

PN2680

They have got their own complicated child care responsibilities, don't they?---They do.

PN2681

Your above-award rates, they incorporate some overtime payments; about an hour and a half a week. Is that right?---We don't do overtime. We do time in lieu.

PN2682

Sure. Just have a look at 42 of your statement, the second sentence where it says -

PN2683

*above-award wages which are inclusive of approximately 1.5 hours of overtime per week.*

PN2684

That's right, isn't it?---So our above-award wages do include that.

PN2685

Yes. You also have an agreement with your staff to give them time off in lieu when they have to work extra hours?---Correct.

PN2686

That's what happens when employees have to stay back if a parent is late?---Correct.

PN2687

That's the main reason they would work overtime, isn't it?---It is.

PN2688

Most parents make a serious effort to get their kids - to pick their kids up on time?---I would say the majority, but there are always the ones that continue to pick up late or on death's door.

\*\*\* ANN MARIE CHEMELLO

XXN MS SAUNDERS



PN2689

Do you charge late fees?---We do.

PN2690

You don't have direct overtime costs, but they offset the time in lieu costs?---Correct.

PN2691

One of your centres is only open until 6.00?---Correct.

PN2692

Do you roster anyone later than 6.00 at that centre?---At that centre we don't. However, my other two centres we do. We have a 6.30 to 6.30 timeslot because of the demographics of where the other two are in relation to the CBD.

PN2693

Yes, but you don't roster anyone to stay past closing time?---No.

PN2694

You could at that first centre without paying overtime rates?---To my knowledge we haven't had to, because we're pretty close to the CBD. We haven't needed to. However, like I said before, the other two centres we have.

PN2695

Yes, sure. You understand the ACA claim is to expand the span of hours to end at 7.30?---Correct.

PN2696

Whether you keep your centres open later depends on demand in the area?---There are a few things that you would have to look into; parent demands, parents' occupations, their different rostering, their demographics of where they live in comparison to where the service is. It's not just a clear-cut of - there are a few things that you would need to consider.

PN2697

Before you could say whether it was worth it for you as a business you would need to do quite a complicated analysis. Is that fair?---Yes.

PN2698

You haven't done that analysis up to 7.30, have you?---At the moment, no.

PN2699

Okay?---It hasn't - I've been restricted with the award, so that hasn't even been an option in my head.

PN2700

I want to talk to you about rostering. Your full-time staff, they work the same shifts Monday to Friday?---Correct.

\*\*\* ANN MARIE CHEMELLO

XXN MS SAUNDERS

PN2701

Do you roster to absolute minimum ratios or above?---We do roster above in two of the services, so - - -

PN2702

Yes?---Malvern Springs and Ellenbrook have got two trainees which although it's above our ratios, they actually don't really count as far as - I can't put them on earlies or lates.

PN2703

Because they're not qualified?---They're not qualified.

PN2704

So you do have a risk where if someone calls in sick you might drop below the ratio?---Usually we have - I have my phone on and they can ring the service before they open, and we have a protocol of what we do if someone rings in sick.

PN2705

What is that? What do you do?---They ring me if I'm available. Otherwise, they've got a relief list if they can. The relief list sometimes isn't available. If they ring up before we open, well, someone has got to come in with a key; so a relief list isn't an option for us because they need to open the door.

PN2706

Sure?---And, therefore, we either ring the coordinator who has got a key or a qualified that would have been opening half an hour later to probably come in.

PN2707

Okay. In that example, say you called the qualified who is rostered to start at 7.00 and asked them to come in at 6.30 - - -?---Yes.

PN2708

If they told you that they couldn't do it for some reason - they needed to drop their kids off - would you force them to come in, anyway?---No. We have, like - the people that do open up, we have a background knowledge of. If they do have to drop children off, we don't normally put them on a roster where it has to be flexible enough. Extreme cases, I've gone in because there is absolutely no one that can do it. You really can't force someone to come in if they can't do it.

PN2709

You wouldn't want to force someone to come in if they couldn't do it?---No.

\*\*\* ANN MARIE CHEMELLO

XXN MS SAUNDERS

PN2710

You really wouldn't want to force anyone to change their hours at all, would you?---Unfortunately, we are a regulated industry and my first protocol is to look after the children and the families, as well as the employees, but we are regulated so I do have to stick to having the appropriate qualifications replaced with a person that has called in sick. I don't have the luxury to just say, "Well, we'll open up half an hour later", or get a cert III to open up. We actually have to replace the person with the exact qualifications that are then called in. Unfortunately, we're in a dilemma whether - no, in the perfect world it would be lovely to have your

roster and not change. However, in our world which is our industry, that is not our perfect world.

PN2711

That's not quite my question. I might take it a step back. So you do have to meet these minimum ratios? Yes?---Correct.

PN2712

That's your priority in managing the roster? Yes?---Our roster is based on what we know or what children will be in at certain times, so we roster them accordingly to our regulations.

PN2713

If someone calls in sick, that's usually at the last minute?---We hope that they would give us at least half an hour notice which allows us to get some sort of momentum to get our - so we don't actually cross the regulations that we are under ratio.

PN2714

That's how long you generally need; half an hour?---In most instances. If not, you know, an hour, because people have got a life outside of work and so they need to be able to get their life into perspective before they can - they can't just drop everything to come to us, so we have got to call on the people that we've got.

PN2715

So you have a range of different ways you cover those gaps. One of them is your casual workforce?---Correct.

PN2716

One of them is asking your permanent staff to change their hours or work extra hours?---If need be.

PN2717

That's lower down the priority list, isn't it?---Sorry, can you repeat the question.

PN2718

That's lower down the priority list. You would rather not disrupt someone's work hours?---My intentions when I write a roster is that everyone has a fair roster and in my experience things happen, and as we work as a collaborate team we are all on the same page to make sure that we are doing the right thing by everyone; so they are happy to change their roster.

PN2719

Your staff are very accommodating. They will, even at the last minute, change their hours if you need them to?---Yes.

PN2720

Okay. I want to ask you about a hypothetical situation. It might not be one that arises in your centre, but just listen to the propositions I'm setting out and pretend that's the facts, okay?---Yes.

\*\*\* ANN MARIE CHEMELLO

XXN MS SAUNDERS

PN2721

You've got a permanent part-time worker who is rostered Monday, Wednesday and Friday. Those are their usual days. On Tuesday the person opening the centre calls in sick. They give you half an hour notice, so at 5.30 in the morning, and that puts you below the ratio. Are you with me so far?---So they call in on the Monday for Tuesday or - - -

PN2722

They call in on Tuesday morning at 5.30?---Okay.

PN2723

You need to cover them by 6 am. Do you want to be able to call that part-time worker and tell them that they are required to work starting from 6.00 on Tuesday? Not ask, tell?---What time was the part-time worker starting initially?

PN2724

They weren't working on Tuesday at all?---That would probably be my last resort.

PN2725

Would you force - - -?---Because she wasn't rostered.

PN2726

- - - her to come in?---No, I'd ask her the question but I wouldn't force her.

PN2727

Do you need to be able to force her?---I don't think it's good for our team to force anybody to do anything, so we work collaboratively so we have a good working partnership.

PN2728

Okay. Nothing further.

## **CROSS-EXAMINATION BY MR BULL**

**[2.40 PM]**

PN2729

MR BULL: Ms Chemello, my name is Stephen Bull. I'm from United Voice. I just want to ask you a few questions. You haven't directly addressed our claims, but we have claims in relation to some allowances for the responsible person and the educational leader, and some other matters concerning training, shutdown and so forth. I just wanted to ask you some general questions about the way you run your business. Your precise address was hidden from us, but I gather from the answers you have given my friend that you're located in Perth?---Correct.

PN2730

And you're in a central business district. You're close to the city?---No, I'm not.

PN2731

Okay. So how far are you from the CBD?---Are you asking me where I live personally or where my - - -

\*\*\* ANN MARIE CHEMELLO

XXN MR BULL

PN2732

Just roughly. I don't need to know roughly where you are, but are you in a five-kilometre - are you in a suburban area?---I'm probably - where I reside, I'm probably 25 minutes out of the CBD.

PN2733

I was actually interested in your centres. Are they in the same suburb or area generally?---No.

PN2734

Okay. So the first one, Warriapendi Early Learning Centre, is that in a suburban, regional or country area?---Suburban.

PN2735

The Ellenbrook School of Early Learning, suburban, city, regional or country?---Suburban.

PN2736

And Malvern Springs Early Learning Centre in Ellenbrook, is that also in a suburban area?---Correct.

PN2737

So you're in the suburbs of a capital city?---Correct.

PN2738

Now, I notice from the rosters we got that the Malvern centre appears to have a little bit of a shutdown, is that correct, over the Christmas/New Year period?---No, we don't.

PN2739

You don't. Okay. The rosters I have, have the rosters starting on what looks like January; early January. You don't shut down at all?---No, we don't.

PN2740

That's the same with the other two centres?---Correct.

PN2741

So if you're a parent living near the centre and you want to put your child into child care on 3 January, there's no problem?---Yes, that is not a problem. We only shut for public holidays.

PN2742

Okay. One of our claims is to remove provisions that allow employers to shut down and essentially send employees home, we say, without pay. That's not a facility you require to run your business?---(No audible reply)

PN2743

Do you understand what I've just asked you?---Yes. Your services don't shut down - - -

\*\*\* ANN MARIE CHEMELLO

XXN MR BULL

PN2744

So you don't need the facility to direct employees not to come to work for any period during the year?---No, I don't.

PN2745

Now, each of your centres - and you're an experienced person in this sector. You've worked in child care for over 20 years?---Correct.

PN2746

Each of your centres has a - well, they'll have multiple responsible persons during the day?---Correct.

PN2747

And each will have an educational leader?---That's not correct.

PN2748

Okay?---I am the educational leader for all the services.

PN2749

Okay. Is that partly to reflect the fact that it's a complex role and you have significant experience in the sector?---No, it's the way I would like to run my business. Anyone at my service could do it. However, being a registered teacher and as a family business, it's what I've chosen, but - yes.

PN2750

It's your right to run your business because it's your business, but is it also because the educational leader role is an important - for want of a better word - culture-forming role within your business?---I've never thought of that, so I can't answer it.

PN2751

Okay. Is it imputing completely alien concepts into the role of the educational leader?---Can you rephrase that question?

PN2752

Well, I use the term sort of "culture-forming role" and that the educational leader has some role in essentially forming the educational culture of your centres. Do you agree with that proposition?---In my instance my room leaders work with me to establish our educational program, so I lead it with what I need the girls to do. We work on it as a collaborative movement.

PN2753

Do you consider each three of your centres separate services?---I do.

PN2754

Okay. You read the regulations as being you can provide the educational leader role in all three services simultaneously?---I can provide being the educational leader to all my three services and be within the regs.

\*\*\* ANN MARIE CHEMELLO

XXN MR BULL

PN2755

Okay. You've gone through the process of assessment by the Australian Children's Education and Care Quality Authority?---I have.

PN2756

Have you got separate ratings for each of your three centres?---I have.

PN2757

So in relation to Warriapendi, when was the last assessment done?---To my knowledge - I can't recall the year, but I would say maybe 2016.

PN2758

Okay. I can assume from the fact that you have trouble recalling it that it was a good assessment?---It was an "exceeding".

PN2759

So because you got that exceeding assessment, you haven't had to be assessed recently?---Correct.

PN2760

In Ellenbrook School of Early Learning, when do you recall you had your last assessment there?---It's a new centre, so we're not assessed at the moment.

PN2761

Okay. Malvern Springs; when last were you assessed by the authority for that centre?---Again I think it was 2015/2016, and we got "exceeding" on that one, as well.

PN2762

You've been spared further assessment because you did so well last time?---It's in a rotation. It just gives you a time frame of when the regulatory body picks your name out to have your next assessment.

PN2763

But these assessments are - they're significant things for the way you conduct your business?---Correct.

PN2764

Because you get a public rating?---Yes.

PN2765

And it's viewed by parents?---Yes.

PN2766

Decisions will be made on the basis of the rating?---Not necessarily.

PN2767

Well, your centres have obtained, by the sound of it, excellent ratings, so the public rating which would be available would be of benefit to your centres, wouldn't it?---Yes, they would.

\*\*\* ANN MARIE CHEMELLO

XXN MR BULL

PN2768

It wouldn't deter a parent placing a child under your care?---No.

PN2769

Now, you've obviously worked before and after the National Quality Framework?---I have.

PN2770

You would agree with the proposition that in this sector in terms of regulation, it's the most significant recent event?---Yes, it has challenged the industry.

PN2771

So it has brought a whole different level and type of regulation that you have to deal with as a provider of child care and early learning in Australia?---If you're talking about as the provider, it's just - the regulations still stay the same for Western Australia. The girls are still working what they did before to now - is the same. I don't see it any different how they used to work five years ago to how they are now.

PN2772

But the assessment reports in some ways are emblematic of what the National Quality Framework requires you to do and one of the things is that there are quite comprehensive quality standards concerning education, and there is a particular style of how that education is to be delivered. You would agree with that?---Not necessarily, no. I haven't changed my model for eight years. I've tweaked it and it's the basics. Everybody should be doing what they were doing five years ago now. The only thing that has changed is it has become electronic in most services, which I think is easier for the girls.

PN2773

Are you familiar with the quality standard - I think it's 7.2 - which deals explicitly with educational leaders?---Mm-hm.

PN2774

You would agree that there is specific attention given to the role of the educational leader in a service?---I don't think the educational leader does any more than what a room leader would do or any qualified - I think they do the same as they did it before, like five years ago. There's no change of extra responsibilities.

PN2775

You have regular staff meetings at all three of your centres. That's correct?---Correct.

PN2776

Through your industrial representative you have provided us with some of your rosters?---Mm-hm.

\*\*\* ANN MARIE CHEMELLO

XXN MR BULL

PN2777



[REDACTED]

PN2778

You have also assumed the role of the educational leader, so we're talking - - -  
?---No.

PN2779

- - - about the same person, different hats. You would agree with that?---When  
we have a staff member there is no mention of an educational leader.

PN2780

But you're the educational leader?---But even in certain other services it's a staff  
meeting which deals with the centres as a holistic. Training, or it can be -  
whatever the topic is or what concerns there are. It's a holistic and everyone has  
the same floor space.

PN2781

You may have got it in terms of what the educational leader has to do, but  
whatever you're doing you're doing what the National Quality Framework wants  
an educational leader to do. Would you agree with that proposition?---Well, in  
my instance - and I can only speak on my instance - I'm doing what an owner  
would want to do for their own business.

PN2782

But you're also required to do certain things by the regulations and you're required  
to have an educational leader in each of your services who - - -?---That's not  
correct. You don't have to have one in each service because I've just proven that I  
can be the educational leader to six services, seven, doesn't matter. You don't  
have to be on site to be an educational leader.

PN2783

Well, I'll just read the regulation to you and this is regulation 118. It says:

PN2784

*The approved provider of an education and care service must designate, in  
writing, a suitably qualified and experienced educator, coordinator or other  
individual as educational leader at the service to lead the development and  
implementation of educational programs in the service.*

PN2785

?---Correct. It doesn't state you have to be working on the floor or in the building  
all the time.

\*\*\* ANN MARIE CHEMELLO

XXN MR BULL

PN2786

Right?---I lead, so I have training sessions. That reg is correct what you're saying, but there is no wording to say that I have to be working there full-time.

PN2787

So in relation to the two centres in which you've been assessed and had good assessments, that's Warriapendi and - - -?---Malvern Springs.

PN2788

Malvern Springs. At the time of those assessments when you were asked by the authority to provide the written appointment, for want of a better term, or designation, you were able to provide correspondence indicating that you had designated yourself in writing obviously suitably qualified and experienced as the educational leader respectively at those centres?---Correct. I have my name up to say that I am the nominated supervisor, the educational leader and a service provider.

PN2789

Okay. The fact that you've assumed the educational leader role and other roles, would you describe yourself as a hands-on manager?---I have a coordinator that is my manager. I oversee the mechanics of my business.

PN2790

And the way you read the regulation is that you don't have to have individual ones for separate services, you can be all three?---Correct.

PN2791

Or six in the case - - -?---Correct.

PN2792

What do you do as the educational leader?---Myself - so I'm talking about what I do - we work on what our program should look like, but that again is collaborative with everyone. It's something that I don't say, "This is what it has got to be." I sit down with them and say, "Okay, what do we all think?" We have collaborative meetings, so that way everyone has got a say in what it looks like, how we draw upon our information and the children, so it's not - I just maybe coordinate the meeting as such, but everyone would have the knowledge, I suppose, to do observations. We've been doing observations for 25 years, so it's nothing new.

PN2793

You attend all the staff meetings for all the centres you own and manage. Is that correct?---If I can't, my daughter who is also a registered teacher, who is also second tier of educational leader, will attend.

\*\*\* ANN MARIE CHEMELLO

XXN MR BULL

PN2794

Okay. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

PN2795

You make an effort to attend most of these staff meetings, don't you?---One of us do.

PN2796

It's you or your daughter?---And that's because I own it. If there was a service that had just a coordinator and was under another banner, I don't know if [REDACTED] would go, but I do.

PN2797

But you are in quite an effective manner complying with what the regulation requires you to do, in that you are leading education and development of your team, so to speak, at these meetings. You're not dictating what goes on, but you're certainly leading discussion and so forth, aren't you?---Correct, but if I was not existent, I would assume a coordinator would be leading.

PN2798

But the point is you need to - next time you get assessed there will be the issue about who is the educational leader. You do have to designate someone for each service. That's correct, isn't it?---No, it's not. I have had - every year you get a visit from the licensing body and you also get your assessment and rating whenever it comes up, and it's never a problem.

PN2799

But that's because you've designated yourself for each of the services?---Correct.

PN2800

You know, let's put to the side this argument about whether you can wear three hats. Each place you manage and own has a designated educational leader, and that person happens to be you?---Correct. I wouldn't call - what I do isn't an educational leader; I call it a leader.

PN2801

Now, you also in your roster have got a coding system for the responsible person?---Mm-hm.

PN2802

There is green, yellow and red?---Correct.

\*\*\* ANN MARIE CHEMELLO

XXN MR BULL

PN2803

There is no particular priority, is there, in relation to those colours?---I don't know what the relation of the colours is, but one of them would be the person who opens and she would be there from, say - if I take Malvern Springs, she would open up at 6.30. Then my coordinator clocks on at 8.30, so then she becomes the

responsible person and she's the responsible person right up until the time she leaves the building, and then the person who locks up takes over her position as a responsible person.

PN2804

You agree that it's desirable to have senior experienced people performing the responsible person role?---Before these regulations came in you had to have a qualified open up and that worked well, and then we had - that we had to have an SO, which is a supervising officer, which now it has been dropped. Now it's up to the service to appoint a responsible officer. It only means that they're opening up, they hold a qualification and they've signed to say that they're happy to do - to be responsible. They don't have any extra jobs.

PN2805

Well, they do. They have some role in the sense that their name is displayed. I notice on your rosters you actually display who the responsible person is?---Yes.

PN2806

Is there a display in the workplace who the responsible person is at any particular time?---It's on the roster, which is displayed.

PN2807

So if a parent comes in and has a problem or whatever, that parent will be able to identify who the responsible officer is at one of your centres at a particular point in time?---Correct.

PN2808

So it does carry with it some exposure?---Depending on the nature of the parent request. Usually if it's in the morning we are too busy to answer anything. They would refer it to the director when she comes in at half past 8. Most of our parent concerns are dealt at that level. I don't expect anybody to deal with - and nor should they - parent concerns at 6.30 in the morning when they're trying to look after children. They can't do two jobs at once.

PN2809

But theoretically if there is a problem which is pressing, which you can't avoid - if a child has some sort of health incident which requires immediate attention - it's the responsible person who is going to be dealing with it and liaising with the parents and, you know, possibly - - -?---Not necessarily.

PN2810

Well, they will have some involvement, won't they?---I'm just talking on my staff. All of my staff have got first aids, so anyone can attend an accident within the service, then the protocol is to call the coordinator.

PN2811

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

PN2813

[REDACTED]

PN2814

Educator?---Yes.

PN2815

Okay. Then later in the day [REDACTED] is the responsible person. What does [REDACTED] do?---She is just a qualified, as well.

PN2816

Okay. So you don't have the directors or assistant directors as the responsible person?---We do between the hours of - depending. We may start at 8.00, until 5.30.

PN2817

Those more senior staff will tend to be on above-award wages?---Which ones, the qualifieds?

PN2818

The directors?---The directors, yes, they are.

PN2819

Okay. Would some of the qualified educators also be on above-award wages?---All my staff are on above-award wages.

PN2820

So if you were compelled to pay an award allowance for the responsible person duties, you may not have to pay it because you're paying in excess of the award. That's the case?---I'm not aware of that so I would rather not answer it, because I haven't had a thought about what the award is and so forth. I'd rather not answer it because I'm not really understanding where I would go with that.

PN2821

Okay. The majority of employees that you roster as responsible persons, you also pay them above what you're obliged to pay them under the Children's Services Award and the Teachers Services Award?---Yes, I do pay them above-award wages.

\*\*\* ANN MARIE CHEMELLO

XXN MR BULL

PN2822

In relation to training, do you believe that if you direct one of your employees to take a course which is going to benefit your business because it's something they need to do to do their job for you, that you should pay for the course? We're talking about you requiring somebody to do a particular course?---We have staff



reviews every six months and we negotiate what they would like to do, then they go if they do. I pay for it myself.

PN2823

Okay, great. If it takes a day or so, is that work time?---It depends on the training.

PN2824

But frequently if it's on a Friday and they're full-time, they will still be working that Friday. You would be paying their wages?---Correct.

PN2825

You think it's fair and reasonable, if you direct them to do a course during the week, that you would pay for the course and you pay for the time as work time?---If it's in work hours.

PN2826

Do you pay the laundry allowance to your staff?---It's within their above-award wages.

PN2827

Okay. Do you have laundry facilities on site?---We do and they are available to them if they want to use it.

PN2828

But you have no dedicated staff laundry facilities?---No, they would have to use our laundry facility - our general laundry facility.

PN2829

At busy periods your general laundry facilities would be fairly - well, it would be being used by the business doing the business's laundry. That's correct?---No, not necessarily. My service - and again I'm talking about my service - the only things that we launder are the bibs and the hand wipes. We don't launder anything else - and the tea towels. Everything else goes home to the families.

PN2830

Do you require your - - -?---We don't have - - -

PN2831

Sorry?---So we don't do the bedding. They go home to the parents.

PN2832

Do you require your employees to wear a uniform?---Yes, I do.

PN2833

You obviously require the uniform to be neat and tidy?---Correct.

PN2834

It's an occupational hazard when you're dealing with small children and mashed banana and yoghurt, and so forth, that the uniforms will unavoidably get dirty?---Yes.

\*\*\* ANN MARIE CHEMELLO

XXN MR BULL

PN2835

So having to launder a uniform every day - - -

PN2836

MS WHISH: Objection. I'm just not quite sure where this is going. She has already answered that she pays a laundry allowance and that it's included in the above-award wages.

PN2837

MR BULL: Well, I understood her evidence that she doesn't pay a laundry allowance. She pays some increment in the above-award payments. I won't press this line of questioning, your Honour.

PN2838

DEPUTY PRESIDENT CLANCY: I don't know where you want to go with it really.

PN2839

MR BULL: Look, I hear what my friend is saying. Nothing further from this witness.

PN2840

DEPUTY PRESIDENT CLANCY: Thank you. Are there further questions from  
- - -

PN2841

MS ARRABALDE: If I could just please respond.

PN2842

DEPUTY PRESIDENT CLANCY: Yes, Ms Arrabalde.

**CROSS-EXAMINATION BY MS ARRABALDE**

**[3.10 PM]**

PN2843

MS ARRABALDE: Ms Chemello, my name is Elizabeth Arrabalde. I'm appearing as an individual in this matter. I was wondering if you could please just clarify something for me. You said that the coordinator is called if there happens to be an accident in the morning before they actually start for the day?---Mm-hm.

PN2844

Who is it that calls the coordinator?---Whoever has taken the accident. So depending on what room it has happened in, then that person who is in that room will ring. They will actually ring me if it's a serious one, but that's the way I like to run it. I'm not saying that all services run that way, but if you can imagine a child hurting themselves in the babies' room, you would expect someone in the babies' room to make that phone call.

PN2845

Absolutely. Would the responsible person be notified even if they weren't in the babies' room?---Not necessarily.

\*\*\* ANN MARIE CHEMELLO

XXN MS ARRABALDE

PN2846

All right. Thank you, Ms Chemello?---They would call the director.

PN2847

Thank you, Ms Chemello.

PN2848

MS WHISH: No re-examination.

PN2849

DEPUTY PRESIDENT CLANCY: Ms Chemello, thank you for your evidence. You may step down. You're excused from further attendance?---Thank you.

**<THE WITNESS WITHDREW**

**[3.12 PM]**

PN2850

MS SAUNDERS: Just before my friend calls the next witness, just as a time indication I would anticipate being 20 to 30 minutes with Ms McPhail depending - perhaps we could hear from Mr Bull as to his time estimate. I just hate to have her on her oath overnight or for a couple of days by phone. It seems inherently undesirable.

PN2851

MR BULL: We will finish by 4.00.

PN2852

DEPUTY PRESIDENT CLANCY: Yes. Has she got a time constraint, has she?

PN2853

MS SAUNDERS: No, it's just I think it will - I wanted to flag it now in case there was a difficulty.

PN2854

DEPUTY PRESIDENT CLANCY: We will sit until she is finished.

PN2855

COMMISSIONER LEE: Yes.

PN2856

DEPUTY PRESIDENT CLANCY: Thank you. We might just adjourn while the telephone line is set up. We will just adjourn briefly and once the phone is established, we will come back in.

**SHORT ADJOURNMENT**

**[3.13 PM]**

**RESUMED**

**[3.17 PM]**

PN2857

[REDACTED]







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MR BULL: NQS, what? Yes, I take an exhibit list to keep myself awake.

PN3149

DEPUTY PRESIDENT CLANCY: I've got one for – yes, why have I got two copies then?

PN3150

MR BULL: They're confusingly similar, but different, these reports.

PN3151

DEPUTY PRESIDENT CLANCY: Right. Yes, maybe I've got two copies up here. When you say there's two versions of the Eastwood one - - -

PN3152

MR BULL: I sent some material to your Associates last night.

PN3153

DEPUTY PRESIDENT CLANCY: Yes.

PN3154

MR BULL: And the purpose of that was to have stuff in front of witnesses today.

PN3155

DEPUTY PRESIDENT CLANCY: Yes.

PN3156

MR BULL: And not for that material necessarily to make its way into the proceedings.

PN3157

DEPUTY PRESIDENT CLANCY: No, but you then handed up one, this morning.

PN3158

MR BULL: Yes, and you should have that.

PN3159

DEPUTY PRESIDENT CLANCY: Yes. Is that the same as the one last night?

PN3160

MR BULL: It is.

PN3161

DEPUTY PRESIDENT CLANCY: Yes, all right.

PN3162

MR BULL: It gets confusing. I'm going to hand up another one and that can be tendered. And perhaps the easiest way is just to mark the physical thing as the document and you can throw away all the others.

PN3163

THE ASSOCIATE: Is that just one copy?

PN3164

MR BULL: That's just one copy. I've got other copies for anyone here who wants one. Where's she going?

PN3165

MS SAUNDERS: To get copies.

PN3166

MR BULL: I've got copies.

PN3167

THE ASSOCIATE: I asked if that was one copy.

PN3168

MR BULL: Sorry, I didn't hear you. Sorry about that. I literally didn't hear you.

PN3169

THE ASSOCIATE: No, that's fine.

PN3170

MR BULL: These are copies. Thanks.

PN3171

DEPUTY PRESIDENT CLANCY: All right, so I've just marked a [REDACTED] as exhibit 30. So what have you handed up now? Is that another - - -

PN3172

MR BULL: That's exhibit 30, I hope. It's dated 21 May, last year.

PN3173

DEPUTY PRESIDENT CLANCY: Yes.

PN3174

MR BULL: [REDACTED]

PN3175

DEPUTY PRESIDENT CLANCY: You've just given us extra copies. Is that what you wanted?

PN3176

MR BULL: Well, your Associate was going to find a photocopying machine.

PN3177

DEPUTY PRESIDENT CLANCY: No, no, but I don't know why you – you gave us one before, and then you've given us some now.

PN3178

MR BULL: Force of habit from doing things.

PN3179

DEPUTY PRESIDENT CLANCY: All right.

PN3180

MR BULL: You have to hand up exhibits and so forth.

PN3181

DEPUTY PRESIDENT CLANCY: Okay. Well, I've already marked one, so – okay.

PN3182

MR BULL: I notice the time. I don't know whether we want to deal with the issue which has been raised.

PN3183

DEPUTY PRESIDENT CLANCY: I'll hear Ms Whish now and see. Yes.

PN3184

[REDACTED]

PN3185

DEPUTY PRESIDENT CLANCY: Yes.

PN3186

[REDACTED]

PN3187

DEPUTY PRESIDENT CLANCY: Yes.

PN3188

[REDACTED]

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PN3201  
DEPUTY PRESIDENT CLANCY: All right. Is there anything further today?  
All right, thank you. We'll adjourn then till 9.30 tomorrow, whereas I understand  
we've got Ms James and Ms then Ms Farrant, is that right?

PN3202  
MS SAUNDERS: Yes, sir.

PN3203  
DEPUTY PRESIDENT CLANCY: All right, and then various – well, Ms  
Farrant's, by video into Parkes(?).

PN3204

MS SAUNDERS: There is an update to that. Ms Llewellyn and Ms Hands will be moved to Thursday, as I don't think there's any reasonable prospect we'll get through our list tomorrow.

PN3205

DEPUTY PRESIDENT CLANCY: All right. We'll be guided by the parties on that but we've got the time on Thursday to do it, if needs be. Thank you. All right, thank you, we'll adjourn till 9.30 tomorrow.

**ADJOURNED UNTIL WEDNESDAY, 08 MAY 2019**

**[4.25 PM]**

**LIST OF WITNESSES, EXHIBITS AND MFIs**

<b>EXHIBIT #16</b> [REDACTED]	PN1436
<b>PRESTON TORI WARNER, AFFIRMED</b>	PN1455
<b>EXAMINATION-IN-CHIEF BY MS DABARERA</b>	PN1455
<b>EXHIBIT #17 WITNESS STATEMENT OF PRESTON TORI WARNER DATED 08/03/2019</b>	PN1462
<b>CROSS-EXAMINATION BY MR ARNDT</b>	PN1463
<b>CROSS-EXAMINATION BY MS ARRABALDE</b>	PN1532
<b>RE-EXAMINATION BY MS DABARERA</b>	PN1537
<b>THE WITNESS WITHDREW</b>	PN1542
<b>JAE DEAN FRASER, AFFIRMED</b>	PN1553
<b>EXAMINATION-IN-CHIEF BY MS WHISH</b>	PN1553
<b>EXHIBIT #18 WITNESS STATEMENT OF JAE DEAN FRASER DATED 15/04/2019</b>	PN1567
<b>CROSS-EXAMINATION BY MS SAUNDERS</b>	PN1571
<b>EXHIBIT #19 SEEK JOB ADVERTISEMENT</b>	PN1648
<b>EXHIBIT #20</b> [REDACTED]	PN1825
<b>CROSS-EXAMINATION BY MR BULL</b>	PN1826
<b>RE-EXAMINATION BY MS WHISH</b>	PN1983
<b>FURTHER CROSS-EXAMINATION BY MS SAUNDERS</b>	PN2020
<b>THE WITNESS WITHDREW</b>	PN2028
<b>KATY LOUISE PATON, AFFIRMED</b>	PN2042
<b>EXAMINATION-IN-CHIEF BY MS WHISH</b>	PN2042
<b>EXHIBIT #21 WITNESS STATEMENT OF KATY PATON DATED 14/03/2019</b>	PN2049
<b>CROSS-EXAMINATION BY MS SAUNDERS</b>	PN2050
<b>EXHIBIT #22</b> [REDACTED]	PN2135

<b>EXHIBIT #23</b> [REDACTED]	PN2157
<b>CROSS-EXAMINATION BY MR BULL</b>	PN2313
<b>EXHIBIT #24</b> [REDACTED]	PN2389
<b>CROSS-EXAMINATION BY MS ARRABALDE</b>	PN2395
<b>THE WITNESS WITHDREW</b>	PN2401
<b>PAMELA AVRIL MACLEAN, AFFIRMED</b>	PN2434
<b>EXAMINATION-IN-CHIEF BY MS WHISH</b>	PN2434
<b>EXHIBIT #25 WITNESS STATEMENT OF PAMELA AVRIL MACLEAN DATED 15/04/2019</b>	PN2444
<b>EXHIBIT #26</b> [REDACTED]	PN2529
<b>CROSS-EXAMINATION BY MR BULL</b>	PN2530
<b>THE WITNESS WITHDREW</b>	PN2625
<b>ANN MARIE CHEMELLO, AFFIRMED</b>	PN2641
<b>EXAMINATION-IN-CHIEF BY MS WHISH</b>	PN2641
<b>EXHIBIT #27 STATEMENT OF ANN MARIE CHEMELLO DATED 01/03/2019</b>	PN2657
<b>CROSS-EXAMINATION BY MS SAUNDERS</b>	PN2657
<b>CROSS-EXAMINATION BY MR BULL</b>	PN2728
<b>CROSS-EXAMINATION BY MS ARRABALDE</b>	PN2842
<b>THE WITNESS WITHDREW</b>	PN2849
<b>KRISTEN CAROL MCPHAIL, AFFIRMED</b>	PN2863
<b>EXAMINATION-IN-CHIEF BY MS WHISH</b>	PN2863
<b>EXHIBIT #28 STATEMENT OF KRISTEN CAROL MCPHAIL DATED 12/04/2019</b>	PN2879
<b>CROSS-EXAMINATION BY MS SAUNDERS</b>	PN2880
<b>EXHIBIT #29</b> [REDACTED]	PN2973
<b>CROSS-EXAMINATION BY MR BULL</b>	PN2988



**EXHIBIT #30** [REDACTED]

[REDACTED]

[REDACTED] ..... PN3134

**THE WITNESS WITHDREW** ..... PN3135