

[2021] FWCFB 2051

The attached document replaces the document previously issued with the above code on 19 April 2021.

- In paragraph [541], footnote 455 should read ‘25 March 1994, Print L2535’
- In paragraph [665], the reference to s 134(1)(g) should read s 134(1)(f)
- Correction to the appearances

Associate to Vice President Hatcher.

Dated 12 May 2021.



DECISION

Fair Work Act 2009

s 302 - Application for an equal remuneration order

s 158 - Application to vary or revoke a modern award

Independent Education Union of Australia

(C2013/6333 and AM2018/9)

VICE PRESIDENT HATCHER

DEPUTY PRESIDENT DEAN

DEPUTY PRESIDENT SAUNDERS

SYDNEY, 19 APRIL 2021

Application for equal remuneration order for early childhood teachers - Application to vary Education Services (Teachers) Award 2020 on work value grounds

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ABBREVIATIONS

ABS - Australian Bureau of Statistics
ACA - Australian Childcare Alliance
ACARA - Australian Curriculum, Assessment and Reporting Authority
ACECQA - Australian Children’s Education and Care Quality Authority
ACT Child Care decision - *ALHMWU re Child Care Industry (Australian Capital Territory) Award 1998 and Children's Services (Victoria) Award 1998 - re Wage rates* [2005] AIRC 28, PR954938, (13 January 2005)
ACTU - Australian Council of Trades Unions
AEU - Australian Education Union
AFEI - Australian Federation of Employers and Industries
AFPC - Australian Fair Pay Commission
AIRC - Australian Industrial Relations Commission
AITSL - Australian Institute for Teaching and School Leadership
APEA Report - Professional Engineers Employment and Remuneration Report 2017
APST - Australian Professional Standards for Teachers
AQF - Australian Qualifications Framework
ATAR – Australian Tertiary Admission Rank
CCER - Catholic Commission for Employment Relations
CELC – Catholic Early Learning Centre
CELCs - Catholic Early Learning Centres
COAG - Council of Australian Governments
CoE Award - *Teachers’ (Victorian Government Schools) Conditions of Employment Award 1995*
CS Award - *Children’s Services Award 2010*
ECT Award - *Victorian Independent Schools - Early Childhood Teachers - Award 2004*
EST Award - *Educational Services (Teachers) Award 2020*
EYLF - Early Years Learning Framework
FW Act - *Fair Work Act 2009 (Cth)*
ICT - Information and communication technology
IEU - Independent Education Union of Australia
Interim IE Award - *Independent Education (Victoria) Interim Award 1994*
Interim GS Award - *Teachers (Victorian Government Schools Interim) Award 1993*
Manufacturing Award - *Manufacturing and Associated Industries and Occupations Award 2010*
MCEECDYA - Ministerial Council for Education, Early Childhood Development and Youth Affairs
Melbourne Declaration - Melbourne Declaration on Educational Goals for Young Australians
Metal Industry Award 1998 - *Metal, Engineering and Associated Industries Award, 1998*
Metal Industry classification structure - the classification structure in what was originally the *Metal Industry Award 1984 - Part I* and subsequently became the *Metal, Engineering and Associated Industries Award, 1998*, and substantially retained in the *Manufacturing and Associated Industries and Occupations Award 2010*
NAPLAN - National Assessment Program – Literacy and Numeracy
National Law - *Education and Care Services National Law Act 2010*
National Regulations - *Education and Care Services National Regulations*
NCAC - National Childcare Accreditation Council
NCCD - National Consistent Collection of Data
NESA - NSW Education Standards Authority

NFTR - National Framework for Teacher Registration
NPAITQ - National Partnership Agreement on Improving Teacher Quality
NQF - National Quality Framework
NQS - National Quality Standard
NSW IRC - Industrial Relations Commission of New South Wales
NSW Teachers Award 2020 - *Crown Employees (Teachers in Schools and Related Employees) Salaries and Conditions Award 2020*
NSW School and TAFE Teachers Award - *Crown Employees (Teachers in Schools and TAFE and Related Employees) Salaries and Conditions Award*
NSW School Teachers decision - *Crown Employees (Teachers in Schools and TAFE and Related Employees) Salaries and Conditions Award* [2004] NSWIRComm 114, 133 IR 254
PAT - Progressive Achievement Testing
PAT-R - Progressive Achievement Test – Reading
PAT-M - Progressive Achievement Test – Mathematics
PE Award - *Professional Employees Award 2010*
Pharmacy Award decision - *4 yearly review of modern awards - Pharmacy Industry Award 2010* [2018] FWCFB 7621, 284 IR 121
PLP - Personalised Learning Plan
proposed ERO - *Early Childhood Teachers in Long Day Care Centres and Preschools Equal Remuneration Order 2019* proposed by the IEU
QCT - Queensland College of Teachers
QIAS - Quality Improvement and Accreditation System
QIP - Quality Improvement Plan
QKFS – Queensland Kindergarten Funding Scheme
QKLG - Queensland Kindergarten Learning Guideline
SACSA Framework - South Australian Curriculum Standards and Accountability Framework
STEM - Science, Technology, Engineering and Mathematics
VECTEA - *Victorian Early Childhood Teachers and Educators Agreement 2016*
VET - Vocational Education and Training
VEYLDF - Victorian Early Years Learning and Development Framework
VIST Award - *Victorian Independent Schools - Teachers - Award 1996*
WWCC – Working With Children Check
2001 decision - *Teachers (Non-Government Pre Schools) (State) Award* [2001] NSWIRComm 335, 120 IR 3
2006 decision – *Re Teachers (Non-Government Early Childhood Service Centres Other Than Pre Schools) (State) Award* [2006] NSWIRComm 4
2009 decision - *Teachers (Non Government Early Childhood Service Centres other than Preschools) (State) Award 2006* [2009] NSWIRComm 198, 191 IR 14
2015 decision - *Re Equal Remuneration Decision 2015* [2015] FWCFB 8200, 256 IR 362
2018 decision – *Application by United Voice and the Australian Education Union* [2018] FWCFB 177, 274 IR 1

A. INTRODUCTION AND BACKGROUND

A.1 *The applications and the proceedings*

[1] This decision concerns two applications made by the Independent Education Union of Australia (IEU). The first application is for an equal remuneration order pursuant to s 302 of the *Fair Work Act 2009* (FW Act), to apply to early childhood teachers employed in long day care centres and preschools who are covered by the *Educational Services (Teachers) Award 2020* (EST Award) (equal remuneration application). The second application is made pursuant to s 158 of the FW Act, and seeks to increase the minimum salaries for all teachers covered by the EST Award on work value grounds (work value application).

[2] The IEU's equal remuneration application was filed on 8 October 2013. In procedural terms, it initially travelled together with an application made by United Voice and the Australian Education Union (AEU) for an equal remuneration order to apply to employees in long day care centres and preschools covered by the EST Award, the *Children's Services Award 2010* (CS Award) and the *Educational Services (Schools) General Staff Award 2010* that had been filed 15 July 2013. Early in the course of the proceedings, it was determined in respect of both applications that the Commission should determine a number of legal and conceptual issues in a preliminary hearing prior to the parties presenting their respective evidentiary cases. These preliminary issues were determined in a Full Bench decision delivered on 30 November 2015¹ (2015 decision).

[3] One of the key matters determined in the 2015 decision, which we discuss in greater detail later in this decision, was that an application for an equal remuneration order must proceed on the basis of a comparison with the work of another employee or group of employees of the opposite gender. On 28 September 2016, United Voice and the AEU amended their application to provide for male comparators, namely employees covered by the C5 and C10 levels in the *Manufacturing and Associated Industries and Occupations Award 2010* (Manufacturing Award). In connection with this amended application, these two unions then sought a preliminary hearing concerning whether their selected male comparators were suitable comparators for the purposes of s 302 of the FW Act. In a decision issued on 6 July 2017² (2017 decision), the Full Bench determined that it was prepared to conduct a preliminary hearing, but it reformulated the question to be determined on the basis that it was confined to a comparison between employees under relevant classifications in the CS Award and employees under the C5 and C10 levels in the Manufacturing Award. The Full Bench also indicated that any such preliminary hearing would have to proceed on the basis that, if the question was determined against the position of the applicant unions, the consequence would necessarily be the dismissal of their application. The unions acceded to this course, and a hearing in relation to the reformulated question occurred on 30 November 2017. In a decision issued on 6 February 2018³ (2018 decision), the Full Bench decided against United Voice and the AEU on the question and dismissed their equal remuneration application.

¹ *Re Equal Remuneration Decision 2015* [2015] FWCFB 8200, 256 IR 362

² [2017] FWCFB 2690, 268 IR 36

³ [2018] FWCFB 177, 274 IR 1

[4] That left the IEU’s equal remuneration application to be determined. Directions were made for the filing of evidence and submissions in relation to this application, and 14 days were listed for the hearing of the application commencing on 26 July 2018.

[5] After the completion of the first and second days’ hearing, the Full Bench (as currently constituted) issued the following statement on 27 July 2018:⁴

“[1] The Full Bench considers, on the basis of the opening submissions received on 26 July 2018 as well as our very preliminary perusal of the evidentiary and other materials filed to date, that there may be an issue as to whether the minimum rates of pay applicable to early childhood teachers in the *Educational Services (Teachers) Award 2010* are properly set having regard to the value of the work performed by such teachers.

[2] This proceeding is being conducted outside the current 4-yearly review of modern awards. We note that the Commission has the power under s 157(2) and (3) of the *Fair Work Act 2009* to make a determination varying the minimum wages in a modern award for work value reasons on its own initiative as well as upon application.

[3] We invite the parties to give consideration to this potential issue in the future conduct of the proceeding.”

[6] On the next hearing day on 30 July 2018, the IEU sought and was granted an adjournment for it to file a further or amended application addressing the potential work value issue identified in the statement.⁵ The IEU then filed its application pursuant to s 158 of the FW Act to vary the rates of pay in the EST Award on work value grounds on 17 August 2018. The hearing dates which had previously been set were vacated, and a new program was established for the filing of evidence and submissions concerning the IEU’s new application. Both the IEU’s applications were then the subject of hearings before us on 11-13 June, 17-20 June, 25-27 June, 1-4 July and 4-5 September 2019. We also conducted inspections at the following early childhood facilities on 1 August 2019:

- KU Phillip Park, 2-10 Yurong Parkway, Sydney, NSW; and
- Bambini of Lilyfield, 284 Balmain Road, Lilyfield NSW.

[7] Before we turn to our direct consideration of the IEU’s equal remuneration application and work value application, it is appropriate that we first set out the non-contentious factual background concerning the characteristics of the teaching sector, the regulatory framework governing the teaching profession, the early childhood education and care sector and the award coverage of the teaching sector. During the course of the hearing, we directed the parties to file an agreed statement of facts, and this was filed on 20 March 2020. We will draw upon this agreed statement of facts in describing the background to this matter immediately below, as well as in our findings of fact later in this decision.

⁴ [2018] FWCFB 4433

⁵ [2018] FWCFB 4467

A.2 *Overview of the teaching profession*

[8] As of August 2019, there were approximately 488,000 teachers employed in Australia, of which about ten percent were employed as early childhood teachers. The number of early childhood teachers grew by 48 percent between 2011 and 2016. The gender profile of the profession as at August 2019 may be broken down as follows:

- 99% of all early childhood teachers were female;
- 86% of all primary school teachers were female; and
- 58% of all secondary school teachers were female.

[9] School teachers were, as at 2018, employed across 9,477 primary and secondary schools in Australia (including schools for students with special needs). These schools may be broken up into the following categories:

- 70% were government schools;
- 18% were Catholic systemic schools; and
- 11% were other independent schools.

[10] In 2018, 3,893,834 students attended primary and secondary schools, in the following proportions:

- 66% attended government schools;
- 20% attended Catholic systemic schools; and
- 14% attended other independent schools.

[11] As at 30 June 2019, there were a total of 10,850 early childhood and care centres approved under the National Quality Framework (NQF) operating in Australia, of which 7,744 were long day care centres and 3,106 were preschools/kindergartens.

[12] The number of children attending approved child care services in Australia was 825,432, broken up into the following age groups:

0 years old	28,657
1 years old	129,548
2 years old	176,039
3 years old	197,119
4 years old	176,293
5 years old	117,776

[13] Customised data provided by the ABS (Australian Bureau of Statistics) sourced from the *Survey of Employee Earnings and Hours, May 2016* shows that:

- Early childhood teachers' average hourly cash earnings were \$38.90 and average weekly cash earnings were \$861.70;
- Primary school teachers' average hourly cash earnings were \$45.90 and average weekly cash earnings were \$1,305.80; and
- Secondary school teachers' average hourly cash earnings were \$48.70 and average weekly cash earnings were \$1,532.40.⁶

A.3 *The regulatory framework for teachers in Australia*

[14] Prior to 2011, teacher registration was primarily regulated at the State and Territory level. Queensland and South Australia introduced mandatory registration schemes for school teachers in the 1970s, and South Australia also introduced registration for early childhood teachers in preschools at the same time. Victoria followed in 2001 with registration of school teachers through the Victorian Institute of Teaching, and New South Wales, Western Australia and the Northern Territory commenced registration of school teachers in 2004. The Australian Capital Territory implemented registration of school teachers in 2011.

[15] A national approach to the regulation of the teaching profession had its origins in December 2007 when the Council of Australian Governments (COAG) agreed to a partnership between the Commonwealth and State and Territory Governments to pursue substantial reform in the areas of education, skills and early childhood development, to deliver significant improvements in human capital outcomes for all Australians. In 2008, the Commonwealth, State and Territory Education Ministers agreed upon the *Melbourne Declaration on Educational Goals for Young Australians* (Melbourne Declaration), which identified two overarching goals for the education system in Australia:

- (1) The promotion of equity and excellence in Australian schooling.
- (2) All young Australians become successful learners, confident and creative individuals, and active and informed citizens.

[16] The Melbourne Declaration stated that the Education Ministers, as signatories, sought “*to achieve the highest possible level of collaboration with the government, Catholic and independent school sectors and across and between all levels of government*”.

[17] In the same year, the COAG entered into the *National Partnership Agreement on Improving Teacher Quality* (NPAITQ). The stated objectives of the NPAITQ included:

⁶ The release of this data by the ABS was subject to caveats that (1) the data is subject to sample variability and volatility; (2) the survey data was not designed for use as a time series; and (3) the release was subject to confidentiality rules. The ACA and the AFE also had concerns about the sample size for early childhood teachers.

- to contribute to achieving the objectives, outcomes and targets for schooling under the COAG participation and productivity agenda, the National Education Agreement, and Melbourne Declaration;
- to drive and reward systemic reforms to improve the quality of teaching and leadership in Australian schools;
- aiming to deliver system-wide reforms targeting critical points in the teacher “*lifecycle*” to attract, train, place, develop and retain quality teachers and leaders in our schools and classrooms; and
- a specific focus on professional development and support for principals.

[18] The NPAITQ stated that it would contribute to “*outputs*” which included:

- (a) New professional standards to underpin national reforms;
- (b) Recognition and reward for quality teaching;
- (c) A framework to guide professional learning for principals, teachers and school leaders;
- (d) National accreditation of pre-service teacher education courses;
- (e) National consistency in teacher registration;
- (f) National consistency in accreditation/certification of Accomplished and Leading Teachers;
- (g) Improved mobility of the Australian teaching workforce;
- (h) Joint engagement with higher education to provide improved pre-service teacher education; new pathways into teaching; and data collection to inform continuing reform action and workforce planning;
- (i) Improved performance management in schools for teachers and school leaders; and
- (j) Enhanced school-based teacher quality reforms.

[19] Also in 2008, the Commonwealth enacted the *Australian Curriculum, Assessment and Reporting Authority Act 2008*, which established the Australian Curriculum, Assessment and Reporting Authority (ACARA). The functions of the ACARA, as provided for in s 6 of the Act, are, relevantly, to:

- (a) develop and administer a national school curriculum, including content of the curriculum and achievement standards, for school subjects specified in the Charter; and
- (b) develop and administer national assessments; and

(c) collect, manage and analyse student assessment data and other data relating to schools and comparative school performance; and

(d) facilitate information sharing arrangements between Australian government bodies in relation to the collection, management and analysis of school data; and

(e) publish information relating to school education, including information relating to comparative school performance; and

(f) provide school curriculum resource services, educational research services and other related services; and

(g) provide information, resources, support and guidance to the teaching profession...

[20] In July 2009, the Ministerial Council for Education, Early Childhood Development and Youth Affairs (MCEECDYA) was established as a merger/re-alignment of pre-existing ministerial councils, with responsibility for overseeing progress towards the goals stated in the Melbourne Declaration. Its areas of responsibility include early childhood development, including early childhood education and care, and primary and secondary education. Pursuant to the NPAITQ and on behalf of the MCEECDYA, the Commonwealth then incorporated the Australian Institute for Teaching and School Leadership (AITSL), which came into being on 1 January 2010. The AITSL describes its “*Strategic Direction*” as follows:

“AITSL’s primary purpose is to provide national leadership for the Commonwealth, state and territory governments in promoting excellence in the profession of teaching and school leadership.

AITSL has a significant role in delivering the reforms agreed to through the Council of Australian Governments (COAG) National Partnership on Improving Teacher Quality, which targets critical points in the teacher lifecycle to attract, train, place, develop and retain quality teachers and leaders in schools and classrooms.

AITSL has responsibility for rigorous national professional standards and fostering and driving high quality professional development for teachers and school leaders by working collaboratively across jurisdictions and engaging with key professional bodies. Basing its work on the national professional standards for teaching, AITSL will guide reform in the areas of teacher registration, accreditation of pre-service teacher education, accreditation of teachers at the graduate, proficient, highly accomplished and lead teacher levels, and will deliver prestigious national awards for teachers and school leaders.”

[21] The AITSL developed the National Framework for Teacher Registration (NFTR), which was agreed to by the MCEECDYA in October 2011. The key elements of the NFTR are, for relevant purposes:

- in every State or Territory, only registered teachers may be employed to teach in schools;
- each State and Territory has established an authority or agency with responsibility for the registration (licensing) of teachers;

- to achieve full registration, evidence of performance is required at the Proficient stage of the *Australian Professional Standards for Teachers* (APST);
- an initial period of provisional registration is allowed during which a new teacher has a form of “licence” that allows them to be employed as a teacher and undertake workplace learning and development that will equip them to meet requirements for becoming fully registered;
- the maximum period for meeting the requirements for full registration is five years, with provision for extension on a case-by-case basis;
- regulatory authorities will specify a minimum time period (of no less than 80 days of teaching and not exceeding the equivalent of one year full-time teaching) in a school setting in which the teacher demonstrates they have met the APST to the satisfaction of the regulator before an applicant may apply for full registration;
- after a fixed period of registration, teachers are required to demonstrate their ongoing proficiency and suitability to teach in order to renew their registration;
- the minimum requirements for the renewal or continuation of a teacher’s registration are that: suitability has been maintained on the basis of a national criminal history records check that is no older than five years; recency of professional practice requirements is established on the basis of 100 days of professional practice in the last five years; proficiency against the APST has been maintained; and professional learning is demonstrated on the basis of at least 100 hours of professional development activities in the last five years as referenced in the APST;
- there will be provision for a recognised authority to impose sanctions or withdraw a teachers’ registration if they fail to meet the required standards of personal and professional behaviour or professional performance;
- there must be a requirement for an applicant for registration to be suitable to both work with children and be a teacher, based upon an assessment of character and criminal history, and regulatory authorities may take into account information from other registration bodies and overseas employers, analysis of previous misconduct based on the level, nature, frequency, recency and seriousness of the offences, and any other information relevant to an assessment of suitability for registration as a teacher such as fitness to teach;
- there will be a minimum qualification, including a professional qualification, for registration, consisting of at least four years of higher education study (full-time or equivalent) study, including an initial teacher education program accredited in Australia, leading to the achievement of a recognised qualification, or an overseas qualification assessed as equivalent;
- registration will require achievement of a level of professional proficiency in spoken and written English, with defined assessment scores used to measure this; and

- a person registered to practise as a teacher in one jurisdiction is entitled to apply for registration in another jurisdiction based on that registration.

[22] The requirements of the NFTR have been implemented in respect of school teachers in all States and Territories (with a three year registration renewal requirement in South Australia, annual registration in Victoria and the ACT, and five-year registration in the other States and Territories). The NFTR did not directly address registration for early childhood teachers. Teacher registration has been extended to early childhood teachers to the following extent:

- in South Australia, all early childhood teachers must be registered regardless of setting;
- in New South Wales, Western Australia and Victoria, all early childhood teachers in NQF approved services must be registered; and
- in Queensland, the ACT, the Northern Territory and Tasmania, early childhood teachers in school-attached services must be registered, with voluntary registration available in out-of-school settings including long day care in Queensland and the Northern Territory.

[23] In all states except Victoria, early childhood teachers are registered in a single register together with school teachers. In Victoria, they are in a separate division of the register.

[24] In its September 2018 publication *One Teaching Profession: Teacher Registration in Australia*, the AITSL recommended that early childhood teachers in all employment settings be required to be registered by teaching regulatory authorities under a consistent national approach. The remaining jurisdictions where this is not the case are moving to implement this recommendation.

[25] In conjunction with the NFTR, the AITSL developed the APST. The APST were endorsed by MCEECDYA in December 2010. The stated purpose of the APST is as follows (footnotes omitted):

“The Standards are a public statement of what constitutes teacher quality. They define the work of teachers and make explicit the elements of high-quality, effective teaching in 21st century schools that will improve educational outcomes for students. The Standards do this by providing a framework which makes clear the knowledge, practice and professional engagement required across teachers’ careers.

They present a common understanding and language for discourse between teachers, teacher educators, teacher organisations, professional associations and the public.

Teacher standards also inform the development of professional learning goals, provide a framework by which teachers can judge the success of their learning and assist self-reflection and self-assessment.

Teachers can use the Standards to recognise their current and developing capabilities, professional aspirations and achievements.

The Standards contribute to the professionalisation of teaching and raise the status of the profession. They could also be used as the basis for a professional accountability model, helping to ensure that teachers can demonstrate appropriate levels of professional knowledge, professional practice and professional engagement.

The Standards are organised into four career stages and guide the preparation, support and development of teachers. The stages reflect the continuum of a teacher’s developing professional expertise from undergraduate preparation through to being an exemplary classroom practitioner and a leader in the profession.”

[26] The APST consist of seven interconnected standards stipulating what teachers should know and should be able to do, which are grouped into three domains of teaching as follows:

Professional Knowledge

Standard 1: Know students and how they learn

Standard 2: Know the content and how to teach it

Professional Practice

Standard 3: Plan for and implement effective teaching and learning

Standard 4: Create and maintain supportive and safe learning environments

Standard 5: Assess, provide feedback and report on student learning

Professional Engagement

Standard 6: Engage in professional learning

Standard 7: Engage professionally with colleagues, parents/carers and the community

[27] The three domains of knowledge are explicated in the APST as follows:

“Professional Knowledge

Teachers draw on a body of professional knowledge and research to respond to the needs of their students within their educational contexts.

Teachers know their students well, including their diverse linguistic, cultural and religious backgrounds. They know how the experiences that students bring to their classroom affect their continued learning. They know how to structure their lessons to meet the physical, social and intellectual development and characteristics of their students.

Teachers know the content of their subjects and curriculum. They know and understand the fundamental concepts, structure and enquiry processes relevant to programs they teach.

Teachers understand what constitutes effective, developmentally appropriate strategies in their learning and teaching programs and use this knowledge to make the content meaningful to students.

Through their teaching practice, teachers develop students' literacy and numeracy within their subject areas. They are also able to use Information and Communication Technology to contextualise and expand their students' modes and breadth of learning.

Professional Practice

Teachers are able to make learning engaging and valued. They are able to create and maintain safe, inclusive and challenging learning environments and implement fair and equitable behaviour management plans. They use sophisticated communication techniques.

Teachers have a repertoire of effective teaching strategies and use them to implement well designed teaching programs and lessons. They regularly evaluate all aspects of their teaching practice to ensure they are meeting the learning needs of their students. They interpret and use student assessment data to diagnose barriers to learning and to challenge students to improve their performance.

They operate effectively at all stages of the teaching and learning cycle, including planning for learning and assessment, developing learning programs, teaching, assessing, providing feedback on student learning and reporting to parents/ carers.

Professional Engagement

Teachers model effective learning. They identify their own learning needs and analyse, evaluate and expand their professional learning both collegially and individually.

Teachers demonstrate respect and professionalism in all their interactions with students, colleagues, parents/carers and the community. They are sensitive to the needs of parents/carers and can communicate effectively with them about their children's learning.

Teachers value opportunities to engage with their school communities within and beyond the classroom to enrich the educational context for students. They understand the links between school, home and community in the social and intellectual development of their students."

[28] The APST provide for four career stages of professional capability which:

"...provide benchmarks to recognise the professional growth of teachers throughout their careers. The descriptors across the four career stages represent increasing levels of knowledge, practice and professional engagement for teachers. Progression through the stages describes a growing understanding, applied with increasing sophistication across a broader and more complex range of situations."

[29] The four professional career stages are defined in the APST as follows:

“Graduate teachers

Graduate teachers have completed a qualification that meets the requirements of a nationally accredited program of initial teacher education. The award of this qualification means that they have met the Graduate Standards.

On successful completion of their initial teacher education, graduate teachers possess the requisite knowledge and skills to plan for and manage learning programs for students. They demonstrate knowledge and understanding of the implications for learning of students’ physical, cultural, social, linguistic and intellectual characteristics.

They understand principles of inclusion and strategies for differentiating teaching to meet the specific learning needs of students across the full range of abilities.

Graduate teachers have an understanding of their subject/s, curriculum content and teaching strategies. They are able to design lessons that meet the requirements of curriculum, assessment and reporting. They demonstrate the capacity to interpret student assessment data to evaluate student learning and modify teaching practice. They know how to select and apply timely and appropriate types of feedback to improve students’ learning.

Graduate teachers demonstrate knowledge of practical strategies to create rapport with students and manage student behaviour. They know how to support students’ wellbeing and safety, working within school and system curriculum and legislative requirements.

They understand the importance of working ethically, collaborating with colleagues, external professional and community representatives, and contributing to the life of the school. Graduate teachers understand strategies for working effectively, sensitively and confidentially with parents/carers and recognise their role in their children’s education.

Proficient teachers

Proficient teachers meet the requirements for full registration through demonstrating achievement of the seven Standards at this level.

These teachers create effective teaching and learning experiences for their students. They know the unique backgrounds of their students and adjust their teaching to meet their individual needs and diverse cultural, social and linguistic characteristics.

They develop safe, positive and productive learning environments where all students are encouraged to participate.

They design and implement engaging teaching programs that meet curriculum, assessment and reporting requirements. They use feedback and assessment to analyse and support their students’ knowledge and understanding. Proficient teachers use a range of sources, including student results, to evaluate their teaching and to adjust their programs to better meet student needs.

Proficient teachers are active participants in their profession and with advice from colleagues, identify, plan and evaluate their own professional learning needs.

Proficient teachers are team members. They work collaboratively with colleagues; they seek out and are responsive to advice about educational issues affecting their teaching practice. They communicate effectively with their students, colleagues, parents/carers and community members. They behave professionally and ethically in all forums.

Highly Accomplished teachers

Highly Accomplished teachers are recognised as highly effective, skilled classroom practitioners and routinely work independently and collaboratively to improve their own practice and the practice of colleagues. They are knowledgeable and active members of the school.

Highly Accomplished teachers contribute to their colleagues' learning. They may also take on roles that guide, advise or lead others. They regularly initiate and engage in discussions about effective teaching to improve the educational outcomes for their students.

They maximise learning opportunities for their students by understanding their backgrounds and individual characteristics and the impact of those factors on their learning. They provide colleagues, including pre-service teachers, with support and strategies to create positive and productive learning environments.

Highly Accomplished teachers have in-depth knowledge of subjects and curriculum content within their sphere of responsibility. They model sound teaching practices in their teaching areas. They work with colleagues to plan, evaluate and modify teaching programs to improve student learning.

They keep abreast of the latest developments in their specialist content area or across a range of content areas for generalist teachers.

Highly Accomplished teachers are skilled in analysing student assessment data and use it to improve teaching and learning.

They are active in establishing an environment which maximises professional learning and practice opportunities for colleagues. They monitor their own professional learning needs and align them to the learning needs of students.

They behave ethically at all times. Their interpersonal and presentation skills are highly developed. They communicate effectively and respectfully with students, colleagues, parents/ carers and community members.

Lead teachers

Lead teachers are recognised and respected by colleagues, parents/carers and the community as exemplary teachers. They have demonstrated consistent and innovative teaching practice over time. Inside and outside the school they initiate and lead activities that focus on improving educational opportunities for all students. They establish inclusive learning environments that meet the needs of students from different linguistic,

cultural, religious and socioeconomic backgrounds. They seek to improve their own practice and to share their experience with colleagues.

They are skilled in mentoring teachers and pre-service teachers, using activities that develop knowledge, practice and professional engagement in others. They promote creative, innovative thinking among colleagues. They apply skills and in-depth knowledge and understanding to deliver effective lessons and learning opportunities and share this information with colleagues and pre-service teachers. They describe the relationship between highly effective teaching and learning in ways that inspire colleagues to improve their own professional practice.

They lead processes to improve student performance by evaluating and revising programs, analysing student assessment data and taking account of feedback from parents/carers. This is combined with a synthesis of current research on effective teaching and learning.

They represent the school and the teaching profession in the community. They are professional, ethical and respected individuals inside and outside the school.”

[30] The APST were written for school teachers and do not directly address the position of early childhood teachers. In Victoria and Western Australia, amended versions of the APST have been developed to be inclusive of early childhood teaching practices and settings, and in New South Wales an evidence guide has been produced to support early childhood teachers to confidently interpret the Proficient Teacher standards and apply them to their context. In *One Teaching Profession: Teacher Registration in Australia*, the AITSL recommended that the APST be amended to ensure their relevance and applicability to early childhood teachers.

A.4 National regulation of the early childhood and care sector

[31] Regulation of the early education and care sector was previously divided between pre-schools and childcare (principally, in respect of children aged 0-5, long day care). Pre-schools were previously the regulatory and funding domain of State and Territory Governments. The Commonwealth became responsible for the quality accreditation of child care as a function of its provision of the Child Care Benefit. Such quality accreditation was carried out by the National Childcare Accreditation Council (NCAC). The NCAC administered, in respect of participating long day care centres, the Quality Improvement and Accreditation System (QIAS). The QIAS was introduced in 1994. The QIAS outlined 33 principles of quality care incorporated in seven quality areas, namely: Staff relationships with children and peers; Partnerships with families; Programming and evaluation; Children’s experiences and learning; Protective care and safety; Health, nutrition and wellbeing; and Managing to support quality. In addition, State and Territory Governments generally had in place licensing schemes for child care services.

[32] In March 2008, the COAG issued a communique in which it endorsed a comprehensive set of aspirations, outcomes, progress measures and future policy directions in the area of early childhood. The agreed aspiration was that children are born healthy and have access, throughout early childhood, to the support, care and education that will equip them for life and learning, delivered in a way that actively engages parents and meets their workforce participation needs. In the 2008-9 Budget, the Commonwealth Government set out a comprehensive plan to make

the early childhood years a national priority and, to this end, to reform early childhood education and care. Relevant elements of this plan were:

- to improve access to quality early childhood education and care through universal access to preschool for all children in the year before formal schooling, for 15 hours per week, 40 weeks per year, delivered by a university-qualified early childhood teacher;
- to improve the quality of early childhood education through strong national quality standards, a quality rating system, support for education and training of the early childhood workforce, and the development of an Early Years Learning Framework.

[33] In August 2008, the Early Childhood Development Sub-group of the COAG Productivity Agenda Working Group published a discussion paper, *A national quality framework for early child education and care*. This paper summarised the then Government's agenda for early childhood education and explained the Commonwealth's role as follows (footnotes omitted):

“Improving health and development outcomes for young children is the combined responsibility of parents, carers, and government on behalf of the community. While parents have primary responsibility for raising children, carers also play a significant role. The role of government in formal early childhood education and care is to provide a comprehensive service system, regardless of setting, that responds effectively to the health and developmental needs of children in the years before formal schooling. The way parents, carers and government carry out this responsibility has an impact on children's early learning and development, as well as later success in school and the workforce.

The early childhood education and care service system in Australia encompasses two sectors - child care and preschool - that have largely been planned, funded and delivered separately. Research literature and practice in other countries demonstrate that the delineation between child care and preschool rests in part on a false distinction between 'education' and 'care'. Children are ready and willing to learn wherever they are, and start learning from birth.

The boundaries between child care and preschool are blurring. In some jurisdictions, long day care can include a preschool program. With evidence mounting about the value of early childhood education, traditional child care settings need to refocus on learning and development. In addition, integrated models of care, such as wraparound care and co-located services, are emerging to meet the needs of families. As the two sectors come together to service changing community need, families need to be able to expect a consistently high level of quality across all formal early childhood education and care settings.”

[34] The discussion paper stated that the current regulatory arrangements were fragmented and complex because of the shared responsibility for the regulation of the early childhood and care sector between the Commonwealth and State and Territory Governments, the different regulatory arrangements for different services within the sector, overlap between State licensing schemes and Commonwealth accreditation, and gaps and inconsistencies in the regulatory schemes in the different jurisdictions. The paper stated that the COAG reform agenda could be

achieved by the development and implementation of a National Quality Framework which would:

- enhance learning and development outcomes for children in different care settings, with an initial focus on early learning in the years prior to formal schooling; and
- build a high-quality, integrated national quality system, including accreditation, for early learning and care that took account of setting, diversity of service delivery and the age and stage of development of children.

[35] The overall policy rationale for this was described in the following way (footnotes omitted):

“...early childhood education and care improves outcomes for children, particularly disadvantaged children, as well as benefiting society more broadly. However, the evidence also shows that the quality of these early childhood education and care experiences is of key importance. Research shows that a quality early childhood environment provides for the basic needs of children, including health and safety, positive relationships and opportunities for stimulation and learning from experience. Research also shows that prime structural indicators of the quality of formal care, sometimes referred to as the ‘iron triangle’, are staff qualifications, child-to-staff ratios and group size. As noted earlier, the OECD highlights these factors, as well as educational concept and practice, interaction and process quality, child outcome quality or performance standards, and standards pertaining to parent/community outreach and involvement.”

[36] The paper identified that there were significant demand, supply and retention issues for early childhood education and care professions, and pointed to the following causal factors in this respect:

- demand for early childhood teachers was strong in most jurisdictions and would only get stronger with the implementation of arrangements to support universal access to early childhood education programs;
- the level of remuneration;
- child care workers had been in short supply across the nation for many years;
- job turnover was high, with over one in five child care workers leaving the occupation every year;
- although there had been growth in enrolments in Certificate III child care courses, enrolments in Diploma child care courses have fallen since 2002; and
- the early childhood education and care workforce comprised both qualified and unqualified staff, with staff shortages more significant among qualified staff.

[37] The discussion paper proposed that, in addition to the NQF, a National Early Years Learning Framework would be established. The purpose of this was described as follows (footnotes omitted):

“A National Early Years Learning Framework is an early childhood curriculum framework which will guide early childhood educators in developing quality early childhood programs in a range of early childhood education and care settings. It will enhance children’s learning from birth to five years of age, including in early childhood education programs in the year before formal schooling, as well as their transition to school.

The framework will improve the integration of [early childhood education and care] services through a consistent focus on individual and group learning and development for children in all [early childhood education and care] settings. It will also enhance the professional profile and approach of the early years workforce through a common understanding of child development and learning, and consistent practice and language. It will outline the desired outcomes for children in [early childhood education and care] settings across the birth to five age range, including the year before formal schooling, and enhance their transitions to school.

It will inform parents, families and all Australians about young children’s learning. [Early childhood education and care] services will draw on the framework and associated resources to assist in planning and describing children’s learning to parents, families, communities and government.

The framework will underpin the National Quality Standards and the COAG commitment to universal access to quality early learning in the year before formal schooling.”

[38] The role of university-qualified early childhood teachers in early childhood education was identified as being of key importance:

“The role of early childhood educators is also a critical element of quality. Because they are skilled in early childhood learning and development, early childhood teachers are able to continually monitor the progress of each child and provide learning and development experiences that maximise their potential. They have an important role in providing feedback to parents about their child, and in helping the child make the transition to formal schooling through the provision of information to parents.”

[39] Finally, the discussion paper identified the underlying public policy rationale for investment in early childhood education as follows (footnotes omitted):

“There is increasing recognition of the social and economic benefits of investing in early childhood. The rates of return are much higher from early investments than those made later in life. It has been argued that a nationwide commitment to high-quality early childhood development would have a substantial long-term payoff. The early years of children’s learning and development needs to be seen as important in their own right as well as being a foundation for life outcomes. During the early years children inquire, explore and discover much about the world around them, establishing attitudes to learning that remain with them throughout their lives.

Cost-benefit studies show that prevention and early intervention strategies are more effective than treatment programs with clear, flow-on benefits for individuals, families

and the broader community. On the basis of an extensive analysis of the evidence, research concludes that investing in quality early childhood programs, particularly for disadvantaged children, has a high economic return.”

[40] The Early Years Learning Framework (EYLF) was delivered in 2009. This is discussed further in the next section of the introduction to this decision.

[41] The NQF was introduced in 2012 as the first national regulatory system to apply to all early childhood education and care services, including preschools and kindergartens. It was implemented by way of a model law, the *Education and Care Services National Law Act 2010* (National Law), which was enacted by State and Territory legislatures, and by the *Education and Care Services National Regulations* (National Regulations) which were made pursuant to State and Territory enactments (with some modification in Victoria). Its key features are to:

- provide for a regulatory authority in each state and territory which is responsible for the approval, monitoring and quality assessment of services in each state and territory;
- provide for a national body, the Australian Children’s Education and Care Quality Authority (ACECQA), which replaced the NCAC and guides the implementation of the NQF and works with regulatory authorities;
- require services to comply with the National Quality Standard (NQS);
- establish an assessment and quality rating process linked to accreditation;
- mandate staff to children ratios, that is, the minimum number of staff that must be directly working with children based on how many children are present at any given time;
- prescribe minimum qualification requirements for staff counted towards the above ratios, with a general proposition that 50% are required to have or be actively working towards at least a diploma and the remainder are required to have or be actively working towards at least a Certificate III;
- mandate teacher to children ratios, that is, the minimum numbers of qualified early childhood teachers that must be accessible to or in attendance at services based on how many children are present at any given time; and
- mandate that all services have a Quality Improvement Plan (QIP) in place.

[42] As earlier discussed, the NQF established by the National Law and the National Regulations does not require early childhood teachers to be registered; however as mentioned above, registration is a requirement under some state and territory legislation. To work as an early childhood teacher, a person must hold or be “*actively working towards*” an approved early childhood teaching qualification, a formerly approved qualification that was commenced prior to the introduction of the NQF or an equivalent qualification as determined by ACECQA. The early childhood qualifications approved by ACECQA are four-year bachelor degrees or post-graduate qualifications.

[43] The NQS, which was established by the National Regulations and replaced the QIAS, acts as a benchmark for early childhood education and care services. There are seven broad standards relating to the following “*quality areas*”:

- (1) *Educational program and practice*: The educational program and practice of educators is stimulating, enhances and extends children’s learning and development. In services for children over preschool age the program nurtures the development of life skills and complements children’s experiences, opportunities and relationships at school, at home and in the community.
- (2) *Children’s health and safety*: Every child’s health and wellbeing is safeguarded and promoted.
- (3) *Physical environment*: The physical environment is safe, suitable and provides a rich and diverse range of experiences which promote children’s learning and development.
- (4) *Staffing arrangements*: Staffing arrangements create a safe and predictable environment for children and support warm, respectful relationships. Qualified and experienced educators and co-ordinators encourage children’s active engagement in the learning program. Positive relationships among educators, co-ordinators and staff members contribute to an environment where children feel emotionally safe, secure and happy.
- (5) *Relationships with children*: Relationships that are responsive, respectful and promote children’s sense of security and belonging free them to explore the environment and engage in play and learning.
- (6) *Collaborative partnerships with families and communities*: Collaborative relationships with families are fundamental to achieve quality outcomes for children. Community partnerships that focus on active communication, consultation and collaboration also contribute to children’s learning and wellbeing.
- (7) *Governance and leadership*: Effective leadership contributes to sustained quality relationships and environments that facilitate children’s learning and development. Well documented policies and practices that are developed and regularly evaluated in partnership with educators, co-ordinators, staff members and families contribute to the ethical management of the service. There is a focus on continuous improvement.

[44] Within each quality area, there are more specific standards and elements of those standards. In respect of the first quality area, *Educational program and practice*, these are:

“Standard 1.1--Program

The educational program enhances each child’s learning and development.

Element 1.1.1 - Approved learning framework

Curriculum decision-making contributes to each child's learning and development outcomes in relation to that child's identity, connection with community, wellbeing, confidence as learners and effectiveness as communicators.

Element 1.1.2 - Child-centred

Each child's current knowledge, strengths, ideas, culture, abilities and interests are the foundation of the program.

Element 1.1.3 - Program learning opportunities

All aspects of the program, including routines, are organised in ways that maximise opportunities for each child's learning.

Standard 1.2--Practice

Educators facilitate and extend each child's learning and development.

Element 1.2.1 - Intentional teaching

Educators are deliberate, purposeful, and thoughtful in their decisions and actions.

Element 1.2.2 - Responsive teaching and scaffolding

Educators respond to children's ideas and play and extend children's learning through open-ended questions, interactions and feedback.

Element 1.2.3 - Child-directed learning

Each child's agency is promoted, enabling them to make choices and decisions and influence events and their world.

Standard 1.3--Assessment and planning

Educators and co-ordinators take a planned and reflective approach to implementing the program for each child.

Element 1.3.1 - Assessment and planning cycle

Each child's learning and development is assessed or evaluated as part of an ongoing cycle of observation, analysing, learning, documentation, planning, implementation and reflection.

Element 1.3.2 - Critical reflection

Critical reflection on children's learning and development, both as individuals and in groups, drives program planning and implementation.

Element 1.3.3 - Information for families

Families are informed about the program and their child's progress."

[45] The ACECQA has published a detailed guide to the NQS which explains the purpose of each standard and element and how they are to be assessed, and sets out questions for critical reflection in respect of each standard.

[46] Services are assessed and rated against the NQS by the relevant state or territory regulatory authority. There are four assessment grades:

- Exceeding NQS
- Meeting NQS
- Working towards NQS
- Significant Improvement Required.

[47] In addition, a ranking of “*Excellent*” may be awarded by the ACECQA on application by a service which has already been rated as “*Exceeding*” in all seven quality areas. The ratings are publicly available.

[48] Since 2014, the National Law and National Regulations have mandated teacher/children ratios in early childhood centres. Initially, the following ratios were mandated:

- services providing care to less than 25 children on any given day – an early childhood teacher must be in attendance for at least 20% of operating hours; and
- services providing care to 25 or more children on any given day – an early childhood teacher must be in attendance for six hours on that day (where a service operates for 50 or more hours per week), or 60 percent of operating hours (where a service operates for less than 50 hours).

[49] In 2020, additional teacher/children ratios were mandated in early childhood centres:

- services providing care to between 60 and 80 children on any given day – a second early childhood teacher must be in attendance for at least three hours on that day (where a service operates for 50 or more hours per week), or 30% of operating hours (where a service operates for less than 50 hours); and
- services providing care to more than 80 children on any given day - a second early childhood teacher must be in attendance for at least six hours on that day (where a service operates for 50 or more hours per week), or 60% of operating hours (where a service operates for less than 50 hours).

[50] Several jurisdictions mandate standards higher than those in the National Law and National Regulations and the NQF with respect to early childhood teacher qualification ratios. For example, in New South Wales a second teacher must be present where a service cares for more than 40 children, with an additional teacher for every 20 children thereafter up to a maximum of four teachers. The National Regulations also specify educator to child ratios as follows:

- (a) for children from birth to 24 months of age - 1 educator to 4 children;
- (b) for children over 24 months and less than 36 months of age - 1 educator to 5 children;
- (c) for children aged 36 months of age or over (not including children over preschool age) - 1 educator to 11 children;

- (d) for children over preschool age - 1 educator to 15 children.

[51] For the purpose of the above ratios, the National Regulations provide that at least 50 percent of the educators must have or be actively working towards an approved diploma level education and care qualification, and all other educators must have or be actively working towards at least an approved certificate III level education and care qualification.

[52] The National Regulations require that the “*approved provider*” of an early childhood education and care service must designate in writing a “*suitably qualified and experienced educator, co-ordinator or other individual*” to be the “*educational leader*” of the service who has the responsibility to “*lead the development and implementation of educational programs in the service*”. The National Law provides that the “*approved provider*” must be the operator of the service and have responsibility for the management of the staff. Services must also have at least one “*nominated supervisor*” for the service who has the responsibility to ensure that all children being educated and cared for by the service are adequately supervised at all times that the children are in the care of that service. They must also nominate staff members to be a “*person in day-to-day charge*” of the service. A Nominated Supervisor and a person in day-to-day charge must, among other things, have completed child protection training. The Approved Provider, a Nominated Supervisor or a person in day-to-day charge must be present at all times that the service is in operation.

A.5 Development of national curricula

[53] Prior to 2009, school curricula and, to the extent they existed at all, curricula for early childhood education, were a matter for State and Territory governments. As earlier mentioned, following the publication in August 2008 of *A national quality framework for early child education and care*, the EYLF foreshadowed in that discussion paper was delivered the following year.

[54] The EYLF describes its core function in the following way:

“The Framework forms the foundation for ensuring that children in all early childhood education and care settings experience quality teaching and learning. It has a specific emphasis on play-based learning and recognises the importance of communication and language (including early literacy and numeracy) and social and emotional development. The Framework has been designed for use by early childhood educators working in partnership with families, children’s first and most influential educators.”

[55] The introduction to the EYLF states that its main elements and objects are as follows:

“The Framework conveys the highest expectations for all children’s learning from birth to five years and through the transitions to school. It communicates these expectations through the following five Learning Outcomes:

- Children have a strong sense of identity
- Children are connected with and contribute to their world
- Children have a strong sense of wellbeing

- Children are confident and involved learners
- Children are effective communicators.

The Framework provides broad direction for early childhood educators in early childhood settings to facilitate children’s learning.

It guides educators in their curriculum decision-making and assists in planning, implementing and evaluating quality in early childhood settings. It also underpins the implementation of more specific curriculum relevant to each local community and early childhood setting.

The Framework is designed to inspire conversations, improve communication and provide a common language about young children’s learning among children themselves, their families, the broader community, early childhood educators and other professionals.”

[56] The elements of the EYLF are further described as follows:

“The Framework puts children’s learning at the core and comprises three inter-related elements: Principles, Practice and Learning Outcomes... All three elements are fundamental to early childhood pedagogy and curriculum decision-making.

Curriculum encompasses all the interactions, experiences, routines and events, planned and unplanned, that occur in an environment designed to foster children’s learning and development. The emphasis in the Framework is on the planned or intentional aspects of the curriculum.

Children are receptive to a wide range of experiences. What is included or excluded from the curriculum affects how children learn, develop and understand the world.

The Framework supports a model of curriculum decision-making as an ongoing cycle. This involves educators drawing on their professional knowledge, including their in-depth knowledge of each child.

Working in partnership with families, educators use the Learning Outcomes to guide their planning for children’s learning. In order to engage children actively in learning, educators identify children’s strengths and interests, choose appropriate teaching strategies and design the learning environment.

Educators carefully assess learning to inform further planning.”

[57] The EYLF emphasises the importance of the role of professional expertise, judgment and pedagogy in the delivery of children’s education. In this respect it relevantly states:

“Educators’ professional judgements are central to their active role in facilitating children’s learning. In making professional judgements, they weave together their:

- professional knowledge and skills
- knowledge of children, families and communities

- awareness of how their beliefs and values impact on children’s learning
- personal styles and past experiences.

They also draw on their creativity, intuition and imagination to help them improvise and adjust their practice to suit the time, place and context of learning.

Different theories about early childhood inform approaches to children’s learning and development. Early childhood educators draw upon a range of perspectives in their work which may include:

- developmental theories that focus on describing and understanding the processes of change in children’s learning and development over time
- socio-cultural theories that emphasise the central role that families and cultural groups play in children’s learning and the importance of respectful relationships and provide insight into social and cultural contexts of learning and development
- socio-behaviourist theories that focus on the role of experiences in shaping children’s behaviour
- critical theories that invite early childhood educators to challenge assumptions about curriculum, and consider how their decisions may affect children differently
- post-structuralist theories that offer insights into issues of power, equity and social justice in early childhood settings.”

[58] The EYLF states that five principles underpin practice that is focused on assisting all children to make progress in relation to the learning outcomes:

- (1) Secure, respectful and reciprocal relationships with children.
- (2) Partnerships with families and support professionals.
- (3) High expectations and a commitment to equity.
- (4) Respect for diversity.
- (5) Ongoing learning and reflective practice in order to build professional knowledge and develop learning communities.

[59] In terms of practice, the EYLF states:

“The principles of early childhood pedagogy underpin practice. Educators draw on a rich repertoire of pedagogical practices to promote children’s learning by:

- adopting holistic approaches
- being responsive to children
- planning and implementing learning through play
- intentional teaching

- creating physical and social learning environments that have a positive impact on children’s learning
- valuing the cultural and social contexts of children and their families
- providing for continuity in experiences and enabling children to have successful transition
- assessing and monitoring children’s learning to inform provision and to support children in achieving learning outcomes.”

[60] The practice of “*Intentional teaching*” is explained in the following way:

“Intentional teaching is deliberate, purposeful and thoughtful.

Educators who engage in intentional teaching recognise that learning occurs in social contexts and that interactions and conversations are vitally important for learning. They actively promote children’s learning through worthwhile and challenging experiences and interactions that foster high-level thinking skills. They use strategies such as modelling and demonstrating, open questioning, speculating, explaining, engaging in shared thinking and problem solving to extend children’s thinking and learning. Educators move flexibly in and out of different roles and draw on different strategies as the context changes. They plan opportunities for intentional teaching and knowledge-building. They document and monitor children’s learning.”

[61] The practice of “*assessment*” is also explained in detail in the EYLF:

“*Assessment* for children’s learning refers to the process of gathering and analysing information as evidence about what children know, can do and understand. It is part of an ongoing cycle that includes planning, documenting and evaluating children’s learning.

....

Educators use a variety of strategies to collect, document, organise, synthesise and interpret the information that they gather to assess children’s learning. They search for appropriate ways to collect rich and meaningful information that depicts children’s learning in context, describes their progress and identifies their strengths, skills and understandings. More recent approaches to assessment also examine the learning strategies that children use and reflect ways in which learning is co-constructed through interactions between the educator and each child. Used effectively, these approaches to assessment become powerful ways to make the process of learning visible to children and their families, educators and other professionals.”

[62] In relation to each of the five outcomes earlier identified, the EYLF further explicates the outcome and its elements and sets out when children evidence the outcome and the means by which educators may promote it.

[63] Since 2012, early childhood education and care services have been required under the National Law and the National Regulations to provide an educational program based on an approved learning framework. The only frameworks for early childhood education approved by ACECQA are the EYLF and, for Victoria, the *Victorian Early Years Learning and Development Framework* (VEYLDF). The VEYLDF is substantially based on the EYLF.

[64] In primary and secondary schools, the Australian Curriculum was implemented in 2011 and was the first national school curriculum in Australian history. The Australian Curriculum is aligned with the EYLF and builds on EYLF learning outcomes. The Australian Curriculum’s content specifies the knowledge, understanding and skills that young people are expected to learn across the years of schooling Foundation/Kindergarten to Year 10 and what teachers are to teach, and the achievement standards describe what students are typically able to understand and able to do. The Australian Curriculum is designed to ensure students develop the knowledge and understanding on which the major disciplines are based and emphasises seven general capabilities, being literacy, numeracy, information communication technology competence, critical and creative thinking, ethical behaviour, personal and social competence and intercultural understanding.

A.6 *Educational Services (Teachers) Award*

[65] Clause 4.1 of the EST Award provides that it covers employers throughout Australia in the “*school education industry*” and the “*children’s services and early childhood education industry*” and their employees, to the exclusion of any other modern award. The industries referred to are defined in clause 4.2 as follows:

4.2 For the purposes of this award:

- (a) **school education industry** means the provision of education, including preschool or early childhood education, in a school registered and/or accredited under the relevant authority in each State or Territory or in an early childhood service operated by a school and includes all operations of the school. Where the provision of school education is directed, managed and/or controlled by a central or regional administration of a system of schools it may also include the persons involved in providing such services to schools; and
- (b) **children’s services and early childhood education industry** means the industry of long day care, occasional care (including those occasional care services not licensed), nurseries, childcare centres, day care facilities, family based childcare, out-of-school hours care, vacation care, adjunct care, in-home care, kindergartens and preschools, mobile centres and early childhood intervention programs.

[66] The coverage of the EST Award is subject to certain exclusions specified in clause 4.4, which relevantly include: teacher/integration aids; helpers; classroom assistants; director/supervisors in or in connection with childcare, preschool, long day care centres, childminding centres or outside of school hours care services (other than university qualified early childhood teachers);⁷ and principals and deputy principals.⁸

[67] Clause 14 of the EST Award deals with the classification structure in the award. There are 12 classification levels. There are no classification definitions as such since the classifications are based on annual progression. Clause 14.2(a) provides that “*On appointment, an employee will be classified and placed on the appropriate level on the wage scale in*

⁷ Clause 4.4(c)

⁸ Clause 4.4(d)

clause [17—Minimum rates](#), according to their qualifications and teaching experience”. In this respect, clause 14.4 provides:

14.4 Progression

- (a) An employee who is 3 year trained will commence on Level 1 of the wage scale in clause [17—Minimum rates](#) and progress according to normal years of service to Level 12 of the scale.
- (b) An employee who is 4 year trained will commence on Level 3 of the wage scale in clause [17—Minimum rates](#) and progress according to normal years of service to Level 12.
- (c) An employee who is 5 year trained will commence on Level 4 of the wage scale in clause [17—Minimum rates](#) and progress according to normal years of service to Level 12 of the scale.
- (d) All other teachers and 2 year trained teachers as defined in clause [2—Definitions](#) will commence on Level 1 of the wage scale in clause [17—Minimum rates](#) and progress according to normal years of service to a maximum of Level 5.

[68] As will be discussed later in this decision, all currently graduating teachers are 4 year trained, which means that the minimum starting salary for a newly-qualified teacher is, pursuant to clause 14.4(b), the Level 3 salary.

[69] Clause 15 provides for the hours of work for employees covered by the EST Award except for teachers (including teachers appointed as director) employed in an early childhood service which operates for 48 or more weeks per year who are covered by Schedule A of the award.⁹ Clause 15.1 states that the clause “*provides for industry specific detail and supplements the NES that deals with maximum weekly hours*”. The clause relevantly provides as follows:

- clause 15.3 provides that the ordinary hours of an employee may be averaged over 12 months;
- clause 15.4 provides that an employee’s ordinary hours during term weeks are variable and, in return, the employee is not generally required to attend for periods of time when students are not present subject to the needs of the employer with respect to professional development, student-free days and other activities requiring the employee’s attendance;
- clauses 15.5 and 15.6 provide that the maximum number of days an employee will be required to attend during term weeks and non-term weeks is 205 in each school year (i.e. 41 weeks), subject to specified circumstances which are not included in calculating the 205 days; and
- clause 15.9 provides that the annual salary and any applicable allowances payable under the EST Award are paid in full satisfaction of an employee’s entitlements for

⁹ Clause 15.2

the school year or a proportion of the school year, and that the employee's absence from school during non-term weeks is deemed to include their entitlement to annual leave.

[70] In summary, teachers to whom clause 15 applies are required to work no more than 41 weeks per year (subject to some exceptions), are paid a salary which is intended to compensate for all hours worked, and may not take annual leave during school term weeks.

[71] Clause 17.1 provides for the minimum rates of pay under the EST Award, which are expressed as a "*Minimum annual rate*" for a full-time employee. The current pay scale is as follows:

Classification	Minimum annual rate (full-time employee)
	\$
Level 1	52,420
Level 2	53,500
Level 3	54,956
Level 4	56,938
Level 5	58,922
Level 6	60,769
Level 7	62,615
Level 8	64,597
Level 9	66,582
Level 10	68,565
Level 11	70,550
Level 12	72,531

[72] Clause 17.2 provides for an additional payment of 4% on the minimum annual rates in clause 17.1 for full-time employees who work in an early childhood service which usually provides services over a period of at least 8 hours each day for 48 weeks or more. Clause 17.2 is principally applicable to teachers employed in long day care centres, with clause 17.1 mainly applying to teachers in schools and preschools. The effective minimum annual salaries for employees covered by clause 17.2 are:

Classification	Minimum annual rate (full-time employee)
	\$
Level 1	54,517
Level 2	55,640
Level 3	57,154
Level 4	59,216
Level 5	61,279
Level 6	63,200
Level 7	65,120
Level 8	67,181
Level 9	69,245
Level 10	71,308
Level 11	73,372

Level 12	75,432
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[73] Clause 17.3 provides that weekly rates for employees covered by the EST Award can be calculated by dividing the annual rate by 52.18.

[74] Clause 19 provides for various allowances. Clause 19.2 provides that full-time teachers who are appointed as a director of an early childhood service are entitled to an allowance calculated on the basis of the number of places at the centre for which they are responsible as follows:

Level	Number of places	\$ per annum
1	Up to 39 places	6028.30
2	40–59 places	7469.85
3	60 or more places	9068.66

[75] Clause 19.3 provides for a “*leadership allowance*” applicable to a teacher in schools in relation to whom the employer requires “*the performance of administrative, pastoral care and/or educational leadership duties additional to those usually required of teachers by the employer*”,¹⁰ with the allowance being “*linked to a position of leadership rather than tied to an individual employee*”.¹¹ Clause 19.3(c) divides the leadership allowances into three categories: Category A covers schools with more than 600 students, Category B schools with between 300-600 students, and Category C schools with between 100-299 students. Clause 19.3(f) provides that a school with less than 100 students will “*determine positions of responsibility and allowances which are appropriate to its structure*”. The leadership allowance also has three levels: level 1 applies to positions of leadership “*such as responsibility for the management of a major department or a pastoral care or educational leadership position of equivalent status*”, and Levels 2 and 3 apply to positions of leadership “*such as small learning area department heads, additional responsibilities such as co-ordination of a school publication, sports co-ordinator or similar responsibilities*”. The quanta of the allowances are:

Level	\$ per annum		
	A	B	C
1	4193.60	3669.40	3302.46
2	2883.10	2489.95	2096.80
3	1441.55	1231.87	838.72

[76] Schedule A of the EST Award applies to teachers employed in early childhood services operating for at least 48 weeks per year. It relevantly provides that:

- a full-time employee’s ordinary hours of work will be 38 hours per week, which may be averaged over a period of 4 weeks;¹²
- a casual employee’s maximum ordinary hours will be 38 hours per week;¹³

¹⁰ Clause 19.3(a)(ii)

¹¹ Clause 19.3(a)(iii)

¹² Clause A.1.1

¹³ Clause A.1.2

- the ordinary hours of work will be worked between 6.00am and 6.30pm on any five days Monday to Friday, and will not exceed 8 hours on any day;¹⁴
- the employer and employee may agree to a rostered day off system operating on the basis that 19 days will be worked in each 4 week period;¹⁵
- an employee responsible for programming and planning for a group of children will be entitled to at least 2 hours' non-contact time per week for the purpose of planning, preparing, evaluating and programming activities, during which the employee must not be required to supervise children or perform other duties directed by the employer;¹⁶
- an employee will be paid overtime for all authorised work performed outside or in excess of the ordinary or rostered hours at the rate of 150% of the minimum hourly rate for the first 3 hours and 200% thereafter;¹⁷
- however part-time employees who agree to work hours in excess of their ordinary hours will be paid at the ordinary rate for up to 8 hours in a day during the ordinary hours of operation of the early childhood service;¹⁸
- the standard time off in lieu of overtime provisions apply;¹⁹ and
- a system of shiftwork, with shiftwork loadings, is provided for.²⁰

¹⁴ Clause A.1.3

¹⁵ Clause A.2

¹⁶ Clause A.3.2

¹⁷ Clause A.4.1(a)

¹⁸ Clause A.4.1(b)

¹⁹ Clause A.4.2

²⁰ Clause A.5

B. THE IEU’S EQUAL REMUNERATION APPLICATION

B.1 *The application*

[77] The IEU proceeded at the hearing on the basis of an amended application dated 27 September 2017. That amended application sought an “*Early Childhood Teachers in Long Day Care Centres and Preschools Equal Remuneration Order 2019*” (proposed ERO). The proposed ERO would cover teachers, other than those employed by a State or Territory government, employed in long day care centres and preschools, and their employers, and would also encompass labour hire employees engaged in working in long day care centres and preschools, and their employers. The salary obligations that the proposed ERO would impose are as follows:

Level (as determined in accordance with clause 13 of the Award)	Equal Remuneration Payment Per Year (Preschools)	Equal Remuneration Payment Per Year (Long Day Care)
	\$	\$
1	68,929	71,686
2	68,929	71,686
3	68,929	71,686
4	68,929	71,686
5	83,136	86,461
6	83,136	86,461
7	90,236	93,845
8	93,793	97,545
9	102,806	106,918
10	102,806	106,918
11	102,806	106,918
12	102,806	106,918

[78] These salary levels were set relative to the EST Award salary levels as they were at the time that the amended application was filed. The proposed ERO provided that any increase in minimum wages in the EST Award had to be applied to the above salary amounts. If percentage increases to the EST Award minimum rates of pay awarded since the date of the IEU’s amended equal remuneration application are applied to the rates of pay in the proposed ERO, they would be as follows:

Level (as determined in accordance with clause 14 of the award)	Equal Remuneration Payment Per Year (Preschools) \$	Equal Remuneration Payment Per Year (Long Day Care) \$
1	74,768	77,758
2	74,768	77,758
3	74,768	77,758
4	74,768	77,758
5	90,178	93,785
6	90,178	93,785
7	97,880	101,794
8	101,738	105,808
9	111,514	115,975
10	111,514	115,975
11	111,514	115,975
12	111,514	115,975

[79] The salary rates claimed by the IEU would involve salary increases of about 36% for a graduate early childhood teacher and about 54% for an early childhood teacher at the top of the pay scale. The proposed ERO also contains ancillary provisions concerning the payment of salaries and providing employees with access to the ERO.

[80] The grounds for the application contend that early childhood teachers employed in long day care centres and preschools covered by the application do not receive equal remuneration for work which is of equal or comparable value to work performed by other professionals in other industries and by teachers employed in other parts of the education industry. The following factual contentions are advanced:

- the sector is highly gender- segregated, with over 95% of early childhood teachers employed in long day care centres and preschools being women;
- there is a high turnover of staff compared to other occupations and industries, and an acute shortage of appropriately qualified staff;
- the workforce in long day care centres is younger compared to the Australian workforce overall;
- there is low union density;
- the employers in the sector are either not-for-profit organisations or operate with relatively small profit margins because of the nature of the service and funding arrangements;
- the main source of revenue is fees charged to parents, and there is constant pressure to minimise fees charged to ensure accessibility to the service;
- the federal government provides subsidies to parents in relation to the cost of child care, and State governments provide direct funding for the operation of preschools;

- early childhood teachers are university-qualified professionals;
- early childhood teachers employed in long day care centres or preschools who are covered by the EST Award are employed either as teachers or Directors;
- in most cases, early childhood teachers are employed as such because of government requirements that such a teacher must be employed or in attendance as a condition of operation;
- early childhood teachers have overall responsibility for the educational program provided by long day care centres or preschools, and teachers develop the curriculum applying their tertiary skills and knowledge, are the pedagogical leaders at the service, and professionally develop and support the delivery of education by other employees;
- a Director covered by the EST Award is an early childhood teacher appointed to be responsible for the overall management and administration of a long day care centre or preschool, and the Director's role includes ensuring compliance with regulatory requirements; pedagogical leadership; overall management; administration and leadership; accounting and financial management; recruitment and human resources management; communication and engagement with staff members, children, parents, business contacts, community/local leaders and other stakeholders; and supporting and participating in management committees or other groups;
- the environment in which early childhood teachers perform their work is intense, noisy, requires dealing with human waste, is physically and emotionally demanding, and likely to lead to higher levels of illness;
- research has linked the employment of university-qualified early childhood teachers to higher quality education and care;
- early childhood education and care delivers significant social and economic benefits to the Australian economy, society, families and individuals;
- high quality early childhood education and child care environments lead to positive intellectual and cognitive development and later-life learning outcomes in children and improved social, health and behavioural outcomes in children; and
- the workforce participation of women, and the consequent economic benefit, is directly linked to high quality and accessible child care.

[81] The IEU contends that the majority of early childhood teachers covered by the EST Award are award reliant, in that the minimum award rates are usually the actual rates of pay received by such teachers. Prior to the making of the EST Award, there were award wage rates for teachers in long day care centres in a number of states. The transition from higher State award rates in New South Wales to the rates in the EST Award resulted in minimum wages for early childhood teachers in that State dropping by between \$3,000 and \$11,000 per annum, which exacerbated the undervaluation of early childhood teachers. The IEU contends that the incidence of over-award payments and collective bargaining in the sector is low and, where

over-award payments are made through collective agreements or individual contracts, they are rarely significantly above the wage rates in the EST Award.

[82] The IEU's central contention as to the existence of gender-based undervaluation is that the wage rates paid to early childhood teachers in long day care centres and preschools do not adequately reflect the skills, responsibilities and qualifications required to perform the work, when compared to work of equal or comparable value requiring equal or comparable qualifications, skills and responsibilities in other occupations and/or other industries. This has been caused by a variety of factors that result from the predominance of women working in the sector, including:

- social undervaluation of the skills and responsibilities required to perform the work because of the perception that they are “*soft*” skills, an extension of the unpaid work performed by women in the domestic sphere, skills that “*naturally*” occur in women rather than are learnt or developed, and caring work; and
- the limited bargaining power of early childhood teachers in long day care centres and preschools to achieve recognition of the skills, responsibilities, qualifications and benefit of the work through enterprise bargaining.

[83] The IEU contends that the undervaluation can be seen by comparing the work performed by early childhood teachers and the remuneration paid to them to the following comparator occupations:

- (1) primary school teachers employed in schools; and
- (2) professional engineers.

[84] In respect of the first comparator, primary school teachers employed in government and non-government schools are also covered by the EST Award, to the extent that they are in the federal industrial relations system, and the same minimum salary rates generally apply. The only difference in the award minimum remuneration is the additional 4% loading which applies to early childhood teachers in long day care centres who do not receive school holidays. The actual remuneration paid to primary school teachers, the IEU contends, is much higher than for early childhood teachers employed in long day care centres and preschools, and the same is the case for primary school teachers in promotional positions compared to Directors of long day care centres and preschools. However, early childhood teachers in preschools that are part of government schools are paid the same as primary school teachers in government schools.

[85] As to the second comparator, the IEU contends that the work of early childhood teachers is comparable to the work of professional engineers with three or four year university qualifications, but remuneration paid to professional engineers is much higher than remuneration paid to early childhood teachers in long day care centres and preschools.

[86] The IEU contends that the effects of undervaluation on early childhood teachers include that:

- it is difficult to retain them in employment in long day care centres and, to a lesser extent, in preschools, because many teachers leave the sector to obtain higher paying, less stressful jobs in other educational settings;

- some teachers use employment in long day care centres and preschools as a “*stepping stone*” to entry into school teaching positions with higher pay;
- low wages and poor industrial conditions result in job vacancies remaining unfilled or exemptions being sought to permit under qualified employees to be appointed to perform work; and
- children’s developmental outcomes and emotional wellbeing are affected by the shortage of early childhood teachers and the lack of continuity of educators.

[87] The IEU contends that there is no suitable alternative remedy to an equal remuneration order to address the identified undervaluation. A low paid authorisation pursuant to s 243 of the FW Act, or a low paid workplace determination pursuant to Division 2 of Part 2-5 of the FW Act, even if available, would not adequately address the gendered undervaluation of the work. An application to vary the EST Award pursuant to s 158 of the FW Act could not, if submitted, result in increases to minimum award wages comparable to actual wage rates earned in other occupations and/or other industries and would therefore not meaningfully address the gendered undervaluation of the work.

B.2 Principles applicable to equal remuneration applications

[88] Section 302 of the FW Act, pursuant to which the IEU’s equal remuneration application is made, provides as follows:

302 FWC may make an order requiring equal remuneration

Power to make an equal remuneration order

(1) The FWC may make any order (an **equal remuneration order**) it considers appropriate to ensure that, for employees to whom the order will apply, there will be equal remuneration for work of equal or comparable value.

Meaning of equal remuneration for work of equal or comparable value

(2) **Equal remuneration for work of equal or comparable value** means equal remuneration for men and women workers for work of equal or comparable value.

Who may apply for an equal remuneration order

(3) The FWC may make the equal remuneration order only on application by any of the following:

- (a) an employee to whom the order will apply;
- (b) an employee organisation that is entitled to represent the industrial interests of an employee to whom the order will apply;
- (c) the Sex Discrimination Commissioner.

FWC must take into account orders and determinations made in annual wage reviews

(4) In deciding whether to make an equal remuneration order, the FWC must take into account:

(a) orders and determinations made by the FWC in annual wage reviews; and

(b) the reasons for those orders and determinations.

Note: The FWC must be constituted by an Expert Panel in annual wage reviews (see section 617).

Restriction on power to make an equal remuneration order

(5) However, the FWC may make the equal remuneration order only if it is satisfied that, for the employees to whom the order will apply, there is not equal remuneration for work of equal or comparable value.

[89] There is no contest between the parties that the IEU’s equal remuneration application is to be determined in accordance with the principles established in the 2015 decision. Broadly speaking, the 2015 decision identified two necessary stages in the consideration of an application for an equal remuneration order. First, the Commission must reach a state of satisfaction under s 302(5) that “*for the employees to whom the order will apply, there is not equal remuneration for work of equal or comparable value*”. The 2015 decision characterised this as a jurisdictional prerequisite for the making of an equal remuneration order on the basis that s 302(5) provides that the Commission may only make such an order upon reaching this state of satisfaction. The 2017 decision summarised what would be necessary for the state of satisfaction to be reached in relation to an application for an equal remuneration order to apply to a group of workers which was founded upon a comparison with another group of workers as follows (footnotes omitted):

“[18] The “comparative exercise” which is required as a jurisdictional prerequisite to the making of an equal remuneration order under s.302(5) to be carried out between the group of employees to be covered by the proposed order and an identified comparator group has three elements:

(1) the two groups must perform work of equal or comparable value;

(2) they must be of the opposite gender; and

(3) they must be unequally remunerated.”

[90] The second stage of consideration under s 302(5) identified in the 2015 decision is the exercise of a discretion as to whether an order should be made. Considerations that are relevant to the exercise of such a discretion were summarised in the 2017 decision as follows:

“[19] Once this jurisdictional prerequisite is demonstrated, the Commission has a discretion as to whether to make an equal remuneration order. The circumstances which may be relevant to the exercise of the discretion include:

- (i) the circumstances of the employees to whom the order will apply;
- (ii) eliminating gender based discrimination;
- (iii) the capacity to pay of the employers to whom the order will apply;
- (iv) the effect of any order on the delivery of services to the community;
- (v) the effect of any order on a range of economic considerations, including any impact on employment, productivity and growth;
- (vi) the effect of any order on the promotion of social inclusion by its impact on female participation in the workforce; and
- (vii) the effect of any order on enterprise bargaining.”

[91] In addition to the above, s 302(4) requires the Commission in the exercise of the discretion to take into account orders and determinations made by the Commission in annual wage reviews and the reasons for those orders and determinations.

[92] The nature of the comparative exercise which upon satisfaction under s 302(5) must be founded was elaborated upon in the 2015 decision in a number of important respects. Firstly, as to the need for a comparator of opposite gender, the Full Bench:

“[278] ‘Equal’, according to its ordinary meaning, posits one thing being the same or alike in quantity, degree or value as another thing. Therefore when s.300 and s.302(1) refer to ensuring equal remuneration for employees, this must necessarily involve making the remuneration for one employee or group of employees equal to that of another employee or group of employees in circumstances where the Commission is satisfied under s.302(5) that they do not currently have equality of remuneration. In order to determine that the remuneration of relevant employees or groups of employees is unequal and needs to be equalised, it is necessary for a comparison between the employees or groups of employees to be made. The nature of this comparison - that is, who is to be compared with whom for the purposes of s.302 - is described by the words ‘for men and women workers for work of equal or comparable value’.

[279] The words ‘for men and women workers’ (as used in ss.300 and 302(2)) are clearly fundamental, since (apart from the reference to the Sex Discrimination Commissioner in s.302(3)(c) as one of the persons who may apply for an equal remuneration order) they are the only express indicator in Part 2–7 that the Part is concerned with *gender* inequity in remuneration, and not inequity based on other criteria such as, for example, race or disability. No party before us contended that Part 2–7 had any non gender-related purpose. The words must therefore do the work of ensuring that the comparative task under Part 2–7 is based on gender. They can only do that work if the ‘and’ in the expression is given a dispersive effect, so that the words are read as meaning ‘for male workers on the one hand and female workers on the other hand’. An

alternate reading whereby ‘men and women workers’ is read as referring to a single undifferentiated group within which equal remuneration for work of equal or comparable value must be ensured would mean that the gender foundation of Part 2–7 is removed. This approach cannot be accepted as correct for that reason.”

[93] The Full Bench said in relation to the selection of the comparator group:

“[291] It is not necessary for the purpose of this decision to attempt to prescribe or establish guidelines in respect of how an appropriate comparator might be identified. It will ultimately be up to an applicant for an equal remuneration order to bring a case based on an appropriate comparator which permits the Commission to be satisfied that the jurisdictional prerequisite in s.302(5) is met. It is likely that the task of determining whether s.302(5) is satisfied will be easier with comparators that are small in terms of the number of employees in each, are capable of precise definition, and in which employees perform the same or similar work under the same or similar conditions, than with comparators that are large, diverse, and involve significantly different work under a range of different conditions. But in principle there is nothing preventing the comparator groups consisting of large numbers of persons and/or persons whose remuneration is dependent on particular modern awards.”

[94] As to the comparison of work value required, the Full Bench in the 2015 decision summarised the proper approach to be taken as follows:

“8. The inclusion of the concept of ‘comparable’ value serves the purpose of applying the provisions of Part 2–7 not just to the same or similar work that is equal in value, but also to dissimilar work which is none the less capable of comparison.

9. The comparison may be between different work in different occupations and industries. Traditional work value criteria will be applicable in determining whether the work of the comparator employee(s) is of equal or comparable value, but other criteria may also be relevant depending on the nature of the work. Work value enquiries have been characterised by the exercise of broad judgment. Depending upon the specific characteristics of the work under consideration, it may be appropriate to apply different or additional criteria in order to assess equality or comparability in value. Job evaluation techniques may useful in comparing work. Each case will turn on its own facts in this respect.”²¹

B.3 The IEU’s primary comparator – primary school teachers in NSW

[95] The primary comparison relied upon by the IEU for the purpose of satisfying the jurisdictional prerequisite in s 302(5) of the FW Act for the making of an equal remuneration order is between female employees who would be covered by its proposed ERO and male primary school teachers employed in the government and catholic systemic schools in New South Wales. It contends that the three elements of the jurisdictional prerequisite are satisfied, in that:

²¹ [2015] FWCFB 8200, 256 IR 362 at the Summary following [367]

- (1) early childhood teachers in long day care centres and preschools perform work of equal or comparable value to male school teachers in the comparator group;
- (2) early childhood teachers are an overwhelmingly female group, and the comparator group is (by definition) entirely male; and
- (3) male government and catholic systemic school teachers in New South Wales earn significantly more than early childhood teachers.

B.3.1 Comparison of pay rates

[96] In respect of the third proposition, it not in contest that that early childhood teachers earn less than government and Catholic systemic school teachers in New South Wales. We have earlier set out the current payscales for teachers under the EST Award, which sets the legal minimum wage rates for early childhood teachers in the federal system. It was not in dispute and was, in any event, firmly established by the evidence that the EST Award rates constitute the actual or close to the actual wage rates for the large majority of early childhood teachers. The IEU provided an analysis of a sample of job advertisement for early childhood positions which showed that the rates of pay on offer were very close to the EST Award rates.²² It also provided an analysis of 224 enterprise agreements operating in the sector. These only cover a minority of early childhood teachers, and in over 90% of cases provided for wages that were less than the salaries claimed by the IEU in its proposed ERO which were necessary to equalise remuneration with primary school teachers in NSW.²³

[97] Primary school teachers in the New South Wales Government school system are covered by the *Crown Employees (Teachers in Schools and Related Employees) Salaries and Conditions Award 2020* (NSW Teachers Award 2020), an award of the Industrial Relations Commission of New South Wales (NSW IRC). The current pay scale in this award, contained in Schedule 1A, is:

Band/Level of Accreditation	Salary from the first pay period to commence on or after 1.1.2021 \$
Band 1(Graduate)	72,263
Band 2 (Proficient)	87,157
Band 2.1	94,601
Band 2.2	98,330
Band 2.3	107,779
Band 3 (Highly Accomplished/Lead)	114,720

²² Exhibit 76, Document 99

²³ Exhibit 76, Document 97

[98] The above rates range from 31% higher than the EST Award rates for a 4-year trained graduate teacher in a preschool, to 58% higher than for a preschool teacher at the top of the pay scale.

[99] Primary school teachers employed in Catholic systemic schools in New South Wales are covered by the *NSW and ACT Catholic Systemic Schools Enterprise Agreement 2020*. The current salaries for teachers under this agreement (except for the Archdiocese of Canberra and Goulburn) who have been employed since 2014 are provided for in Table 1A of Schedule A, and are, from 1 January 2021:

Conditionally Accredited Teacher (Level 1)	65,165
Conditionally Accredited Teacher (Level 2)	72,263
L Band 1 (Graduate)	72,263
Band 2 (Proficient Teacher) Level 1	87,157
Band 2 (Proficient Teacher) Level 2	87,157
Band 2 (Proficient Teacher) Level 3	94,601
Band 2 (Proficient Teacher) Level 4	98,330
Band 2 (Proficient Teacher) Level 5	107,779
Band 3 (Highly Accomplished)	114,720

[100] The salary rate for a 4-year trained graduate teacher under the above agreement is 31% higher than under the EST Award for a preschool teacher, and the salary rate for a teacher at the top of the scale is 58% higher.

B.3.2 Whether an appropriate comparator

[101] However the first two of the IEU's propositions are in contest. It is convenient to deal with the second proposition first. The Australian Childcare Alliance (ACA) submitted that:

- the subset of primary school teachers which the IEU wishes to use as a comparator forms part of a sector that is predominantly female;
- on the basis of the ABS data provided by the IEU as part of its case, the comparison really being advanced is between early childhood teachers, who are 95.5% female, and primary school teachers, who are 83.1% female; and
- the approach taken by the IEU is fundamentally inconsistent with the work of Part 2-7, Division 2 of the FW Act in that it was comparing what in truth is a female dominated sector to another female dominated sector.

[102] The Australian Federation of Employers and Industries (AFEI) similarly submitted that the comparison urged by the IEU is effectively a comparison between two female-dominated vocations, which does not assist achieving the remedial purpose of the provisions of Part 2-7 to remedy gender wage inequality and promote equal pay. The AFEI pointed to statistical information published by the NSW Department of Education which indicated that the proportion of female teachers in NSW public primary schools was 82% in 2016, 81.7% in 2015 and 81.3% in 2014. It submitted that it followed that the work performed by primary school teachers is not characteristically male work and therefore that the wage outcomes for primary

school teachers cannot be explained as either the manifestation of considerations unique to male workers or some form of advantage enjoyed predominantly by male workers.

[103] The IEU submitted in reply that the focus of the legislation is on identifying one or more employees of one gender and comparing them to one or more employees of the other gender who do work of equal or comparable value. There is no reason, as a matter of principle or policy, why the fact that a subgroup of workers who are male cannot be used as a comparator merely because the majority of workers in that subgroup are female. It submitted that the employers' approach would tend to undermine the essential purpose of the Division 2 of Part 2-7: if male call centre operators were being paid 10% more than female call centre operators, the fact that call centre operators are predominantly female not only would not, but as a matter of policy should not, be able to defeat a claim. The IEU submitted that it cannot be gainsaid that the comparator group are workers who are male.

[104] We consider that the submissions of the ACA and the AFEI must be accepted on this point. As stated in the 2015 decision, Part 2-7 is concerned with *gender* inequity in remuneration, and its function is to equalise the remuneration of male workers on the one hand and female workers on the other who perform work of equal or comparable value in circumstances where they do not currently have equality of remuneration. The starting point of the consideration required by s 302(5) is therefore the proper identification of the two workers or groups of workers of opposite gender who are to be compared. We will assume, without deciding, that where two *groups* of workers are being compared, the first group may consist of workers of *predominantly* one gender and the second group may consist of workers of *predominantly* the opposite gender.²⁴ But it appears to us that it is essential that where groups of workers are to be compared, each group must have an authentic group identity in order for the purpose of the legislation to be served. By this we mean that the first group that is to be the subject of an equal remuneration order sought must consist of one category of workers who together perform the same work for a lower rate of remuneration and are of one gender (or, perhaps, predominantly of one gender), and the comparator group must consist of another category of workers who together perform the same work for a higher rate of remuneration, and are of the opposite gender (or, perhaps, are predominantly of the opposite gender). If the work of the two categories of workers is found to be of equal or comparable value, the requisite state of satisfaction under s 302(5) may then be reached.

[105] The identity of either comparator group will not be authentic if it has been constructed or manipulated to produce an appearance of gender pay inequity when, in substance, no relevant gender pay inequity actually exists. As earlier stated, the IEU referred in its submissions to a hypothetical example of female call centre operators in a female-dominated workforce being compared to the male call centre operators in the same workforce, where the former group is being paid 10% less than the latter group. Both groups would have an authentic group identity if they each comprised the entirety of the relevant gender component of the call centre operator workforce. Because the two groups are obviously performing work of equal value (because they perform the same work), but have unequal remuneration, it would be open for the Commission to reach the requisite state of satisfaction under s 302(5).

[106] However, if we modify this example of a call centre workforce somewhat, the difficulties which arise from an invalid manipulation of the identities of the comparator groups

²⁴ Cf. [2015] FWCFB 8200, 256 IR 362 at [240]-[243]

become apparent. If the half of the female component of that workforce is paid \$800 per week and the other half of the female workforce is paid \$900 per week, and half of the male component of the workforce is paid \$800 per week and the other half of the male workforce is paid \$900 per week, then it is possible to construct the following two scenarios:

- (1) An equal remuneration order is sought for that half of the female workforce earning \$800 per week on the basis of a comparison with the half of the male workforce earning \$900 per week and performing the same work.
- (2) An equal remuneration order is sought for that half of the male workforce earning \$800 per week on the basis of a comparison with the half of the female workforce earning \$900 per week and performing the same work.

[107] In each case, the comparator groups have been artificially selected in a way which gives the appearance of there being unequal remuneration for men and women workers for work of equal value. They potentially lead to a result whereby the entire workforce is raised to a wage of \$900 per week. However, as a matter of substance, there is no *gender* pay inequality. There may be unfair and unjustified pay differentials in the hypothetical workforce, but they are not differentials which run along gender lines. A comparison between the whole of the female component of the hypothetical workforce and the whole of the male component would suggest that there is no inequality of remuneration as between the genders. This demonstrates that the Commission must guard against artificially constructed comparator groups which are in substance being used as a vehicle to achieve “comparative wage justice” rather than remedying genuine gender pay inequality.

[108] In this case, the IEU nominally seeks to compare female early childhood teachers to male primary school teachers in NSW. However, no rational basis is apparent for the extraction of male primary school teachers from the entire workforce of primary school teachers in NSW beyond a need on the part of the IEU to construct a male comparator group. We have referred to instruments which set the higher pay rates of teachers in government and Catholic primary schools in NSW. Not surprisingly, there is no distinction in the rates of pay for male and female teachers. The evidence upon which the IEU relied to demonstrate an equality or comparability in the work value of early childhood teachers and primary school teachers dealt with the latter group in an entirely undifferentiated way as to gender.

[109] In substance, the comparison being made is really one between a female-dominated workforce consisting of early childhood teachers and another female-dominated workforce consisting of primary school teachers in NSW government and catholic schools. The extraction of male teachers from the latter group for use as a comparator is simply a sleight of hand to avoid the fact that a female-female comparison is being relied upon. There is no *gender* inequality in remuneration as between early childhood teachers and NSW primary school teachers. Accordingly, we are not satisfied under s 302(5) that, for early childhood teachers who are covered by the IEU’s proposed ERO, there is not equal remuneration for men and women workers for work of equal or comparable value on the basis of the principal comparison relied upon by the IEU.

[110] This conclusion renders it unnecessary to consider, in the context of the proposed work value comparison between early childhood teachers and male primary school teachers, the evidence of the IEU’s witnesses concerning the work of the two groups and the evidence of the ACA in response, as well as the evidence relevant to the exercise of the discretion had we been

satisfied as to the jurisdictional prerequisites in s 302. However, that evidence was also relied upon, in part or whole, in respect of the IEU’s alternative comparison with professional engineers and in relation to the work value application, and will therefore be considered in due course in that context. It may also be noted that, in respect of the work value application, we make a finding later in this decision that the work value of early childhood teachers and primary school teachers is equal or comparable. However, for the reasons we have given, that finding is not sufficient for the success of the IEU’s equal remuneration application.

B.4 The IEU’s alternative comparison – professional engineers

[111] The alternative basis for an equal remuneration order relied upon by the IEU is by way of a comparison with male professional engineers. The IEU contends that professional engineers are, compared to early childhood teachers:

- (1) overwhelmingly male;
- (2) paid higher remuneration; and
- (3) perform work of comparable value.

B.4.1 Gender and remuneration comparison

[112] The first two propositions were not seriously contested, and in any event were firmly established by the evidence.

[113] In relation to the first proposition, the IEU relied on ABS data, *Employed Persons by Occupation*.²⁵ This data showed that, as at May 2016, the female share in the subcategories of the occupational category Engineering Professionals (ANZSCO code 233) was as follows:

ANZSCO Code	Occupational subcategory	Female share %
2331	Chemical and materials engineers	25.2
2332	Civil Engineering Professionals	13.8
2333	Electrical Engineers	8.1
2334	Electronics Engineers	0
2335	Industrial, Mechanical and Production Engineers	2.9
2336	Mining Engineers	24.7
2339	Other Engineering Professionals	26.9

[114] As to the second proposition, although the award minimum salaries for professional engineers set by the *Professional Employees Award 2020* (PE Award) are broadly comparable (and indeed slightly lower in most cases) than those under the EST Award, the actual or market rates of pay for professional engineers are significantly higher. A report prepared by Leanne Issko of Mercer Australia (Mercer Report)²⁶ which was commissioned by the IEU used position matching data to analyse the salaries paid to engineers. It showed that the median annual

²⁵ ABS 6291.0.55.033, IEU outline of submissions dated 22 December 2017

²⁶ Exhibit 5

remuneration for a 4-year qualified graduate engineer as at July 2017 was \$83,863, with remuneration at the 25th percentile being \$65,700 and at the 75th percentile being \$110,869. For experienced engineers with 4-7 years' experience, the median remuneration was \$140,173, with remuneration at the 25th percentile being \$104,532 and at the 75th percentile being \$157,762. The Mercer Report took into account the base salary of employees plus the monetary value of all other benefits excluding bonus and incentive payments.

[115] The IEU also relied upon a survey report prepared by the Association of Professional Engineers Australia, the *Professional Engineers Employment and Remuneration Report 2017* (APEA Report).²⁷ This showed that that, for graduate engineers, the median annual remuneration (total package) was \$71,589, with remuneration at the 25th percentile being \$65,700 and at the 75th percentile being \$79,935. For experienced engineers who would be classified at Level 3 under the PE Award, the median annual remuneration was \$124,145, with remuneration at the 25th percentile being \$104,558 and at the 75th percentile being \$142,350.

[116] Although there are some substantial differences between the Mercer Report and the APEA Report as to the median remuneration and remuneration at the 75th percentile, they are remarkably consistent as to salaries at the 25th percentile. The annual remuneration even at that level is higher than the remuneration paid to early childhood teachers at equivalent career stages.

[117] The IEU also relied upon ABS data by which the total average hourly cash earnings of Early Childhood (Pre-Primary School) Teachers (with the ANZSCO code 2411) may be compared with various subcategories of Engineering Professional (ANZSCO code 233).²⁸ The total average hourly cash earnings for the former group in May 2016 was \$38.90, while in the subcategories of Engineering Professional it ranged from \$45.90 for Electronics Engineers (ANZSCO code 2334) to \$78.70 for Mining Engineers (ANZSCO code 2336).

B.4.2 Work value comparison - evidence

[118] It was the question of whether early childhood teachers performed work of equal or comparable value to professional engineers that was the subject of the substantive contest between the parties. On this matter the IEU relied upon the Mercer Report, evidence given by six early childhood teacher witnesses - Lauren Hill, Emily Vane-Tempest, Amanda Sri Hilaire, Lily Ames, Gabrielle Connell and Emma Cullen - and the evidence of two professional engineers: Kenan Toker and Brad Broughton. This evidence is summarised below.

Mercer Report

[119] The Mercer Report used the Mercer CED job evaluation methodology to compare the work of early childhood teachers to engineers. The Mercer Report summarised this methodology as follows:

“Overview

²⁷ Exhibit 134

²⁸ IEU outline of submissions dated 22 December 2017

- Job Evaluation is a method for assessing the work value of jobs. It provides a systematic and defensible approach for the grading of positions within a job classification system. Therefore, it provides a sound basis for salary administration and human resource management.
- The Mercer CED methodology was developed in the 1960s as a robust and universal job evaluation system. It has gone through several stages of maturity in response to changes in the way work is organised and jobs are designed, but the fundamental principles remain and are still recognised as valid in the marketplace.
- The Mercer CED Job Evaluation System is designed to measure the relative size of positions. It measures the major components of job worth to achieve this. This well established method examines the complexity of job demands of individual positions in a way that allows a systematic and analytical comparison of positions. Information used in the job evaluation process may come from interviews with incumbents or managers, from specifically designed questionnaires completed by job incumbents and/or from position descriptions.
- In conducting evaluations (whether it be in a particular organisation or according to a set of generic position descriptions), a position is measured in terms of the actual requirements of the job, rather than the experience or skills possessed by the particular incumbent of the position. The position is evaluated assuming it is performed at a competent level.
- The Mercer CED Job Evaluation System expresses the worth of a position in work value points. These points are determined by assessing eight sub-factors that are considered to be common to all positions. Hence, the system is described as a points factor evaluation system. The eight sub-factors are based on a systems approach to understanding jobs.”

[120] The Mercer CED methodology groups the eight sub-factors referred to above into three primary factors: *Expertise*, which consists of the required inputs in terms of the skills, knowledge and experience need to do the job; *Judgement*, which refers to the processing components of the job, defined in terms of the complexity of tasks and the requirement for solving problems; and *Accountability*, being the outputs from the job defined in terms of the impact, influence and independence of the position. The report went on to explain that in the evaluation process for each job, assessments are made for each of the eight sub-factors, with each sub-factor typically having from three to eight levels. The definitions for each level determine how the position is rated on each sub-factor. The requirements of the positions the subject of evaluation are compared with detailed, standard definitions to find the level of each sub-factor which most accurately describes the characteristics of the job. Once each sub-factor has been assessed, work value points can be determined. The total of the points assigned for all factors is the work value score for the position and is intended to indicate the relative size of the job in terms of intrinsic work value.

[121] In undertaking the job evaluation exercise, five early childhood teachers or Directors employed in metropolitan, regional or remote preschools and profit and not-for-profit long day care centres were interviewed. Mercer evaluated the positions of Graduate Early Childhood Teacher and Graduate Childhood Teachers with 5 years’ experience and prepared a summary

of the requirements for each role based on the EST Award classification descriptors, inputs from the interviewees and information obtained from the IEU.

[122] For the comparative exercise, Mercer used the position of Graduate Engineer and Experienced Engineer, with the summary of the requirements for these roles having been taken from the PE Award. No further information was obtained in respect of the job requirements for engineers. The results of the comparison, in terms of work value points produced by the job evaluation exercise, were as follows:

	Expertise	Judgement	Accountability	Total
Graduate Teacher	101	66	101	268
Teacher + 5 Years	134	72	116	322
Graduate Engineer	101	66	88	255
Experienced Engineer	134	76	116	326

[123] The Mercer Report identified the key points arising from this analysis as follows:

“Key points to note:

- At the Graduate level, the ELC teacher role is slightly higher than the engineer stream roles. This reflects that an ELC graduate teacher will lead a class independently whilst the professional services roles operate under close supervision. Typically a graduate engineer operates with limited scope and all outputs are subject to review. The level of independence that a graduate ELC teacher operates at is still under general supervision, for example, lesson plans are reviewed. In Mercer’s view for this sub-factor, the graduate ELC teacher has a higher level of independence than the equivalent graduate engineer role.
- The ELC teacher with 5+ years corresponds to the experienced engineer level. The complexity of the Job Environment was evaluated as slightly higher for the experienced engineer reflecting that these roles operate in a less structured environment that may be subject to adaptation and/or change.
- Overall, there was strong alignment with the corresponding work value scores for the education roles and the engineer stream roles.”

Lauren Hill

[124] Lauren Hill is an early childhood teacher. At the time she made her witness statement dated 18 December 2017,²⁹ her most recent employment had been as a temporary maternity leave replacement teacher at the Catholic Early Learning Centre at Stanhope Gardens in Sydney (CELC), with her employer being the Catholic Diocese of Parramatta. In this placement, she taught two days per week and did additional days on a casual basis. She had previously worked as a Senior Business Analyst at a pharmaceutical company, but she had a career change after the birth of her children and undertook a Bachelor of Education (Early Childhood Education) degree at Macquarie University. She completed her degree in 2015, which qualifies her to teach children from birth to 12 years of age. She commenced working in her first teaching role, at a

²⁹ Exhibit 17

preschool, in that year. She received a salary of \$49,046 in her first year of teaching, and when she left the maternity leave replacement role she was on Level 4 under the EST Award.

[125] Ms Hill said that the CELC was licensed for 40 places for 3–5-year-olds, and it had three early childhood teachers (including the Director), two Certificate III-trained educators, one Diploma-qualified educator and a trainee educator. The CELC is located on the same grounds as John XXIII Catholic Primary School. She was involved in school transitions from the CELC to the primary school whereby she took children from the preschool to the Kindergarten class in the primary school for half an hour each week to engage in transitional activities with their future teacher. Ms Hill is accredited as a proficient teacher with the NSW Education Standards Authority (NESA). She said that to maintain her accreditation, she has to complete 100 hours of professional development over five years and at all times meet the APST.

[126] Ms Hill summarised her responsibilities in the CELC role as follows:

- She had to ensure that the NQF is met, which included meeting the NQS.
- She was involved in developing and reviewing the QIP, which set out the areas of the NQS, the areas of improvement and the aspirational goals of the service. The QIP was updated at least annually, and needed to be available for the regulatory authority or for parents on request. Ms Hill used reflections and evaluations of the program to assess the CELC against the NQS, and communicated with families about the areas they were working to improve and to seek their contribution. As an example, Ms Hill as part of a team identified the PALS Social Skills Program as a method to assist new children first starting preschool to develop their sharing, negotiation and communication skills.
- She had the responsibility to ensure the safe arrival and departure of children at the CELC and complete the required documentation. This included the responsibility to exclude inappropriate people from the premises in accordance with the National Law and knowing and monitoring restrictions under Family Court Orders. It also included following procedures to minimise the spread of infections, making sure that children had sun protection and promoting dental health. She also monitored the safety of the play environment, including ensuring that the building and equipment were safe and in a good condition, administered the prescribed medication policy, and dealt with allergy issues. She also had mandatory reporting obligations, which created difficulties in judging and assessing things children often say which are difficult to interpret.
- Ms Hill promoted the inclusion of children with additional needs and created tailored programs to ensure their active participation and to review more regularly their program in developmental areas. She described an instance where she identified a child with behavioural issues, and assisted the child's parents to seek specialist help and make funding applications on his behalf. She also described another instance in she worked with an external therapist to develop a routine and program for a child with a sensory processing disorder and autism.
- She described her ultimate responsibility as being to guide children through the critical early years of life to ensure they reach the developmental stages in a timely way through physical, emotional, social and cognitive development.

[127] Ms Hill described the skills she exercised as including the following:

- creating and implementing stimulating, interesting and exciting learning activities within the framework of the EYLF;
- analysing each child's learning and implementing an individual cycle of planning using researched and informed curriculum decisions;
- exposing children to content and concepts around language, literacy, science and creativity, building their extended thinking and promoting problem-solving capacities through extended conversations with children, analysis, hypothesising and investigation;
- assessing her practice against the goals of the EYLF and the NQS;
- creating opportunities for children to interact with technology;
- doing portfolios and documentation for 18 children and creating mid-year reports and transition to school reports;
- creating two observations per child per term;
- creating an Individual Education Plan for the child with additional needs in her class;
- documenting links to the EYLF through reflections on each child's learning and development, incorporating where relevant the children's work samples, quotes, photos, stories and structures;
- providing care to children and promoting children's participation in interesting and exciting physical activities;
- implementing positive physical behaviour management; and
- liaising and communicating with families, including communicating with parents on a daily basis both face to face and via email.

[128] Ms Hill said that she worked autonomously in programming and teaching, mentored the Certificate III and trainee educators at the centre, and collaborated and communicated with other staff. She also said that working with children in early childhood involved close emotional and physical contact with children, required reassurance and nurturing in interactions with children, and also required the provision of assistance with toileting and other forms of personal contact with children.

Emily Vane-Tempest

[129] Emily Vane-Tempest was, at the time she made her statement of evidence filed on 22 December 2017,³⁰ an early childhood teacher at Sandcastles Childcare in Chatswood, Sydney. She holds an integrated double degree of Bachelor of Early Childhood Education and Bachelor of Teaching (Primary) from the University of Newcastle, where she graduated in 2015. She is qualified to teacher children from 0-12 years of age (that is, up to Year 6). In her statement of evidence, she said that she began work at Sandcastles as an early childhood teacher in the preschool room in January 2015, took the Lead Educator position nine months later, and became the Educational Leader in December 2015. She said that Sandcastles operates as a long day care centre, and is licensed for 50 children a day with a total of 70 enrolled across the week. Ms Vane-Tempest still teaches in the preschool room, where there are 26 children a day with 37 children over the week. She is the Lead Educator in the room, and she supervises another recently graduated early childhood teacher and an educator who holds a Certificate III. The Director and the second-in-charge at the centre are diploma-trained. Ms Vane-Tempest said that Sandcastles is owned and operated by G8 Education Limited (G8), an early childhood provider with 490 centres as at 31 December 2016, over 10,000 employees, and a total combined licensed capacity of 38,713 places with 75,000 children attending in a given week. The Director of Sandcastles reports to an Operations Manager who oversees 11 centres and who in turn reports to a Senior Operations Manager who oversees 4 or 5 Operations Managers. Senior Operations Managers report to the General Manager of Operations of G8. Ms Vane-Tempest said that her hourly rate when she first started was \$0.49 above the minimum EST Award rate. When she became Lead Educator and then Educational Leader, her pay rate was not increased.

[130] Ms Vane-Tempest identified her responsibilities as follows:

- She analyses and assesses how her practice and the centre meet the NQS and the requirements of the National Law and the National Regulations.
- She undertakes the professional development necessary to maintain her accreditation as a proficient teacher. She explained that G8 has its own Learning and Development department which runs professional development workshops which educators can volunteer to attend. As an Educational Leader, she attends these to support the educators in the centre to make any relevant changes. She said that every couple of months she does educational professional development on programming, transition to school, mandatory reporting and getting ready for school.
- Ms Vane-Tempest has responsibilities in the creation and carrying out of the QIP requirement of the NQF and NQS. The QIP must identify areas of improvement and include a statement of philosophy. The first step involved is to conduct a self-assessment critically reflecting on current practice. She said that if, as a teacher, she identified something lacking in the engagement and relationships with children, then she would decide in consultation with the team to focus on this area. The next step is to identify the opportunities where quality improvements can be made and to plan and effectively implement them. She said that she constantly reassesses the centre's progress towards the identified goals and needs to collect evidence of meeting the goals through observation, reflection or photos.

³⁰ Exhibit 39

- Her role requires her to implement policies to ensure they are individualised to the requirements of her centre. G8 has a website called Jigsaw that staff members must use to increase their knowledge of centre requirements and policies and, as Lead Educator, Ms Vane-Tempest needs to ensure that the staff she supervises are completing this program and are familiar with the policies. She ensures that the policies are followed in her room, including the maintenance of child ratios, resourcing and equipment.
- Ms Vane-Tempest is responsible the safety and wellbeing of the 24 or more children in her room every day, which includes administering first aid where necessary, ensuring medication is properly administered and ensuring that children have the correct food. She is also responsible for illness management and hygiene practices, and she uses her professional judgment in allowing children to gain responsibility and test their skills through risky play. She is responsible for completing and updating risk assessments for her room every six months, and must identify child protection risks and children with higher needs or troublesome behaviour.
- She works with other professionals including occupational therapists, speech therapists and psychologists to ensure that children with additional needs have those needs met within the centre and receive an appropriate educational program.
- She has the responsibility to build children’s confidence, sense of wellbeing and security, and their motivation to engage actively with others.

[131] Ms Vane-Tempest identified the skills she exercised as including:

- acting as the facilitator of the EYLF, and she uses the skills of observation, analysis, planning and intentional teaching to allow children to progress towards the outcomes in the EYLF;
- using a program and documentation file to determine what is needed to assess and guide each child’s learning in terms of the EYLF outcomes;
- engaging in intentional teaching, which involves observing children’s activities and engaging with them to ascertain their interests, encouraging further research into and investigation of those interests, developing the language development of the child by asking them to express their thoughts about their interests, and designing learning tasks arising from those interests which are appropriate to the child’s age and developmental stage;
- documenting children’s progress through the use of G8’s program called “Kindyhub” as well as through day books, floorbooks, and writing individual learning journeys, reflections on children’s learning and suggestions about where extensions need to be made;
- maintaining a flexible and adaptive approach to children’s learning;
- providing each child with a respectful and reciprocal relationship in consultation with parents;

- implementing strategies that help demonstrate respect and understanding of individual children and providing them with the social skills to resolve their own conflicts; and
- engaging in respectful and supportive relationships with parents and families.

[132] Ms Vane-Tempest said that when first employed, she assisted the Lead Educator in performing different duties and was only provided with limited support and guidance in relation to the systems in place at the centre and no support or guidance as to her role as a teacher. When she was appointed Lead Educator within 12 months, she was expected to take on a leadership role and make decisions on programs and implement them. She said that, as an Educational Leader, there is an expectation that she supports all rooms including other teachers and diploma-qualified educators in their programming and planning. She sits alongside the Director of the centre with her own sphere of responsibility for pedagogical and educational planning, programming and observations.

[133] Ms Vane-Tempest gave oral evidence to the following effect:

- she is currently an early childhood teacher at another G8 school, Community Kids Empire Bay and is the Lead Educator of a preschool room but is not the Educational Leader;³¹
- in October 2018, all early childhood teachers employed at G8 centres were given a 10% increase in pay;³²
- G8's professional development and learning program for educators was revised to include webinars, which she said she often does at home in her own time because she does not have time at work to complete them;³³
- early childhood teachers in G8 centres also have to attend a learning program called Teachers for Tomorrow to assist early childhood teachers improve their practise, which they are paid to complete;³⁴
- she communicates with families on a daily basis using an application called Xplor (which replaced Kindyhub) about children's learning and to provide observations on goals and projects, which can include photos or videos of the experience, a description, the learning involved with that activity and how this links to the relevant EYLF outcomes;³⁵
- she also records children's movements throughout the day in real time to update their parents using the Xplor application, which includes their meals, sleeps, sunscreen and nappy changes;³⁶

³¹ Transcript, 19 June 2019, PNs 2217-2222

³² Ibid, PNs 2225-2229

³³ Ibid, PNs 2231-2234

³⁴ Ibid, PNs 2235-2241, 2304

³⁵ Ibid, PNs 2247-2249

³⁶ Ibid, PNs 2269-2273

- as Educational Leader at her previous centre, she had approximately three afternoons a week off the floor which she used to review educators' work, create workshops for educators, meet with individual educators to discuss goals, issues they were experiencing and discussing how she could support them and recording observations;³⁷ and
- in her first year, she was sick every two weeks because she was working with children.³⁸

Amanda Sri Hilaire

[134] Amanda Sri Hilaire was, at the time of her first witness statement filed on 22 December 2017,³⁹ employed in a part-time teaching position at Kamalei Children's Centre at Bowral in NSW and, additionally, taught casually three days a week at the Southern Highlands Christian School (a K-12 school). She holds a Bachelor of Teaching (Early Childhood) degree from the University of Wollongong, which qualifies her to teach children from 0-8 years of age. She had initially undertaken teaching in both early childhood centres and primary schools in the period 2001-2005, but then took a break from teaching because of parental responsibilities, and resumed teaching in 2015.

[135] She said the Kamalei Children's Centre is a for-profit long day care centre with 28 places. The Director is diploma-qualified. The centre has two rooms: a 4-5 year old preschool room, in which Ms Hilaire works, and a 3-year old room. The centre has a Nominated Supervisor who is also an early childhood teacher, two trainees, one Certificate III staff member and two other staff members working towards their diploma. Ms Hilaire said that she teaches 18 children in the pre-school room, in which she is the Room Leader two days a week, and is assisted by a trainee. At the time of her statement, she was paid as a Level 8 teacher under the EST Award, and received a total of \$241 per day. At the Southern Highlands Christian School, she was employed pursuant to the *NSW Christian Teaching Staff Agreement 2015-2017* and was paid \$380 per day as a casual teacher. She was, at that time, working towards her Proficient Teacher accreditation with the NESAs.

[136] Subsequent to the making of her first witness statement, Ms Hilaire left the Kamalei Children's Centre and worked as an early childhood teacher at the Gumnut Preschool and Bundanoon District Community Preschool.

[137] Ms Hilaire described her responsibilities as an early childhood teacher as including the following:

- ensuring compliance with the National Law and the National Regulations;
- ensuring the centre complies with the NQS;

³⁷ Ibid, PNs 2332-2337

³⁸ Ibid, PNs 2364-2365

³⁹ Exhibit 54

- working collaboratively with the centre's leadership to create and maintain the QIP – in particular, working with the Nominated Supervisor on Quality Area 6, which concerns collaborative partnerships with families and communities;
- discharging her responsibilities under regs 168-172 of the National Regulations to read, review and supervise compliance with policies in the centre, and to supervise and re-direct the practice of other educators where there is a failure in compliance;
- ensuring the health, safety and wellbeing of the 18 children in her room, which includes checking buildings and equipment, analysing the risk to learning ratio when observing children, providing first aid, and checking that the correct food is provided to children with allergies;
- dealing with the requirements and safety of the additional needs student in her class, including adjusting the activities he engages in to allow for his emotional and physical behaviour, modelling to other children how to relate to him and the adjust their expectations of interactions with him, and liaising with occupational therapists and other staff in relation to his progress and expectations; and
- managing children through their developmental stages, building their language, communication skills and their relationships with one another, and introducing them to literacy, numeracy and information and communications technology.

[138] Ms Hilaire said the skills required of her employment included:

- teaching to achieve the outcomes prescribed in the EYLF, which requires her to plan a developmentally appropriate activity for each child and to ensure that the relationship she has with the child is trusting, secure and allows them to feel sufficiently comfortable to be able to meaningfully learn;
- collecting information about each child's strengths and abilities and identifying any concerns by way of formal and informal observations, and engaging in intentional teaching with the use of that information;
- documenting children's experiences and their response in order to make learning visible to the children themselves, their parents and to her and her colleagues, and to allow her to professionally reflect and analyse her practice and decision and each child's engagement with the program;
- providing a range of activities, including programmed and spontaneous activities designed for individuals or groups, and evaluating the programs each week to make sure they are meeting the outcomes, principles and practices of the EYLF;
- completing a formal report for each child twice a year which gathers all observations and learning stories and comments on every learning outcome and where the child is placed;
- creating individual programs for six children in her room as well as group programs;

- ensuring quality relationships with children by constantly encouraging children to express themselves, providing positive guidance and allowing and encouraging activities that develop self-reliance and self-esteem; and
- managing conflicts between children and assisting them in recognising their emotions, understanding there is an underlying need that is not being met and assisting them in formulating a request of the people around them to support them in meeting their needs.

[139] Ms Hilaire said that she worked very autonomously as an early childhood teacher, with only limited support and mentoring. She said that there was a graduate early childhood teacher in her centre who, from the commencement of her employment, was assumed would be the leader in her room whether or not she had experience and although she was working with educators with Diploma or Certificate III qualifications who had many years' experience. She said that graduate teachers can struggle with the leadership elements of their role. Ms Hilaire said in her statement that she is responsible for what happens in the room which she leads, mentors the other educators, ensures that the staff adhere to the routine, and makes decisions about behaviour management in the room and communicates strategies to other staff. She does not receive pedagogical or programming direction, advice or support.

[140] Ms Hilaire said that operating in a for-profit centre places pressure on staff and, because centres compete with each other for places, this limits collaboration and assistance across the profession. She described how early childhood teachers carry the mental load of the day, and said her job was both physically demanding and emotionally exhausting. She also said that the background noise from 18 children in her room was constant all day long.

[141] Ms Hilaire was, because of her dual employment, able to compare early childhood teaching with primary school teaching. She said that, as a school teacher, she programs and plans for the 10-week terms across a range of curriculum areas, has fixed breaks and two hours release from face-to-face teaching each week, and non-term periods to utilise. By comparison, she said that early childhood teaching did not allow for enough time to properly plan and program. She considered that early childhood teaching requires a more comprehensive and detailed knowledge of child development across physical, social, emotional and cognitive domains. In the school setting, she did not have guidelines around governance or the many other responsibilities placed on teachers in the early childhood sector through the NQF, and the level of support provided to teachers was much greater in schools. Beyond this, she said, teaching is doing exactly the same type of work, simply at different levels for what is developmentally appropriate for the children in question. However, there was much less community understanding about what early childhood teachers do compared to primary school teachers.

[142] Ms Hilaire also filed a witness statement in reply dated 19 July 2018.⁴⁰ The evidence it sought to respond to was not adduced by the ACA.

Lily Ames

[143] Ms Lily Ames is employed by the City of Yarra as a Kindergarten teacher at the North Carlton Children's Centre in Victoria. She has worked in the profession since January 2012.

⁴⁰ Exhibit 55

Ms Ames graduated with a Bachelor of Early Childhood Education degree from the University of Melbourne in 2011 and is qualified to teach children up to Grade 6 in primary school. She currently teaches seasonal kindergarten programs for 3 and 4-year-olds. In Victoria, a sessional kindergarten program operates for a set number of hours each week, and parents may drop-off and pick-up their children at the same times each session, with the children being in a particular group for the whole year. These programs are government-funded, and costs on average \$400 per term and are free for disadvantaged families. The 4-year-old program, which is for the year before formal schooling, is for 15 hours per week during school terms. The centre in which Ms Ames works has 108 places across the long day care and sessional preschool. There are two teachers (including Ms Ames) and three co-educators (one Diploma-qualified and two Certificate III qualified) in the sessional program over two groups. The employment for Ms Ames and other staff at the centre was, at the time Ms Ames made her first statement, regulated by the *City of Yarra Enterprise Agreement: 2013-2017*. This agreement maintains parity with school teachers' salaries, and Ms Ames was at that time classified as an Accomplished Teacher 2.1 and was paid \$36.22 an hour (derived from a salary of \$71,579.03).

[144] In her witness statement filed on 22 December 2017,⁴¹ Ms Ames described her responsibilities as an early childhood teacher as including: implementing the NQF; maintaining professional standards; creating and maintaining a QIP; creating, maintaining and applying centre policies; ensuring children's safety; dealing with additional needs children; and managing the development of children and fostering lifelong learning. In respect of professional standards, Ms Ames said that, like primary and secondary school teachers, early childhood teachers in Victoria are required to be registered by the Victorian Institute of Teaching and that, once a teacher graduates and finds a mentor in their educational practice, they receive provisional registration. She said that finding a mentor in the early childhood education sector can be difficult because of the organisational isolation of such teachers. She is also required to undertake and document the 20 hours per year professional development required under the APST. In relation to the QIP, she collaborates with the centre's Director and other teachers and educators to create and implement a QIP in accordance with the National Regulations. The QIP requires her to identify needs, hazards and risks which may require improvement, and then once these are identified she must plan on how to improve them in a practical way and outline timelines and methods of achievement. Teachers like herself are expected to be leaders in the industry for other staff who are Diploma or Certificate III-qualified and to be experts in early childhood education.

[145] As an early childhood teacher, Ms Ames said that she has been responsible for developing and reviewing policies around children's wellbeing and hygiene practices in the past, and is responsible for compliance with the centre's policies by the (up to) five educators which she supervises. She also is expected to manage the performance of these educators, ensure that they are undertaking all the necessary duties and functions of their employment, and are adhering to policies and regulation including handling confidential records, WHS requirements and child protection. She is also required to ensure the maintenance of mandated child to staff ratios and to implement appropriate procedures when children hurt themselves. The government funding requirements for sessional kindergartens requires her to be at the centre of the operation of the kindergarten and ensure that there is adequate supervision of children at all times. In respect of ensuring children's safety, she has to engage in behaviour guidance and risk management by maintaining positive interactions with children and

⁴¹ Exhibit 58

encouraging them to critically reflect on risky behaviour. Ms Ames also said that providing medications and care to children with illnesses, injuries and medical condition such as anaphylaxis is one of her major responsibilities and a duty of care that she holds. She also has a statutory responsibility to report child abuse, which requires her to use her skills and training to observe children and their behaviours to notice changes over time.

[146] Ms Ames gave evidence that the requirement to ensure children’s safety is amplified when they have additional needs, and she described her responsibilities with respect to a child in her class who has Dravet Syndrome (a serious form of epilepsy) as well as ADHD and a developmental delay. She had to develop a risk management program for this child and an action plan to be followed if the child had a seizure (which has happened three times while the child has been in her care). She has to ensure that the assistants in her room, who are not trained in special education or child development, are aware of the child’s medical condition, the routine, emergency procedures and relevant policies. She also has to observe the children and consider whether there is a concern about their development, and make contact with parents is necessary. Ms Ames said that she will often be the first contact that parents have with an external service when it comes to identifying additional needs children. Any observation of this nature must be documented, her conversations with parents must be informative and supportive in accordance with the applicable NQF standards. She must also deal with violence from some additional needs children, including one child in her care who has severe autism and can lash out at her and others. Ms Ames also described the fact that for some children in foster care or who have been victims of abuse, she may be the one person they have a secure attachment with.

[147] In relation to the skills required of her job, Ms Ames said that the core skill in teaching is the cycle of observation, analysing learning, planning and implementation, based on the principles, practices and outcomes prescribed by the VEYLDF. The VEYLDF is mapped to the Victorian Curriculum for schools, and there is intended to be a continuum of learning and teaching between the VEYLDF and the development outcomes of the Victorian Curriculum.

[148] In respect of the planning phase of the teaching cycle, Ms Ames said that she firstly observes children’s interests and development level, and then assesses how she can scaffold each child’s learning to ensure that they are learning more than they currently know. She designs experiences through play and discovery to that end, and then designs an assessment to show that the child has learnt through that experience. She makes further observations, evaluates and assesses what the child has learnt against the knowledge of the developmental stages, and determines how she can further extend their learning. This must take into account the five learning outcomes of the VEYLDF, which explains the developmental stages within the early years and defines learning areas including literacy, language, arts and maths concepts. Implementation utilises intentional teaching methods, with the use of language to promote critical reflection being the main intentional strategy at all times. She gave the following example of this:

“The complexities and subtleties of the teaching process is best depicted by way of example. On one occasion I observed some children playing, a girl and a boy who I knew were friends; and I noticed that the boy tended to come up and squeeze the girl, and this seemed to cause her some discomfort. To notice this, I needed to be constantly observing and be attuned to each child’s emotional state. I asked the girl if she liked when the boy did that to her, and she told me no. I told her it was ok to say that she did not like it. She said, ‘well he is my friend, I don’t want him not to be my friend, so I don’t want to say that to him.’ I analysed her response and assessed her social

development. I identified a need to introduce the idea of consent to the class, to talk about what is ok, and what is not ok, and how to communicate this to others. To achieve this, I planned an activity based on the wellbeing and identity outcomes of the VEYLDF. I researched and identified the appropriate resources to achieve my plan. Which led me to a story called 'Don't Let the Pigeon Drive the Bus.' I also made this a group outcome to help extend to all children's learning, a non-direct method of introducing these ideas in a safe and unidentified way.

I read the story with the children, and in it the bus driver told all the people on the bus that they could not let the pigeon drive the bus. Through the story the Pigeon pleads and begs, and the children have an opportunity to say no aloud at certain points in the story. Simultaneously building on their language skills, as they follow the story. In the days after we read the story, I then observed the girl to see if there had been any effect, and I noticed that she was now saying no much more frequently than she used to. I then decided to extend her social response by introducing her to new language of not just saying no, but explaining why she does not like the behaviour, and getting her to explain how it makes her feel to the other person. In this way, I am introducing a complex idea of social interactions and consent, to further her social and emotional wellbeing, building on Outcome 3 and Outcome 1 of the VEYLDF, which aim towards children having a strong sense of identity and wellbeing.”

[149] Ms Ames said that she has an individual learning goal for each child, and she documents the child's development towards this goal through anecdotal conversations and learning stories of the narrative of the child's learning. She completes these once a month for all 43 children across her two classes, and uses this to perform an evaluation and undertake future planning. She also writes summative assessments each term.

[150] Ms Ames described getting to know each child and building a positive relationship with them to be a cornerstone of what she does. She does this by taking an interest in who they are as people, learning about their interests and their families, knowing when to step into their play and step back, and interacting with them in a way that makes them feel important. She also used the care regime to take advantage of teaching moments in the elements of care, including health, hygiene, healthy eating and toileting. Ms Ames said that positive and collaborative relationships with families are also important. Dealing with families can be challenging, as she works with a diverse group of parents including parents from high socio-economic backgrounds and parents who are refugees migrants with African backgrounds. She said that is necessary for her to manage parents' expectations and their understanding of learning outcomes and how and what children learn in kindergarten. She also needs to have positive relationships with primary school teachers in connection with the transition between early childhood and school.

[151] In relation to the level of decision-making required of her, Ms Ames said that she works quite autonomously, has most of the responsibility of the room that she teachers, and runs all the operational and day-to-day aspects of the Kindergarten program. She only receives support if she actively seeks it out. Ms Ames said that there is a high expectation of autonomy and supervisory capacity from when early childhood teachers graduate. Mentorship is difficult to arrange, and she said that most of skill development has been on-the-job, learning by doing. She said that early childhood teaching involves working in organisational isolation, and she does not have the collegial support that school teachers have. The environment in which she works may be challenging because of the level of communicable disease, the noise because of

the age of the children, and the stress arising from children's demand for attention throughout the day while she is trying her best to implement her educational programs.

[152] Ms Ames also filed a witness statement in reply dated 18 July 2018.⁴² The evidence it sought to respond to was not adduced by the ACA.

Emma Cullen

[153] Emma Cullen was, at the time she made her first witness statement, employed as a full-time Director at Abbotsford Long Day Care Centre in Sydney, New South Wales. She subsequently left that employment and became a Teaching Director at Banyan Park Early Learning Centre, Norfolk Island. Ms Cullen was awarded a Bachelor of Education (Early Childhood Education) (Honours) in 2004 and a Master of Educational Leadership (Early Childhood Education) in 2011 from Macquarie University and a Graduate Certificate in Autism from Wollongong University in 2017.

[154] Ms Cullen's witness statement filed on 22 December 2017⁴³ was concerned with her employment at the Abbotsford Long Day Care Centre, which is a community-based centre catering for children aged 0-5 years. It has 55 places, and has 79 children attending across the week. There are four full-time teachers, including Ms Cullen. She is not required to undertake face-to-face teaching, but in fact does so approximately eight hours per month to provide a release for other teachers. There is a total of about 25 staff at the centre, which includes teachers, educators, cooks, support workers and an administrative assistant. All the staff are female. Under the *Abbotsford Long Day Care Enterprise Agreement 2015* which applies at the centre, Ms Cullen was (at the relevant time) paid \$42.77 per hour for her teaching with a Director's allowance of \$152.99 per week.

[155] Ms Cullen said that she had overall responsibility for ensuring that the centre maintains its accreditation under the NQF with the ACECQA. She maintains her accreditation under the *Teacher Accreditation Act 2004* (NSW), which requires her to meet and maintain the APST. She formed part of the panel which advised the then Board of Studies, Teaching and Educational Standards NSW on the creation of the *Proficient Teacher Evidence Guide, Early Childhood Teachers*, which provides information about the evidence that an early childhood teacher can provide to demonstrate that they meet the APST at the Proficient Teacher level. She undertakes the professional development needed to remain accredited, and she identifies her own priorities for professional development and engages with other teachers at her centre in ongoing critical reflection on their professional practice. Ms Cullen said that she requires teachers in her centre to assist in the development of pedagogical documents and the implementation of the QIP, which is integrated into the daily work of teachers. She also requires teachers to be part of the process of developing and implementing policies and procedures, including those required by the National Law. Teachers are also responsible for a budget of \$2,500 per room per year to be spent on maintenance and to ensure that the centre is fit-for-purpose. Ms Cullen said that, when in the classroom, she has to constantly monitor the environment to make sure that all children are safe. This includes administering medication preventing children harming others and themselves, caring for children after an accident, and dealing with dietary requirements. If a teacher is proposing an excursion or other activity, they

⁴² Exhibit 59

⁴³ Exhibit 68

must engage in the proper risk management process including formulating an assessment outlining the potential risks and how they will be managed.

[156] In relation to children with additional needs, Ms Cullen gave evidence that she requires teachers working with such children to liaise with specialists such as paediatricians, psychologists and social workers. Such teachers are also required to write regular reports on these children, understand and interpret specialist reports and act on and implement the recommendations of specialists. Ms Cullen said that teachers are often the first professionals to identify issues of additional needs through their ongoing observations of children and the application of their knowledge of the developmental stages. If a concern is identified, teachers at the centre may raise the concern with families after consultation with professional colleagues, and may suggest a referral to a specialist. Ms Cullen's evidence was that the role of monitoring subtle yet important changes in the development of a child over time requires teachers to be aware of current practices and emerging research relating to child development.

[157] Ms Cullen said that the key aspect of teaching children between birth and five years of age is understanding that they learn best through play, and the EYLF emphasises the role of play-based learning. She said that the complexity of play is very much underappreciated outside of early childhood learning. The EYLF provided for five learning outcomes but, unlike in primary education, these are not endpoints but rather involve a continuing process of working towards those outcomes utilising the teaching skills of assessing, reviewing and implementing. Ms Cullen stated that she required teachers to both assess and document the development and progress of each child in accordance with the NQS, and teachers produce a daily reflective learning journal which contains observations and photos of the children's experiences through the day. She described the flexibility and adaptability necessary for teachers to integrate basic reading skills into all activities involving each child depending on their capabilities level of engagement and how it fits within their chosen activity. She requires teachers to plan effectively for children's current and future learning, determine the extent to which children are progressing towards learning outcomes, identify what is impeding development, and also identify which children need additional support and determine the method and amount of that support.

[158] Ms Cullen's evidence was that the caregiving functions of early childhood teachers, such as nappy changes, dressing, applying sun protection and toileting are also important as learning time, since it gives teachers opportunities for teachable moments. She said that care goes beyond physical care and extends to both providing emotional support and managing conflict between children. For example, early childhood teachers have the training to use an instance of conflict between children to encourage the children to reflect on their feelings of each other and equip them with the words and phrases to better manage conflict in the future. Care functions also extend to using the provision of food in the centre to sit with them and intentionally teach by modelling eating and talking about healthy choices and nutrition.

[159] Interaction between early childhood teachers and parents occurs daily, Ms Cullen said, and teachers must be ready for face-to-face conversations every morning and afternoon at drop-off and pick-up. Additionally they are required to interact with parents by email. She gave evidence that teachers as part of their daily teaching practice need to know children and their families intimately to understand children's learning development, and events such as divorce and custody issues have a big impact requiring teachers to adapt their teaching practices accordingly.

[160] Ms Cullen said that at her centre, early childhood teachers assume a leadership role in relation to other staff and the management of the service almost from the commencement of their employment. She said that a new graduate is expected to approach their work with the same responsibility as a more experienced teacher, although their skill level will be different, and they may be required to lead other staff with more experience but lesser qualifications. Teachers at the centre are required to teach for 40 hours per week, and are released for about eight hours per months to complete their developmental records of their focus children. The formal position of Educational Leader under the NQF is a treated as a promotional position, and is usually filled by a teacher who has quite a lot of experience and is very passionate.

[161] Ms Cullen said she had done her honours thesis on perceptions of the similarities and differences between primary and early childhood teachers. She said that many people see early childhood as play, as babysitting and as work that anybody could do, which impacted genitively on pay negotiations with management committees and employers generally. She said:

“I have always received less pay than an equivalent teacher in a school. Within my experience as an early childhood professional, this pay differential has been an issue for many early childhood teachers. Many teachers face a drop in pay in moving from the primary field to early childhood. Early childhood teachers might initially enter the field because they love it, because it is something they are really passionate about, or they really want to work with young children; without at first realising the pay differential. I am the only one left of my peers from University working in long day care that I know of - of those who started in early childhood, all of them have moved into primary teaching or on to other employment.”

[162] Ms Cullen also said that because the majority of early childhood degrees now qualify graduates to teach children from the ages of 0-12, many students undertaking their practicum at the centre have advised that they ultimately intend to teach in primary school although they might accept an early childhood position while waiting for a primary school position. She said that recruiting within an early childhood setting is an ongoing challenge and, because the workforce is female-dominated, teachers often want to take time off to raise their family or seek part-time or family friendly hours. This, she said, is not always possible in a long day care setting.

[163] Ms Cullen filed a statement in reply dated 18 July 2018,⁴⁴ in which she replied to the witness statement of Jae Dean Fraser dated 25 May 2018⁴⁵ and Gary Carroll dated 22 May 2018.⁴⁶ She said that in her experience, the roles of Director or Educational Leader are not held interchangeably by early childhood teachers and non-degree qualified educators, rather they are usually performed by early childhood teachers given their attainment of a higher qualification and capacity to perform at a higher level. Ms Cullen disagreed with Mr Fraser’s characterisation of play-based learning, stating it takes careful consideration and planning by an early childhood teacher who will use their teaching skills and training to extend children’s knowledge about areas of interest using play as a vehicle.

Gabrielle Connell

⁴⁴ Exhibit 69

⁴⁵ Exhibit 84

⁴⁶ Exhibit 94

[164] Gabrielle Connell was, until shortly before giving her evidence, a part-time early childhood teacher at Albury Preschool Incorporated, which is rated as “*Excellent*” under the NQS. Ms Connell previously worked as the teaching-director of the centre for 18 years before returning to a teaching-only role in 2017. She is now retired from her permanent teaching position but continues to work as a casual early childhood teacher. Ms Connell was awarded a Bachelor of Education (Early Childhood) from the Canberra College of Advanced Education and a Graduate Diploma in Special Education from the University of Southern Queensland. Her Bachelor’s degree allows her to teach children between 3-8 years of age.

[165] In her witness statement filed on 22 December 2017,⁴⁷ Ms Connell said that Albury Preschool is a community based, not for profit standalone centre, licensed for 50 children aged 3-6 years, with 130 students enrolled. It also operates an after school program. The centre is governed by a Committee of Management drawn from families and members of the community and employed one full-time teacher/ Director, four part-time teachers, six classroom assistants with diploma qualifications or Certificate III and one part-time office manager. At the time of her statement, she was employed pursuant to the *Albury Preschool Employee Collective Agreement 2016-2019* and was paid as a four-year trained teacher on step 9. Under the agreement, all teachers were paid in parity with equally qualified primary school teachers.

[166] Ms Connell summarised her responsibilities at Albury Preschool as follows:

- She had to ensure that the centre was meeting the NQS, National Law and National Regulations.
- She was required to maintain her accreditation and status as a proficient teacher with the NESAs, which included completing 100 hours of professional development over a seven year cycle, writing and submitting a report at the end of the cycle and keeping abreast of new research in educational practice, funding and other developments in the education field.
- In collaboration with all teachers at her centre, she was involved in creating and maintaining a QIP, identifying areas that require improvements and outline the philosophy of the centre. The QIP was updated every term and was required to be available to parents or the regulatory authority on request. She gave an example of implementation of the QIP, which required more sustainable practices at her centre. As part of a team, she developed a Sustainability Booklet, established a worm farm and vegetable garden for the children and created a composting program.
- She was involved in the development, research and review of policies to ensure they were meeting requirements of the National Law and National Regulations and other relevant legislation. As a senior teacher, she assisted in the training of staff in the National Law, policies and procedures and ensure they are implemented. She was also involved in completing documentation including fundraising, community planning and implementation and budgets and maintained confidentiality of personal records in accordance with the National Regulations.

⁴⁷ Exhibit 61

- She described her greatest responsibility as the ensuring the safety of the children in her care in accordance with the NQF and NQS. She continually managed the balance of risk and responsibility in play, applied her professional judgment and monitored each child to assess what level of risk was acceptable. She provided care to children who were ill or injured, made decisions on when a child should go home, provided first aid, was trained in first aid and anaphylaxis response, conducted WHS risk assessments and kept records of accidents and near misses. Ms Connell also complied with safe food handling practices and hygiene and checked lunchboxes due to a number of children in the centre having serious food allergies.
- In respect of additional needs children, Ms Connell was required to liaise and integrate with a large number of agencies, meet at least once a term with parents and support agencies, write reports for therapists, paediatricians, parents and schools, and keep Daily Communication books. She said that each early childhood teacher in her service is responsible for the development of an Individual Education Plan for each additional needs child in collaboration with families and any other services. She was also responsible for identifying undiagnosed disabilities in a new class, speaking with the child's parents and advising where they can get extra help. Ms Connell said she was required to keep detailed programs, implement plans created by other professionals and train in and provide care to severely disabled children, including tracheostomy tubes, colostomy bags and provide support to a girl waiting for a heart transplant who was required to be attached to a machine.

[167] Ms Connell described the skills she exercised as including the following:

- creating educational programs which are based on the EYLF that aim to improve children's skills in a range of areas including language, literacy and mathematics;
- planning intentional teaching practices based on each child's stage of development, their interests and abilities, and her observations;
- assessing her programs against the NQF, EYLF and her obligations under the APST;
- document the development of up to 26 children, take observations, keep daily/ weekly diaries and digital documentation of portfolios and profiles;
- report to parents on a regular basis to keep them informed of their child's progress and being a point of contact for the parents to discuss this if needed;
- develop individual programs for each child, which must be evaluated regularly and objectives formulated accordingly;
- maintain a flexible and adaptable approach in a room where children are on different programs and at different developmental stages all at once; and
- formulate strong relationships with the children and their families, which includes building trust and confidence, to assist children in building their sense of wellbeing.

[168] Each teacher in her service serves as the certified supervisor a day a week without additional payment, and are required to ensure all of the National Regulations are being met,

ratios are appropriate and accidents are reported. Ms Connell said that in her role as a Room Leader, she was responsible for what happened in her room, doing the majority of programming and reporting, supervising the planning and documentation kept for each child, ensuring that staff conduct themselves in accordance with the regulations and keep communication positive with families. She had to have a greater knowledge of the NQF and the EYLF to ensure educators are meeting the standards and provided supervision and mentorship to graduate teachers at her centre. Ms Connell also maintained her own classroom budgets.

[169] Ms Connell also described the level of responsibility of Educational Leaders, having performed this role for several years until 2016. She said that it is a very senior role in centres but there is no extra money attached to it, which makes it difficult to attract the right person. Educational leaders are supposed to review all profiles and programs of staff in the centre and are usually allocated two hours to do so, however she thinks they require at least half a day to perform this role properly. Ms Connell had also previously performed the Director/Nominated Supervisor role. The Director has overall responsibility for ensuring that the centre is meeting the NQF, its regulations and learning framework and she could have been fined personally for any failures under the National Regulations.

[170] In a further statement of evidence dated 18 July 2018,⁴⁸ Ms Connell responded to statements of various ACA witnesses. She stated that the EYLF does provide an early childhood curriculum framework which is harder to implement than the primary school curriculum as it is philosophical and there are no rigid, “tick-the-box” outcomes. In her experience, working within the confines of a rigid and specific curriculum tends to require less work and skill than working in a less structured framework, as early childhood teachers are required to do. She said that early childhood teachers create skilled and complex documentation as part of their day-to-day role, which includes records of the children’s learning, assessments of learning, portfolios, learning journals, individual learning plans, reflections on practice and programming and daily diaries. Ms Connell stated that tertiary trained early childhood teachers can generally exercise these functions at a higher level than non-tertiary trained workers in the sector. In her experience, early childhood teacher turnover does not occur in large part due to the attraction of lower contact hours and school holidays in the school sector but rather the better pay that draws potential early childhood teachers away from the early childhood sector.

Kenan Toker

[171] Kenan Toker is a Graduate Software Engineer at Langdale Consultants Pty Ltd in Belrose, NSW. He was awarded a Bachelor of Engineering (Electrical Power) and a Bachelor of Arts from the University of Sydney in 2016. In his witness statement filed on 22 December 2017,⁴⁹ he said that his Engineering degree was a 4-year degree, and the Arts degree was an additional year. He elected to major in Electrical Power as a subfield of his electrical engineering specialisation. Mr Toker commenced employment at Langdale Consultants Pty Ltd in October 2016 as a Software Support and Development Technician on a casual basis. Langdale is a small consultancy group consisting of three principal engineers and a software engineering student completing work experience in addition to Mr Toker. Langdale holds an ongoing contract with a power provider company to oversee its operational technology. Mr Toker’s original role was primarily programming with elements of system management, but his

⁴⁸ Exhibit 62

⁴⁹ Exhibit 52

role expanded and in 2017 became that of Graduate Software Engineer. He did not study software engineering in his degree, but did study software programming. Mr Toker now works full-time on the basis of a 38-hour week, with usual hours of work between 9am to 5.30pm with the understanding that he will work overtime on an unpaid basis as needed. His annual salary in 2017 was \$72,000.

[172] Since taking up a full-time role, Mr Toker identified his responsibilities as including the following:

- He became more accountable in his role and is left more often to perform tasks on his own.
- He uses software to solve engineering problems within an electricity network. He gave the example of organising meters and readings in a way that is accessible and meaningful rather than leaving it as indecipherable data.
- He undertakes systems and network maintenance; checks the health of and the logs in the system each day, engages in a diagnostic should anything go wrong and informs the principal engineer. This is escalated where necessary and resolved. He is also required to log issues and their resolutions into the internal reporting system.
- He has a role in the development environment, and gave an example of building and configuring virtual machines which are computers running in another computer, testing and ensuring they work, configuring software on them and ensuring the development environment performs the same as the production environment but does not impact the production environment in any way. He was provided with the requirements of this task but was left to implement it on his own.
- He builds computer systems in which he programs and models a piece of software, tests it for compatibility or installation problems and measures or analyses its results. He gave an example of creating a program that will generate a load estimate for distribution substations.
- He also writes documentation for the projects he works on so another person can understand how they are coded, as he is the only person who will know how the program works.

[173] Mr Toker identified the skills he exercised as including:

- the management and coordination of a project within a timeframe;
- the utilisation of a working knowledge of hardware, software and programming language and an excellent knowledge of computer-aided software engineering tools;
- the use of a creative approach to problem-solving;
- specialised communication skills to communicate the technical aspects and details of the software with other engineers; and

- versatility and flexibility to work with changing and evolving problems and to learn new technologies.

[174] Mr Toker said that he receives informal assistance and feedback from the principal engineer, and does not oversee any employee or provide mentoring support. When he started his job, he said that he was not provided with any formal mentoring or introductory procedure but there have been informal meetings, questions and instructions that have shown him the basics at his work. His current responsibilities mean that if he makes a mistake, nothing of consequence will follow, whereas engineers with 5-10 years' experience run their own projects and are responsible for problems that arise. His job does not require him to be registered and there is no external regulation of the engineering profession, but he is required to comply with international electrical standards. He works in an office-based environment but has some elements of travel in his job.

[175] In his oral evidence, Mr Toker described the systems and network maintenance aspect of his role. If there is a problem, he is responsible for ascertaining what the reason is, triaging it depending on the urgency, then must decide whether it is something he needs to pass on to his supervisor and whether this is in the form of an informal comment or something more formal. He then checks the database and messaging queues and decides whether he needs to discuss the issue with the client.⁵⁰ He described the developing aspect of his role which involves administering a later version of programs or developing another program that sits in the same environment that has some new functionality.⁵¹ Mr Toker said when performing network maintenance for clients, this is in the context of his own office rather than onsite.⁵² He must always be aware of security during his work, as it is a particular issue during maintenance.⁵³ He said that in his current role, he is only drawing on a portion of his training as an electrical engineer.⁵⁴

Brad Broughton

[176] Mr Brad Broughton was, at the time he made his witness statement, a Project Engineer at York Civil Pty Ltd and worked in construction management. He has since commenced employment as a civil design engineer at Paradigm Design in Michigan, USA. He graduated in 2012 with a 4-year Bachelor of Engineering degree, majoring in Civil and Structural Engineering and with first class honours from the University of Adelaide. In his witness statement filed on 22 December 2017,⁵⁵ he said the degree is four years long irrespective of whether honours is undertaken. He is a trained civil engineer, however the common industry job titles are site engineer, project engineer and project manager. Mr Broughton commenced employment with York Civil in 2012 through an undergraduate program, and became a site engineer after graduating in 2013 with an annual salary of \$54,000. York Civil is a civil construction company based in Adelaide, South Australia and has offices in various capital cities and a staff of over 400. There were approximately 25 civil engineers that worked in the Adelaide office. Mr Broughton's initial duties were primarily in quality assurance, for which

⁵⁰ Transcript, 25 June 2019, PNs 3058-3073

⁵¹ Ibid, PNs 3075-3076

⁵² Ibid, PNs 3099-3100

⁵³ Ibid, PNs 3083, 3102-3104

⁵⁴ Ibid, PN 3138

⁵⁵ Exhibit 57

he completed testing on site to monitor the project and compile quality assurance reports, and he also had the responsibility for procurement on the projects he was working on. He then worked under the direction of the project engineer and project manager prior to being promoted to the position of Project Engineer in 2016, and earned an annual salary of \$100,000 (including superannuation), and received in addition a car, phone and laptop.

[177] Mr Broughton identified his responsibilities as including the following:

- As a Project Engineer, he worked on one project at a time, with the last project he completed being in Berri, 3 hours' drive away from his location in Adelaide. He had to drive there on Monday afternoon, work on the project for 10 days until the following Thursday, and then return to Adelaide the following Friday.
- In relation to this project, he managed and supervised the site engineer to ensure that procurement was conducted correctly, made decisions about the engagement of suppliers, wrote and reviewed management plans that covered the environmental impact, and worked on the program of the project to ensure completion within expected timeframes.
- He organised the machinery, offices and staff for the site, working in conjunction with the site manager; attended the site to commence the build; oversaw quality assurance and provided direction to the site engineer and checked his calculations and measurements; and engaged in redesign work to deal with problems on the site as they arose.
- He was required to follow the suite of Australian Standards in the course of his project work.
- It was necessary to engage with a client representative on most projects, which requires interpersonal and communication skills.
- He was very involved in the budgeting of projects, which required him to track spending on a day-to-day basis and measure it against the production value achieved to ensure that each project is delivered within budget. At the end of each month, he assisted the project manager on the project reporting to monitor spends and estimate remaining tasks and budget requirements which is then reported to the state manager and financial manager.
- He needed to ensure that the project complies with legal requirements, particularly health and safety, and in this respect he was involved in determining the safest way of carrying out the work, ensuring that workers maintain a high safety standard and safety reporting, and investigating, reporting and remedying any safety issues which arise.

[178] Mr Broughton described the skills he exercised including:

- problem-solving and thinking methodically to solve arising problems to ensure that projects meet their deadlines within budgets;
- interpersonal skills, the ability to negotiate, supervise and lead;

- written communication skills, in reducing design changes into a written proposal to the client in a succinct and persuasive manner; and
- the use of a broad range of mathematical and computational functions, such as Microsoft Excel and Microsoft Project.

[179] In his role, Mr Broughton generally worked autonomously and, when assigned a site engineer, had the task of training and supervising them. As a Project Engineer, he would eventually take on bigger projects with greater responsibility. The level of responsibility attached to his health and safety role was stressful, because the management team (which he was part of) would be blamed in the first instance for injuries on a project which occurred due to ignorance. It was not necessary for him to be registered or accredited, and he chose to not be accredited as a chartered engineer because it did not add any value to his work. His job required him to travel frequently outside of Adelaide and spend long periods of time away from home, and he spent long hours on site (6.30am to 6.00pm Monday to Friday and 6.30am to 2.30pm on Saturdays). There was always is a risk to his personal safety when on site because of the presence of moving heavy equipment, and on some projects he had to work at heights or in confined spaces.

[180] In his oral evidence, Mr Broughton described his new role as a civil design engineer as designing stormwater management systems for new and existing warehouses and other sites.⁵⁶ He said he produces the designs that a project engineer would implement and works, engages in redesign work and now works in an office-based environment.⁵⁷ In his previous role at York Civil, he worked on projects with budgets between \$1-30 million,⁵⁸ engaged contractors to conduct tests on building materials⁵⁹ and ensure the project met expected timeframes otherwise the company could have been liable for liquidated damages.⁶⁰ When he engaged in redesign work, he had to address the technical challenges, communicate with the client and persuade them to accept the deviation from the plan.⁶¹

Egan Report

[181] In response to the Mercer Report, the AFEI relied upon a report prepared by John Egan, the Principal of Egan Associates Pty Limited (Egan Report).⁶² Mr Egan has a long career in remuneration consulting, and it was he who developed the CED job evaluation methodology. The Egan Report used the CED methodology (the same as that used in the Mercer Report) to compare the same categories of employees, and in addition analysed primary school teachers (graduate and with 5 years' experience). In evaluating early childhood teachers and engineers, the Egan Report used the same position descriptions developed in the Mercer Report for the former category and the same PE Award classification descriptors for the latter category. The

⁵⁶ Transcript, 26 June 2019, PNs 3445-3446

⁵⁷ Ibid, PNs 3454-3457

⁵⁸ Ibid, PN 3465

⁵⁹ Ibid, PN 3473

⁶⁰ Ibid, PNs 3502-3505

⁶¹ Ibid, PNs 3511-3513

⁶² Exhibit 115

Egan Report produced the following results from the job evaluation it conducted (set out in the same way as for the Mercer Report above):

	Expertise	Judgement	Accountability	Total
Graduate Teacher	88	58	76	222
Teacher + 5 Years	134	69	116	319
Graduate Engineer	88	72	76	236
Experienced Engineer	134	94	134	362

[182] The Egan Report stated the following conclusion on the basis of the above results:

“The CED evaluations I have performed indicate that there is a difference between the respective work values of an Early Childhood Teacher and an Engineer (at both graduate level and with 5 years’ experience) compared to the CED evaluation conducted by Mercer. At the graduate level, while both jobs require similar level of knowledge and experience, in my professional opinion, the level of technical reasoning and judgment is higher for an Engineer, who is required to interpret well-established procedures and examine scientific and technical information which would likely require a more complicated level of analysis and problem-solving skills.”

[183] The Egan Report also made the following points (in summary):

- engineers are required to apply a high level of applied mathematics, science and technology to their work and are required to be analytical, logical and focused in detail;
- engineering positions exist to plan, analyse and develop products, processes and systems, and they inevitably require advanced analytical skills;
- the Mercer Report suggests that the level of accountability is the only difference between a graduate early childhood teacher and a graduate engineer, and states that a graduate level early childhood teacher will lead the class independently, whilst the professional services roles operate under close supervision, but the Mercer Report elsewhere states that a graduate early childhood teacher is generally supervised and mentored;
- an early childhood teacher operates in a highly regulated environment where the national and state based guidelines and standards determine almost all aspects of their deliverables including their work environments;
- in Mr Egan’s opinion, the level of regulations and guidelines that an early childhood teacher needs to abide by restricts his/her level of judgment and independence compared to an engineer;
- as engineers become more experienced, they either lead teams or become more specialised in a technical subject, and engineers who do not want to become supervisors tend to become technical experts by specialising in a specific technical area; and

- an experienced early childhood teacher, on the other hand, is not required to choose between these two career paths as a part of their career progression unless they change jobs.

[184] The Egan Report also used a separate job evaluation methodology, the Egan Associates Job Evaluation (eJE) methodology, to compare the work value of the same categories of early childhood teachers and engineers. This methodology assigns a point score and a grade to the position being evaluated. The application of this methodology produced the following results:

	eJE Points	eJE Grade
Graduate Teacher	99	4
Teacher + 5 Years	124	7
Graduate Engineer	110	5
Experienced Engineer (non-supervisory role)	149	8
Experienced Engineer (supervisory role)	172	9

[185] The Egan Report also sought to draw a contrast between the career development of early childhood teachers and engineers. In respect of early childhood teachers, the Egan Report stated:

“Early Childhood Teachers are equipped with the knowledge and skills to deliver most of their accountabilities when they graduate. They also work under supervision; receive mentoring and follow the requirements of a heavily regulated curriculum and a national framework. As they become more experienced, the level of supervision they receive is minimised and they provide more advice and undertake independent discussions with parents. However, regardless of their years of experience, they continue to operate in the same heavily regulated environment.

After 5 years in the job, despite having an increased level of job specific experience, an Early Childhood Teacher would still perform similar tasks unless the curriculum and applicable industry standards are amended by the relevant governing authority.”

[186] The Egan Report contrasted this with the position of engineers with 5 years’ experience as follows:

“On the other hand, an Engineer with 5 years’ work experience would either have a supervisory role with specialised focus in one or more technical areas or become a seasoned individual contributor with increased depth and breadth of technical knowledge. Career progressions of Early Childhood Teachers and Engineers are very different from each other.

Further to his/her graduation, an engineer could choose to specialise in a number of technical areas which could be either mining, civil, chemical, electrical, mechanical, industrial, petroleum or a role in the emerging technologies in artificial intelligence, robotics, computers or medical devices, etc. This reflects the nature of an Engineer’s role in a period within 5 years of graduating, highlighting the various areas in which engineering graduates can find themselves employed while pursuing their profession whereas for an Early Childhood Teacher, who remains in that occupation, there is a limited degree of role change.

An engineer could be required to work on multiple projects simultaneously and could be also assigned to work on or lead projects which could be of a very different scale and scope compared to the subsequent ones. Engineers are required to solve technical and operational challenges which could have a significant immediate and long term financial consequences to their employers.”

Nida Khoury

[187] The ACA obtained, in response to the Mercer Report, an expert report from Mr Nida Khoury.⁶³ Mr Khoury is a remuneration specialist and has been a Director of Godfrey Remuneration Group since May 2016. Mr Khoury has previously worked as a senior Consultant for Hay Group and AMP, as the Head of Human Resources, Research and Development at Consolidated Contractors International Company and in several operations and senior personnel roles since 1980. Mr Khoury holds a Bachelors Degree in Public Administration and Political Science from the American University of Beirut in Lebanon (1977-1980) as well as an Associate Degree in Human Resources Management from the Human Resources Professional Association of Ontario (1993).

[188] Mr Khoury was asked to comment in his report on the conclusions drawn in the Mercer Report with respect to job sizing difference between graduate and five-year experienced early childhood teachers and engineers. Mr Khoury was not engaged in his expert report to comment directly on changes in the work value of teachers covered by the EST Award or changes in the work of teachers over the past two decades resulting from the increased professionalisation of teaching work, the increased complexity of the work and the increasingly intense and demanding nature of the work.

[189] In his report, Mr Khoury said that work measurement methodologies are not scientific and the usefulness of its outputs is highly dependent on the objectivity of the person applying both their knowledge of the methodology and the jobs being assessed. In respect of the conclusion in the Mercer Report on the job sizing difference between graduate and five-year experienced early childhood teachers and engineers, Mr Khoury questioned the lack of specificity in the information provided that was relied upon for the job size assessments. This lack of specificity, he submitted, meant that the Mercer Report could not draw accurate conclusions as it was unclear what job information was assessed and what assumptions were made in doing so. In respect of early childhood teachers, he gave the example that only two of five early childhood teacher statements (Gabrielle Connell and Emma Cullen) and the G8 position descriptions were provided in the Mercer Report and do not necessarily set an industry standard for such roles. For engineers, no job information was provided at all apart from the role requirements provided in the PE Award. Mr Khoury also took issue with the Mercer Report in that it made no reference at all related to what type of engineer position is being assessed. He concluded that without sufficient clarity of the abovementioned information regarding early childhood teachers, he could not understand how anyone could establish with any degree of certainty or accuracy what the job size should be for either role or the difference between them. He opined that at best, he agreed with the Mercer Report’s conclusion that the five-year experienced early childhood teacher role may be bigger than graduate early childhood teacher role but not by a lot. In comparing graduate and five-year experienced engineers, Mr Khoury concluded that Mercer assessed two engineering roles only based on them carrying out

⁶³ Exhibit 105

unspecified professional engineering duties that require having a university level qualification or equivalent in experience and therefore a range of job sizes can be used for even a graduate engineer. He said it is likely Mercer's assessment results are "*overweight*" in focusing on one or two subfactors and are very "*underweight*" on the remaining six subfactors due to a generous interpretation of the operating context of such roles. He could not provide specific job values for the various roles for the reasons set out above.

[190] Concerning the comparability of teachers and engineers, Mr Khoury said this rationale eluded him and he questioned whether, merely because both roles require a base level university degree of four years, this meant that any discipline that required a four-year length university degree could be compared. On an overall basis, he said the nature of teaching roles for a certain category of students are a more repetitive type of experience, whereas the nature of most engineering roles is more a cumulative type of experience. Mr Khoury also took issue with the scope the Mercer Report adopted in determining the pay level of jobs by focusing on job size. He said job size is only one of four main determinants of pay with the others being market premium or discount, person premium and capacity to pay. He criticised the Mercer Report's position matching analysis which, he submitted, disregarded job environments, complexities and skill requirements. He also noted Mercer conducted job matching based on education requirements, years of experience and staff management responsibility, as instructed by the IEU. Mr Khoury said that these key indicators are so generic they could easily apply to any other function.

[191] In his oral evidence, Mr Khoury stated that:

- the fact that teaching is a low paid profession is unsurprising as it is low paid compared to other occupational groups including female only samples of similar job size;⁶⁴
- he did not have access to the same information used by the author of the Mercer Report and that, because of this, it was not possible to provide a specific job value for the roles in question;⁶⁵
- there are subtle differences in responsibilities and day to day responsibilities between a graduate early childhood teacher and an early childhood teacher with five years of experience, including the graduate role being supervised, mentored, requiring less contact with parents and no expectation for graduates to immediately develop lesson plans or identify potential development and behavioural issues;⁶⁶
- in contrast, and in most cases, the initial level of responsibility of a graduate or trainee professional engineer is quite different to that of an experienced engineer of some years' standing;⁶⁷
- for primary school teaching years 2 to 6 and secondary teaching years 7 to 12 role, it is not necessary to differentiate in job size between a graduate and an experienced

⁶⁴ Transcript, 3 July 2019, PNs 7691-7700

⁶⁵ Ibid, PNs 7774-7779

⁶⁶ Ibid, PNs 7787-7793

⁶⁷ Ibid, PNs 7794-7796

teacher because both front the class on their own from day one and the job size will not change much because in both roles, a graduate and an experienced teacher are doing the same thing;⁶⁸

- the conclusions Mr Khoury formed in his expert report and which were “based on a high level understanding of the roles” from his personal knowledge of teachers and their teaching environment in different schools;⁶⁹ and
- he characterised repetitive experience as performing the exact same job for 10 years, and while a person may become faster and more efficient in the role, it is not a different job and the job size will likely remain the same. This can be distinguished from cumulative experience where a person gains additional knowledge as time goes on usually leading to higher responsibilities, and this usually translates to a higher job size.⁷⁰

Nicola Johnson

[192] The ACA also relied on the evidence of Nicola Johnson in relation to the comparator work of engineers. Ms Johnson is the People and Culture Lead at Deputec Pty Ltd, a company which provides an online employee management tool called Deputy. She was awarded a Bachelor in Marketing and Business from Derby University, England and has been employed by the company since 2017. In her statement of evidence dated 23 May 2018,⁷¹ Ms Johnson said that the company engages 100 or so employees, of whom 33 are Product Developers that perform roles either within web or mobile development. The remainder are engaged in other office-based roles. All of the Product Developers engaged by the company at the time of her statement were male and the company had not received many (if any) applications from female developers. Ms Johnson said the software industry does not attract many females. The company pays Product Developers salaries that are above-award, and also pays them an amount each year to cover professional development. Product Developers work in an office environment or remotely. She said Product Developers are required to work approximately 40-50 hours per week and hours of work can be unpredictable because Deputy services a vast majority of clients in the hospitality industry who use their products outside of ordinary work hours. Some developers are almost always on call in case a system is disrupted and requires servicing.

[193] Ms Johnson was not required for cross-examination.

B.4.3 Consideration

[194] The IEU’s selection of the entirety of the engineering profession as its alternative comparator gives rise to the difficulty identified in paragraph [291] of the 2015 decision, which we have quoted above - namely, it is “large, diverse, and involve[s] significantly different work under a range of different conditions”. We do not necessarily accept the proposition advanced in the Egan Report about the difference in the career development of early childhood teachers as compared to engineers in terms of work value, but the report does at least in this respect point

⁶⁸ Ibid, PNs 7821-7825

⁶⁹ Ibid, PNs 7827-7831

⁷⁰ Ibid, PNs 7857-7859

⁷¹ Exhibit 130

to the diversity of the engineering profession in terms of the specialised areas in which engineers operate, including as mining, civil, chemical, electrical, electronic, mechanical, industrial and production engineers as compared to the comparative uniformity in the early childhood teaching profession. Thus the selection of the entire engineering profession as the comparator immediately raises the question of whether the work value of the profession is consistent across its different specialisations and sub-categories. If it is not, then the use of the profession as a comparator becomes highly problematic.

[195] The difficulty may be illustrated this way. The conditions under or environment in which work is performed is a major element of the assessment of work value. In the case of early childhood teachers, the IEU's evidence permits a number of fairly accurate generalisations to be made in respect of this consideration: such teachers work in a fixed location with controlled and confined indoor and outdoor settings; they are required to interact closely with young children who will display a variety of behaviours, including noisy and disruptive behaviour; they will have to face emotionally challenging situations and deal with human waste; and they are exposed to a greater risk of infectious disease. However, it is difficult to make any such generalisations with respect to engineers, as the limited witness evidence before us demonstrated. Mr Toker's evidence was that he worked wholly or principally in an office-based environment, and that offers some basis for comparison with early childhood teachers. However, Mr Broughton's description of his work environment at York Civil places it in an entirely different category: he worked primarily at the site of the particular project he was working on at any particular time, which could be some distance from where he resided and required him to live away from home for periods of time and to work long days at the site. A building site is a dynamic work environment, with well-recognised disabilities and safety risks. That working environment is not comparable to that of Mr Toker, let alone that of any early childhood teacher. The difficulty becomes more acute when, for example, the position of a mining engineer working in a remote mine location is considered. There is simply no stable point of comparison, and thus no proper basis to conclude a comparability of work value.

[196] The same problem arises with the nature of the work performed and the level of skill and responsibility required. Mr Broughton and Mr Toker are engineers, but their evidence indicates significant differences in the nature of the work they each perform. It is also readily apparent that Mr Broughton has worked on large-scale projects and has had a very wide range of responsibilities in respect of those projects, and his level of remuneration at York Civil was likely to be reflective of this. Even leaving aside his greater career experience, it is difficult to compare his work with that of Mr Toker. By contrast, the evidence concerning the work of early childhood teachers shows a substantial uniformity in the nature of the work and the level of skill and responsibility required.

[197] At a broader scale, the IEU's evidence concerning remuneration shows that there are very large differences in remuneration between the subcategories of engineer and between different industry sectors so that, for example, the median total remuneration package for an engineer in the electricity or mining industries is approximately 50% higher than in the construction industry. It is likely that these substantial wage differentials at least in part reflect differences in work value. This diversity in remuneration in the engineering profession is to be contrasted to remuneration in the early childhood teaching profession, which is confined to a fairly narrow range of incomes.

[198] The Mercer Report essayed a general comparison between early childhood teachers and engineers with the use of the CED job evaluation system. However, we do not consider that the

conclusions of the Mercer Report in this respect can be accepted as demonstrative of equality or comparability in work value for three fundamental reasons. The first is that the fact that the Egan Report used the same methodology and the same information base to produce different results suggest that the methodology itself is incapable of producing reliable, objective and reproducible outcomes. Mr Egan (who, we repeat, developed the methodology) gave the following evidence about this:

So we have two people using the same methodology and getting different results? -Yes. Our interpretation of the demands of the job are different.⁷²

[199] It is apparent that the results produced by the methodology depend to a significant extent on a subjective assessment of the requirements of a role from the limited information contained in the position description, as the evidence of Mr Khoury indicated. It is also apparent from the Egan Report that Mr Egan's "*interpretation*" of the respective roles of early childhood teachers and engineers was informed by his understanding of their roles from information obtained independently of the evaluation process. To say this is not to criticise his evidence but rather it illustrates the degree of subjectivity in the CED methodology.

[200] Ms Issko, the principal author of the Mercer Report, defended the CED methodology in a report which responded to the Egan Report.⁷³ This reply report stated (footnote omitted):

"One of the key principles that underpins job evaluation is the concept of a discernible (or noticeable) difference. The definition of a discernible difference within the Mercer CED and Hay Group Job Evaluation methodologies is based on Weber's Law – a fundamental law of psychometrics. This law as it relates to job evaluation uses a minimum perceivable difference between levels of 15%, hence the numerical pattern and scoring grids are geometric progressions. Anything less than a 15% difference is recognised as not large enough to be a noticeable difference. This is also the rationale behind why many organisations cluster "like sized" roles into grades within a classification framework.

Given Weber's law, and recognising that job evaluation is a subjective systematic approach and not a scientific approach, it is not surprising that there may be minor differences between evaluations across evaluators. Notwithstanding this, if evaluation outcomes are within 15%, they are generally considered to be broadly in line with each other. With this in mind, we have compared the outcomes of the Mercer CED evaluations from the Egan Associates and Mercer Reports in Table 1 overleaf."

[201] Mr Egan gave the following evidence in response to this (underlining added):

I'm pointing to an earlier witness who said something to the effect that even with your scores, 222, 230, 236, that, having regard to the element of subjectivity involved, that that is really not a meaningful difference in work value when the numbers are that close. Do you agree with that, or do you disagree with that? -I don't disagree in principle. I think one of the challenges as job evaluation methodologies are being applied to technical, administrative, graduate positions in the workforce is that the degree of

⁷² Transcript, 4 July 2019, PN9255

⁷³ Exhibit 6

granularity using a 15 per cent differential for any element isn't sufficient to evaluate difference between a cleaner, an administrative officer, a customer service person, or a school teacher, because the systems don't establish that granularity at the very low levels of roles in the workforce. That may become increasingly more complex with increased mechanisation, robotics and technology.

....

But with this sort of job is that a meaningful difference or not? -I would say it is meaningful but I would equally say that the methodologies don't have the level of granulation to reveal a significant difference. I believe there's a difference based upon my 30-odd years' work in this field, but the way there would be a difference in the world of work would be how they use those points to band them. In other words, if they have jobs between 100 and 120 as one band and 120 and 140 as another band, that may indicate a difference, whereas if you're just looking at the absolute point scores, you might say, they're broadly comparable, and I don't think that's an unreasonable judgment at that level, your Honour.⁷⁴

[202] This evidence points to the difficulties of using the CED methodology in the current context. Job evaluation systems were originally established, and are primarily used, to allow disparate positions within large organisations to be placed in a common pay grade structure. Differences in work value point scores may be immaterial in that context if they result in the positions being compared falling within a band that aligns with a particular pay point. However they cannot be dismissed as immaterial when the purpose of the use of the CED methodology is to demonstrate equality or comparability in work value.

[203] Secondly, we consider that the reference point used to assess the work value of the engineering profession in its entirety is misconceived. As we have explained earlier, the Mercer Report (and the Egan Report in response) took the relevant classification definitions in the PE Award as the representative descriptor of all jobs in the engineering profession at the graduate and 5-year levels. However, the classification definitions were never constructed for the purpose; their function is only to describe what is necessary to qualify for the minimum levels of remuneration prescribed by the award. There is no basis whatsoever to conclude that these classification definitions accurately describe the duties, skills, responsibilities and work environment of all engineers in the engineering profession or to assume that a graduate or 5-year engineer who is remunerated at levels well in excess of the minimum rates of pay prescribed by the award is required to do work of no higher value in their position than is described in the award classification descriptions. The basis of comparison in the Mercer Report must therefore be rejected for reasons similar to those for the rejection in the 2018 decision of the comparison sought to be advanced by the applicant unions in that matter:

“[48] Finally, the applicant unions' proposed comparator group is to a significant degree composed of persons who, as earlier discussed and was not in dispute, are in receipt of over-award payments either through formally bargained enterprise agreements or less formal arrangements. In the absence of any evidence about the basis for the payment of those over-award payments, we would not be prepared to assume that those over-award payments do not include any element of work value that is not included in the classification descriptors for the C5 and C10 classifications in the *Manufacturing and Associated Industries and Occupations Award 2010* (Manufacturing Award). For

⁷⁴ Transcript, 4 July 2018, PNs 9260-9263

example, it may be that an over-award payment is reflective of some aspect of the conditions under which the work is performed which is not dealt with in the classifications descriptors, such as a remote work location or unpleasant working conditions, or that it is paid for the exercise of some special skill unique to a particular workplace. That may mean, whatever was found in the 2005 Decision, that members of the comparator group under the C5 and C10 classifications on over-award payments in fact perform work of a greater value than those under the relevant classifications in the *Children's Services Award*, notwithstanding the pay nexus in award minimum rates.”

[204] Third, the CED methodology does not take into account the environment in which the work is performed. Mr Egan gave the following evidence in this respect:

Mr Egan, does the CED methodology take into account the environment in which the work is performed? So say with this example, what's his name, Yohan, as a geologist, has to travel to the Pilbara or something and work in remote areas and be away from his family for long periods of time. Is that something that the CED methodology would take into account or not? -Your Honour, to the best of my knowledge, it does not, but there are methodologies today which do take the work environment into account and would also give consideration to the level of risk, which the CED methodology doesn't directly take into account in order to determine work value.⁷⁵

[205] The CED methodology therefore excludes a significant element of work value which necessarily arises for consideration under s 302.

[206] Accordingly we cannot be satisfied that the job evaluation analysis in the Mercer Report (or the Egan Report) provides a proper basis for the conclusion that the work of early childhood teachers is of equal of comparable value to that of engineers across the entire engineering profession.

[207] None of the above is intended to suggest that there is no basis for comparison between early childhood teachers and engineers. At a high level, both are professional groups requiring a 4-year bachelor's degree, and both require the application of the knowledge and skill acquired through study and ongoing professional learning. At the more granular level, a comparability between the work value of a graduate early childhood teacher and an office-based engineer in the very early years of their career such as Mr Toker may be recognised, having regard in particular to the health and safety responsibilities and degree of autonomy of the early childhood teacher at that level. However the degree of diversity in the engineering profession which we have earlier described, and the very limited evidentiary material before us concerning the work, skills, responsibilities and working environment of engineers, makes it impossible to reach the conclusion that early childhood teachers at the graduate and 5-year levels perform work of equal of comparable value to that of their equivalents in the engineering profession, taken as a whole.

⁷⁵ Ibid, PN 9241

B.5 Conclusion

[208] We are not satisfied that the prerequisite in s 302(5) for the making of an equal remuneration order is satisfied on either basis advanced by the IEU. Accordingly the IEU's application for an equal remuneration order is dismissed.

C. THE IEU'S WORK VALUE APPLICATION

C.1 *The application*

[209] As filed, the IEU's work value application sought to vary clause 14.1 of the 2010 version of the EST Award, which then set the minimum rates of pay in the award, as follows:

14.1 The minimum salary per annum payable to a full-time employee will be determined in accordance with the provisions of clause 13—Classifications, and the following table.

Level	\$ Per year
1	50,017 55,543
2	51,049 58,534
3	52,438 61,615
4	54,329 64,696
5	56,222 67,776
6	57,984 70, 857
7	59,746 73,938
8	61,637 77,019
9	63,531 80,099
10	65,423 83,179
11	67,317 89,341
12	69,208 92,422

[210] The IEU explained that the proposed adjustment to the EST Award salary rates has two elements. The first is that "*internal relativities are adjusted to remove the inappropriate internal compression at the higher levels*". In this respect, the IEU submitted that the current salary scale does not properly reflect the growth in skill level based on years of service because of this inappropriate compression, and a relativity adjustment is necessary to rectify this. The second is that a 17.5 percent increase is applied to the salary rates, better reflecting the work value of teachers. The two elements of IEU's proposed claim are presented in the table below:

Level	Award Rate	Current Award Relativities	IEU Claim Relativities	Adjusted Award Rates	+ 17.5% Work Value Increase
1	\$50,017	95%	90%	\$47,194	\$55,453
2	\$51,049	97%	95%	\$49,816	\$58,534
3	\$52,438	100%	100%	\$52,438	\$61,615
4	\$54,329	104%	105%	\$55,060	\$64,696
5	\$56,222	107%	110%	\$57,682	\$67,776
6	\$57,984	111%	115%	\$60,304	\$70,857
7	\$59,746	114%	120%	\$62,926	\$73,938
8	\$61,637	118%	125%	\$65,548	\$77,019
9	\$63,531	121%	130%	\$68,169	\$80,099
10	\$65,423	125%	135%	\$70,791	\$83,179
11	\$67,317	128%	145%	\$76,035	\$89,341
12	\$69,208	132%	150%	\$78,657	\$92,422

[211] Since the time that the IEU filed its work value application, the salary rates in the EST Award have increased by 4.8 percent as a result of the *Annual Wage Review 2018-19*⁷⁶ and the *Annual Wage Review 2019-20*.⁷⁷ The IEU’s claim in the context of the current salary rates is therefore as follows:

Level	Award Rate ⁷⁸	Current Award Relativities	IEU Claim Relativities	Adjusted Award Rates ⁷⁹	17.5% Work Value Increase
1	\$52,420	95%	90%	\$49,460	\$58,116
2	\$53,500	97%	95%	\$52,208	\$61,344
3	\$54,956	100%	100%	\$54,956	\$64,573
4	\$56,938	104%	105%	\$57,704	\$67,802
5	\$58,922	107%	110%	\$60,452	\$71,031
6	\$60,769	111%	115%	\$63,199	\$74,259
7	\$62,615	114%	120%	\$65,947	\$77,488
8	\$64,597	118%	125%	\$68,695	\$80,717
9	\$66,582	121%	130%	\$71,443	\$83,946
10	\$68,565	125%	135%	\$74,191	\$87,174
11	\$70,550	128%	145%	\$79,686	\$93,631
12	\$72,531	132%	150%	\$82,434	\$96,860

[212] In the alternative, the IEU claimed a uniform 25 percent increase across all classifications. This would produce the following current rates of pay:

Level	\$ Per year
1	65,525
2	66,875
3	68,695
4	71,173
5	73,653
6	75,961
7	78,269
8	80,746
9	83,228
10	85,706
11	88,188
12	90,664

C.2 Statutory framework and general principles

[213] The IEU’s work value application is made pursuant to s 158(1) of the FW Act. For relevant purposes, s 158(1) authorises a registered organisation of employees to apply for the

⁷⁶ [2019] FWCFB 3500, 289 IR 316

⁷⁷ [2020] FWCFB 3500, 297 IR 1

⁷⁸ Last adjusted as at 1 July 2020

⁷⁹ Based on the IEU relativities

making of a determination varying a modern award under s 157. Section 157 relevantly provides:

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

(1) . . .

(2) The FWC may make a determination varying modern award minimum wages if the FWC is satisfied that:

(a) the variation of modern award minimum wages is justified by work value reasons; and

(b) making the determination outside the system of annual wage reviews is necessary to achieve the modern awards objective.

Note: As the FWC is varying modern award minimum wages, the minimum wages objective also applies (see section 284).

(2A) *Work value reasons* are reasons justifying the amount that employees should be paid for doing a particular kind of work, being reasons related to any of the following:

(a) the nature of the work;

(b) the level of skill or responsibility involved in doing the work;

(c) the conditions under which the work is done.

(3) The FWC may make a determination or modern award under this section:

(a) on its own initiative; or

(b) on application under section 158.

[214] The modern awards objective referred to in s 157 is set out in s 134(1), which provides:

134 The modern awards objective

What is the modern awards objective?

(1) The FWC must ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions, taking into account:

(a) relative living standards and the needs of the low paid; and

(b) the need to encourage collective bargaining; and

- (c) the need to promote social inclusion through increased workforce participation; and
- (d) the need to promote flexible modern work practices and the efficient and productive performance of work; and
- (da) the need to provide additional remuneration for:
 - (i) employees working overtime; or
 - (ii) employees working unsocial, irregular or unpredictable hours; or
 - (iii) employees working on weekends or public holidays; or
 - (iv) employees working shifts; and
- (e) the principle of equal remuneration for work of equal or comparable value; and
- (f) the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and
- (g) the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards; and
- (h) the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.

This is the *modern awards objective*.

[215] Section 135(1) provides that, apart from variations pursuant to ss 160 or 161, modern award minimum wages can be varied under Part 2-3 of the FW Act (in which s 134(1), 157 and 158 are located) only if the Commission is satisfied that the variation is justified by work value reasons (as referred to in s 157(2)). Section 135(2) provides that, in exercising powers to set, vary or revoke modern award minimum wages under Part 2-3, the Commission must take into account the rate of the national minimum wage as currently set in a national minimum wage order. In addition, s 138 provides:

138 Achieving the modern awards objective

A modern award may include terms that it is permitted to include, and must include terms that it is required to include, only to the extent necessary to achieve the modern awards objective and (to the extent applicable) the minimum wages objective.

[216] Section 284(2)(b) provides that the minimum wages objective also applies to the performance or exercise of the Commission's powers under Part 2-3 so far as they relate to setting, varying or revoking modern award minimum wages. The minimum wages objective is set out in s 284(1), which provides:

284 The minimum wages objective

What is the minimum wages objective?

(1) The FWC must establish and maintain a safety net of fair minimum wages, taking into account:

- (a) the performance and competitiveness of the national economy, including productivity, business competitiveness and viability, inflation and employment growth; and
- (b) promoting social inclusion through increased workforce participation; and
- (c) relative living standards and the needs of the low paid; and
- (d) the principle of equal remuneration for work of equal or comparable value; and
- (e) providing a comprehensive range of fair minimum wages to junior employees, employees to whom training arrangements apply and employees with a disability.

This is the *minimum wages objective*.

[217] The cumulative effect of the above provisions is that, in order to exercise the power in s 157 to grant the IEU's work value application in whole or part, we need to:

- (1) be satisfied that the variation to minimum wages prescribed in the EST Award is justified by work value reasons;
- (2) be satisfied that the variation is necessary to achieve the modern awards objective;
- (3) be satisfied that the variation is necessary to meet the minimum wages objective; and
- (4) take into account the rate of the national minimum wage as currently set in a national minimum wage order.

[218] In the 2018 Full Bench decision in *4 yearly review of modern awards - Pharmacy Industry Award 2010*,⁸⁰ (*Pharmacy Award decision*) the construction of the requirement in s 156(3) of the FW Act that a variation to modern award minimum wages in the 4 yearly review of modern awards be "*justified by work value reasons*", and the definition of the expression "*work value reasons*" in s 156(4), was considered at length in the context of the genesis and development of the concept of the fixation of wages based on work value in the history of

⁸⁰ [2018] FWCFB 7621, 284 IR 121

industrial arbitration in Australia.⁸¹ Section 156 has since been repealed, but we consider that the conclusion stated in the *Pharmacy Award decision* are applicable to subsections 157(2) and (2A) because those provisions are in terms relevantly identical to subsections 156(3) and (4). The Full Bench stated the following conclusions (footnotes omitted):

“[163] It is against that background that the way in which s 156(3) and (4) are properly to be construed and applied may be considered. A number of propositions may be stated in that context. The first is that the effect of s 156(3) is to establish a jurisdictional prerequisite for the exercise of power to vary minimum wages in a modern award in the conduct of a 4 yearly review of modern awards, namely the reaching of a state of satisfaction on the part of the Commission that the variation is “*justified by work value reasons*”.

[164] Second, because the jurisdictional prerequisite is expressed in terms of the Commission’s “*satisfaction*” concerning whether a variation is “*justified*” by the prescribed type of reasons - a requirement which involves an element of subjectivity and about which reasonable minds may differ - it requires the formation of a broad evaluative judgment involving the exercise of a discretion.

[165] Third, the definition of “*work value reasons*” in s 156(4) requires only that the reasons justifying the amount to be paid for a particular kind of work be “*related to any of the following*” matters set out in paragraphs (a)-(c). The expression “*related to*” is one of broad import that requires a sufficient connection or association between two subject matters. The degree of the connection required is a matter for judgment depending on the facts of the case, but the connection must be relevant and not remote or accidental. The subject matters between which there must be a sufficient connection are, on the one hand, the reasons for the pay rate and, on the other hand, *any* of the three matters identified in paragraphs (a)-(c) – that is, any one or more of the three matters.

[166] Fourth, although the three matters identified - the nature of the work, the level of skill or responsibility involved in doing the work, and the conditions under which the work is done - clearly import the fundamental criteria used to assess work value changes under the wage fixing principles which operated from 1975 to 1981 and 1983 to 2006, the legislature in enacting s 156(4) chose not to import the additional requirements contained in those wage-fixing principle. For example, as was observed in the *Equal Remuneration Case 2015*, s 156(4) does not contain any requirement that the work value reasons consist of identified *changes* in work value measured from a fixed datum point. The Full Bench in that matter said:

“[292] ... We see no reason in principle why a claim that the minimum rates of pay in a modern award undervalue the work to which they apply for gender-related reasons could not be advanced for consideration under s 156(3) or s 157(2). Those provisions allow the variation of such minimum rates for ‘work value reasons’, which expression is defined broadly enough in s 156(4) to allow a wide-ranging consideration of any contention that, for historical reasons and/or on the application of an indicia approach, undervaluation has occurred because of gender inequity. There is no datum point requirement in that definition which

⁸¹ Ibid at [131]-[162]

would inhibit the Commission from identifying any gender issue which has historically caused any female-dominated occupation or industry currently regulated by a modern award to be undervalued. The pay equity cases which have been successfully prosecuted in the NSW and Queensland jurisdictions and to which reference has earlier been made were essentially work value cases, and the equal remuneration principles under which they were considered and determined were likewise, in substance, extensions of well-established work value principles. It seems to us that cases of this nature can readily be accommodated under s 156(3) or s 157(2). Whether or not such a case is successful will, of course, depend on the evidence and submissions in the particular proceeding.”

[167] Likewise, s 156(4) did not incorporate the test in the wage-fixing principles that the change in the nature of work should constitute such a significant net addition to work requirements as to warrant the creation of a new classification. In substance, section 156(3) and (4) leave it to the Commission to exercise a broad and relatively unconstrained judgment as to what may constitute work value reasons justifying an adjustment to minimum rates of pay similar to the position which applied prior to the establishment of wage fixing principles in 1975.

[168] Fifth, it would be open to the Commission have regard, in the exercise of its discretion, to considerations which have been taken into account in previous work value cases under differing past statutory regimes. For example, although as already stated s 156(4) contains no requirement for the measurement of work value changes from a fixed datum point, we consider it likely that the Commission would usually take into account whether any feature of the nature of work, the level of skill or responsibility involved in performing the work or the conditions under which it is done has previously been taken into account in a proper way (that is, in a way which is free of gender bias and any other improper considerations) in assessing wages in the relevant modern award or its predecessor in order to ensure that there is no “double counting”. Likewise, we consider that the considerations referred to in paragraph [190] of the *ACT Child Care Decision*, which we have earlier quoted, may be of relevance in particular cases, as may considerations in other authoritative past work value cases.”

[219] The considerations in paragraph [190] of the *ACT Child Care decision*,⁸² a decision of a Full Bench of the Australian Industrial Relations Commission (AIRC), referred to in the last paragraph of the extracted passage above were as follows (footnotes omitted):

“[190] Previous decisions of the Commission suggest that a range of factors may, depending on the circumstances, be relevant to the assessment of whether or not the changes in question constitute the required “*significant net addition to work requirements*”. The following considerations are relevant in this regard:

- Rapidly changing technology, dramatic or unanticipated changes which result in a need for new skills and/or increased responsibility may justify a wage

(a) ⁸² *ALHMWU re Child Care Industry (Australian Capital Territory) Award 1998 and Children's Services (Victoria) Award 1998 - re Wage rates* [2005] AIRC 28, PR954938 (13 January 2005)

increase on work value grounds. But progressive or evolutionary change is insufficient.

- An increase in the skills, knowledge or other expertise required to adequately undertake the duties concerned demonstrates an increase in work value.
- The mere introduction of a statutory requirement to hold a certificate of competency does not of itself constitute a significant net addition to work requirements. It must be demonstrated that there has been some change in the work itself or in the skills and/or responsibility required. However, where additional training is required to become certified and hence to fulfil a statutory requirement a wage increase may be warranted.
- A requirement to exercise care and caution is, of itself, insufficient to warrant a work value increase. But an increase in the level of responsibility required to be exercised may warrant a wage increase on work value grounds. Such a change may be demonstrated by a requirement to work with less supervision.
- The requirement to exercise a quality control function may constitute a significant net addition to work requirements when associated with increased accountability.
- The fact that the emphasis on some aspects of the work has changed does not in itself constitute a significant net addition to work requirements.
- The introduction of a new training program or the necessity to undertake additional training is illustrative of the increased level of skill required due to the change in the nature of the work. But keeping abreast of changes and developments in any trade or profession is part of the requirements of that trade or profession and generally only some basic changes in the educational requirements can be regarded, of itself, as constituting a change in work value.
- Increased workload generally goes to the issue of manning levels not work value. But, where an increase in workload leads to increased pressure on skills and the speed with which vital decisions must be made then it may be a relevant consideration.”

[220] The principles concerning the assessment of what is necessary to meet the modern awards objective may be summarised as follows:

- the modern awards objective is very broadly expressed,⁸³ and is a composite expression which requires that modern awards, together with the NES, provide “*a fair and relevant minimum safety net of terms and conditions*”, taking into account the matters in ss 134(1)(a)–(h);⁸⁴

⁸³ *Shop, Distributive and Allied Employees Association v National Retail Association (No 2)* [2012] FCA 480, 205 FCR 227, 219 IR 382 at [35]

⁸⁴ *Penalty Rates Decision* [2017] FWCFB 1001, 265 IR 1 at [128]; *Shop, Distributive and Allied Employees Association v The Australian Industry Group* [2017] FCAFC 161, 253 FCR 368, 272 IR 88 at [41]- [44]

- fairness in this context is to be assessed from the perspective of the employees and employers covered by the modern award in question;⁸⁵
- the obligation to take into account the s 134 considerations means that each of these matters, insofar as they are relevant, must be treated as a matter of significance in the decision-making process;⁸⁶
- no particular primacy is attached to any of the s 134 considerations and not all of the matters identified will necessarily be relevant in the context of a particular proposal to vary a modern award;⁸⁷
- it is not necessary to make a finding that the award fails to satisfy one or more of the s 134 considerations as a prerequisite to the variation of a modern award;⁸⁸
- the s 134 considerations do not set a particular standard against which a modern award can be evaluated; many of them may be characterised as broad social objectives;⁸⁹
- in giving effect to the modern awards objective the Commission is performing an evaluative function taking into account the matters in s 134(1)(a)–(h) and assessing the qualities of the safety net by reference to the statutory criteria of fairness and relevance;
- the matters which may be taken into account are not confined to the s 134 considerations;⁹⁰
- section 138, in requiring that a modern award may include terms that it is permitted to include, and must include terms that it is required to include, only to the extent necessary to achieve the modern awards objective (and, to the extent applicable, the minimum wages objective), emphasises the fact it is the minimum safety net and minimum wages objective to which the modern awards are directed;⁹¹
- what is necessary to achieve the modern awards objective in a particular case is a value judgment, taking into account the s 134 considerations to the extent that they are relevant having regard to the context, including the circumstances pertaining to

⁸⁵ *Re Annual Wage Review 2017-2018* [2018] FWCFB 3500, 279 IR 215 at [21]- [24]

⁸⁶ *Edwards v Giudice* [1999] FCA 1836, 94 FCR 561 at [5]; *Australian Competition and Consumer Commission v Leelee Pty Ltd* [1999] FCA 1121 at [81]- [84]; *National Retail Association v Fair Work Commission* [2014] FCAFC 118, 225 FCR 154, 244 IR 461 at [56]

⁸⁷ *Shop, Distributive and Allied Employees Association v The Australian Industry Group* [2017] FCAFC 161, 253 FCR 368, 272 IR 88 at [33]

⁸⁸ *National Retail Association v Fair Work Commission* [2014] FCAFC 118, 225 FCR 154, 244 IR 461 at [105]- [106]

⁸⁹ *Ibid* at [109]-[110]

⁹⁰ *Shop, Distributive and Allied Employees Association v The Australian Industry Group* [2017] FCAFC 161, 253 FCR 368, 272 IR 88 at [48]

⁹¹ *CFMEU v Anglo American Metallurgical Coal Pty Ltd* [2017] FCAFC 123, 252 FCR 337 at [23]

the particular modern award, the terms of any proposed variation and the submissions and evidence;⁹² and

- where an interested party applies for a variation to a modern award as part of the 4 yearly review, the task is not to address a jurisdictional fact about the need for change, but to review the award and evaluate whether the posited terms with a variation meet the objective.⁹³

[221] In respect of the minimum wages objective in s 284, the Expert Panel in the *Annual Wage Review 2017-18*⁹⁴ stated the following propositions:

- as with s 134(1), the matters specified in s 284(1) must be considered and treated as matters of significance in the decision-making process;⁹⁵
- there is a substantial degree of overlap in the considerations the Panel is required to take into account under the minimum wages objective and the modern awards objective;⁹⁶
- the statutory task in s 284(1) (similar to s 134(1)) is an evaluative exercise, in which the statutory considerations inform the evaluation of what might constitute a safety net of fair minimum wages but do not necessarily exhaust the matters which might be considered relevant;⁹⁷ and
- fairness is central to the minimum wages objective (as it is to the modern awards objective), with fairness to be assessed from the perspective of employees and employers.⁹⁸

C.3 *The IEU's contentions*

[222] The central proposition in the IEU's case is that there have been significant changes in the work value of teachers covered by the EST Award, including early childhood teachers, since 1996 that have not been taken into account in the fixation of minimum wage rates for such teachers. The IEU identified three major categories of change in this respect:

- (1) Increased professionalism that has given rise to higher quality teachers, demonstrated by:
 - changes to initial teacher education, in particular quality assurance of teaching programs, higher qualification entry requirements, increased degree

⁹² See generally: *Shop, Distributive and Allied Employees Association v National Retail Association (No.2)* [2012] FCA 480, 205 FCR 227, 219 IR 382

⁹³ *CFMEU v Anglo American Metallurgical Coal Pty Ltd* [2017] FCAFC 123, 252 FCR 337 at [46]

⁹⁴ [2018] FWCFCB 3500, 279 IR 215

⁹⁵ *Ibid* at [8]

⁹⁶ *Ibid* at [9]

⁹⁷ *Ibid* at [14]

⁹⁸ *Ibid* at [17]

length and, in NSW, additional requirements for employment in Government schools;

- new national registration requirements for teachers which involve new ethical standards and standards for proficiency;
- new post-registration requirements, in particular mandatory continual professional development requirements;
- substantial increases in accountability, driven by increased student testing and reporting of results;
- new national quality measures for early childhood education introduced in 2009; and
- increases in accountability arising from changes in community and parental expectations.

(2) An increase in the complexity of the work arising from:

- the change to an outcome-based curriculum, which requires differentiating the teaching for each child and substantially increases the level and intensity of teaching;
- the requirement to constantly record the level of achievement of each child at a granulated level which assesses each child's proficiency in various categories of skill and knowledge for each subject;
- the need to analyse data on the level of achievement of each child to determine how to target those areas that need attention and then teach to that individual level;
- an increase in students with special needs, behavioural difficulties or additional needs which has given rise to substantial additional work, such as individualised teaching, altered assessments, individual student plans determined in conjunction with parents and health professionals, a different and more intense teaching approach, and the need to lead and supervise teacher's aides;
- the need to use technology in the classroom, which is a required part of the EYLF and the national teaching framework; and
- standardised curriculums with greater content and scope, requiring more to be covered in the same period of time.

(3) Substantially more intense and demanding work resulting from:

- the need to produce constant updated reports as to progress based on regular assessments accompanied by a withdrawal of administrative support;

- substantially increased reporting requirements to parents, from once a term or year reports to regular reports on subjects via app technology;
- substantially increased accessibility for parents including via emails and phone;
- substantially increased obligations to document a variety of information;
- a substantial increase in policies which must be understood and applied; and
- an increase in extra-curricular activities requiring teaching time.

[223] In relation to its first category of change, the IEU submitted that initial teacher education requirements had been reformed since 1996, resulting in the lengthening of the time taken to complete an undergraduate degree to four years and a master's degree to two years, the introduction in 2011 of a national course accreditation scheme superintended by the AITSL which imposed strict quality assurance standards, the introduction by the Commonwealth in 2015 of increased entry requirements including higher and more sophisticated entry criteria to university degrees, extensive assessment of graduates to ensure classroom readiness, standardisation of induction systems, increased practicum requirements while undertaking a degree, higher quality assurance measures in relation to university study, and focused research of teacher education effectiveness and practice. The IEU also pointed to the introduction of specialised birth to age 8 degrees, which permit employment in early childhood education and primary schools, and to the NSW Government's imposition of academic benchmark results for teachers who seek employment as a teacher in NSW public schools.

[224] The IEU also submitted that the uniform registration requirements for teachers introduced in 2011, coupled with common national professional standards, represent a significant change in that they established standardised minimum skill levels which ensured accountability and lifted the level of professionalism. In addition, teachers are now required to engage in ongoing professional development of 20 hours per year, or 100 hours over five years, as a result of the introduction of minimum standards and reporting requirements, and schools and education facilities are also introducing internal training and professional development programs for teachers.

[225] As to the second category of change, the IEU submitted that changes in pedagogical understanding and practices have greatly altered the complexity and intensity of work performed by teachers at all levels of schooling. The IEU identified the starting element of this as being differentiation, by which alternative assessment and learning techniques are developed to meet the needs of particular individual children or groups of demographically similar children. More recently, this had evolved into the personalisation of learning experiences requiring the teacher to provide different learning plans and resources for each child in the class. The IEU submitted that although, by necessity, individualised learning has always been a feature of quality early childhood education, it has become more prevalent following the introduction of the NQF. In both schools and early childhood education, it was submitted, individualisation added further complexity in respect of children with special needs or requiring additional support. These developments have had a revolutionary effect on day-to-day teaching practice, with the drive for quality outcomes leading to more complex work.

[226] The IEU also relied upon significant changes in the nature and volume of standardised testing that teachers are required to undertake, including National Assessment Program – Literacy and Numeracy (NAPLAN), Progressive Achievement Testing (PAT), and State-specific and school-specific testing. This testing, the IEU submitted, constituted part of a program of ongoing individual assessment which included test design, data entry, result analysis, ongoing planning based on individual outcomes, determining individual teaching goals, assessing individual student outcomes against their individual plans, and report writing and other documentation. This process involved, it was contended, marking for a range of competencies, and facilitates identification of students with learning difficulties and the design of individual teaching targeted for them. It also increases the accountability of teachers within a school and to parents since test results and outcomes are increasingly used as a metric to assess teacher performance.

[227] The IEU also contended that as a consequence of the above changes, parental expectations of professionalism and quality outcomes have increased, particularly in the early education sector, with parents expecting and enjoying an extraordinarily high degree of communication and reporting about their child's experiences and learning through phone applications, report books and observations tailor-made for each child and written to engage and educate parents. This has, it was submitted, consequently increased the accountability and accessibility of teachers, and has presented complex challenges for teachers and exposed them to a range of new and potentially very difficult interactions and a corresponding increase in the level of interpersonal skills required.

[228] The introduction of the standardised national curricula in the form of the EYLF in 2009 and the Australian Curriculum in 2010 has, the IEU submitted, led to increased work for teachers because of regulatory scrutiny. The IEU rejected the suggestion that the EYLF was not properly to be characterised as a curriculum because it was outcomes focused rather than content-prescriptive. The IEU also pointed to developments in pedagogical understanding which have driven continuous change in teachers' practice by enhancing the sophistication and breadth of skills required of teachers and the quality of outcomes for students. In addition, it was submitted, demographic changes involving an increase in students with diagnosed learning difficulties and other disabilities, or with non-diagnosed issues requiring additional support, and students from challenging and non-traditional family backgrounds, had altered the nature, complexity and challenges involved in teachers' work, both in schools and early childhood education. This in many cases involved liaising with other agencies and professionals, regular meetings with parents and support agencies and extensive record keeping, report writing and the development of individual education plans.

[229] In respect of changes in technology, the IEU submitted that the EYLF and the Australian Curriculum require that technology be integrated into the learning experience, whereby teachers are required to be both a facilitator as well as an instructor in the use of such technology and must ensure the safe and appropriate use of technology. The IEU also relied upon the increase in the number of policies which teachers have been required to understand and implement, covering issues such as child safety, child protection requirements, diversity issues, occupational health and safety and complex medical issues. This had in particular occurred in early childhood education, it was submitted.

[230] In relation to the third category of change, the IEU submitted that the changes earlier described had led to a significant increase in the overall workload of teachers in addition to the increase in the skill requirements, complexity and quality of teachers' work, including greater

detail in respect of programming, increased documentation requirements, an increased need to work out of hours, a requirement to work with less administrative support, greater participation in a greater range of extra-curricular activities, and a greater need to mentor and provide leadership to junior staff seeking accreditation.

[231] The IEU also submitted that the environment in which teachers work has changed, with a move from traditional classrooms to open plan classrooms, “agile space” environments including with multi-age groupings, and self-paced learning environments for students who might be using their own devices. These changes, it was submitted, bring additional challenges in early childhood education in terms of creating noisy, chaotic and crowded teaching spaces full of very young children who have difficulty in controlling their emotions and following instructions.

[232] In relation to early childhood teachers specifically, the IEU placed emphasis upon the introduction of the NQF, which imposed a uniform national scheme of quality regulation on the early childhood sector and, in respect of teaching work, mandated a national curriculum for the first time, identified and applied the EYLF and teaching outcomes, improved the professionalism and quality of outcomes of early childhood teachers, and also increased their workload.

[233] The IEU identified the following discretionary considerations as weighing in favour of the grant of its claim:

- the shortage of early childhood teachers was not just caused by increased demand resulting from government-imposed teacher/child ratios but also by the difference in remuneration and conditions between early childhood teachers and primary school teachers;
- those early childhood employers which had increased the remuneration of early childhood teachers above the minimum rates of pay set by the EST Award had been motivated by a desire to improve their capacity to recruit and retain early childhood teachers;
- it was in the public interest to address the shortage of early childhood teachers to ensure the best educational outcomes for children in that stage of education;
- the maintenance of wages for early childhood teachers at levels so clearly below those for school teachers is not fair and should be rectified;
- the gender-biased perception that early childhood education is of lower value in the eyes of the community, and that it is caring work which women are inherently capable of doing, would be at least in part addressed by the grant of the IEU’s claim;
- the growth in the for-profit long day care sector, the government subsidy scheme introduced effective from 1 July 2018, the capacity of the sector to increase charges without losing patronage in recent years, and the ability of some employers to increase teachers’ pay meant that the IEU’s claim could not be said to be unaffordable; and

- the compression in teachers' salaries caused by flat-rate wage increases had meant that the work value acquired through years of experience in teaching has not been appropriately rewarded, and the grant of the IEU's primary claim would rectify this.

C.4 The IEU's evidentiary case

[234] The IEU adduced evidence from a number of expert and lay witnesses in support of its work value case. In addition, it relied upon its witness evidence adduced in support of its equal remuneration application, except for the Mercer Report (although, unhelpfully, it did not explain precisely what aspects of this evidence related to the work value application). The IEU's evidentiary case is summarised below except to the extent that it has already been summarised in connection with the equal remuneration case.

Associate Professor Susan Irvine

[235] Susan Irvine is Associate Professor at the School of Early Childhood and Inclusive Education in the Faculty of Education at the Queensland University of Technology. She was awarded a Diploma of Teaching (Early Childhood) from the Brisbane Kindergarten Teachers College in 1980, a Bachelor of Educational Studies in 1986 and a Master of Educational Studies in 1990 from the University of Queensland and a PhD from the Queensland University of Technology in 2005. She has previously worked as an early childhood teacher, Director of a childcare centre, a primary school teacher and was the CEO of Lady Gowrie kindergartens in Queensland. She has also held public service, management and academic roles in the area of early childhood education and care over a career of almost 40 years. She was requested by the IEU to prepare a report⁹⁹ identifying changes in the nature and value of early childhood teaching from 1996 to the present day, divided into two time periods: 1996 to 2009, and 2010 to 2018. In her report, Associate Professor Irvine focused on the work of early childhood teachers, which she characterised as degree-qualified teachers who have completed an initial teacher education program (that is, covering the age range birth to 8 years or birth to 12 years) that enables them to work in preschools and long day care as well as the early phase of school. She also emphasised that while she concentrated on changes impacting upon early childhood teachers, the vast majority of the changes she identified impacted on the work of *all* teachers through to secondary school.

[236] At the outset Associate Professor Irvine identified that a major area of change was the focus placed on effective or quality teaching, which acknowledges the teacher as the key determinant of positive educational outcomes at both the individual and national level. This was based on research which disclosed the extent to which the quality of teaching accounted for variance in student achievement. In Australia, the Melbourne Declaration recognised the link between education, society and the economy, identified priority goals to improve educational outcomes for all young Australians and acknowledged the fundamental importance of teachers and school leaders in achieving these goals. The Melbourne Declaration shaped Australian education policy for the next decade in respect of:

- more rigorous teacher preparation;
- the introduction of national curricula (the Australian Curriculum, the EYLF);

⁹⁹ Exhibit 14

- the development of the APST;
- initiatives to improve educational outcomes for children experiencing disadvantage; and
- strengthened accountability and transparency in education.

[237] Associate Professor Irvine said that each of the above has had a profound effect on the nature, complexity and volume of work of teachers.

[238] Associate Professor Irvine identified specific changes in the areas discussed below.

Teacher registration

[239] Associate Professor Irvine said that in the period 1996 to 2009, initial teacher education programs became longer with the phasing-out of three-year programs and the introduction of a requirement for a four-year study program. It was reported in 1998 that most States and Territories were making the transition at this time as a response to increased demands and complexities in contemporary schooling. The duration of study for graduate entry was also generally increased from one to two years, although in Queensland this did not occur until 2017. Introduction of mandatory requirements for ongoing learning were also recommended in 1998.

[240] In the 2010-2018 period, a commitment was made to the establishment of a national system of teacher registration based on a new national professional framework for teachers known as the APST. The APST strengthened professional expectations in relation to:

- inclusive teaching practices (including differentiated teaching for Aboriginal and Torres Strait Islander students and students with disability);
- assessment and reporting, including the use of diagnostic, formative and summative approaches to assess student learning, interpreting student data and documenting and reporting on student learning;
- information and communication technology (ICT), specifically using ICT and teaching students to use ICT to expand learning; and
- engaging in ongoing professional learning, including using the APST to assess and plan professional learning needs and engaging in professional learning to improve practice and student learning.

[241] Associate Professor Irvine said that while the above aspects of teaching have historically been recognised as important (except for ICT), the APST present these as universal standards for teaching and sets new benchmarks for teaching practice and performance. She said that, today, the national requirement for registration is the completion of a four-year undergraduate degree accredited by the AITSL and, for employment as an early childhood teacher in prior-to-school teaching, the program must also be approved by the ACECQA. Graduate students need to complete two years of professional study in education to be recognised as a teacher, which will usually be Master of Teaching program set at Australian Qualifications Framework (AQF) Level 9 (in comparison with the previous Graduate Diploma set at AQF Level 8). To maintain

registration, teachers are required to complete a minimum of 20 hours of professional development in education each year, often undertaken out of hours and at the teacher's own expense.

More rigorous teacher preparation

[242] Associate Professor Irvine's evidence was that, in the period 2010-2018, apart from the duration of initial teacher education programs, there have been major changes in the content of such programs with the intention of lifting entry requirements, strengthening pre-service teacher performance and ensuring that teachers are equipped to work in a dynamic, demanding and complex profession. These changes include more selective entry requirements (including literacy and numeracy prerequisites), a strengthened focus on content/discipline knowledge, teaching pedagogies and assessment practices linked to the introduction of the Australian Curriculum and the EYLF, an expectation of digital literacy and a renewed emphasis on connecting theory and practice through professional experience while training.

Introduction of the Australian Professional Standards for Teachers

[243] The APST, which were introduced in 2011, constitute the first set of national professional standards for teachers in Australia and describe the professional knowledge, professional practice and professional engagement required of teachers in the 21st century. Associate Professor Irvine said that the APST was a key element in the professionalisation of teaching in Australia and an important step forward in raising the status of the teaching profession. She said that the APST comprises seven standards which are presented in four career stages: Graduate, Proficient, Highly Accomplished and Lead Teacher. The expectations for teaching performance increase with each new level. Preservice teachers are expected to provide evidence that upon completion of their initial teaching program they meet the APST at Graduate level in order to obtain provisional registration. Beginning teachers are then required to work with their employer to transition to full teacher registration following the completion of one year of teaching, and this requires the beginning teacher to collect evidence to demonstrate they meet the APST at Proficient level.

Changes to curriculum and an increased focus on assessment

[244] In relation to the 1996-2009 period, Associate Professor Irvine said that prior to the introduction of the Australian Curriculum, State and Territories designed and implemented their own school curricula, with considerable variation between jurisdictions. There were few curricula designed for education and care services prior to school entry. In Queensland, the *Preschool Curriculum Guidelines* were introduced in 1998 for use by early childhood teachers in a non-compulsory education setting. Following the cessation of State pre-schools and the introduction of the (then) non-compulsory Preparatory year, the Queensland Government implemented the *Queensland Early Years Curriculum Guidelines*, which provided the basis for teaching in the Preparatory year until the phasing-in of the Foundation year in the Australian Curriculum beginning in 2010. The EYLF was introduced in 2009, and was described by Associate Professor Irvine as marking "*a significant historical milestone in Australian early education, and recognition of education and care services as the foundation to Australia's education system*". Associate Professor Irvine said that the EYLF led to a strengthened focus on quality teaching in the early years and increased expectations of early childhood teachers and other educators working in these settings. Under the EYLF, it is expected that early childhood teachers will:

- respect and enable children’s agency in their learning;
- play an active role in promoting and extending children’s learning;
- draw on an expanded range of teaching and learning theories, including developmental, socio-cultural, socio-behavioural, critical and post-structural theories to support and extend children’s learning;
- implement an integrated and holistic approach to teaching and learning, contributing to the five high level learning outcomes;
- work in partnership with families and communities to achieve and sustain the best outcomes for children;
- provide rich and inclusive educational programs that cater for individual learners;
- promote cultural awareness and respect for diversity;
- monitor, document and assess children’s learning;
- promote lifelong learning dispositions; and
- support successful transition to school, including liaising with schools and the development of transition statements at the end of the kindergarten/preschool year.

[245] Associate Professor Irvine said that while the above practices have long been associated with quality in early childhood education and care, the EYLF draws on contemporary research and practice wisdom to raise professional expectations for all teachers which are defined, monitored and subject to ongoing external assessment as part of the NQF Assessment and Rating System. Associate Professor Irvine also said that, like the Australian Curriculum, the EYLF includes a focus on increased discipline knowledge, teachers as highly skilled pedagogues, individualised and personalised learning approaches and ongoing documentation and assessment of children’s learning progress against predetermined learning outcomes. Her opinion was that the implementation of the EYLF, in conjunction with the broader NQF for early childhood education and care, has raised professional and community expectations of teachers and other educators working in these contexts. There was evidence to show that these initiatives had increased workload, in particular in relation to curriculum documentation and other administrative expectations.

[246] In relation to the Australian Curriculum, Associate Professor Irvine said that it strengthened the emphasis on disciplinary knowledge, regular and ongoing assessment of learning, integrated approaches to teaching and learning, and the development of general capabilities such as literacy, numeracy, ICT capability, critical and creative thinking, personal and social capability, ethical understanding and intercultural understanding. The Australian Curriculum presents a developmental sequence of learning from Foundation to Year 10 and provides detailed content descriptions and national achievement benchmarks to support quality teaching and learning. Associate Professor Irvine said that it has led to a much greater focus on ongoing formative and summative assessment of individual learning, and requires more time to be spent on observing, monitoring and testing children’s developing knowledge and skills

against national expectations for their year level. This, she said, has cumulatively meant a much greater focus on data collection and analysis to inform teaching and learning.

[247] Associate Professor Irvine was cross-examined upon her report at the hearing on 12 June 2019, as well as upon her reports prepared in connection with the IEU's equal remuneration application. She gave evidence to the following effect:

- the professional role and responsibilities of an early childhood teacher are similar regardless of whether the context is an early childhood and care prior-to-school service or whether it is the early phase of school;¹⁰⁰
- non-school early childhood teachers in Queensland are not required to be registered, but that is currently being reviewed and is anticipated to be changed;¹⁰¹
- the NQF applies to non-degree qualified early childhood educators as well as degree-qualified early childhood teachers, but not in the same way;¹⁰²
- there is no provision of the National Law which deals with teachers differently to non-degree educators;¹⁰³
- when Associate Professor Irvine was CEO of the Lady Gowrie kindergartens in Queensland, she employed a mix of degree qualified and non-degree qualified teachers, with the former responsible for the design, implementation and evaluation of preschool education programs and the latter supported the delivery of the programs;¹⁰⁴
- non-degree qualified educators may occupy Educational Leader roles and Director roles;¹⁰⁵
- the Early Childhood Australia Code of Ethics applies to everyone who works in early childhood services, and has been in place in various versions for 28 years;¹⁰⁶
- the capacity to reflect on both teaching and learning is a defining professional skill, but the strengthened emphasis on critical reflection takes this to a new level;¹⁰⁷
- ongoing professional development is a feature of the work or practice of any profession;¹⁰⁸

¹⁰⁰ Transcript, 12 June 2019, PN 936

¹⁰¹ Ibid, PNs 941-942

¹⁰² Ibid, PNs 952-959

¹⁰³ Ibid, PNs 962-963

¹⁰⁴ Ibid, PNs 966-970

¹⁰⁵ Ibid, PNs 976-977

¹⁰⁶ Ibid, PNs 980-988

¹⁰⁷ Ibid, PNs 995-996

¹⁰⁸ Ibid, PN 997

- difficulties in the recruitment and retention of early childhood teachers in the early childhood and care sector, particularly in long day care, are caused by difficulty in competing with schools as to pay and conditions, and also by the increased demand for early childhood teachers caused by the higher number of teachers required to be employed by the NQF;¹⁰⁹
- the NQF recognises three streams of early childhood educators: the assistant educator with a Certificate III level qualification, the Lead Educator who is in charge of a room and has an AQF Level 5 diploma, and the degree-qualified early childhood teacher who can lead a program in any room;¹¹⁰
- the NQF has different expectations of people in these particular roles, so that when it comes to early childhood teachers, the focus is on their role in terms of active teaching, how they can maximise children's learning, and monitoring and assessing learning against the new high level learning outcomes introduced by the EYLF;¹¹¹
- Associate Professor Irvine could not however identify any aspect of the NQF which referred to differentiated expectations for early childhood degree-qualified teachers;¹¹² and
- the research, including the E4 Kids study, suggest that more highly qualified educators are able to apply a higher level of knowledge in the design, delivery and evaluation of children's learning experiences.¹¹³

[248] Associate Professor Irvine prepared a supplementary report at the request of the IEU dated 19 June 2019.¹¹⁴ This report concerned three issues: the impact of the NQF and its various elements; the overarching professionalisation agenda in early childhood education and care; and the related focus on quality teaching in all education contexts. In relation to the NQF, Associate Professor Irvine said that it constitutes a holistic and integrated framework consisting of different elements which have been designed to work together to drive quality improvement in early childhood education and care. The National Law and National Regulations, which set the baseline for service provision, raised qualification requirements for all educators, including the need for long day care centres to engage a degree-qualified early childhood teacher, with most needing to engage a second early childhood teacher from 2020. The NQS has shifted the focus away from structural inputs to children's experiences and outcomes and emphasises early learning and raises expectations regarding educational programs and practices. The EYLF provides the reference point for educational programs and practices, and all educators, regardless of qualifications, are expected to work within it. The NQF sets higher expectations for educators' professional practice and detail practice that is typically associated with teachers. The expectation is that early childhood teachers will lead effective teaching and learning with their group of children, most often the preschool group, and make a positive contribution to educational programs and practice across the centre in both formal and informal leadership

¹⁰⁹ Ibid, PNs 998-1075, 1153-1156

¹¹⁰ Ibid, PN 1126

¹¹¹ Ibid, PN 1127, 1134

¹¹² Ibid, PNs 1160-1165

¹¹³ Ibid, PNs 1140-1142

¹¹⁴ Exhibit 133

roles. The expectation regarding the roles of lesser qualified educators is different. An assistant educator holding a vocational qualification (Certificate III) is expected to work with the EYLF, with direction and support from a Lead Educator (Diploma) or early childhood teacher. In jurisdictions where preschool funding is available to long day care centres, Diploma-qualified educators work with the EYLF (or approved State preschool curriculum), with direction and support from an early childhood teacher. Associate Professor Irvine compared this to the school context, where teacher's aides work with the Australian Curriculum with direction and support from a teacher.

[249] Associate Professor Irvine described the practical effects of the NQF on the work of early childhood teachers. She said that NQS data had shown continuing quality improvement in early childhood education and care since the introduction of the NQF, with many services now achieving a higher quality rating than before. In respect of the EYLF, Associate Professor Irvine said that early childhood teachers are now expected to exercise their professional judgment and select teaching approaches to maximise individual learning, drawing from an expanded suite of evidence-informed teaching strategies, and higher expectations of early childhood teachers is evidenced by the requirement for an early childhood teacher to reach the preschool education program where this is funded by government, regardless of service type. The EYLF identified five high-level learning outcomes, and requires all staff to learn how to plan engaging learning experiences based on the EYLF principles and practices and contributing to the new national learning outcomes. The EYLF requires monitoring, assessment and documentation of children's learning progress against the five high-level outcomes. While all staff contribute to this documentation, there is an expectation that early childhood teachers leading the preschool education program will regularly engage in formative and summative assessment of learning and use this to develop a transition statement for each child in their group on learning over the preschool year, which is shared with the child's family and primary teacher to support a successful transition to school.

[250] Associate Professor Irvine said that the APST, which identify seven professional standards to support effective teaching and learning, closely align with the NQS, particularly in relation to educational programs and practices. In a growing number of jurisdictions, early childhood teachers in early childhood education and care are required to be registered, and it is expected that there will be a move to national registration. She also pointed to the growing diversity of children in early childhood education, which she said increases the demands and complexity of work for all staff. The NQF requires all educators to engage in inclusive practices in early childhood education and care and, in this respect, the NQS and the EYLF promote the need for and the benefits of individualised teaching and learning practices. The APST requires teachers to differentiate their teaching to optimise children's learning, and to design and implement teaching strategies that are responsive to the learning strengths and needs of students from diverse linguistic, cultural, religious and socio-economic backgrounds.

[251] The IEU also relied on Associate Professor Irvine's reports prepared for the purpose of its equal remuneration application, dated 7 December 2017¹¹⁵ and 19 July 2018.¹¹⁶ In respect of the 7 December 2017 report, the IEU requested that Associate Professor Irvine focus on the nature of the work of early childhood teachers, the skills and responsibilities required of them and the conditions and context in which the work is performed.

¹¹⁵ Exhibit 12

¹¹⁶ Exhibit 13

[252] Associate Professor Irvine outlined that early childhood teachers are expected to:

- engage in curriculum planning and decision-making, using the EYLF alongside their knowledge of individual children and professional judgment;
- observe, document, monitor and assess children’s learning and report on their learning progress;
- build respectful and reciprocal relationships with families to inform teaching and to support continuity of learning for children;
- establish and maintain stimulating, safe and supportive learning environments;
- work effectively as pedagogical leaders and members of an educational team and build the capacity of less-qualified educators to critically reflect and build their pedagogical knowledge and skills;
- build partnerships with schools and other local child and family services to strengthen continuity and learning and support families in their child rearing responsibilities;
- critically reflect on their teaching practice, engage in ongoing professional learning and development and strive for continuous improvement in their daily work with children and families;
- act in the best interests of all children and to demonstrate professional and ethical behaviour in all aspects of their work;
- keep up to date with contemporary educational policy, research and practice wisdom; and
- undertake mandatory annual training requirements such as child protection and CPR.

[253] Associate Professor Irvine outlined what she called “*the ECT workforce challenge*”, that is, the shortfall of early childhood teachers prepared to work in prior to school early childhood education and care services, in particular long day care. She pointed to less favourable wages and working conditions and lower professional status than colleagues in primary schools as significantly impacting recruitment and retention of early childhood teachers in long day care services. In turn, the majority of early childhood teacher preservice teachers express a preference to work in the school system, making it more difficult to recruit early childhood teachers to work in long day care compared to in preschools or schools, and turnover in long day care is persistently high. She said early childhood teacher turnover compromises children’s attachments and relationships and is detrimental to their learning, development and wellbeing. She pointed to government and employer initiatives to address the early childhood teacher shortfall that have focused on upskilling vocationally qualified educators, however the 2016 *Early Years Workforce Study* found that educators studying to become early childhood teachers were more likely to leave their current centre once qualified to seek a heightened professional status and better pay and working conditions. Associate Professor Irvine said that the reason early childhood teachers are not being remunerated the same as teachers in the school sector is due to historical artificial and unhelpful distinctions between care and education based on the

premise that education begins close to or upon entry at school, which is now challenged by international research that has found that learning begins at birth and affects achievement in school.

[254] In her expert report in reply dated 19 July 2018, Associate Professor Irvine was commissioned by the IEU to respond to the ACA's submissions and witness evidence filed in respect of the equal remuneration application. Much of this report outlined the regulatory changes in the sector set out in her reports above. She said there has been a strengthened focus on promoting early learning in formal education and care services and pointed to the introduction of the NQF, NQS and the EYLF and the increased qualification requirements for educators working in these services, including the requirement for services to engage more early childhood teachers. She referred to the E4 Kids study, which found that degree-qualified teachers scored higher than educators without a degree in respect of instructional support and supported the benefits of higher-level educator and teacher qualifications on children's learning outcomes. Associate Professor Irvine said that while play continues to be recognised as a rich context for learning in the early years, emphasis is placed on the early childhood teacher's role to facilitate play-based learning and challenge and extend children's thinking and learning. Early childhood teachers plan meaningful learning experiences drawing on their knowledge of individual children, the relevant curriculum and by using intentional teaching strategies.

Dr Frances Press

[255] Frances Press, at the time of giving evidence, was the Head of the School of Childhood, Youth and Education Studies at Manchester Metropolitan University in the United Kingdom. Up until the end of 2018, she was Professor in Early Childhood Education at the School of Teacher Education at Charles Sturt University in Bathurst, and also held the position of Associate Dean Research at that university. She had earlier held positions in early childhood education at Macquarie University and the University of Western Sydney in the period 1996-2005. Immediately prior to this, Dr Press was the Director of the Office of Childcare in the NSW Department of Community Services, and had earlier held various positions in NSW and the Northern Territory in children's services resource and training agencies. She holds Bachelor of Arts from the University of NSW (1981), a Master of Arts (Interdisciplinary Studies) from the University of NSW (1983), and a PhD in Sociology at Macquarie University (2010).

[256] The IEU commissioned Dr Press to prepare a report¹¹⁷ setting out what, in her opinion, are the changes in the value of the work performed by teachers since 1996. The report prepared by Dr Press, dated 22 November 2018, focused on teachers employed in early childhood education and care centres. She addressed the issue the subject of her report under a number of headings, as set out below.

Changes in teaching theory and practice and their impact on the complexity of teachers' work

[257] Dr Press said that in Australia the creation of the NCAC in 1994 drew attention to the quality of children's experiences in early childhood education and childcare and led to more attention being paid to research in the area, and the generation of additional research. This research has resulted in changes to teaching theory and practice. It has underscored the importance of early childhood education and care being of good quality, increased the

¹¹⁷ Exhibit 11

knowledge and understanding of the types of teaching approaches that are associated with good quality early childhood education and care and support positive developmental outcomes for children, and identified that good quality early childhood education and care is an effective early intervention strategy for children facing disadvantage.

[258] Dr Press pointed to the increase in the numbers of children entering early childhood education and care at very young ages. Historically, she stated, early childhood programs for children under three were focused primarily on infants' health and safety, but more recent research has brought the learning and development needs and capacities of very young children to the fore, emphasised their agency, and has underscored the need for teachers to be acutely observant and well versed in pedagogies that are suitable for infants and toddlers. Dr Press also pointed to the diversity of children in any one early childhood program in terms of cultural background, developmental needs and stages, family type and composition and socio-economic composition. As a result, she said, the norms and expectation around children's development, behaviour and learning will vary, and early childhood teachers must be attuned to such variations. Dr Press said that teachers are expected to be familiar with a range of theoretical frameworks, and to have the capacity to critically reflect on these and make considered decisions about their application to their observations, planning and assessment. She said, as an example, that the EYLF refers to a range of theories in this respect. Dr Press said that these changes, taken together, represent a change in the demands and complexity of the work, in that teachers must work with a greater age range of children, with more diversity, and have the capacity to draw upon and appropriately apply a range of theories, and keep abreast to a growing body of research about what constitutes good quality early childhood education and care.

Changes in the accountability of teachers

[259] Dr Press said that the accountability of early childhood teachers has increased with the introduction of the National Partnership Agreement on the National Quality Agenda for Early Childhood Education and Care in 2009, which effectively raised the bar on the quality of early childhood education and care. Prior to 2009, she said, early childhood education and care services were regulated by different State and Territory licensing regulations and, in addition, from 1994 to 2012, the NCAC accredited all childcare centres through the QIAS, which focused specially on children's experiences within the early childhood setting. The National Partnership Agreement resulted in the NQF for early childhood education and care being introduced on 1 January 2012. The NCAC was replaced by the ACECQA as the statutory body that oversees the implementation of the NQF. The NQF is comprised of the National Law and the National Regulations. The NQS is a core component of the NQF, and sets seven quality areas by which early childhood education and care services are quality-rated against the benchmark established by the NQS. The National Regulations, among other things, set minimum requirements as to the number of qualified teachers to be employed in all centre-based early childhood education and care services.

Changes in the professional recognition of teachers

[260] Dr Press said that professional recognition of early childhood teachers occurs in two ways: first, through accreditation of teacher education programs and, second, by individual teacher registration or accreditation. In relation to the first, she said that teacher education programs may be subject to accreditation requirements by the ACECQA in relation to the early childhood component, and by the AITSL for courses that cover both early childhood and primary school years. The ACECQA requires that courses cover certain topic areas: psychology

and child development, teaching pedagogies, early childhood professional practice, the history and philosophy of early childhood, family and community contexts, and education and curriculum studies. The AITSL is a Commonwealth agency which sets professional standards for teachers and is responsible for approving courses and which, in 2011, introduced the NFTR which embedded the APST in registration requirements. Dr Press said that the process of teacher accreditation is undertaken by State and Territory teacher regulatory authorities, and registration of early childhood teachers is required in New South Wales, South Australia, Victoria and Western Australia and in Tasmania and the Northern Territory in respect of kindergartens/preschools that are part of schools. A 2018 AITSL report has recommended that all early childhood teachers be required to be registered.

The administrative function of teachers and whether they are more complex

[261] Dr Press said that the volume and extent of regulation and quality-related policies requires high levels of accountability from early childhood teachers, who need to be well-informed and vigilant about meeting the standards established by regulatory and accrediting bodies. She said that, as a result of the 2009 reforms, all early childhood teachers need to be familiar with the requirements of the NQS and ensure that they acquit their responsibilities under the NQS. According to the National Regulations, early childhood teachers are now required to work directly with children, plan programs, mentor/coach educators facilitating education and care, and perform the role of Educational Leader. She said that, typically, early childhood teachers oversee the development of the educational program within the room or centre, and that they may also be employed as Directors, with responsibility for the day-to-day management of the centre and staff and for ensuring that all regulatory requirements are met.

Changes in curriculum and their impact of the work of teachers

[262] Dr Press said that, prior to 2009, not all early childhood education and care settings in Australia were required to implement an agreed curriculum. The 2009 reforms introduced the first national curriculum framework in Australia. The National Law required that the educational program provided within any early childhood education and care service must be based on the developmental needs, interest and experiences of each child and designed to take into account the individual differences of each child, and approved learning frameworks must be implemented as part of early childhood education and services meeting national standards. Dr Press said that the EYLF is the nationally approved framework and, in addition, the specific state-based frameworks (in Victoria and Western Australia) are approved. The five overarching outcomes for children identified in the EYLF are that children have a strong sense of identity, are connected with and contribute to the world, have a strong sense of wellbeing, are confident and involved learners, and are effective communicators.

[263] Dr Press described the NQS Quality Area 1, which concerns the educational program and practice and which emphasises child-centred practices and child-directed learning. This requires, she said, that teachers have a sound knowledge of each child, including the child's strengths, challenges and interests, and the capacity to develop a curriculum that effectively responds to this knowledge. In this respect, the practice of educators must facilitate and extend each child's learning and development through intentional teaching, responsive teaching and scaffolding, and child-directed learning.

The nature of changes in student assessment processes and their impact on the work of teacher and their level of skills and/or responsibility

[264] In respect of these matters, Dr Press said that the assessment of each child and the program is a recognised aspect of the teacher's role, and that Standard 1.3 of NQS Quality Area 1 requires a planned and reflective approach to implementing the program for each child. This requires each child's learning and development to be assessed or evaluated as part of an ongoing cycle of observation, analysis, learning, development, planning, implementation and reflection. There must be critical reflection of children's learning and development, both as individuals and as groups, which must drive program planning and implementation, and families must be informed about the program and their child's progress. Dr Press said that the complexity of children's assessment in the early years arise partly from variability in developmental norms and the rapid pace of children's development, which means that children in the same age group will be developing differently and will not reach the same developmental milestones at the same time. This means, Dr Press said, that assessment must be an ongoing process rather than the result of a snapshot in time, and requires close observation of what children are doing and saying over time, both individually and in groups, and tracking this over time. It also requires close communication with parents, who are able to provide insights from children's activities and behaviours at home. Observations must be documented through notes, photos and formal templates, and such documentation forms the basis for reflection that in turn informs future actions. In addition, Dr Press stated, it is necessary for early childhood teachers to actively support children's transition to school through transition programs and providing reports to the child's school on the child's strengths, challenges and achievements.

The complexity of teachers' work

[265] Dr Press said that the increasing complexity of teaching in early childhood services arises from the following factors:

- More children attend early childhood education and care services in Australia than ever before, and from younger ages. In 2009, 30% of children aged 0-5 attended; by 2017, this had risen to 43.2%, with attendance being 10% for children aged under 1 and 61.8% for 3-year-olds. In the year before school, 92.4% of children attended either a Commonwealth-funded service or a preschool.
- Attendance patterns are often highly variable, with children attending on different days, times, and periods during the year. This means that teachers can be working with varying groups of children from day to day as well as throughout the year, must become familiar with and build meaningful relationships with a great many individuals and families, and have the skills to work well with changing groups of children.
- There are greater community and government expectations of teachers, including that children will have their learning and development actively nurtured.
- Research has underscored the role of early childhood teachers, and also managers with early childhood teacher qualifications, in promoting quality.
- The internal work environment has become more complicated as teachers endeavour to respond to the changing needs of families.

- Early childhood teachers are expected to be adept at teamwork, and must mentor lesser-qualified staff and provide pedagogical leadership across the centre.
- It is necessary for early childhood teachers to build strong relationships with families because of the very young ages of the children attending, noting that parents are able to enter a service at any time their child is there.
- Teachers must develop and implement an inclusive curriculum that takes into consideration a wide range of variation in development as well as measures that help remediate the impact of physical or cognitive impairment or social disadvantage. This also necessitates early childhood teachers developing strong relationships with other professionals, such as allied health professionals, and agencies.
- It is necessary for early childhood teachers to respect and enact children's rights in accordance with the principles of the United Nations Convention on the Rights of the Child. This requires early childhood teachers to be attuned and responsive to the repertoire of verbal and non-verbal communication strategies used by young children.

[266] In addition to her report outlined above, the IEU also sought to rely on Dr Press' reports prepared for its equal remuneration application. In her report filed 22 December 2017,¹¹⁸ Dr Press focused on the main areas of responsibility and skill required of early childhood teachers and the challenges faced in the early childhood education and care sector, such as recruitment and retention of early childhood teachers.

[267] Dr Press identified the main responsibilities and skills of early childhood teachers (in addition to those outlined above) as maintaining registration; demonstrating a high level of accountability and to be well informed about meeting the standards established by various regulatory and accrediting bodies; and upholding their duty of care through vigilant supervision because of the high risk of accident and injury with very young children.

[268] In respect of recruitment and retention of early childhood teachers, Dr Press said that it is difficult to attract students to work in the early childhood sector. In 2016, the Department of Employment placed early childhood teachers on a skills shortage list in the NSW metropolitan area. Diploma-qualified educators often undertake further study so they can leave the long day care workforce and teach in standalone preschools or schools because of better pay and working conditions and the perception of a higher professional status. She said where teachers graduate with a dual qualification, only a small percentage appear to choose early childhood education and care as a first preference and referred to a Queensland University of Technology study that found over 60% of employed graduates were working in primary schools compared to 13% in childcare a year after completing their degree. Dr Press said that the better wages and conditions available in public schools, in addition to targeted graduate programs run by education departments, meant that the best education graduates tend to work in public schools. Dr Press referred to the 2013 National ECEC workforce staff survey which found 80.4% of all workers (including educators) expected to be with the same employer or business in 12 months time. For those wishing to leave their current job, 30.2% of workers surveyed wanted to seek work outside the sector and 28.5% had dissatisfaction with pay and conditions. Dr Press pointed to

¹¹⁸ Exhibit 9

research which has found job dissatisfaction in the sector stems from long hours and expectations of unpaid work for meetings and planning.

[269] The IEU also relied on the expert witness report in reply prepared by Dr Press dated 18 July 2018¹¹⁹ for the equal remuneration application. The report addressed a proposition advanced by the ACA, namely whether the work of early childhood teachers is essentially the same as that of other educators in early childhood settings. Dr Press stated that simply because early childhood teachers share certain work responsibilities and activities with other educators does not mean that the work of early childhood teachers is identical to that of other educators in early childhood settings, and such a proposition downplays the skills required to be an early childhood teacher. She said early childhood teachers bring a specialist knowledge and skills to their work that inform decisions and what they hope to achieve in terms of children's experiences and outcomes. She referred to the introduction of the regulatory requirement to employ early childhood teachers under the National Quality Reform Agenda in order to improve the quality of early childhood care and education children receive. Dr Press also referred to the E4 Kids and the Effective Provision of Preschool and School Education studies which both found higher-level qualifications were associated with higher quality early childhood education and care and improved child outcomes. In her experience teaching a subject in an early childhood degree designed to enable students to transition from a diploma qualification to an early childhood teaching degree, Dr Press said she receives comments from students about how the subject changes their thinking and approach to their work as educators, which she said is further evidence of the fact that teaching graduates gain a distinct set of skills and knowledge to bring to their work.

[270] Dr Press's oral evidence included the following:

- the reasons for teacher shortages in the early childhood sector are complex, but include dissatisfaction with the wages and conditions paid;¹²⁰
- she did not identify when, in her statement concerning work value, classrooms became more diverse or there first emerged a multiplicity of pedagogical theories "*because these things accumulate over time and they are likely to be an accumulation of incremental changes*";¹²¹
- licensing regulation focusing on matters such as floor space numbers and qualifications of staff, and quality improvement and accreditation systems, applied around the country in various forms in different jurisdictions prior to the NQF;¹²²
- the obligation to be familiar with and acquit responsibilities under the NQS do not apply differentially to teachers as opposed to any other workers in early childhood education and care, but teachers often have more responsibility in ensuring compliance because they are more likely to be appointed to roles of responsibility such as Educational Leader or Director;¹²³

¹¹⁹ Exhibit 10

¹²⁰ Transcript, 11 June 2019, PNs 588-589, 604

¹²¹ Ibid, PNs 671-672

¹²² Ibid, PNs 676-680

¹²³ Ibid, PNs 683-687

- while the National Law requires an Educational Leader to be appointed in each service, that person is not required to be a qualified teacher;¹²⁴
- before the EYLF, there were other frameworks in place in various jurisdictions;¹²⁵
- the impact of government policy is to push early childhood teachers towards working with older children, particularly in preschools, but in many services early childhood teachers do work with children from birth;¹²⁶ and
- a typical early childhood teacher interacts with more children in a year than a typical primary school teacher because variability in attendance and the proportion of students attending long day care on a part-time basis means that early childhood teachers deal with a less stable cohort.¹²⁷

Professor Tania Aspland

[271] Tania Aspland is a Professor and Dean of Education at the Australian Catholic University. Since 2004 she has been a Professor and Head of the Faculty of Education at a number of Australian universities. She has held various academic positions since 1980. She has also worked as a primary school teacher and a special education teacher. She holds the degrees of Bachelor of Education Studies (University of Queensland, 1978), Bachelor of Arts (University of Queensland, 1983), Masters in Education (Deakin University, 1992) and Doctor of Philosophy (University of Queensland, 1999). She was commissioned by the IEU to prepare a report concerning changes in the nature and value of teachers' work from 1996 to the present day, structured by reference to the time periods 1996-2009 and 2010-2018. Professor Aspland's report dated 22 November 2018¹²⁸ dealt with this issue by reference to eight difference facets of teachers' work, which are set out below.

The introduction of special needs students into the mainstream classroom

[272] Professor Aspland referred to the position in Queensland whereby the *Education Act 1992* (Qld) and the *Disability Standards for Education* in 2005 supported the full enrolment of students with disabilities in mainstream classes. The legislation required teachers to teach students with physical, intellectual and emotional disabilities who had previously attended Special Schools. As a result, Professor Aspland said, teachers were required to upskill their knowledge about the nature of a broad range of disabilities and the pedagogies required to engage such children in alternative modes of learning, and to learn how to manage the behaviour of children with special needs, some of whom were very disruptive in the mainstream classroom, Professor Aspland characterised this as highly demanding. Teachers had to acquire new knowledge about each child's disability and write individual programs for each child in consultation with parents and support therapists while they continued to teach their mainstream students, this leading to an intensification of the workload.

¹²⁴ Ibid, PNs 695-697

¹²⁵ Ibid, PN 702

¹²⁶ Ibid, PN 711

¹²⁷ Ibid, PNs 712-713

¹²⁸ Exhibit 15

The introduction of technology into the classroom

[273] Professor Aspland said that teachers have had little choice but for ICT to be incorporated across the curriculum, since regardless of their training it is a curriculum requirement and an expectation of students and many parents. She said that an “*educational revolution*” is underway with the value of teachers’ work potentially integral to its success, but the rapidity of technological change is outpacing teachers’ capability to reconceptualise their work which, as a result, is causing widespread demoralisation and frustration across the profession.

The modification of assessment requirements due to a renewed focus on international and national testing

[274] National testing was introduced for students in Years 3, 5 and 7 across Australia with the purpose, Professor Aspland said, of using evidence as the basis for intervention and further teaching. She said that this has required teachers to become upskilled in test design, implementation and interpretation, which has required a good deal of professional training for teachers most of which has, until recently, been completed in an ad hoc manner and self-funded by teachers. She further said that the psychometric underpinning of testing has placed huge demands on teachers, many of whom consider that testing does not contribute to positive learning outcomes and actually detracts from quality teaching. Professor Aspland said that national testing has led to a reconfiguration of teachers’ work, in that research has demonstrated that it has narrowed the focus on curriculum, reduced pedagogical innovation and caused stress to both students and staff.

The management of disruptive children in the classroom

[275] Professor Aspland referred to the 2013 OECD *Teaching and Learning International Survey* in which teachers reported that managing difficult students has the largest impact on the success of their work and that they are losing, on average, 45% of their class time on keeping order in the classroom. Research has identified that behavioural problems in the classroom are a factor in the retention of teachers in the profession. She said that there is no recipe for teachers to adopt to overcome the management of disruptive students, and in this contested field teachers must continually access research and contemporary literature in order to upskill their repertoire of professional practice to address the many diverse disruptive behaviours in the classroom. Professor Aspland stated that teachers are expected to continue in the traditional role in delivering the curriculum to all despite the increasing level of behavioural disruptions.

Increased regulation of the profession

[276] The AITSL was incorporated in 2010 as a national body with the responsibility, authority and resources to develop and maintain standards for the professional practice of teachers. Professor Aspland said that since 2011, teachers are required to demonstrate that they are meeting the professional standards generated by AITSL in all aspects of their professional work. She said that all teachers in Australia must now be registered and perform against a set of professional standards to maintain their status as a teacher, to ensure that they are deemed to be ethical members of the profession and to classify their status as a law-abiding citizen. She noted that it has been argued that the introduction of the professional standards has demonstrated a significant leap forward in developing a cohesive approach to teaching quality across Australia to achieve the best possible student outcomes no matter what state a student

resides in, indicating an increasing recognition of the complex work of teachers. However Professor Aspland also noted there is an alternative view that the current regulatory context promotes conformity rather than the autonomy and diversity needed to deal with the complexity of teaching and the student population.

Sustained and non-systematic curriculum reform

[277] Professor Aspland identified that the first national curriculum framework was established by the Australian Education Council in 1991, consisting of eight designated Learning Areas. Each Learning Area was described in terms of Statements, which provided a framework of what was to be taught, and Profiles, which set out what students were expected to learn. These closely matched the existing State and Territory curriculum documents to a greater or lesser degree, based on an outcome-based educational approach in which outcomes were more significant than content. Professor Aspland said that this move away from a content-based curriculum to an outcomes-based one meant that teachers were required to reconceptualise their planning and assessment, but were granted greater freedom to select content and pedagogy. She said that this placed extra demands on teachers that were not present prior to 1998.

[278] In May 2009, the ACARA was established, and this led eventually to the Australian Curriculum being mandated in 2013. Professor Aspland said that this required teachers to revise their planning, teaching and assessment processes in line with a very crowded curriculum across eight learning areas. She said that in many schools the intensification of work involved in scoping and sequencing the content of the Australian Curriculum became so complex that curriculum coordinators were appointed to deconstruct the curriculum documents into grade or year level programs. Professor Aspland expressed the view that in the domain of curriculum policy from 1999 to 2018, political intervention has had an “*unsettling impact*” on the work of teachers. She said that with every curriculum change, the teaching and assessment are conceived from different orientations and this requires teachers to rethink, redevelop and represent their curriculum work. More recently, she said, the introduction of the “*high stakes test agenda*” has meant that teaching work has greatly intensified, “*with curriculum, teaching, learning and assessment misaligned in their purposes and as such, having a negative impact on student learning*”.

Changing theories of teaching and learning

[279] Professor Aspland said that in 2009 OECD study, teachers reported using teaching practices aimed at ensuring learning is well-structured more often than they used student-oriented practices which involve adapting teaching to the individual needs of the student. She said that both of these teaching practices are used more often than activities such as project work which requires more active participation by students, particularly in the areas of mathematics and science. She said that further research had evidenced a significant trend towards direct forms of teaching for enhanced student learning outcomes, and had emphasised the significance of quality teaching as the most significant factor to enhance learning outcomes, indicating a significant turn-around in the value of teachers’ work. She added that with the introduction of national professional standards, mandated teacher registration, NAPLAN national testing and visible learning, “*the profile of quality teaching in Australia has never been more important*” and that schools across Australia are “*engaging in teacher development and the reconceptualization of teaching and learning to foreground direct and explicit instruction with a view to enhancing the quality of learning outcomes and national test results*”.

Increased administration and accountability

[280] Professor Aspland referred to data which showed that Australian teachers work an average of 42.7 hours per week compared to an international average of 38 hours, that they are struggling with the comparative lack of quality teaching time in front of classes due to administrative and extra-curricular activities, and that 25% of teachers lose at least 30% of their class time and 11% lose at least 50% of their class time to factors other than effective teaching and learning. She said that this can be correlated to new accountability requirements related to risk assessment, reporting, regulations regarding supervision, child protection, routines, family law, custody and access, communications with parents, financial management of resources, case management of identified students with disabilities or behavioural challenges, issues related to culture, gender and sexuality, and recording matters of harassment, bullying or workplace issues. Professor Aspland said that the administrative tasks implicit in these responsibilities had at one time been the duties of the leadership teams, not the classroom teacher, but in the contemporary context were now completed by teachers after hours or in lieu of teaching responsibilities.

[281] In conclusion, Professor Aspland referred to a 2013 survey result that 60% of Australian teachers do not feel valued in their work, and that a significant factor in this was the devaluing of teachers' work amongst the media, politicians and parents. She said that this was "*surprising*" when the complexity of the profession has been increasing over time and that teachers "*are no longer public servants who deliver a finite curriculum to compliant and homogenous classrooms*".

[282] In her oral evidence, Professor Aspland said:

- increases in resources and teacher's aids accompanied the mainstreaming of special needs students;¹²⁹
- in earlier years, when students with an IQ of 70 were removed from mainstream classes and placed in special schools, teachers had few challenges in their classroom, their major responsibility was to disseminate and deliver content to the class, classes were tested every six weeks or so, and as long as the class fell within the normal bell-shaped curve it was considered normal;¹³⁰
- previously, teachers only tested content from their own layperson's perspective and re-taught what students did not pick up, whereas now test data is interpreted from a psychometric perspective which is based on norms and deviations for which special training is required;¹³¹
- in the early childhood and primary sector the priority is human development, holistic development and integrated teaching where the teacher starts with the child and not

¹²⁹ Transcript, 13 June 2019, PNs 1210-1213

¹³⁰ Ibid, PNs 1219-1220

¹³¹ Ibid, PNs 1225-1229

the content, and looks at the developmental needs of each of the children to try to align their development with what is in the curriculum,¹³² and

- as at 2014, an evaluation of the APST suggested that only half of teachers said that the standards informed their practice, but a more recent evaluation has shown a greater level of engagement.¹³³

Professor Sue Dockett

[283] Sue Dockett is a Professor in Early Childhood Education at the School of Education, Charles Sturt University in Albury/ Wodonga. She has been employed at Charles Sturt University since 2007. Prior to this role, she held academic positions in early childhood education at the Macarthur Institute of Higher Education (1988-1996) and the University of Western Sydney (1996-2006). Before working as an academic, she was employed as a teacher in the early years of school (1981-1983), the inaugural Director of a childcare centre (1983-1987) and founding Director of a work-based, extended hours childcare centre (1987-1988). Professor Dockett was awarded a Bachelor of Education (1980), Master of Education with first class honours (1987) and a PhD (1994) from the University of Sydney.

[284] The IEU commissioned Professor Dockett to write a report in respect of its equal remuneration application upon which it sought also to rely in respect of its work value application concerning the accreditation requirements prescribed by the NESAs in NSW and her understanding as to why early childhood teachers took longer than other teachers to be subject to these requirements. In her report dated 3 December 2017,¹³⁴ Professor Dockett focused on the introduction of accreditation requirements for early childhood teachers in NSW. From July 2016, all early childhood teachers working in an early childhood setting as a teacher must be accredited which involves registering with the NESAs, providing evidence of their identity, qualifications, employment and a Working With Children Check (WWCC) and paying the annual accreditation fee. Once completed, an early childhood teacher is considered to have Provisional accreditation. At the time of her statement, there were no finalised procedures by the NESAs for early childhood teachers to obtain Proficient accreditation. In NSW, early childhood teachers must maintain their registration by maintaining and developing their teaching practice against the relevant APST, complete 100 hours of professional development during their maintenance period, pay an annual fee and hold a current WWCC.

[285] Professor Dockett outlined the rationale for the introduction of the NESAs accreditation requirements for early childhood teachers. Prior to 2016, only teachers in primary and secondary schools were required to be accredited. Arguments advanced in favour of early childhood teacher accreditation from the sector itself included:

- early childhood teachers and teachers in the school sector are required to have a university degree that often qualified teachers to work across prior-to-school and school sectors, however only those working in the school sector were recognised as teachers through professional accreditation;

¹³² Ibid, PN 1235

¹³³ Ibid, PNs 1259-1264

¹³⁴ Exhibit 44

- perceptions that “*real teaching*” only occurred in schools, resulting in a lack of professional recognition or respect for early childhood teachers; and
- recognition of the significant reforms in early childhood education, such as the introduction of the first national curriculum framework for children in prior-to-school services and commitments to increasing professionalisation in the sector.

[286] Professor Dockett said her understanding of why early childhood teachers took longer than other teachers to be subject to registration requirements is multifactorial. Firstly, she referred to the history of fragmentation and the complexity of the early childhood education sector with its range of service types, such as preschool, long day care, occasional care, out of school hours care, family day care, mobile children’s services and multifunctional Aboriginal children’s services, and its many different providers, including community-based, private, not-for-profit and corporate organisations covered by different industrial awards. Secondly, she suggested that, traditionally, the national emphasis on education focused on schools and schooling and came under the responsibility of State and Territory education departments. On the other hand, early childhood education and care was moved between the departments of education and family or community services and reflected an historical dichotomy between care and education. Finally, Professor Dockett suggested that the nature of the work of many early childhood teachers being the only teacher in the service and working in a setting that has “*care*” in the title means the nature of their pedagogical work is often not clearly visible to families and communities outside the sector. She said that coupled with often limited access to professional development opportunities, early childhood teachers may be professionally isolated and not in a position to advocate for their own professional recognition.

[287] Professor Dockett was not required for cross-examination.

Dr Keith Heggart

[288] Keith Heggart is currently employed as an organiser at the IEU (NSW/ACT Branch) and as a casual academic at the University of Technology Sydney. Dr Heggart has worked as a secondary school teacher for 13 years, teaching in a number of public and independent schools in Australia as well in the United Kingdom during this period. Dr Heggart’s qualifications include a Bachelor of Arts/Bachelor of Education from the University of New South Wales in 2002, Master of Education in 2010 and a Doctor of Philosophy from University of Technology in 2018. In his statement of evidence dated 21 November 2018,¹³⁵ Dr Heggart described his experience across different school systems in different countries which, he said, highlighted the significant increase in the complexity of teacher’s work.

[289] In regards to technological change in school education, Dr Heggart stated that email has facilitated a move from teaching as something done during business hours (with exceptions such as parent-teacher evenings) to a model where teachers are required to be available outside of business hours to respond to parent emails. Dr Heggart said that this change became particularly discernible after he returned to Australia in 2008. At the last school he worked in, there was an expectation that emails would be responded to within 24 hours. He also said that teachers are now expected to make use of a wide range of digital and online tools such as learning management systems, and this requires a new suite of skills in instructional and

¹³⁵ Exhibit 16

learning design of a different nature to the face-to-face skills required for classroom teaching. Teachers are also expected to make use of digital tools to communicate more thoroughly with parents and stakeholders, to teach students about the responsible use of social media, and to deal with the emotional and mental consequences of technology including cyber-bullying.

[290] Dr Heggart stated that the process of “educationalisation’ in schools has also added to the complexity of teachers’ workloads and the responsibility of teachers. Dr Heggart described this process as one which “*posits that society’s ills can be addressed through educational programs delivered via formal schooling institutions.*” Dr Heggart stated that several initiatives of this type are now mandated in the NSW curriculum, focusing on digital safety for students, domestic violence and road safety.

[291] Dr Heggart also said that changes to teaching theory and practice have contributed to increased workloads and have increased the complexity of work. One area of teaching practice that has changed in NSW is the emphasis being placed upon teachers and schools to ensure that students are actively engaged, which denotes a shift from a passive model of learning to one that emphasises more active learning models that, he said, treat the responsibility for student achievement as one solely of teachers. An example of this is “flipped learning”, which is an educational strategy which requires teachers to “pre-load” student learning, often in the form of educational videos which a student is required to watch before attending class. Dr Heggart said that another recent change has been the movement towards increased reliance on evidence-based learning, which requires teachers to be conversant with a wide range of academic literature and research and to adopt that into their practice. There has also been a growing emphasis on students working in groups of collaboratively in order to teach “soft skills” or “21st century skills”. This has meant that teachers are required to teach students how to work as part of a group, and requires teachers to act as both instructors and facilitators. Dr Heggart said that teachers need to work in a more complex fashion in order to both cover the curriculum in the allotted time as well as to develop these skills.

[292] Dr Heggart gave evidence that another aspect of teaching theory that had changed was the movement towards greater differentiation and personalisation of teaching approaches, which requires teachers to alter specific teaching methods and resources to meet the needs of students with special or additional needs which involves tailoring teaching approaches to student’s individual needs, such students with Asperger’s Syndrome, Autism Spectrum Disorder or Oppositional Defiance Disorder. This means, Dr Heggart said, that teachers have to develop engaging lessons for students working at different stages of learning and development in circumstances where, for example, a teacher working at a Year 7 class may have students within their class operating at a Year 4 level and a Year 10 level. This may require teachers to set a number of different exams and provide alternative assessment processes. Dr Heggart said that many students with special needs require individual learning plans, with strategies that must be utilised by the teacher in the classroom, which require teachers to be able to meet the needs of different learners at the same time. Dr Heggart described this as “*a complex feat that is new to teaching*”. He described his experience teaching mixed ability English classes whereby, out of 25-30 students, 3-4 would require differentiation because they were more able than the others and 3-4 would require differentiation because they were less able and, in addition, those or other students would require modifications to ensure they could access the content satisfactorily.

[293] Dr Heggart’s evidence provided several other examples of teachers’ increasingly complex workloads, including:

- the increased accountability of teachers involved in maintaining accreditation/registration requirements, maintaining and recording professional development, and the use of management practices and technology to track the learning growth of individual students compared with their peers to determine the effectiveness of teacher interventions and pedagogy;
- the requirement to keep increasingly detailed records of students' pastoral and academic matters, using IT systems, compared to previous years;
- liaison with third parties such as allied health professionals like speech and language therapists, occupational therapists and educational psychologists, which may require teachers to implement strategies beyond their traditional expertise and also adds to administrative complexity;
- the need for teachers to ensure their lessons are consistent with the Australian Curriculum introduced in 2014, which is more complex than previous iterations and includes for example the require to weave themes such as Sustainability, Aboriginal and Torres Strait Islander Histories and Australia's Engagement with Asia into different key learning areas;
- the changes in students' assessment practices particularly with the introduction of the standardised testing regime, which had led to a process of almost constant testing and requires teachers to place greater emphasis on providing formative and qualitative feedback; and
- the changing view that education is a "*private value proposition*" rather than a public good, which results in additional responsibilities outside the classroom involved in attracting new students.

[294] Dr Heggart also stated that various legislative and regulatory changes by way of the *Disability Discrimination Act 1992* (Cth) and child protection legislation have made positive albeit complex changes to the work value of teachers, including ensuring lessons accommodate students with disabilities as well as greater responsibility and scrutiny of teachers with regards to ensuring their compliance with the child protection regime.

[295] In his oral evidence, Dr Heggart referred to an open source application called Moodle, which was introduced in the school he then taught at in 2010. This allows teachers to upload materials that they wish students to look at, and also allows students to upload assessment tasks for marking, and Dr Heggart said that it requires a different set of skills to be used effectively.¹³⁶ He also referred to an online behavioural management tool called ClassDojo, which teachers can use to score students for good or poor behaviour, and which is often made accessible to parents.¹³⁷ Dr Heggart gave the following evidence about the effect of standardised testing on teachers' work:

¹³⁶ Transcript, 13 June 2019, PNs 1318-1325

¹³⁷ Ibid, PNs 1349-1350

What are the consequences of that in terms of the teacher's actual work? -Well, teachers need to be able to interpret, analyse and make sure of that data, you know. And that's - there's some quite considerable challenges involved. I remember when I first started working for the Diocese of Parramatta which would have been about 2010, they were still talking about things like, you know, we need to be above national averages and things like that. And that conversation has changed and this portrays the increasing complexity of what teachers are required to do. It's now changed into we need to talk about learning gains or learning growth, you know, which is a measure of how much each student actually grows rather than whether as a whole the class or the school is above the national average.¹³⁸

[296] He also described the extent of testing in Year 7 at one school, and compared this to his own previous experience as a teacher:

What is the mathematical assessment interview? -Well, just on the regime. It's something that continually I find in my experience working with teachers is that they - and this happens at Gilroy College in Castle Hill. They said barely a week goes by for Year 7 in term 1 where there is not some form of testing. So for example the new Year 7s when they arrive at the school, they undergo what's called the mathematical assessment interview. Now that's a 40 minute individual diagnostic tool that has to be between one teacher and one student, and there has to be time provided for that which is a real challenge. Then from that point there is some kind of test, they might do the PAT reading test or the PAT M test and then by the time they get to the end of term one, they're doing practice NAPLAN or pre-NAPLAN tests. That ranges from everything from in-class assessment and writing tasks to - honestly, this did happen at Gilroy - practice for entering into the exam room and then exiting the exam room, so it wasn't unusual and they weren't concerned about it. Then as soon as term two starts I think you've got a week and a half and then you're straight into NAPLAN so over the course of 12 or 13 weeks, there has been some kind of test, you know, every week.

MR FAGIR: This requirement for testing and standardised testing, you will say, has changed the face of teaching in schools? -Yes, absolutely - I mean, when I started teaching at Kincoppal in 2003 almost entirely the school had control of our testing regime and that meant we did some in-class assessments and we did some end-of-year assessments and that was it.¹³⁹

[297] Dr Heggart also referred to his experience as an IEU official with a teacher who did not adopt into their teaching practice contemporary teaching methods based on academic literature and research:

Another requirement, you suggest a bit later in your statement, is that teachers are required to develop sufficiently engaging lessons? -That's a NESAA requirement. NESAA is the New South Wales Educational Standards Authority.

What I haven't been able to discern from your statement is what happens if a teacher is not conversant with a wide range of academic literature and research? -If teachers aren't

¹³⁸ Ibid, PN 1359

¹³⁹ Ibid, PNs 1368-1369

- and I can draw on my own experience as an organiser - yes, I'll give you an example of what's happened. I was working at Cerdon College, Merrylands, with a member and the principal had identified that she felt that member in particular was not making best use of the online tools. That had Google Classroom at that respect and that the work that she was placing on it was not sufficiently engaging and they were talking about John Hattie and Helen Timperley's work about feedback and in order to generate engagement there needs to be regular and constant feedback. So that member was placed on a performance-management plan which might have led to the termination of their employment because they weren't meeting the Australian Professional Standards for teachers because they weren't making use of those kind of requirements.

I see? -Fortunately the union was able to be involved and the member made better use of the Google Classroom.

I see. Was it the use of Google Classroom that allowed the principal to detect the issue that was raised between the principal and the teacher? -Well, they were talking about online engagement, so it wouldn't have happened without some kind of online mechanism.¹⁴⁰

Christopher Watt

[298] Christopher Watt is the Federal Secretary of the IEU and has occupied this role since 2009. Mr Watt has previously occupied the positions of Assistant Secretary of the IEU, an organiser within the NSW/ACT branch of the IEU and worked as a secondary school teacher from 1982 to 1996. In his statement of evidence dated 22 November 2018,¹⁴¹ he referred to a range of national reforms and requirements over the last decade which, he said, have significantly increased the complexity of work for teachers and placed greater expectations on teachers' skills and capacity. These included:

- the increase in academic publications have required more regular review, re-assessment and consideration of teaching practices, often accompanied by higher expectations on the teaching profession to update and sustain their skill development;
- numerous government inquiries since 2014 concerning early childhood and school education have impacted on policy settings and changed the nature and complexity of teachers' work;
- new research on student learning, including changes and nuances in pedagogical approaches and understandings about brain development have significantly changed the work of teachers in the classroom, demanding more individualised, targeted and flexible approaches to teaching and learning and a significantly more complex approach to curriculum programming and development;
- the introduction of teacher registration requirements as mapped against the APST for all school teachers and for early childhood teachers in NSW, Victoria, South Australia and Western Australia. Mr Watt stated that compliance with the APST

¹⁴⁰ Ibid, PNs 1375-1378

¹⁴¹ Exhibit 22

requires reflection on teachers' practice, complex mapping of teacher's attributes against the standards for graduate teacher registration and substantial evidence to meet the requirements of registration. Mr Watt also stated that assessment and reporting expectations for teachers conducting vocational education and training (VET) has also increased in volume and complexity;

- since 2018, teachers have been required to use the teacher performance assessment tool to measure the progress of practicum/initial teacher education undertaking pre-service experience in schools against the APST, which has significantly increased the detail, complexity and evidence requirements to judge the suitability of practicum/initial teacher education candidates;
- the development of teaching programs has become increasingly complex with the approval of the Australian Curriculum and the way in which the National Assessment and Reporting Program, of which the NAPLAN regime is one element, Australian Government initiatives such as the 2018 *National School Reform Agreement*, international testing regimes and employer mandated standardised assessments require that teachers interpret, analyse and report students' individual data and implement new structures and expectations on lesson-planning and delivery expectations;
- teachers are required to provide and assess more detailed data at transition points in a student's progress through schooling, including more complex data that arrives with the child from the early learning education centres (including preschools and long day care) and academic, social and behaviour-related notes about students transitioning from primary to high school;
- under the *National School Reform Agreement*, "learning progressions" are being established in 8 learning areas and 7 general capabilities which are designed to align with the Australian Curriculum, help identify student needs and support classroom planning and reporting, and when fully developed and implemented they will increase workload and the complexity of teaching;
- the increased awareness in the profession of how socioeconomic considerations and demographics affect student learning outcomes and efforts expected to reduce these differences in the classroom;
- the impacts of technology in facilitating and increasing the amount of parent-teacher contact and the requirement that teachers develop the necessary skills to effectively use these technologies in their own professional time, such as synchronising various technologies into lesson plans and performing IT maintenance and troubleshooting; and
- new regulatory and legislative changes concerning child safety and children with disabilities. In relation to child safety, this includes child protection and WWCCs, reportable conduct schemes and the conduct of complex risk assessments prior to potentially dangerous activities in school and out-of-school. In relation to children with disabilities, the increased collection of data relating to students with disability has increased expectations on teachers in relation to providing learning adjustments

and managing complex situations such as accommodating a combination of multiple learning needs and managing situations previously not encountered.

[299] Mr Watt gave the following oral evidence:

- 18% of enrolments in Australian schools are students with a disability, but those students who are subject to a learning adjustment constitute a subset of this number;¹⁴² and
- the source of his information that students are increasingly presenting with multiple disabilities is anecdotal and based on information and responses provided by IEU members and organisers.¹⁴³

Carol Matthews

[300] Carol Matthews is an Assistant Branch Secretary of the NSW/ACT Branch of the IEU. She has been employed by the IEU or the associated state union since 1984, having held various positions including Industrial Officer, Assistant Federal Secretary and Assistant Secretary of the NSW/ ACT Branch. Ms Matthews was awarded a Bachelor of Arts and Bachelor of Law from the Australian National University. She has been engaged in many of the cases before the NSW IRC concerning early childhood teachers, federal award matters relating to teachers and modern award coverage of early childhood teachers.

[301] The IEU sought to rely on Ms Matthews' evidence filed in respect of its equal remuneration application in its work value application. Ms Matthews' witness statement filed 22 December 2017¹⁴⁴ set out the challenges facing early childhood teachers working in the early childhood education and care sector, which she characterised as staff turnover being relatively high, a shortage of qualified teachers in the sector caused by low remuneration, and low union density. In respect of staff turnover, she referred to ABS data that demonstrated the average tenure of educators (including early childhood teachers) in long day care centres was 3.7 years, and 21.2% of educators had less than one year tenure compared to an average of 18% across all industries and occupations and 7% for professionals. She described the shortage of qualified teachers in the sector across a number of states, and referred to a Department of Employment survey in 2017 which found only 65% of vacancies across NSW were filled on average, this being the third consecutive year of recruitment difficulties. Ms Matthews also noted that the shortage of early childhood teachers in the sector is caused by low remuneration and poorer conditions than those in the school sector, such as longer shifts and fewer holidays. She also noted union density is lower amongst early childhood teachers compared to in the school sector and that the small sizes of the workplaces hamper recruitment.

[302] Ms Matthews described the nature of the work performed by early childhood teachers as follows:

- creating the educational program provided by the centre based on the approved learning framework;

¹⁴² Transcript, 17 June 2019, PNs 1565-1567

¹⁴³ Ibid, 1570-1573

¹⁴⁴ Exhibit 1

- if appointed as Director, the early childhood teacher is responsible for the overall management and administration of the service including compliance with regulatory requirements, pedagogical leadership, management administration, accounting, financial and human resources management and liaising with staff, parents and other stakeholders;
- in addition to their educative role, early childhood teachers are required to perform care functions such as changing nappies, assisting children with toileting, supervising meals or feeding babies; and
- maintaining a safe and secure environment for children, acting as the emotional support and child development expert for parents.

[303] Ms Matthews filed a statement in reply dated 19 July 2018¹⁴⁵ in response to various witness statements relied on by the ACA. In respect of Mr Fraser's evidence regarding the Queensland Kindergarten Funding Scheme (QKFS), she said that she understands that all the centres in Queensland he owns or operates are in receipt of state government kindergarten funding. She noted that the QKFS Funding Requirements stipulate that centres can use this funding to pay significantly above-award wages to an early childhood teacher delivering the kindergarten program. She also commented on Mr Fraser's assertion that children do not need goals or testing, stating that although goals and testing are not the same in early education as they are in schools, outcome and assessment are still very important. Ms Matthews disagreed with Ms Prendergast's evidence that early childhood teachers not delivering an educational program are not required to be registered as a teacher in Western Australia and that, prior to the regulatory change in 2012, early childhood teachers were not required to be paid as teachers.

Lisa James

[304] Lisa James an Early Childhood Organiser at the IEU (NSW/ACT Branch). Ms James previously worked as an early childhood teacher from 1998 to 2001 and as a Special Needs Teacher in a long day care centre from 2002 to 2007. Ms James holds a Bachelor of Teaching (Early Childhood) in 1997 and a Master of Early Childhood in 2007 from Macquarie University. She is qualified to teach children from 0-8 years of age.

[305] The IEU sought to rely on a statement prepared by Ms James dated 20 December 2017¹⁴⁶ concerning the equal remuneration application. In that statement, she said there is a shortage of early childhood teachers in the early childhood sector. In her experience having given lectures to students studying to be early childhood teachers, she asked the students whether they intended to work in the early childhood sector. The majority of students she asked indicated that they intended to work in primary schools because of the higher wages and superior working conditions such as paid school holidays and shorter face-to-face teaching hours. Ms James stated that in her work, she has also observed a trend within the sector where early childhood teachers work in the sector until a position becomes available in a school. Some early childhood teachers work casually in both sectors with the hope of securing permanent future employment in a primary school. She was aware of a significant number of services struggling to attract and

¹⁴⁵ Exhibit 2

¹⁴⁶ Exhibit 25

retain early childhood teachers, with some centres reporting vacancies for over 6 months and others experiencing very high staff turnover. By way of example, she was aware of a non-profit organisation where early childhood teachers are programming for up to 26 children per week due to the inability of the centre to employ permanent qualified staff. She also said that in her experience, early childhood teaching is female-dominated and in over nine years of teaching, she has only ever worked with female teachers. She referred to research citing the perception that caring for young children is devalued because it epitomises what has traditionally been viewed as “*women’s work*”. Ms James said that whilst ever the status, standing and wages are early childhood teachers are low she considers there will be a shortage of early childhood teachers in Australia.

[306] In this respect, Ms James referred to the following finding from the 2011 *Early Childhood Development Workforce* research report by the Productivity Commission:

“In order to attract and retain a sufficient number of early childhood teachers to achieve the reforms set out in the National Quality Standard and the National Partnership Agreement on Early Childhood Education, salary and conditions offered by long day care centres will need to be competitive with those offered to primary teachers in the school sector. Community- and privately-managed preschools in New South Wales will also need to offer similarly competitive salaries and conditions for their teachers, which is already the case in other jurisdictions.”

[307] Ms James outlined the nature of the work performed both through her employment in the industry and her discussions with teachers and employers. She described the responsibilities of a graduate early childhood teacher as being abreast of the regulatory framework, WHS obligations and centre policies, and observing and recording children’s development to plan and implement an educational program to extend children’s learning with assistance from a more experienced colleague. With support, graduate early childhood teachers also start to develop strategies for inclusion and support of children with additional needs, challenging behaviours and culturally and linguistically diverse backgrounds. A more experienced early childhood teacher who is not a Director leads and mentors the team in their room and assists lesser-qualified staff to build on their skills. They are responsible for developing an overall daily timetable, designing the learning environment, developing a Supervision Plan for indoor and outdoor areas, develop Individual Behaviour/Learning Plans, provide information to specialists such as paediatricians, psychologists and social workers, record management of medication and accidents, perform risk management assessments prior to excursions and implement transition to school plans. Experienced early childhood teachers are expected to display a high level of autonomy in decision-making, understand the NQS and EYLF and impart this knowledge on to lesser qualified staff. An experienced early childhood teacher may also be Educational Leader, whose responsibilities include overseeing the program for the entire centre, reviewing other employees’ programs and lesson plans to ensure they reference the EYLF and developmental theorists, providing feedback and keeping up to date with new early childhood research to share with other employees. Educational leaders are usually early childhood teachers where one is employed and do not receive an allowance under the award to perform this role.

[308] Ms James described the conditions of the work of an early childhood teacher as being physically and emotionally demanding because they are often bending down to be at eye level with children, sometimes are required to lift or physically assist children, young children require their constant attention and need assistance in resolving conflicts, going to the toilet or tying

their shoelaces. She said early childhood teachers can be face-to-face with children for 8 hours per day except for during break times. In respect of remuneration, Ms James focused on the difference in pay rates between early childhood teachers and primary school teachers in NSW despite early childhood teachers having four years of university training, also being accredited with the NESAs and many early childhood teachers being qualified to teach in primary schools with the same qualification. She gave the example of a full-time early childhood teacher working in long day care she had spoken to in the course of her work who has had to take on a second job because as a single mother she cannot support her family on the amount she is paid.

[309] Ms James made a statement in reply to various witness statements filed by the ACA in respect of the equal remuneration application dated 19 July 2018.¹⁴⁷ She gave evidence in relation to the transferability of early childhood teaching degrees. She said that in South Australia and Victoria, registered early childhood teachers who are qualified 0-8 or 0-12 need only register as a primary school teacher with the relevant authority to be eligible to teach in a primary school and, in Western Australia, once an early childhood teacher is registered, they do not need to take any further steps to be eligible to teach in a primary school. She disagreed with Mr Carroll's claim that there is no real hierarchy between early childhood teachers and educators. Ms James said that when she worked as an early childhood teacher in a preschool, she was solely responsible for programming and evaluating learning experiences and when educators contributed to her work, she reviewed their contributions and assisted them. When she worked in long day care, early childhood teachers and educators both completed documentation of learning and contributed to a program, however early childhood teachers were responsible for the documentation for a higher number of children. Ms James disputed Mr Fraser's claim that the EYLF is not a curriculum because it does not require children to have goals or testing, referring to the EYLF itself which stipulates how children are to be assessed, namely by gathering and analysing evidence about what children know, can do and understand. She also said early childhood teachers set educational and socialisation goals for children. Ms James referred to Ms Viknarasah's evidence in which she stated she takes full responsibility as the Director for all regulatory and compliance issues. Ms James said it is the Approved Provider and the Nominated Supervisor who are accountable and can be personally fined for breaches to the National Regulations, not the Director.

[310] In her statement prepared for the work value application dated 16 June 2019,¹⁴⁸ Ms James provided a summary of the day-to-day work of an early childhood teacher and relevant changes to these tasks. She stated that since the NSW Government has introduced "Start Strong" funding to preschools in 2016, children have begun attending services earlier as the funding requires children to attend 15 hours a week, and be enrolled for 7.5 hours a day. Children are now, as a result, attending preschool in the period between 8.00am to 4.00pm rather than 9.00am to 3.00pm. As a result, early childhood teachers have less time to set up indoor and outdoor activities, complete documentation and routinely stay back past their scheduled roster times to finish work. Ms James stated that this program has resulted in preschools enrolling more students, which means each early childhood teacher has become responsible for documenting and programming learning for an increased number of students without a guaranteed increase in programming time. Time traditionally used for completing documentation, such as the standard rest time after lunch, is no longer available to complete these tasks due to changes in regulations. Ms James gave evidence that planning and

¹⁴⁷ Exhibit 26

¹⁴⁸ Exhibit 27

implementation of indoor and outdoor learning programs has become a more complex and structured process since the introduction of the NQF and teacher accreditation. Early childhood teachers are required to observe children's skill levels and development during group activities, review the strategies used during these activities and assess their effectiveness, and record them for future planning and evaluations. In particular, she gave the example that the teacher must link the observations (and the resulting educational program) to specific child development theorists or EYLF curriculum outcomes.

[311] In her oral evidence, Ms James said that:

- she agreed that the number of early childhood teachers in the workforce has increased very significantly in recent years, however she thinks the shortage of early childhood teachers has been exacerbated because under the NQF, all services are now required to employ teachers whereas previously other states except NSW did not have to;¹⁴⁹
- despite not currently teaching, she believes she would be able to competently deliver the EYLF if she took a job in an early childhood centre, as she has read it and reflected on what it would look like in a classroom;¹⁵⁰
- Educational Leaders review other programs and lesson plans, give feedback to staff to ensure the learning the child has exhibited that is documented is linked to the relevant outcome in the EYLF;¹⁵¹
- Educational Leaders are required to keep up to date with new early childhood research, as part of their role is to assist in meeting the professional development needs of the staff at their centre by determining how individual staff or the centre as a whole can further develop their skills;¹⁵²
- in her experience, the majority of graduates prefer to work in schools rather than in early childhood because of the higher wages and better conditions;¹⁵³ and
- observation and documentation requirements are much more significant and complex now, as the early childhood teacher must link the observations and resulting educational program to specific theorists and EYLF outcomes.¹⁵⁴

[312] Ms James also gave the following evidence about the NSW Government's Start Strong funding program in response to questions from the bench:

“... It may well be that my understanding about this is wrong, that's why I wanted to explore it with you. You say in the second sentence that the funding system requires children to attend 15 hours a week? -Yes.

¹⁴⁹ Transcript, 26 June 2019, PNs 4087-4088

¹⁵⁰ Ibid, PNs 4133-4135

¹⁵¹ Ibid, PNs 4147-4153

¹⁵² Ibid, PNs 4154-4158

¹⁵³ Ibid, PNs 4197-4203

¹⁵⁴ Transcript, 27 June 2019, PN4322, 4325-4332

My understanding is that the system doesn't actually require 15 hours of attendance. That's just what you need to do if you want to maximise - obtain the maximum funding? -The funding, yes. So services are penalised if children are enrolled for less than that 15... hours if they're funded.

Yes, so the funding is different based on the number of hours? -That's right.

So likewise then with the rest of that sentence it says:

Funded children must be enrolled for 7.5 hours a day.

Now my understanding is there's no requirement for them to be enrolled 7.5 hours a day. That that's - - -? -Once again that's to maximum funding. So what preschools have done is instead of having a three day and a two days pattern as they previous did, they're enrolling children for 7.5 hours a day, two days a week, so they can put one child on Monday, Tuesday, another child Tuesday, Wednesday, another child Monday, Wednesday. So in that - out of that 20 places they can actually get 30 children in in that part of the week and then the second part of the week on Thursdays and Fridays, children will attend 7.5 hours.

I understand they might schedule it a particular way but it's not actually an enrolment - a requirement is it? -No, they don't have to be enrolled for that but once again to maximum funding, if they're enrolled for less than that 7.5 hours the preschool will be penalised in terms of their funding.”¹⁵⁵

Pam Smith

[313] Pam Smith is an Assistant Secretary of the IEU NSW Branch and is based in its Parramatta office. In her statement dated 19 July 2018,¹⁵⁶ Ms Smith said she organises principals and other teachers within the NSW Catholic School sector in her role and has had extensive dealings with the Catholic school campus at Stanhope Gardens in Western Sydney which consists of St Marks Secondary School, St John XXIII Primary School and the CELC. Teachers working at this campus are employed by the Catholic Education Diocese of Parramatta. From her discussions with the Diocese and teachers working on this campus, she was aware that at the time of making her statement, the Diocese paid its primary and secondary school teachers in accordance with the *NSW and ACT Catholic Systemic Schools Enterprise Agreement 2015*, however it pays its early childhood teachers at the early learning centre in accordance with the EST Award, despite those teachers having identical qualifications (in some cases) and performing similar work to the teachers in the schools on campus. Ms Smith said this is a source of tension within the Diocese.

[314] Ms Smith was not required for cross-examination.

Cathryn Hickey

¹⁵⁵ Transcript, 17 June 2019, PNs 1700-1706

¹⁵⁶ Exhibit 32

[315] Cathryn Hickey is an Education and Policy Officer and the Assistant Secretary of the Victoria Tasmania branch of the IEU. Previous to these roles, Ms Hickey worked as a policy and education officer with the NSW/ACT Branch of the IEU for nine years and as a secondary school teacher for eight and a half years. Ms Hickey was awarded a Master of Education from the University of Sydney in 1991, a Post Graduate Diploma of Education from the University of Queensland in 1978 and a Bachelor of Arts from the University of Queensland in 1977. Ms Hickey has also been a member of various advisory boards, including the NSW Ministerial Advisory Committee on the Quality of Teaching, and is currently the Director of the Centre for Strategic Education, an organisation that provides teacher professional development and expertise in teacher pedagogy and policy.

[316] Ms Hickey's witness statement dated 23 November 2018¹⁵⁷ set out in detail what she described as the increased professionalisation of teaching and the expectations placed on students in respect of lifting the performance and participation of all students in learning. She said that the establishment of professional regulatory authorities and the registration of teachers has been a key feature of this, and referred to the APST and the requirement for all teachers in Australia to meet, and continue to meet, the thirty seven standards outlined in this framework to continue their registration at a level of proficiency, as well as the "*highly complex and technical aspects*" of meeting these standards. Ms Hickey also said the profession demands higher and more extensive qualifications and candidates than in the past, with the minimum qualification for all registered teachers in Australia currently being four years of higher education. The central role that teachers have played in both federal and state government education reform agendas was also identified by Ms Hickey as contributing to the higher and higher standards of teaching practice and commitment.

[317] Ms Hickey also referred to *The Australian Teacher Performance and Development Framework* published by the AITSL in 2012, which outlines the critical factors for creating a performance and development culture in schools, including the essential elements that should be present in all Australian schools. The AITSL has also produced a series of "*Illustrations of Practice*", which are video presentations of how each of the APST standards can be achieved in practice.

[318] Ms Hickey gave evidence that the nature of teachers' work has not only become more complex and technical, but also significantly more explicit, and that teachers are expected to possess and utilise broad and deep skills in diagnosing and assessing the learning and social development needs of all students in their classes, including those with significant learning needs, challenging emotional and behavioural needs, disabilities and complex health needs, and to develop individualised learning sequences and activities for all students in their classes. She said that significant change in the nature of the work of teachers has been largely driven over the last two decades by a nationwide re-focusing on key national goals of schooling and subsequent systemic reforms in Australian schooling, and specific emphasis on the following aspects have resulted in required increases in the skill, knowledge and accountability levels of teachers:

- the development and maintenance of high quality teaching through more complex and sophisticated initial teacher education programs, increased and more highly

¹⁵⁷ Exhibit 29

specialised professional development requirements, performance appraisal and school improvement cycles;

- the significant movement to individualised student learning and greater focus on individual student learning needs and the need to scaffold learning, tailoring programs, assessment and reporting to each individual student despite key enabling conditions such as class sizes and scheduled teacher preparation time remaining at substantially the same levels over the period;
- the significant movement to include students with significant levels of special needs/disabilities into mainstream classes;
- the need to work with students in more holistic ways, including development and utilisation of strategies to deal with the significant increase in complex social issues affecting students and their learning,
- the adoption of targeted strategies to increase retention of students in Years 11 and 12 school education, including more vocationally orientated curriculum and innovative pedagogy;
- the development and implementation of new and innovative curriculum, including the incorporation of ICT, general capabilities in student learning programs, cross curriculum approaches and increased focus on Science, Technology, Engineering and Mathematics (STEM);
- significant increases in monitoring, data collection and detailed reporting, including high stakes national reporting, of student and school performance to parents, governments and the wider community;
- the importance and pressure placed by governments on schools and teachers by international comparisons of the performance of Australian students on international standards testing regimes; and
- the tying of school funding agreements to the adoption by systems and schools of strategic government reforms and improvement measures.

[319] Ms Hickey also said that sustained federal and state government focus on these areas has had an unprecedented effect on raising the expectations of governments, schools, teacher education providers and regulatory authorities on the required skills for knowledge of teaching. Ms Hickey said that technology-driven changes such as student e-learning, increased communication with students and parents online have required teachers to develop sophisticated and complex understandings in relation to the technology as well as the ways in which this technology enhances student learning. The steady increase of legislation in the area of child wellbeing and safety has also meant that teachers now require a heightened and sophisticated understanding of their obligations under law and increased knowledge as to how to meet these obligations.

[320] Ms Hickey also expressed the view that the conditions under which school teaching work is done have changed, and in this connection she pointed to:

- greater diversity in student populations;
- the associated need for teachers to provide targeted and specialised teaching including individual assessment of students and individualised personal learning plans;
- a movement away from traditional classroom structures to multi-age groupings, agile space learning environments, self-paced learning, and managing student work placements in vocational education subjects;
- the increased inclusion of students with significant special needs in mainstream classes requiring facilitation of the learning of students of very different ability/learning stages in the one classroom; and
- greater interaction with parents and health and welfare providers.

[321] In her oral evidence, Ms Hickey said that:

- there had been an increase in the ratio of educators to students in early childhood education over the last two decades “*to a small degree*”, and the focus on the individual child may have started slightly earlier in early childhood education than in schools;¹⁵⁸
- she had not identified in her witness statement any data quantifying any increase in the number of students with special needs or disabilities into mainstream classrooms;¹⁵⁹
- in respect of her contention that divorce and custody issues having to be dealt with by teachers had increased, albeit the rate of divorce is lower than it has been at any time since the 1970s;¹⁶⁰
- while teachers have always had to deal with students who are socio-economically disadvantaged, teachers were now expected to specifically address this through individual programming;¹⁶¹
- NAPLAN testing has significantly increased pressures on schools and teachers to lift NAPLAN scores because of the publicisation of the results;¹⁶²
- required ATAR (Australian Tertiary Admission Rank) scores for university education courses have been raised in some states (in Victoria to 70), but the minimum university entry requirements have been and are low compared to other courses;¹⁶³ and

¹⁵⁸ Transcript 18 June 2019, PNs 1826-1835

¹⁵⁹ Ibid, PNs 1837-1839

¹⁶⁰ Ibid, PNs 1843-1846

¹⁶¹ Ibid, PNs 1848-1851

¹⁶² Ibid, PN 1863

¹⁶³ Ibid, PNs 1868-1872

- ATARs only form part of the picture because only about half of the population of student teachers come from schools who have an ATAR, and the remainder come from many other pathways.¹⁶⁴

John Spriggs

[322] John Spriggs is a Senior Industrial Officer at the IEU – Queensland and Northern Territory Branch and has been in this position since approximately 1995. In his role, he is responsible for matters dealing with all teachers and employees other than teachers in non-government education and has particular responsibility for the early childhood education sector.

[323] In his witness statement filed 22 December 2017,¹⁶⁵ Mr Spriggs said that the early childhood education sector in Queensland essentially consists of approximately 430 community kindergartens and 1,500 long day care centres. Community kindergartens provide children (aged 3.5-4.5 upon commencement) with an educational program prior to their attendance to school. Long day care centres historically did not provide an educational program; however, this has since changed when in approximately 2009 the Universal Access scheme was introduced by the federal government, which resulted in a number of centres introducing an educational program as part of their services for children commencing 3.5-4.5 years of age. In Queensland, both community kindergartens and long day care centres receive funding through the QKFS for the delivery of these educational programs. Early childhood teachers delivering an educational program subject to the scheme is considered to be teaching for the purposes of teacher registration in Queensland and must hold an educational qualification acceptable to the Queensland College of Teachers (QCT).

[324] Mr Spriggs described the pay and conditions of early childhood teachers in Queensland. He said the majority of community kindergartens are operated by standalone not-for-profit associations and are subject to enterprise agreements, 90-95% of which provide wages and conditions comparable to those that apply in various schools. He said many agreements, such as the *Jacaranda Street Community Preschool and Kindergarten Early Childhood Education Enterprise Agreement 2016*, contain a term such as the following:

2.2.6 Future Wage Increases and Claims

(a) The parties acknowledge that employees to whom this Agreement applies have, traditionally, received wage increases which are the same as (or comparable to) the wage increases which have applied to teachers employed in State Schools. It is the intention of the signatories to this Agreement that this relationship be retained. That intention is formalised in paragraphs (b), (c) and (d) below.

(b) It is an enforceable term of this Agreement that the wages for teachers will be increased by the same percentage movement, and will be the same quantum, as wages for teachers employed in Queensland State Schools. Further, the wages for employees other than teachers will be increased by the same percentage movement which applies to teachers.

¹⁶⁴ Ibid, PN 1878

¹⁶⁵ Exhibit 33

(c) The commitment to match the wage increases in Queensland State Schools will apply only to the classification levels contained in this Agreement and the counterpart (if such levels are amended) classification levels in State Schools.

(d) The allowances provided in clause 2.4 will receive the same increase as applies to wage rates.

[325] In respect of long day care centres, Mr Spriggs stated that in his experience few centres have an enterprise agreement and are therefore covered by the award. Historically the wage rates for teachers employed in long day care did not match the rates for teachers employed in community kindergartens because there was neither a requirement that they be a registered teacher nor a requirement that an educational program be delivered.

[326] In a statement dated 19 July 2018,¹⁶⁶ Mr Spriggs replied to evidence given by Jae Dean Fraser in his statement dated 25 May 2018.¹⁶⁷ Mr Spriggs disputed Mr Fraser's characterisation of the ACA as "the peak body" in the early childhood education and care sector, noting that its membership is generally limited to for profit long day care centres and none of the large not-for-profit operators such as C&K in Queensland, KU in NSW and Goodstart are represented by the ACA. In respect of staffing in kindergarten rooms, he said that in his experience, the Educational Leader is usually an early childhood teacher. He said that kindergarten programs have generally been developed and delivered by an early childhood teacher with a certificate III educator assisting, in accordance with the intent of the National Law and the QKFS. In respect of funding, Mr Spriggs noted that Mr Fraser failed to explore four subsidy payments available under the QKFS, namely the standard per child subsidy, remote area subsidy, low socio-economic subsidy and QKFSPlusKindySupport. Mr Spriggs submitted that QKFS specifically allows the standard per child subsidy to be used to pay more appropriate rates of pay to early childhood teachers.

[327] In his oral evidence, Mr Spriggs said that:

- he accepted not all early childhood teachers in Queensland are required to be registered, however a number of early childhood teachers will move from conditional to full registration after 12 months regardless of whether their employer or something else requires them to be teachers because they want to attain that status;¹⁶⁸
- there is a very small discrepancy between the requirements of the ACECQA and the QCT as to what constitutes a teacher to be recognised, which means they are qualified according to the ACECQA but not the QCT;¹⁶⁹ and
- early childhood teachers in Queensland have been registered for decades if they were covered by the *Early Childhood Education Award* and were responsible for delivering an educational program.¹⁷⁰

¹⁶⁶ Exhibit 35

¹⁶⁷ Exhibit 84

¹⁶⁸ Transcript, 18 June 2019, PNs 1961-1962

¹⁶⁹ Ibid, PNs 1963-1967

¹⁷⁰ Ibid, PNs 1984-1990

Martel Menz

[328] Martel Menz is the Vice President Early Childhood at the AEU – Victorian Branch and is the elected leadership representative of branch members in the early childhood sector. She has been in this position since 2016 and prior to that was the Deputy Vice President Early Childhood from 2007-2015. Early childhood teachers are eligible to be members of the AEU in Victoria, except if employed in an independent school.

[329] In her statement dated 20 December 2017,¹⁷¹ she focused on the regulation of and conditions in the early childhood sector in Victoria. Her evidence repeated much of the regulatory framework governing teachers in Australia as set out above. She said that 405 independent community-based preschools in Victoria are covered by the *Victorian Early Childhood Teachers and Educators Agreement 2016* (VECTEA), the *Victorian Early Childhood Agreement 2016* applies to a further 41 community-based preschools and she is aware of eight further enterprise agreements that apply to community-based preschools and school councils. Early childhood teachers are paid the same annual salaries under each of these agreements. Ms Menz said that early childhood teachers covered by the abovementioned agreements are sometimes paid more than Victorian primary school teachers covered by the *Victorian Government Schools Agreement 2017*. In her experience, long day care sector employees are paid the award rates of pay or marginally above them. She said there are very few enterprise agreements that cover early childhood teachers employed at long day care centres and in those agreements, wage rates are very close to those prescribed by the EST Award. Ms Menz gave evidence that early childhood teachers paid the minimum rates under the EST Award were to be paid 23.69% to 32.81% less than a primary school teacher in a government school as of 30 June 2018.

[330] Ms Menz prepared a statement in reply dated 19 July 2018,¹⁷² in which she responded to various matters raised in the statement of Jennifer Kearney dated 23 May 2018.¹⁷³ Ms Menz said that not only local government operators are able to provide higher wages because they have access to State Government funding, as this funding (the Early Childhood Teacher Supplement Funding) is also available to private operators who provide a four year-old kindergarten program if they have an enterprise agreement in place with a classification structure based on the progression requirements in the VECTEA. She said there are mechanisms for Ms Kearney’s services to access this funding stream and match those rates. Ms Menz disagreed with Ms Kearney’s characterisation of the responsibilities of early childhood teachers in respect of program delivery. She said that the responsibility of delivering a kindergarten program in Victoria rests with the early childhood teacher engaged to teach the program and referred to the Victorian Kindergarten Funding Guide, which she said has mandatory requirements for delivering funded kindergarten programs. These include planning and delivering a preschool curriculum in accordance with the EYLF and VEYLDF, against the NQF and the QIP. She said certain responsibilities can only be undertaken by a qualified early childhood teacher, such as writing transition statements for all children attending school the following year.

¹⁷¹ Exhibit 30

¹⁷² Exhibit 31

¹⁷³ Exhibit 77

[331] Ms Menz was not required for cross-examination.

Gabrielle Connell

[332] In addition to the evidence she gave concerning the equal remuneration application, which has earlier been set out, Ms Connell made a further statement of evidence which was filed on 23 November 2018¹⁷⁴ specifically concerning the work value application. In that statement, Ms Connell stated that early childhood teachers in NSW entered the teacher accreditation process in July 2016, and are increasingly considered professionals. Accordingly, she said, there is now a greater expectation from families that she is knowledgeable, delivers results and provides more regular documentation. She has to be cognisant of the EYLF, the NQF, the NQS, the National Law and the National Regulations, as well as a range of other regulatory requirements. She also engages in more research and reading than in the past, and there is a growing expectation from universities that early childhood teaching centres will participate in research projects, which requires increased administrative work and extensive involvement for centres which become involved in these research projects.

[333] Ms Connell also said that, since July 2016, she has been required to engage in 20 hours of NESAs-accredited professional development as well as 80 hours of teacher-identified professional development over a period of five years, and newly-accredited teachers will now have to engage in 50 hours of NESAs-accredited professional development and 50 hours of teacher-identified professional development. She said that before this, although she was expected to participate in professional development, there was no recommended amount that she had to complete, and she did not undertake 50 hours of teacher-identified professional development. Ms Connell said that NESAs-accredited professional development was often difficult to access in regional settings, that her centre could not readily afford to send its teachers to conferences in the cities, that teachers usually had to pay for their own professional development once centres exhausted their limited professional development budgets, and she often needed to do online professional development in her own time after working hours in order to meet accreditation requirements.

[334] Ms Connell also said that, now early childhood teachers in NSW are accredited under the same regime as all school teachers in NSW, they are able to achieve the Highly Accomplished Teacher and Lead Teacher accreditations through the NESAs. Achieving these accreditations involves a significant amount of work, including that teachers must demonstrate that they have a “*sphere of influence*” greater than their own classroom, that they are contributing to programming and planning across the whole centre and within the wider early childhood community, that they have taken on lead roles in their centres and wider networks, and are contributing to the professional development of early childhood teachers across these wider fields. There is currently no extra amount of remuneration for teachers with these higher levels of accreditation.

[335] Because, since 2012, the NQF has prescribed the number of teachers each centre must have and for other workers to be Diploma or Certificate III-qualified, Ms Connell’s role has included ensuring that these requirements are met through assisting staff to gain the necessary qualifications. She has also provided mentoring and tutoring to Diploma or Certificate III-qualified workers who are training to become teachers. Ms Connell gave evidence that there is

¹⁷⁴ Exhibit 63

currently a big push by ACECQA to embed family and community participation in the centre in accordance with the NQF, and this has led to a growing amount of family and community interaction, including an open-door policy within the centre that allows parents greater accessibility to their child's teacher.

[336] Ms Connell said that the career progression of an early childhood teacher will now be from teacher to Room Leader, to Director or certified supervisor, and to Educational Leader. Since the NQF was introduced, there has been a great deal of work for teachers in ensuring centre accreditation, including demonstrating that every staff member has contributed to the QIP, policy development and self-assessment, and has knowledge of the regulations. Ms Connell's evidence was that compliance with the NQF is far more evidence-based than it was before, requiring teachers to provide a great deal more administrative evidence of compliance, and she now has to be able to demonstrate that the elements of the EYLF and the NQF are embedded in her practice. She said that there has also been a whole range of new policies introduced which for the most part did not exist before the implementation of the NQF and the EYLF.

[337] Ms Connell described the changes to early childhood teaching methodology and the requirement to implement a play-based curriculum in her teaching as mandated by the EYLF. Ms Connell stated that it is difficult to ensure the effectiveness of a play-based curriculum, and it requires more reflection and planning, collection of resources and evaluation from teachers. It also requires the ability to flexibly respond to the child by tailoring a lesson to their individual intelligence and needs, as well as increased communication with families to explain the methodology and its value. Ms Connell said that the EYLF also requires teachers to implement intentional teaching and "Scaffolding of Learning" methods into their practise, which requires her to be knowledgeable about this methodology and the pedagogy underlying it. She said that the EYLF is aimed at building literacy, numeracy, social development and community belonging through multiple methods including language, drama, music, movement, art and craft, creative play, gross and fine motor skill development, technology, science, engineering and research. In implementing a play-based curriculum, Ms Connell said she is teaching children to think creatively and logically, hypothesise, experiment, plan, work co-operatively and be in charge of their own learning. She uses intentional teaching strategies to scaffold each child's learning and sets up the environment to become the "third teacher". It is necessary for her to promote children's learning through worthwhile and challenging experiences and interactions that foster higher level thinking skills. Ms Connell said that intentional teaching is the opposite of teaching by rote or continuing with traditional styles of teaching, and she had to learn this new style of teaching since the introduction of the NQF in 2012. Before the EYLF, Ms Connell said, there was a NSW-based curriculum, but it was not mandatory, and the Practice of Relationships document was not widely incorporated into centres and did not refer to specific teaching techniques.

[338] Ms Connell also described a significant increase in curriculum resources since the introduction of the NQF and the EYLF, especially in the area of online publications, blogs and communities. These inform teachers' compliance with standards and support the adoption of new, more radical methods of teaching such as outdoor or bush programs. Ms Connell said she now performs summative and formative assessments on a weekly basis. She looks at the observations which detail what each student did each day, maps them against the learning outcomes of the EYLF, analyses how she can extend the child's learning in the future and engage them in further learning and interest. Twice a year she conducts a more formative assessment against the EYLF outcomes, which sets out the child's achievements and ongoing

developmental plans. Ms Connell compared this to the position before the introduction of the EYLF, around 10-15 years ago, when she only kept a developmental checklist on each child and conducted an interview with the parents after the checklist. Ms Connell said that the current system requires far more accountability for early childhood teachers, in that she has to regularly provide parents with observations, plans and assessments.

[339] Ms Connell gave evidence that compliance with multiple standards and regulatory requirements involves extensive administrative work compared to previous years, such as signing in and out of the centre approximately five times a day, recording daily reflections and all interactions with parents in a communication book, writing risk assessment plans (including for individual children with specific conditions) and completing forms for excursions, medication, illness, accidents and WHS hazards.

[340] Ms Connell described several changes in the enrolments of children attending her centre that require extra work, attention and vigilance from staff, including catering to an increasing number of children who speak English as a second language, an increase in speech and language problems, an increase in allergies such as anaphylaxis, an increase in disorders such as reactive attachment disorder and/or sensory processing disorders as well as being aware and sensitive to family issues that may be affecting the children, such as trauma, drug abuse and/or divorce. Ms Connell further described the increased contact and expectations of parents, such as communicating formally with all parents on a weekly basis via a learning journal, providing daily and/or weekly updates to parents on their child and being available to communicate with parents during the working day as well as out of hours via email or new digital platforms. She said there was also an expectation that teachers create transition to school statements for children. She compared the position to that earlier in her career, when she would send information to parents once or twice per year, with verbal updates and arranged interviews to discuss specific concerns.

[341] In a further statement of evidence made for the work value proceedings on 17 June 2019,¹⁷⁵ Ms Connell stated that teachers often leave the early childhood sector before completing their accreditation, and that in her experience, services that pay award rates rather than higher wages have problems recruiting and retaining early childhood teachers. Ms Connell also stated that many preschool Directors have observed university students who undertake practical experience in preschools choose primary school teaching over early childhood teaching because the pay and conditions are better, and make this choice in spite of “*loving the early childhood sector*”. Ms Connell also listed several preschools that have or are working towards reaching wage rates on parity with primary school teachers.¹⁷⁶

[342] Ms Connell said that the newly introduced Principle 5 in the EYLF, “*Critical Reflection*”, is different to the previous requirement of teachers providing a simple reflection of what happened during the day and what was observed about a child’s development. Ms Connell stated that critical reflection involves higher order thinking, creative thinking and considering multiple perspectives and that teachers must, through research and discussion, promote and develop critical reflection skills as part of a team. In terms of workload, Ms Connell said that at her previous centre, she was routinely working additional time that was unpaid to complete her daily tasks as well as spending at least six hours at home completing documentation.

¹⁷⁵ Exhibit 64

¹⁷⁶ Ibid at [7]

[343] Ms Connell gave oral evidence to the following effect:

- the Albury preschool was the first standalone centre to obtain an “excellent” rating under the NQS;¹⁷⁷
- her experience has largely been in community-based preschools, and she does not have a great knowledge of privately-operated long day care centres;¹⁷⁸
- in the long day care services that she does have knowledge of, there has always been an early childhood teacher in the room, and the EYLF is followed;¹⁷⁹
- in her experience, Directors usually work in that role part-time and are otherwise teachers with classroom responsibilities;¹⁸⁰
- early childhood teachers at the Albury preschool are required to work according to the National Law, and this encompasses ensuring that the service operated in accordance with the National Law;¹⁸¹
- in the Albury preschool, the Room Leader and responsible person or certified supervisor was always an early childhood teacher with responsibility for seeing that the service adhered to the National Law and Regulations;¹⁸²
- non-teacher qualified educators have mandatory reporting obligations as well as teachers;¹⁸³
- long day care centres had a version of the quality improvement plan and self-assessment prior to the NQS;¹⁸⁴
- the Albury preschool has just started using a digital online reporting app called Storypark to upload observations, pictures and learning outcomes related to particular activities, and to send that to families;¹⁸⁵
- although the National Law requires that a centre have an Educational Leader, it is best practice supported by research to have a Room Leader who is an early childhood teacher to drive the program, since the Educational Leader is not in the classroom with every child and is not aware of the needs, interests or observations of every child or the input from families;¹⁸⁶

¹⁷⁷ Transcript, 26 June 2019, PN 3706

¹⁷⁸ Ibid, PNs 3714-3719

¹⁷⁹ Ibid, PNs 3721-3722

¹⁸⁰ Ibid, PNs 3734-3737

¹⁸¹ Ibid, PNs 3739-3757

¹⁸² Ibid, PNs 3761-3766

¹⁸³ Ibid, PNs 3774-3775

¹⁸⁴ Ibid, PN 3782

¹⁸⁵ Ibid, PNs 3790-3797

¹⁸⁶ Ibid, PNs 3809-3813

- the Albury preschool moved to pay parity for early childhood teachers with school teachers over a period of six years to September 2016, requiring an almost 40% increase in wages;¹⁸⁷
- the take-up of higher-lever teacher accreditations amongst teachers has been miniscule, but amongst early childhood teachers there is already a group of 20 early childhood teachers who are working towards highly accomplished accreditation;¹⁸⁸
- there has always been a requirement for play-based learning in early childhood education, but it became mandatory and was emphasised in the EYLF;¹⁸⁹
- the requirement for a child-focused program worked differently before the EYLF, and communication with families was done in different ways and less frequently;¹⁹⁰
- intentional teaching is, in her opinion, an innovation;¹⁹¹
- in NSW, there was the Children’s Service Regulation, the QIAS in relation to long day care, and the NSW Curriculum (Practise of Relationships) prior to the EYLF, but the curriculum was non-mandatory and there was no training or professional development for it;¹⁹²
- although the EYLF says nothing about STEM, there is a “*big push*” for it and the APST talk about it;¹⁹³
- the idea of extended learning did not arise just in 2012, but intentional teaching and the scaffolding of learning required by the EYLF made a big difference;¹⁹⁴
- when Ms Connell underwent university training, the emphasis was on a thematic approach, but when the EYLF came in, teaching became child-centred whereby the child would lead the program with input from the parents and the use of intentional teaching methods, and the program became more dynamic and teaching styles changed;¹⁹⁵
- there are far more resources for teachers than there were in the past, which is unequivocally positive;¹⁹⁶

¹⁸⁷ Ibid, PNs 3830-3833

¹⁸⁸ Ibid, PNs 3875-3878

¹⁸⁹ Ibid, PN 3883

¹⁹⁰ Ibid, PNs 3882-3883

¹⁹¹ Ibid, PN 3884

¹⁹² Ibid, PNs3885-3890

¹⁹³ Ibid, PNs 3894-3895

¹⁹⁴ Ibid, PNs 3901-3902

¹⁹⁵ Ibid, PN 3903

¹⁹⁶ Ibid, PNs 3913-3925

- Ms Connell has concerns about the quality of Certificate III and diploma-qualified teachers who have been trained by online training organisations rather than through TAFE, and the requirement for educators to be qualified has not made things easier for early childhood teachers because they have to be tutored and helped to qualify;¹⁹⁷
- the degree of contact with parents has increased dramatically in association with the NQS in terms of send out documentation on a regular basis to parents and send out learning journals on a weekly basis;¹⁹⁸
- there is an expectation by parents that if they send an email, on an alert on Storypark which goes through to phones instantly, there will be a response;¹⁹⁹
- email addresses for each group were provided to parents from 2012, but email communication has not reduced the amount of communication that occurs at handover;²⁰⁰ and
- early childhood teachers perform a significant amount of work, including documentation associated with the EYLF, out of hours.²⁰¹

Lauren Hill

[344] In addition to the evidence she gave concerning the equal remuneration application, which has earlier been set out, Ms Hill made a further statement of evidence dated 11 June 2019²⁰² concerning the work value application. At the time of making the further statement, Ms Hill was working as a casual early childhood teacher via an agency and worked in different preschools and long day care centres as required. Ms Hill referred to Independent Education Plans she has prepared for children, which are long documents and involve discussions with parents and external healthcare providers such as speech therapists and occupational therapists. She said that while such plans are usually prepared for children with special learning needs, she had recently worked in preschools where similar, less formal documents were developed for all children by teachers in consultation with parents. She provided an anonymised example of an Individual Education Plan for a child who was seeing a speech therapist, and whose needs are described in the plan as “*Language needs, focus and attention, social skills*”. The plan, which is in tabular form, identifies a number of long-term goals (including “*To be able to participate in group experiences. - Develop friendships within his peer group and interact in play. - Articulate words clearly and speak in sentences. Express himself and use his words. - Transition to school in the following year (2017)*”) and short term goals (including “*To sit in small groups for short periods of time... increase joint attention... to play 1:1 or with small groups of peers... to use words and increase his vocabulary and feel confident when using new words... Develop a collaborative approach in planning and monitoring strategies to assist... transition to school*”), and sets out some 33 teaching strategies and resources to meet these goals. These all involve individualised attention to the particular student (for example, “*Educators to obtain*

¹⁹⁷ Ibid, PNs 3930-3936

¹⁹⁸ Ibid, PNs 3945-3948

¹⁹⁹ Ibid, PN 3955

²⁰⁰ Ibid, PNs 3956-3963

²⁰¹ Ibid, PNs 3968-3972

²⁰² Exhibit 18

Student Name's attention before instruction... Educators to implement visual expectations (Peppa Pig reward system) and explore other visual aids/prompts... Educators to outline clear expectations prior to group time with visual aids... Educators to use Peppa Pig reward system and visual expectations to remind Student Name Removed of routine and expectations. Once completed, provide Student Name Removed with preferred item e.g. sensory toy... Educators to provide 'warm-down' activity prior to group time... Educators to provide opportunities for movement activities prior to group times to wake up or calm down... Encourage Student Name Removed to do a calming activity prior to sunscreen times, then encourage him to use sunscreen). The plan records outcomes on a regular basis.

[345] In her oral evidence, Ms Hill said that at the CELC, her documentation responsibilities in respect of 18 children required two observations to be reported each term, a mid-year report to be prepared, and then either an end-of-year report or a transition to school statement. She described an observation as being documentation showing the learning that is occurring as well as a follow-up experience that is building on that learning and includes photographs and links to early childhood theorists.²⁰³ She said that when she worked two eight-hour days per week at the CELC, she was released for three hours to do preparatory and documentation work and the remainder was face-to-face teaching time.²⁰⁴

Margaret Gleeson

[346] Margaret Gleeson is an early childhood teacher and the Managing Director of Keiraville Community Preschool, a not-for-profit, standalone preschool in NSW. She has managed the preschool since 2001. She was awarded a Diploma of Teaching Primary Infants in 1978, a Bachelor of Teacher Early Childhood in 1998 and a Diploma of Management in 2010. She has previously worked as a school teacher. She is paid at the top of the salary scale, receiving a rate of pay of \$75,626 with a Managing Director's allowance of \$7,880. The preschool has 40 places each day for children ages 3-5 years and three early childhood teachers, one certificate III-qualified educator and two diploma-qualified educators work each day.

[347] In her statement of evidence dated 18 July 2018,²⁰⁵ Ms Gleeson responded to various matters raised in the statement of Merran Toth dated 16 May 2018, which was withdrawn by the ACA and re-filed as an amended version dated 27 March 2019.²⁰⁶ She said Keiraville Community Preschool recognise that early childhood teachers are historically underpaid and are committed to moving towards pay parity and appropriate remuneration for early childhood teachers. Ms Gleeson agreed with Ms Toth's concern that many early childhood services are not able to find employees to fill early childhood teacher roles or retain them, as in her experience, there is a significant pay gap between the salary of an early childhood teacher and that of a primary school teacher and many early childhood teachers resign to work in the school sector because of better wages and conditions. In respect of qualities of early childhood teachers, Ms Gleeson agreed that there are qualities that are essential for both early childhood teachers and educators, however stipulated that early childhood teachers have an additional significant theoretical knowledge of pedagogy and children's learning as a result of their degree qualifications and undertake extensive ongoing learning. Ms Gleeson said that early childhood

²⁰³ Transcript, 13 June 2019, PNs 1458-1466

²⁰⁴ Ibid, PNs 1467-1470

²⁰⁵ Exhibit 66

²⁰⁶ Exhibit 99

teachers at her centre are responsible for ensuring the preschool is meeting the requirements of the National Law and National Regulations and implementing the NQS and have a greater degree of responsibility in supervision each day. The early childhood teachers at her centre also form a leadership team which support the management committee. Ms Gleeson also compared the role of an early childhood teacher with that of a primary school teacher from her own experience. She said that early childhood teacher work is more complex in many ways, as they are responsible for writing applications for additional support for additional needs children, mentoring of other teachers, writing and reviewing policies, overall responsibility for the safety of children and their security and writing funding or grant applications.

[348] In her statement of evidence dated 22 November 2018,²⁰⁷ Ms Gleeson said that in regard to the qualifications for early childhood teachers, teachers can no longer rely on their formal degree qualifications and that there is an increased pressure to participate in ongoing professional development and obtain additional qualifications and skills, such as management skills, delegation skills and leadership skills. This has been said this followed the introduction of the NQS and the increasing focus on excellence in early childhood education. Since 1996, Ms Gleeson has extended her teaching practice by studying and adopting the Reggio Emilio approach from Italy, which relies on self-directed, experiential learning by students. She has also researched the forest schools of Scandinavia and Germany which involve first-hand sensory experiences with regular visits to forests to reconnect children with nature. This has led to a “*bush preschool*” model of learning in Australia, and a great part of Ms Gleeson’s professional development has been to increase her skills so that she could implement some of the bush preschool principles into her preschool. She said that the preschool’s ability to put into practice this new form of teaching pedagogy took a lot of thinking, planning and learning and required significant new skills in leadership, management and organisation. In addition, Ms Gleeson said that another strong focus within her professional development has been the inclusion of Aboriginal culture within the curriculum and the preschool.

[349] Ms Gleeson’s increasing amount of professional development has involved attending more and more conferences on early childhood education, and a number of new early childhood education events have been created. She said that early childhood teachers have in the last 7-10 years increasingly participated in research studies in early childhood education. When this is done, it is necessary for her to obtain parental permission, collect data, conduct interviews and carry out surveys in collaboration with the researcher.

[350] Ms Gleeson said that the introduction of the NQF in 2010 together with the NQS has led to the ACECQA introducing a new rating systems for assessing early learning centres. This now includes an “*excellent*” rating, which is a step above the “*exceeding*” rating. The range of criteria for assessing against the standards includes collaborative partnerships with professional, community and research organisations. As a result, early childhood teachers are required to engage in significant networking and collaborating with external agencies and community involvement.

[351] Ms Gleeson said that there has been a significant increase in the amount of data that a teacher is able to access in the development of their teaching practice, and the internet has enabled her to access resources that she can incorporate into her professional practice. Ms Gleeson also outlined changes to the curriculum over the last 20 years. She referred first to the

²⁰⁷ Exhibit 67

introduction of the NSW Curriculum Framework for Children's Services in 2002 which, while not compulsory, set out the concepts, obligations and qualities of early childhood professionals. It was necessary for Ms Gleeson to undertake many hours of personal study and professional development to become competent in implementing this framework, and she developed a workshop to share the NSW Curriculum Framework for Children's Services with preschool staff and other early childhood services. This was overtaken in 2010 by the introduction of the NQF and the EYLF. This required a great deal of learning by teachers, and required a series of meetings to be conducted to train staff. Ms Gleeson said that the content and delivery of these meetings are planned by teachers and involves familiarity with adult learning techniques and engagement.

[352] Ms Gleeson said that teaching methodology has changed in recent years. She said that 20 years ago, the teaching style segmented time into small chunks and was highly regimented, so that when she started work at her preschool in 1999 the children's day was strictly timetabled with many transitions. Children had little choice in their learning, their time, what they did and when. Ms Gleeson said that, now, the rhythm of the day is more relaxed, larger amounts of time are dedicated to when children are directing their own learning, and teachers are responsible for providing an appropriate educational setting as an invitation to learn and guiding and scaffolding their children's learning as appropriate.

[353] Ms Gleeson referred to other significant changes in preschools over the past 20 years including a threefold increase in children who have no English skills. These children require significant amounts of teacher support to achieve appropriate learning, and also requires adaption of the communication style with the parents of such children. She said that changes in funding systems and resources allocated to preschools presented administrative challenges and led to difficulties explaining these changes to parents when they affected fee structures. These challenges were particularly acute with respect to special needs students. Ms Gleeson also described the changes in parents and community expectations over her career, including increased communication and the requirement to convince prospective parent customers "*of our merit*", having the skills to navigate complex family dynamics and breakups and shouldering changing parenting styles which she said has heightened children's behavioural issues.

[354] Ms Gleeson also described the range of administrative duties teachers are involved in at her centre that require complex skills for which teachers are not formally trained, including nurturing a team learning culture which is consistent with the NQF, monitoring the financial viability of the centre, undertaking various management, legal and recruitment responsibilities. Ms Gleeson further described the way in which stand-alone preschools often require that teachers are entirely responsible for all aspects of the centre's viability, including resourcing the management committee, preparing recruitment criteria, monitoring and potentially misinterpreting the funding guidelines, juggling ethical decisions regarding what the priorities of the preschool are, and supporting and mentoring university students on placement in the preschool.

[355] In her oral evidence, Ms Gleeson said that:

- the Keiraville preschool has an enterprise agreement in place which is moving early childhood teachers towards pay parity with school teachers;²⁰⁸
- “focus group leaders” at the preschool (being equivalent to Room Leaders) have an hour per day relieved from face-to-face teaching;
- based on her experience, she believes the role of an early childhood teacher is more complex than that of a primary school teacher, in part because the roles of certified supervisor and Nominated Supervisor (which are filled by early childhood teachers) have a greater role in planning for the safety and supervision of children;²⁰⁹
- she considers that the Reggio Emilia approach is compatible with the EYLF and the NQF, in that they emphasise the capability of the child learning through play;²¹⁰
- there are different ways on which an educational program can be delivered consistent with the EYLF, provided the principles and practices are put in place and the curriculum works towards the outcomes for children;²¹¹

Jenny Finlay

[356] Jenny Finlay is a teacher and Director at Borilla Community Kindergarten in Emerald, Central Queensland, and has been employed there since 1997. She has a Diploma of Teaching (Primary), Graduate Diploma of Education (Early Childhood) from Queensland University of Technology and a Master of Education from the University of Central Queensland and has been in the teaching profession since 1980. She has worked at a number of educational facilities prior to commencing her current position.

[357] In her witness statement dated 21 November 2018,²¹² Ms Finlay said that she holds a 0.5 FTE teaching load as part of her Director’s duties. At her centre, there are 4 other early childhood teachers employed (3 full-time and 2 part-time/casual) and 15 educators. When the Kindergarten is operating, one early childhood teacher and one educator is attached to each Kindergarten room. The Kindergarten employs more educators because they provide a service that has high numbers of special needs children (often now 30-40% of children in each class) and require more inclusion staff. The Kindergarten educates up to 140 children in any one week, who are all aged between 3½ years and school age. Teaching staff are covered by an enterprise agreement.

[358] Ms Finlay gave evidence that the biggest change that has occurred in the early childhood sector in the past two decades is the introduction of universal access funding, which aims to increase the number of children attending preschool. She said that the impact of this initiative is that now a lot more children from families facing social disadvantage, such as low income and indigenous children, children in the care of Child Safety and children with disabilities are attending the Kindergarten. Whilst she considered this to be a positive development, with

²⁰⁸ Transcript, 27 June 2019, PNs 4423-4424

²⁰⁹ Ibid, PN 4453, 4478-4479

²¹⁰ Ibid, PNs 4466-4469

²¹¹ Ibid, PN 4471

²¹² Exhibit 50

subsidies now almost fully covering the fees, she said that these families are more likely to require support with multiple and complex needs. She stated that the initiative has:

- increased the administrative workload and reporting requirements for staff, such as in relation to keeping current registers of family health care card details;
- increased the need for different skills in respect of educating and caring for children with special needs and significant and complex problems, such as children from families with poor literacy skills or families experiencing domestic violence;
- placed a focus on the increasing importance of risk management, Behaviour Support Plans and Individual Support Plans for children with specific health or behavioural issues;
- meant that teachers need to understand the protections and accompanying bureaucratic procedures for children in the child safety system, such as processes involving parental consent; and
- required staff to navigate situations where the children are the subject of custody disputes, such as who is able to pick up the child from the Kindergarten.

[359] Ms Finlay stated that, in 2018, the mainstreaming of children with significant physical and intellectual disabilities is now the norm, which means that teachers in ordinary kindergartens now need the skills required to deal with the added complexity that comes with educating and caring for such children. She also said that reporting of a reasonable suspicion that a child has suffered or is at risk of suffering abuse has become mandatory in Queensland since 1 July 2017, whereas before it was merely a professional responsibility. Ms Finlay said that this requires her to monitor children for changes in behaviour which may indicate child safety issues at home (such as self-harming) even where the matter does not meet the threshold for mandatory reporting. When such behaviours are observed, Ms Finlay is expected to record the occurrence and liaise with her team and, where necessary, with external government child protection agencies. Ms Finlay described interactions with families in the context of child safety and protection issues as being both confronting and complex.

[360] Ms Finlay said in her statement that, although early childhood teachers were “*viewed as less of a teacher*” than those in schools, the job expectation was greater because of the degree of their liaison with the families of the children, developing relationships with whom was a fundamental and essential part of the curriculum and the job. She said that the focus on increasing interaction with parents and communities made her job more complex, and this had expanded hugely since she started teaching. Previously, she said, it was sufficient to red-flag an issue with a parent; now, the expectation was that the teacher would actively help the parent manage or solve the developmental issue.

[361] In respect of teaching, Ms Finlay said that the complexity of the teaching role of early childhood teachers had become more evident through the implementation of the NQF and the Queensland Kindergarten Learning Guideline (QKLG). She said that, compared to schools, the teaching and assessment cycle is more dynamic, cannot be planned for a term in advance, and has to be more responsive to the children whilst still meeting the national guidelines and curriculum. Ms Finlay said that a key part of the EYLF was intentional teaching, which requires deliberation and purpose in all of a teacher’s actions. She gave the following example of this:

“For example, I may introduce a story about how we are all different - and simultaneously, how we are the same. We are all the same - we all have a head but we are all different – look at our hair. This is very intentional - about how being different is okay. This then leads to a discussion about respecting difference and feeling safe and secure and belonging. The deliberate choice of that book/story and the timing of its delivery is a purposeful act, given that the room has a cohort of children with disabilities, or from different cultural or linguistic backgrounds.

Intentionality goes way beyond what resources are made available for the children. On a simple level, the story example involves intentionality - to highlight that there are physical similarities shared by all people. At the same time there is intentionality to show that there is physical diversity between children in the class, and people more generally. Yet the intentionality goes beyond this: it goes beyond the provision of information with the intention of encouraging positive acceptance, indeed almost celebration of this diversity. This is the nub of the key objectives of EYLF: Being, Becoming, Belonging.”

[362] Ms Finlay said that teachers at her centre are required to follow the mandated curriculum as set out in the QKLG, which any centre in Queensland which receives subsidies under the QKFS must follow. The QKLG is similar but not identical to the EYLF, and uses different language and frames some concepts in a slightly different way. Ms Finlay said they both involve planning and assessment – observing children, analysing the learnings or assessing needs, and applying professional skills and judgment to the various developmental stages of children and planning their learning. Each stage in the learning process must be documented in accordance with the relevant state and federal standards.

[363] Ms Finlay said that her day-to-day work as a teacher operates as a cycle in which she observes and documents the children and their needs and, from that, plans for the next day. Documentation is necessary to show families what is happening throughout each day and to demonstrate how the day’s activities are linked to the curriculum, and also to track children’s strengths, how a child may need to be extended, and how to harness a child’s interests. She described this as a “*cycle of assessment, intentional teaching and then critical reflection that feeds back on itself*”. This requires adaptation of learning for particular children based on a particular situation or development, such as where a specific weakness in a child is addressed through intentional teaching. It was also necessary, Ms Finlay said, to use the process of “scaffolding” to support the child in a process until they can manage it themselves, particularly with high needs children. She also gave evidence of the increase in monitoring and documentation required by teachers . She gave the following examples:

“For example, we may specifically plan to have a teacher involved in playing with a particular child where they model a particular behaviour. The teacher may encourage block building to model ‘turn taking’ (“my turn, your turn”) and asking the questions to scaffold that learning: “*How are we going to make this higher?*” “*What blocks will we use?*” “*What would happen if put this here?*” “*How will this balance?*” In this case, the teacher is scaffolding with language, spatial concepts and introducing social skills as well – all through presence and intentionality.

We also have to follow the children’s lead and follow their interests. You may have something planned for a day, yet the child may turn up to the Centre with some special

object – you can't say "put that away until next week, we can't do it today". The child's interest in the object needs to be responded to – it may mean you are changing what you are doing on a particular table or in the classroom that day."

[364] Ms Finlay said that the documentation requirements, including "*writing up individual learning stories that reflect on the learnings of the children*", take a considerable amount of time and skill as the needs to meet the high quality expectations of the QKFS and the NQS. The matters described by Ms Finlay caused her to conclude that the complexities and skills of the work of early childhood teachers have significantly increased, particularly over the last decade.

[365] In her oral evidence, Ms Finlay said:

- universal access funding in Queensland has led to mid to high 90s (percent) of children now attending kindergarten, according to 2018 Australian Early Development Census data;²¹³
- it was not correct that early childhood teachers are in no different position to any other educator in terms of the demands of dealing with special needs children, because teachers lead the room, assess the developmental level of each child and where they need additional support, write the behaviour management plans and individual education plans and liaise with speech therapists and other members of the transdisciplinary team;²¹⁴
- all educators in a classroom will interact with a special needs child, but it is the early childhood teacher's role to devise the individual education plan or behaviour management plan which guides the team as to what they will do with the child and how they will do it;²¹⁵
- it would be typical to have 3-4 additional needs children in a classroom with an early childhood teacher, a non-degree qualified educator and two additional educators referred to as inclusion support staff, and they would interact with the children under the guidance of the early childhood teacher's individual education plan and under the leadership of the early childhood teacher, who has a deeper knowledge of child development and how to implement different strategies;²¹⁶
- the role of the early childhood teacher has become more important and more complex, especially with the removal in Queensland of advisory visiting teachers who had the role of visiting centres and giving advice on how to work with the children and what the goals should be;²¹⁷

²¹³ Transcript, 25 June 2019, PNs 2873-2874

²¹⁴ Ibid, PNs 2884-2889

²¹⁵ Ibid, PN 2896

²¹⁶ Ibid, PNs 2897- 2899

²¹⁷ Ibid, PN 2900

- inclusion support staff do not work one-on-one with any particular special needs children, and their role is analogous to that of a teacher's aide in a school classroom;²¹⁸
- early childhood teachers are now mandatory reporters under s 13E of the *Child Protection Act 1999 (Qld)*;²¹⁹ and
- there has always been intentional teaching, but under the NQF it now has to be document and evidenced.²²⁰

Amanda Sri Hilaire

[366] In addition to the evidence she gave in respect of the IEU's equal remuneration application, which we have summarised above, Ms Hilaire gave evidence concerning the IEU's work value application. In her statement dated 18 June 2019,²²¹ Ms Sri Hilaire observed that since returning to work in 2017, the day-to-day role of early childhood teachers had dramatically changed. Following the introduction of the NQF, the programming requirements for early childhood teachers have become considerably more complex changing to an EYLF outcomes-based format, requiring written evaluations reflecting on both philosophy and practice and requiring the completion of individual educational programs for each child. These programs include collecting photographs, making and recording observations in light of the EYLF and current child development research, critical reflections, updating both the room and individual children's programs, planning future programs, communicating with parents and considering their input with regards to the program and updating children's individual portfolios. Ms Sri Hilaire also said that the increased complexity of programming has added to the complexity of conversations with parents where she is now required to explain and engage them in the learning process and underlying pedagogical processes in terms accessible to lay persons.

[367] In her oral evidence, Ms Sri Hilaire said that:

- in her opinion, she believes that under her contract she must herself ensure the service and the activities within it are complying with the National Law and National Regulations, including where her practice influences and impacts those she is supervising;²²²
- while she did not have a different responsibility to any other educator working in the service in respect of risk to learning ratio, other staff would often ask for her professional opinion as an early childhood teacher on any kind of risky play and in helping them to assess the level of risk;²²³

²¹⁸ Ibid, PNs 2903-2906

²¹⁹ Ibid, PNs 2920-2930

²²⁰ Ibid, PNs 2936-2938

²²¹ Exhibit 56

²²² Transcript, 25 June 2019, PNs 3227-3237

²²³ Ibid, PN 3266

- the EYLF covers all of the interactions that happen daily with the children, and she was required to bring her expertise in delivering the curriculum;²²⁴
- educators and early childhood teachers do not necessarily have different responsibilities of any other educator caring for a child with special needs, however the level of expertise that an early childhood teacher can bring in dealing with such children is above that, and extends to supporting other staff;²²⁵
- at the Kamalei centre, she was required to undertake planning, programming and completing individual learning plans for six children as well as programming the entire class and group times;²²⁶
- there was not a significant amount of time that documentation work could be done in working hours, so she did planning and programming at home outside of her work hours until she was told not to do that;²²⁷
- when she had to complete planning and programming during work hours, it was difficult to complete it to the same standard with the same depth and scope for critical reflection due to increased time pressures;²²⁸
- the requirement to critically reflect and have conversations between educators regarding pedagogy and practice are not a new development for early childhood teachers, but is now formalised as a process through the EYLF;²²⁹ and
- the use of digital technologies to create a child's portfolio takes up more time, not less, and can interfere with educators' supervisory duties if they are working on an iPad rather than watching the students.²³⁰

Lily Ames

[368] Lily Ames gave evidence specifically concerning the IEU's work value application in addition to the evidence she gave in respect of the IEU's equal remuneration application, which we have set out above. In her statement dated 17 June 2019,²³¹ Ms Ames described her day-to-day work as a Kindergarten teacher at the North Carlton Children's Centre from 7.30am to 5.00pm. Ms Ames' day-to-day work is summarised as follows:

- Ms Ames arrives at work at approximately 7.30am prior to her shift commencing at 8.00am, in order to complete various tasks before children arrive at the centre. This includes setting up the classroom, completing an indoor safety checklist and

²²⁴ Ibid, PN 3284

²²⁵ Ibid, PNs 3274-3276

²²⁶ Ibid, PNs 3308-3309

²²⁷ Ibid, PNs 3317-3319

²²⁸ Ibid, PNs 3320-3321

²²⁹ Ibid, PNs 3370-3371

²³⁰ Ibid, PN 3379

²³¹ Exhibit 60

organising play-based and individual learning activities which are tailored to individual children and their developmental needs.

- After 8.00am, Ms Ames will set up the outdoor area with her colleague “*in an inviting way that promotes curiosity, exploration and team work*” and complete a safety check of the outside area, write the day’s learning intentions on the whiteboard and monitor emails for any urgent communication.
- From 8.30am, the children start to arrive which involves greeting families and addressing any queries or concerns with parents, assisting children with separation from parents and settling them in for the day.
- The morning’s tasks include: the morning meeting; group time involving teaching children important social and self-regulation skills; supervising and assisting children during morning tea which involves teaching children both social skills and good nutrition while also observing their development and fine motor skills; the implementation of individual learning programs through indoor and outdoor play which focus on developing skills such as collaboration and team work, gross motor skills and coordination; and a second group activity before lunch which involves reading and discussing a story relevant to the educational program.
- Following lunch, the afternoon’s tasks include supervising and observing children’s free play with reference to their individual learning plans with a focus on the EYLF, facilitating rest and relaxation time through a guided meditation and/or yoga, reading stories or playing quietly. Following this, educators supervise further indoor and outdoor play-based learning before packing up and mat time where children are encouraged to reflect on the day and what they have learnt.
- Children are picked up at approximately 4.00pm which typically involves discussion with parents regarding their child’s development. If parents are late to pick-up their children, this impacts the tasks left to complete in Ms Ames’ non-contact time.
- Further tasks in non-contact time include cleaning the classroom, preparing resources for the following day, responding to emails or missed calls, talking to the Director and typing up notes from her daily observations. While Ms Ames’ shift is rostered to finish at 4.30pm, Ms Ames usually leaves work at 5.00pm.

[369] Ms Ames gave the following oral evidence:

- during her time at the North Carlton centre, she generally worked 19 hours of face-to-face teaching and 19 hours of non-contact time per week, however sometimes she was asked to perform more teaching duties;²³²
- she had four paid days for professional development at the centre, being two days off for professional development purposes and two involved the centre running its own professional development;²³³

²³² Transcript, 26 June 2019, PNs 3580-3584

²³³ Ibid, PNs 3585-3587

- she felt that it was her responsibility to ensure that the centre is meeting the NQF and NQS alongside the leadership team, as there is an expectation that qualified early childhood teachers will take more responsibility and lead by example;²³⁴
- there are graduates with teaching qualifications who want to work as early childhood teachers, however cannot find positions that offer conditions that are commensurate with their qualifications, in particular employment in accordance with the early childhood teacher provisions of the VECTEA;²³⁵
- the VECTEA is the union industry standard agreement which offers conditions similar to those of primary school teachers for early childhood teachers working within kindergartens and preschools and some community long day care centres;²³⁶
- in her work, she has not dealt with a student bullying another through social media or had to teach through an online device such as Moodle or Google Classroom;²³⁷ and
- she has dealt with non-verbal children with special needs that have been quite physically violent towards her and her colleagues.²³⁸

Emma Cullen

[370] Emma Cullen also gave evidence directed to the IEU’s work value application in addition to the evidence she gave in respect of the IEU’s equal remuneration application summarised above. In her statement dated 17 June 2019,²³⁹ Ms Cullen described her duties mostly as an early childhood teacher but also as a Director of her centre. Ms Cullen’s day at work usually involves arriving at the centre at 7.15am, spending approximately 45 minutes setting up the classrooms with planned learning experiences and attending to administrative tasks such as responding to parent or staff enquiries. Children arrive at the centre between 8.00am and 9.30am which involves greeting and talking to families, settling, monitoring and supervising the children including their toileting and self-care, completing the daily safety checklist and observing and recording children’s engagement with their planned learning experiences. Throughout the day, children are supervised in both indoor and outdoor spaces in line with an “*emergent curriculum style of programming*” which involves responding to children’s interests, comments and questions as they occur and planning activities around this. Meal times (morning tea and lunch) involve preparing and disinfecting the space, assisting and monitoring the children while eating to ensure they follow hygienic food practices and that they are not sharing food in case of food allergies and recording any unusual food behaviours. Ms Cullen said that meal times are often moments for “intentional teaching” where comments or conversations between children about their food can move into discussions about healthy eating and food sustainability. Prior to the centre closing at 4.00pm, Ms Cullen liaises with parents

²³⁴ Ibid, PNs 3590-3599

²³⁵ Ibid, PNs 3605-3610

²³⁶ Ibid, PN 3611

²³⁷ Ibid, PNs 3624-3625

²³⁸ Ibid, PNs 3626-3627

²³⁹ Exhibit 70

and ensures children are awake and prepared to go home. Once the children have left for the day, Ms Cullen will perform any incidental cleaning tasks, debriefs with remaining colleagues and completes any outstanding or ongoing administrative tasks such as writing reports, preparing for visitors, meetings or professional development courses. While Ms Cullen usually leaves the centre at approximately 6.00pm, these non-contact tasks can result in Ms Cullen working past her rostered finish either at the centre or at home which can make it harder to relax or “switch off” out of work hours and effectively plan for future programs.

[371] As the Director of the centre, Ms Cullen described the challenge of balancing her duties as an early childhood teacher with her duties as a Director throughout the day. Ms Cullen’s non-contact duties as a Director include checking emails and returning phone calls, liaising with health professionals who attend the centre to work with children with extra needs such as speech therapy or Autism Spectrum Disorder, preparing additional resources for these children as part of their individualised learning plans, and supervising, mentoring and providing feedback to junior staff on their practice which typically occurs throughout the day through “snatched moments”. All staff are required to share photos and document observations on an online communication platform called “Seesaw” throughout the day. As both the early childhood teacher and Director, however, the bulk of the documentation is left to Ms Cullen due to her capacity to provide “deeper insight” into learning and development. Ms Cullen said that this process requires significant interpersonal skills and takes considerable time as the expectations from parents for sharing updates has increased. Ms Cullen is also responsible for guiding and preparing “school readiness” activities and learning with the children transitioning into primary school the following year which involves preparing experiences with each individual child in mind.

[372] During cross-examination, Ms Cullen described the five learning outcomes under the EYLF as not being endpoints but rather an evolving process where children are set goals to work towards in their learning and development journey. She accepted that there is no particular point when a specific EYLF learning outcome is achieved but rather a matter of contributing to each of the outcomes every day.²⁴⁰

Aleisha Connellan

[373] Aleisha Connellan is the Assistant Principal, Pastoral at St Francis’ College at Crestmead in Queensland and has worked as a primary school teacher for thirty years. Ms Connellan was awarded a Diploma of Teaching from McCauley College of Teacher Education in 1987; Bachelor of Education from the Australian Catholic University in 1994; Postgraduate Certificate in Education (Early Years) from the Australian Catholic University in 2010; Masters of Education Leadership from the Australian Catholic University in 2014; Masters of Religious Education from the Australian Catholic University in 2016 and completed a Company Directors Course from the Australian Institute of Company Directors in 2018. Ms Connellan also currently serves as the Deputy Chair of the Queensland College of Teachers Board.

[374] In her statement of evidence filed on 23 November 2018,²⁴¹ Ms Connellan stated that the increased emphasis on external accountability of teachers in Brisbane Catholic Education has led to a significant increase in the data teachers are required to collect, store and use. She

²⁴⁰ Transcript, 27 June 2019, PNs 4526-4530

²⁴¹ Exhibit 41

said that in previous years, the expectation was that teachers assessed and monitored their classes at the classroom level, which resulted in a report card and benchmarking at the end of the year. Now, this information needs to be collated into the internal administrative system so that the principal can access school, cohort, class and individual student results. She gave as an example of this the requirement for teachers to record correct and incorrect student responses in the Letter Sound Knowledge checklist, which now has 116 combinations, and then upload this online. Ms Connellan said that the requirement to complete this task for 28 children, while continuing to address learning and behaviour needs of others in the class created complexity in delivering effective teaching. There was pressure on teachers to plan, teach and assess in three-week blocks, plan unit delivery in a more collaborative fashion, and display the collected data on both a physical wall as well as upload it online. Teachers are now required to use the data to inform their planning at the class, group and individual levels and use targeted teaching to “*move students along*” and to achieve the school’s “*smart goal*” of having a certain percentage of students reading at a particular level by the end of the year.

[375] Ms Connellan said that her school is increasingly engaged in using standardised testing, including the ACER Progressive Achievement Test – Reading (PAT-R) and Progressive Achievement Test – Mathematics (PAT-M), which are taken every twelve months online. As a teacher, Ms Connellan needs to interpret and implement the outcomes of these tests and their results into her teaching practice, which involves identifying from the data which students have not managed to meet the expected “*effect size*” to show learning growth, and then determining what is necessary in terms of changes to learning cycles and planning specific learning experiences and targeted teaching in order to provide opportunities for growth.

[376] Ms Connellan also said that teachers in Queensland are required to attend 20 hours of professional development training a year, ten of which must be dedicated to specific training to be accredited to teach in a Catholic school. She also said that Catholic Education had begun to look into the Highly Accomplished and Lead Teacher categories for accreditation and to encourage staff to apply. She said this is “*a very different space to what existed industrially in the past in Queensland, in terms of the rates of pay and allowances*”, and required teachers to collect a portfolio of evidence to be submitted to an external assessor who then attends the school and speaks to nominated teachers and observes the teaching in practice.

[377] Ms Connellan said that approximately 45% of the students in her school came from broken homes, which was a significant increase from when she started teaching. This created difficulties in terms of teachers navigating appropriate communications with families. There was also an increased prevalence of children being exposed to domestic violence or students who experience gender dysphoria, which demanded more sophisticated skills and knowledge from teachers. Ms Connellan stated that teachers must be sensitive and conscious when communicating with parents or guardians in complex family situations, and deal with the distinct challenges an issue such as gender dysphoria raises for teachers who work within Catholic institutions and who are not mental health professionals.

[378] Ms Connellan expressed the opinion that the expectation of accountability on the part of parents is much higher than it used to be, with parents becoming easily agitated over small issues with their child’s learning. Teachers are now also required to manage more of children’s social difficulties in the classroom and to account for this to parents. She said that there is an increasing expectation of accessibility to parents, and she is required to provide her email address to parents at the beginning of the year which enables them to contact her at any time of the day. While there is no formal obligation on her to respond to emails outside of office hours,

there is difficulty in managing parents' expectations as to what level of accessibility and response is reasonable. In addition, there has been an increase in the use of app technology within the classroom as a method of parental communication.

[379] Ms Connellan described the increased use of technology in the classroom. Her school has a one-to-one laptop program in Grades 4 and 5, and she said that teachers have needed to upskill in order to deal with the growing use of technology which involves using it to provide opportunities beyond a mere word processor, including the greater levels of communication and people skills required for teachers now that they are increasingly accessible to contact by way of email. Teachers have four professional development sessions a year to assist in developing the necessary technological skills, as well as support from a specialised IT teacher.

[380] Ms Connellan stated that teaching has also shifted in recent years to a more individual than collective focus, with differentiation of work tasks, instruction and assessments for different ability levels and modifications and accommodations for children's learning based on their emotional, physical or other particular needs. Changes to funding requirements for special needs students in 2015 has increased the documentation requirements for teachers, tailoring specific support, strategies and opportunities for differentiation for multiple students with learning difficulties. She gave as an example a student in her class who is reading below where they need to be. As part of her teaching practice she routinely provides abbreviated instructions, allows for "*preferential seating*", provides extra "*think time*", adjusts the expectation about what needs to be produced for a given task, provides specific support around comprehension strategies and sight words, and provides opportunities for differentiation through targeted teaching within a smaller group or individually. Ms Connellan says she now has to document all of these accommodations as well as liaisons with learning support teachers and contact with parents. There may be five or more students in her class for whom such a process is required.

[381] Ms Connellan also said that there has been a change in pedagogy in the early years of school whereby it is necessary for teachers to be able to explain to students what they are learning and the criteria they need to meet to be successful. This requires teachers to have a clear understanding of what it is they are trying to teach, with a focus on the creation of meaning within students, and means that Ms Connellan must spend greater amounts of time planning and upskilling teachers in terms of their understanding and knowledge of the curriculum and age-appropriate pedagogy and how to put it into child-friendly language.

[382] Ms Connellan gave the following oral evidence:

- in the Prep year (the terminology for the kindergarten year in Queensland), there is an initial test conducted in the first 5-6 weeks, the results of which are uploaded into the system, and then there is ongoing testing after that;²⁴²
- the use of computers and online learning by students commences and gradually increases after Year 2, but nonetheless Year 2 students are required to use a mouse and navigate a screen for the purpose of NAPLAN testing;²⁴³

²⁴² Transcript, 20 June 2019, PNs 2426-2431

²⁴³ Ibid, PNs 2432-2435

- students in Years 4-5 need to be able to access a variety of Microsoft Office applications, such as Sway, PowerPoint and Excel, and to safely and efficiently use different internet browsers, and it falls on the teacher to instruct them in the use of these things;²⁴⁴
- consistent with standard practice in Brisbane Catholic Education, Ms Connellan would email parents at the beginning of each week to notify them about what was happening in the classroom across the week, and if there were specific concerns about particular children she would make contact either with the parents via email or via phone to let them know what was happening with a particular child or to provide an opportunity to have further discussion;²⁴⁵ and
- it was a Government requirement that parents be offered two formal teacher interviews per year, and additional ad hoc interviews might be required for children with learning, behavioural or social difficulties.²⁴⁶

Philip Margerison

[383] Philip Margerison currently works as a primary school teacher at St John XXIII Primary School in Stanhope Gardens, NSW. His school is part of a campus that also consists of St Marks Secondary School and the CELC. He holds a Bachelor of Teaching (1998), Bachelor of Education (Primary) (2000), Masters in Religious Education (2005) and a Masters of Educational Leadership (2008) from the Australian Catholic University. He is employed by the Catholic Education Diocese of Parramatta and was, at the time of his statement, paid in accordance with the *NSW and ACT Catholic Systemic Schools Enterprise Agreement 2017* and received an annual salary of \$100,299. He commenced teaching in 1998 as a primary school teacher.

[384] In his statement of evidence dated 19 July 2018,²⁴⁷ Mr Margerison outlined the responsibilities and the skills required in his role, which include implementing the K-6 syllabuses and assessing students upon them, acting in accordance with school and Diocese policies, keeping learning progress and behavioural records, ensuring children's safety through constant supervision, implementing personalised plans for students with additional needs and formally and informally reporting student progress to parents by way of biannual formal reports, phone calls and meetings.

[385] In his statement of evidence filed on 23 November 2018,²⁴⁸ Mr Margerison stated that there has been a significant increase in the amount and complexity of data collection and assessment over his 21-year career. He said that when he began his career, a teacher was required to complete half-yearly reports and collected student data that was thought relevant to teaching practice. He said that teachers now experience a constant call for school-based data that needs to be updated every three or four weeks, and he is now required to not only be aware of how each student is performing but also to report, input, upload and change their individual

²⁴⁴ Ibid, PNs 2436-2438

²⁴⁵ Ibid, PNs 2441-2443

²⁴⁶ Ibid, PNs 2448-2450

²⁴⁷ Exhibit 37

²⁴⁸ Exhibit 38

data on a periodic basis. Mr Margerison said that he is now expected to test his students in mathematics on a weekly basis, assess whether his students are meeting certain mathematics “growth points”, and to use writing “clusters” to identify where students sit within a set of standards three or four times per year. Mr Margerison characterised this as part of a trend towards each individual student receiving an individual lesson.

[386] Mr Margerison gave evidence that NAPLAN testing was a form of standardised data collection, and created a parental expectation that he spend time teaching students how to complete a NAPLAN test. There is also an expectation that he takes all standardised testing results, analyses them and implements them into his teaching practice taking into account the performance of individual students. This requires him to report, input, upload and change students’ individual data on a data wall. He spends a considerable amount of time obtaining this data through regular assessment, recording the data online, interpreting the individual data to discern different levels of performance amongst students and to meet those individual differences. He also said that his school had begun to implement PAT-R and PAT-M standardised online testing, which provides another source of data about student performance.

[387] Mr Margerison stated that the expectation of accountability to parents has been constantly growing, with parents communicating with teachers through email and text message and often wanting several meetings per semester. He said this was not the case 20 years ago, when teachers would only be accessible through the front office by pre-arranged meetings. The push for individual learning plans for every student requires Mr Margerison to take notes about each student’s performance during every reading group to ensure so that he can report to parents about any student’s progression at any time. He noted several changes amongst students in his teaching career, saying that “*students these days are less resilient*” or are in need of more familial support, and that the growing requirements for teachers to attend to the growing social needs of students makes the work more challenging, particularly in light of child protection laws.

[388] Mr Margerison also stated that significantly more students attend school who speak English as a second language and that teachers are not adequately supported in effectively communicating and facilitating engaging learning for these students. Mr Margerison also described the “open classroom” space accommodating over a hundred students with a large TV screen in each corner which he shares with three other teachers. He said that the open classroom space produces greater noise, with an increased propensity for disruptions to affect more students, and require a level of collaboration between teachers that has not existed before. Mr Margerison also described how 50-60% of his teaching is now delivered through Google Classroom and that students’ increasingly project-based learning through devices like iPads demands new approaches to lesson delivery and integrating technology into past units.

[389] Mr Margerison also said that leadership positions in schools have become increasingly undesirable as the extra reporting, data collection and other administrative functions have placed too much pressure on teachers. Mr Margerison said that the new registration and accreditation of teachers in NSW as of 2018 also require teachers to complete 100 hours of professional learning over a five-year period and that, unlike 10 or 15 years ago, there is an expectation that the content of professional learning will be easily and immediately applied in the classroom.

[390] In his oral evidence in chief, Mr Margerison gave greater detail about the concept of the open classroom space. He said that he still has his own class of 27 students for which he is

responsible, but the day depends on the subjects. Sometimes one teacher might present to the whole 108 students, and at other times each class may be taught separately or one group might be taken aside while the other three teachers work with the larger cohort. He said that “agile spaces” are common practice in the Parramatta diocese and are the preferred method of teaching. All the students are in the same Year (in his case Year 6).²⁴⁹

[391] In cross-examination, Mr Margerison gave the following evidence:

- “writing clusters” identify in fairly minute details what an individual child can do, from punctuation to the use of descriptive or emotive language;²⁵⁰
- the requirements in schools as to recording disciplinary incidents is well above anything he experienced 22 years ago, and all cases of student interaction which might not be favourable must be documented so that, if a parent rings, there is evidence of what the school did and what action was taken;²⁵¹
- if the teacher thinks that a student may receive a D or E on their report based on assessments that have been done, it is necessary to ring the parents and ask them to come in for an interview;²⁵²
- notwithstanding the Australian Curriculum, the NESA produces its own curriculum documents and has been updating the syllabus each year in each curriculum area, which requires programming to be revisited;²⁵³
- the requirement for 100 hours of professional development at his school can largely be met by attending staff meetings involving professional development, which was not done 20 years ago;²⁵⁴
- what children are being asked to produce is a lot different to 22 years ago, the use of technology has meant that children may be asked to produce videos, sound files and podcasts, and his teaching resources are put on Google Classroom which means that students can go back and look at what he has done;²⁵⁵
- on average he would spend 2½ hours marking children’s literacy work and about another hour marking homework on the iPad, and he also makes phone calls to parents at night when they can be contacted after work;²⁵⁶ and
- in relation to the increase in the number of students speaking English as a second language, Mr Margerison referred to one school, East Granville, where upwards of 98% of students came to school with English as a second language, with many being

²⁴⁹ Transcript, 19 June 2019, PNs 2112-2115

²⁵⁰ Ibid, PN 2140

²⁵¹ Ibid, PN 2141

²⁵² Ibid, PNs 2142-2143

²⁵³ Ibid, PNs 2148-2151

²⁵⁴ Ibid, PNs 2152-2154

²⁵⁵ Ibid, PN 2165

²⁵⁶ Ibid, PNs 2169-2170

unable to speak English, making it necessary for teachers to teach English as distinct from the subject of English.²⁵⁷

[392] Mr Margerison also gave the following evidence about these hours of work in response to questions from the bench:

What time do you typically get to school in the morning, Monday to Friday? -In my statement I said 7.45. Again I was being on the generous side there. It's not unusual for me to be there just after 7.00 and in the afternoons it varies but normally 4.30 would be an early afternoon for me.

And what's a typical finish time for you? -4.30 in the afternoon.

Right. You talked about doing some work on Sundays? -Mm-hm.

Have you always done that throughout your 22 years or has it changed more recently? -With the move to a different style of learning in which case we give children the choice in our literacy program of activities. So we will have a range of literacy activities there where they choose which ones they complete and when they complete them. The days of a teacher standing up the front and marking a comprehension sheet because they've all done it in the last 30 minutes, has gone, because choice in education these days is a big thing. And so we give them the choice of completing a certain minimum number of activities during the week. So I can't - it's very difficult to mark that work day by day. So now I have to take it into my own time at home and mark that literacy on the weekend.

When did you start doing that? -Over the last couple of years we'd mark that. In particular, this year, we also asked them to reflect on their learning. So they actually have to write reflections on - every day - on their literacy learning and set goals for the next day. And that's something was unheard of - you know - 20 years ago. But, again, I have to mark that as an additional amount of work.²⁵⁸

Anthony Atkinson

[393] Anthony Atkinson is a primary school teacher and, at the time of his witness statement, the Wellbeing Coordinator at Merri Creek Primary School in Melbourne. He has taught at the school since 2006, having graduated with a Bachelor of Arts from the University of New England and a Bachelor of Education from the Australian Catholic University in 2005. He is qualified to teach as an early childhood teacher and up to Year 8 in high school. He has 22 teaching hours a week, and also fulfils administrative duties within the leadership team and provides mentoring support to graduate colleagues. Mr Atkinson was, at the time of making his statement, paid in accordance with the *Victorian Government Schools Agreement 2017* on the top of the scale.

²⁵⁷ Ibid, PN 2171

²⁵⁸ Ibid, PNs 2178-2182

[394] In a statement dated 19 December 2017,²⁵⁹ Mr Atkinson described the responsibilities of his role. He is required to be registered by the Victorian Institute of Teaching, maintain his WWCC and professional standards in accordance with the APST. He must develop and implement the Australian Curriculum in a logical and consistent order whilst differentiating it for all the ability levels in his class, which can be up to 4-5 capability levels. He described his paramount responsibility as ensuring the safety of children within his care, including producing risk management plans and completing first aid and anaphylactic training. He described the additional complexity where there is a child with additional needs in his class, including when supported by a teacher's aide, as he has to manage the learning of that child in addition to differentiating for the rest of the class. Mr Atkinson said the prime responsibility of a primary school teacher is a personal relationship and emphasised the importance in the role he plays in helping children to develop as people.

[395] Mr Atkinson said the core skill in teaching is the cycle of observation, analysing learning, planning and implementation, and this cycle is based on the principles, practices and educational outcomes of the curriculum. He has a planning day at the end of each term for the following term and creates plans for each week and term. He assesses whether his class are ready to cover a curriculum area and conducts assessments halfway through each unit to check whether they are being challenged by the content. He documents his students' learning using a phone application called Class Dojo, which allows him to share photos or information with parents. Mr Atkinson teaches autonomously and, as a mid-career teacher, is expected to take on other duties and provide greater support to his colleagues. As Wellbeing Coordinator, he oversaw wellbeing programs and policies at the school and was responsible for implementing these programs in classes across the school. The conditions of his employment mean he comes in contact with communicable diseases, and some very young children have high needs and rudimentary communication skills. Mr Atkinson is no longer the Wellbeing Coordinator and has since commenced in the role of Learning Specialist.²⁶⁰

[396] In his oral evidence, Mr Atkinson said:

- his salary is now \$107,601 per annum;²⁶¹
- there is substantial latitude in what teachers do in delivering the curriculum because differentiation has to occur where children learn at different rates and different paces and within one class;²⁶²
- teaching to test is not an onus at his school at all and NAPLAN in particular is a test that is used as a departmental and policy mechanism that is not so much about student learning as a standardised test;²⁶³
- he has to engage in emotional management of older students in addition to younger students, as there are varying levels in emotional maturity;²⁶⁴ and

²⁵⁹ Exhibit 36

²⁶⁰ Transcript, 19 June 2019, PNs 2030-2031

²⁶¹ Ibid, PN 2034

²⁶² Ibid, PN 2047

²⁶³ Ibid, PN 2056

²⁶⁴ Ibid, PN 2059

- his school has four specialist teachers who take classes to give generalist teachers four hours release to plan their lessons, which is higher than the mandated amount of two and a half hours.²⁶⁵

James Jenkins-Flint

[397] James Jenkins-Flint is currently an Organiser at the IEU. Prior to his appointment in April 2017, he worked as a permanent full-time teacher at a number of Sydney primary schools for 11 years, most recently at St Brigid's Primary in Marrickville. He was awarded a Bachelor of Arts (Social Sciences) from the University of New South Wales in 2002 and Bachelor of Teaching in 2006. He is qualified to teach students from Kindergarten to Year 8 and was accredited as a Proficient Teacher by the NESAs.

[398] In his statement of evidence dated 20 December 2017,²⁶⁶ Mr Jenkins-Flint said that during his time as a teacher, he was responsible for creating engaging programs, lessons and assessments to deliver the curriculum and its outcomes to the students in his classroom, keeping abreast of changing views of teaching best practice, completing 100 hours of professional development over five years to maintain his accreditation and adhering to professional standards expected of teachers in addition to the particular policies and theological protocols of his particular school. He had a responsibility for providing a safe and effective learning environment, undertook first aid training every year and conducted risk assessments any time a novel activity was introduced to the classroom, such as a science experiment. In respect of children with additional needs, he was responsible for raising any concerns he had with parents and had contact with other professionals, such as therapists, to assist in planning and programming relating to that child. He also had access to special needs teachers within the Catholic system.

[399] Mr Jenkins-Flint gave evidence that as soon as he was a graduate teacher, he was expected to teach autonomously without supervision and or much assistance. He completed a new program for each class for every subject, each term of every year, which amounted to 7-8 programs for each subject and curriculum area. These programs and the subsequent assessment needed to be differentiated for students of different ability groups. Kindergarten classes have a certain amount of time each week to engage in play-based learning, which evolves into project-based learning following the end of Year 1. He believes that the primary sector is increasingly modelling that of early childhood, where programming and assessment is on an individual basis, which takes longer to program but results in each child being more engaged in their learning. In communicating each student's progress, he was required to create two reports for each student throughout the year whereby they were assessed and comments made against a set of performance areas for each subject. Interactions with parents in the Catholic system were generally limited to parent-teacher interviews or by appointment, there was largely no direct emailing between parents and teachers.

[400] In a further statement of evidence dated 19 July 2018,²⁶⁷ Mr Jenkins-Flint responded to evidence given on behalf of the ACA. Mr Jenkins-Flint said that early childhood and primary

²⁶⁵ Ibid, PN 2071

²⁶⁶ Exhibit 23

²⁶⁷ Exhibit 24

education are the same in that they have curricula that provide outcomes that are aimed to be achieved prior to the child moving to the next set of outcomes. He provided a table in which he compared outcomes provided in the EYLF compared to the primary school curriculum, which he said is indicative of a broader pattern whereby the primary outcomes progress and extend the EYLF outcomes, and in some cases are almost identical. Play-based pedagogical strategies that are used in early childhood centres are also used in primary school teaching. He gave an example from his time at St Brigid's, where a constructive play-based program was in place for Kindergarten students during break periods. Mr Jenkins-Flint also referred to the similarity of assessment in early childhood teaching and primary schools based on observations undertaken by a professional teacher.

[401] In his oral evidence, Mr Jenkins-Flint said that the primary school curriculum is set up with outcomes and indicators that guide the teacher to know whether a student has reached a particular outcome but does not identify exactly what needs to be done.²⁶⁸ He also said that at St Brigid's, the constructive play-based program was instigated in both break periods and lesson time for Kindergarten and Year 1 students.²⁶⁹

Luke Donnelly

[402] Luke Donnelly was, at the time of his first witness statement filed on 22 December 2017,²⁷⁰ employed as a teacher and Religious Education Coordinator at St Joseph's O'Connor in the ACT. Mr Donnelly holds a Certificate III in Children Services (Diploma of Children's Services), a Bachelor of Early Childhood Education from the University of Canberra in 2007, a Masters of Education from the Australian Catholic University in 2012 and a Masters of Religious Education from the Australian Catholic University in 2016. Mr Donnelly has also worked as an early childhood educator prior to becoming a teacher.

[403] In his role, he taught two days a week, fulfilled his leadership role, mentored an early career teacher one day a fortnight and worked within the English as Additional Language or Dialect Program. There is an early learning centre operating as a long day care centre attached to the school, however it is operated administratively as a separate entity. His school has 240 students and a further 60 at the Early Learning Centre. He was paid in accordance with the *NSW and ACT Catholic Systemic Schools Enterprise Agreement 2015* with a REC allowance, which amounted to a salary of \$112,381 with his coordinator duties.

[404] Mr Donnelly described his responsibilities as implementing the Australian Curriculum by ensuring he is covering the content descriptors in all subject areas. The cross-curriculum priorities are embedded within all that he does and the general capabilities which are skill-based are emulated within all class activities, which requires collaborative planning with grade level teams of teachers. He is required to be registered as a teacher in the ACT through the Teacher Quality Institute, and maintaining this registration involves completing 20 hours of professional development and 20 days of teaching each year. At St Joseph's he mentored teachers to move from graduate to full registration with the Teacher Quality Institute, which requires them to meet the proficient standard under the APST. He was responsible for ensuring children's safety through adequate supervision and monitoring, though if a student is ill or injured, they are sent

²⁶⁸ Transcript, 17 June 2019, PNs 1604-1605

²⁶⁹ Ibid, PNs 1615-1618

²⁷⁰ Exhibit 42

to the front office administrator to be attended to. When working with children with additional needs, his workload increased because he needed to put in place strategies and interventions to support the child whilst also assessing and teaching the other children in his class. Mr Donnelly decides on what assessment the class will take and how he will assess whether the outcomes are achieved. This involves differentiating activities and assessments to tailor to each individual student. He provides verbal and non-verbal feedback to students and builds positive relationships with students to maximise students' learning.

[405] Mr Donnelly's level of responsibility involves mentoring graduate teachers, spending the day in their classroom and establishing goals, identifying areas of improvement or where support may be needed, demonstrating different strategies and methods that they could adopt and continuing the cycle of feedback. As the school's Religious Education Coordinator, he coordinated and oversaw the Catholic life of the school through facilitating staff spirituality, prayer and working with parents and students in the Christ-centred Community Focus. He managed a budget in his Coordinator role and another in his classroom and the Religious Education program. He said he would never have gone to work in long day care or preschools due to the pay and job prospects, as even Directors earned less than what primary school teachers early in their career earned when he commenced teaching.

[406] In a further statement of evidence filed on 23 November 2018,²⁷¹ Mr Donnelly said that there has been a consistent increase in the emphasis on professional practice and the proper documentation of learning over the past eight years, with a greater need for teachers to engage in an ongoing process of reflection and evaluation in their learning and to engage in goal setting.

[407] Mr Donnelly said that because he teaches at a Catholic school and studied at a non-Catholic university, it was necessary for him to pursue a Masters of Education with a major in Religious Education to enable him to teach in a Catholic School. He said that in the last ten years there had been a change in parental attitudes from being a partner in their child's learning to see the school as a business that is there to achieve for their child. His experience was that while parental expectations of their children's outcomes had increased, parental engagement with the learning process was not very high. It has become necessary for teachers to accommodate out-of-hours work more regularly to facilitate the involvement of working parents.

[408] Mr Donnelly said that assessment has now taken on three types: the diagnostic, which is data collected before teaching is delivered; the formative, which is data collected as the learning occurs to inform what happens next; and summative, where data is collected to determine whether the outcomes are achieved. He said that there has been an increasing emphasis on the formative stage, and in this respect it is necessary for him to analyse his students, determine whether they know what they need to do, whether they have achieved it, and whether they know what to do next. He said that teachers are now accountable for formative assessment, whereas this was much less emphasised and formalised in the past. Mr Donnelly also referred to the increase in standardised testing over the last 10 years, including the use of PAT and NAPLAN, and said that this is a part of a desire to have more data for parents in respect of school targets, thus making teachers more accountable.

²⁷¹ Exhibit 43

[409] Mr Donnelly said that there has been an increasing trend to make teaching and learning individualised for the student, and in that respect there had been a move away from teaching in sequence whereby the curriculum was taught as it was regardless of whether the students knew it or not or needed more support. Now, there was a movement to understanding the student as an individual, getting to know their stage of progress and identifying methods of moving their learning forward. He said this was similar, in his experience, to the philosophy and pedagogy in early childhood education, and that standardised testing was evidence of the increasing trend to differentiated education and individualised learning.

[410] Mr Donnelly expressed the view that the introduction of the National Consistent Collection of Data (NCCD) had led to a significant increase in administrative responsibility, and there was a requirement that he create a Personalised Learning Plan (PLP) for students who have a diagnosed disability or he suspects have an underlying disability that affects their learning. He said that of a class of 16 in 2018, four of those had PLPs which required at least two meetings with parents each year and for the plan to be updated every term. Thus, he said, the integration of special students into mainstream teaching had increased the level of complexity in delivering classroom teaching.

[411] Regarding technology, Mr Donnelly said that he has to skill himself on a new type of technology every year as well as facilitate the proper functioning of technologies in the classroom such as Google Classroom and the students' use of iPads in class. Mr Donnelly also said that the use of emailing and online platforms to communicate with parents has increased accessibility of teachers to parents. He referred specifically to an app called "Seesaw", which is an online portfolio on which teachers and students can upload their work for parents to view or comment on, and includes a function for parents to message teachers directly.

[412] At the time of his oral evidence, Mr Donnelly had left his role at St Joseph's and commenced employment as a teacher and Assistant Principal at St Monica's Primary School in Evatt in the ACT. In his oral evidence, Mr Donnelly said:

- at his current school, there are 401 students of whom 98 are on PLPs;²⁷²
- parents have access to teachers by email (with the schools providing teachers' email addresses on their website), telephone, and by apps such as Class Dojo, and parents may have physical access at two parent-teacher interviews per year and through annual "Learning Journeys" where parents are present in the classroom;²⁷³
- early childhood teachers had more parental interaction than school teachers because they saw parents at drop-off and pick-up and also interacted through online platforms, but their individual email addresses were not usually provided to parents;²⁷⁴
- in terms of the EYLF, early childhood teachers assess students' ability to communicate, gather data on the level of effective communication in their classroom, and then plan learning for the future to improve their ability to communicate and, similarly with social skills, early childhood teachers do some sort of assessment of

²⁷² Transcript, 20 June 2019, PN 2507

²⁷³ Ibid, PNs 2547-2556

²⁷⁴ Ibid, PNs 2567-2570

their students in terms of observations and anecdotal records in their ability to socialise with each other, gather that data together and see where to go next;²⁷⁵

- observations are not short documents, typically includes some photographs, perhaps a video, a description of a task conducted, a short description of the skills to which the activity contributed and an identification of the EYLF outcome that the activity was related to, and may produce quantitative data concerning social skills and the ability to communicate and use of vocabulary that can be analysed;²⁷⁶
- the assessment in the early childhood setting of children’s social and emotional and communication skills is, like NAPLAN and PAT in schools, “high stakes” with implications for teachers and services;²⁷⁷
- both the EYLF and the Australian Curriculum have a focus on the whole student in terms of their social skills, their rational skills and their ability to communicate but that the main difference is that the Australian Curriculum stipulates content that children are required to learn, and it also stipulates many both broad and specific outcomes;²⁷⁸
- the Australian Curriculum for each subject has a mandatory achievement standard for each year, and also has content descriptions which are optional and which may be selected and adapted for a teacher’s particular classroom cohort;²⁷⁹
- teachers have to deal with regular changes to the Australian Curriculum, an overcrowded curriculum, and changes in teaching method;²⁸⁰
- there is diagnostic assessment both in early childhood and primary school settings but the process is different, so that where children in a primary setting are able to complete a worksheet task or sit a test, teachers in an early childhood setting need to adapt their diagnostic assessment tool to the children in that setting and their capabilities through the use of observation, anecdotal records and images;²⁸¹
- formative assessment is probably the form of assessment that is most similar in early childhood and primary school settings in the sense that it is through questioning and gathering small pieces of information and data from the students that then informs where to go next;²⁸² and
- summative assessment occurs in both settings, but in the primary school setting summative assessment is much more attached to a product which is reported back to parents, whereas in the early childhood a summative assessment product would be

²⁷⁵ Ibid, PN 2613

²⁷⁶ Ibid, PNs 2616-2621

²⁷⁷ Ibid, PNs 2626-2627

²⁷⁸ Ibid, PNs 2641-2642

²⁷⁹ Ibid, PNs 2645-2656

²⁸⁰ Ibid, PNs 2660-2666

²⁸¹ Ibid, PN 2683

²⁸² Ibid, PN 2685

some sort of informal portfolio or journal or some sort of entry on an online platform.²⁸³

Clinton Foster

[413] Clinton Foster is a secondary school teacher at Bayview College in Portland, Victoria. Mr Foster teaches classes in Physics, Mathematics and Chemistry across all year groups and holds a Bachelor of Science and a Diploma of Education (1997) from Deakin University. Mr Foster has worked as a teacher since 1998, commencing his employment at Bayview College before entering roles as a Leading Teacher-Director of Teaching and Learning and Expert Teacher at Heywood and District College between 2002 to 2009, before then returning to Bayview College in 2010.

[414] In his statement of evidence filed on 27 November 2018,²⁸⁴ Mr Foster said that he began his career teaching chemistry and mathematics, but began teaching physics in a hard to staff rural school about three years ago due to a shortage of physics teachers. He said that this required a significant amount of work in non-term time to learn the physics course, but that in rural schools it was an expectation that teachers pick up subjects outside of their teaching area.

[415] Mr Foster described the effect of the introduction of technology into classrooms. He said that he cannot attend class without a laptop, and that the facility of email has created investment of time and resources outside of work hours and that teaching in unfamiliar subject areas has created the expectation that teachers are contactable by parents at any hour via email and that any requests or alternative arrangements for students made via email can be actioned quickly. He gave as an example of this a student with mental health issues who sometimes misses class, and whose parent have requested that he send through class work including worksheets and handouts when this happens. This requires him to assess her capability to do the work and to ensure he is not overburdening her in the context of her health concerns. Previously, he said, he was not accessible to parents. Mr Foster also described the difficulty in managing student behaviour with respect to the use of mobile phones.

[416] Mr Foster also said that the level of diagnosis of mental health issues is much higher in recent times, which has required schools to build a strong welfare team to ensure the mental health of all students. It has also required an increased individualisation of teaching. Mr Foster said that, 20 years ago, he would essentially be required to teach the mathematics program to a typical class of 25 in which there might be one or two students with learning difficulties requiring a modified workload expectation. He compared that to a current class of 20 in which there are 7-8 who have specific learning needs. He said that the introduction of PLPs, and the expectation and requirement to meet the needs of each individual student is extremely challenging. It was necessary for him to assess each student facing a learning difficulty and make an estimation of what they are capable of, create tasks that they can perform up to their ability, and modify assessments to meet their ability. Each stage of this process must be documented. Mr Foster said that “*The days of writing one exam or assessment for a group of students are almost gone*”. The introduction of “Math Pathways” in junior secondary school, which is an interactive online textbook, builds an individual program for each students through the use of adaptive modules, and requires Mr Foster to manage each student on their own

²⁸³ Ibid, PN 2687

²⁸⁴ Exhibit 7

individual learning plan. Mr Foster also said that the introduction of standardised testing meant that it was necessary for him to establish goal-setting exercises for students who fail to achieve to or above their projected results.

[417] In a further statement of evidence made on 10 June 2019,²⁸⁵ Mr Foster attached an example of an individual learning plan of a student who spoke English as a second language, having moved from China two years previously with very little knowledge of English. The plan identified the student's specific learning needs, teaching strategies to address those needs, personal learning targets, special provisions applicable to undertaking examinations and assessments, monitoring and assessment arrangements (which included ongoing communications between teachers, the Inclusion Team, the student and the family, and parent/teacher interviews), and success criteria.

[418] In his oral evidence, Mr Foster said that teaching Year 12 students in a given subject was more difficult than teaching Year 7 students because of the greater academic difficulty in the content and the need to prepare them for external demands.²⁸⁶ He also said that teaching is more individualised and differentiated in the early years of higher school than in Year 12 where, in Victoria, the Victorian Curriculum Assessment Authority is far less flexible in allowing individualised learning plans.²⁸⁷ He said that he had eight out of 20 students in his Year 7 class on individual learning plans, but only one out of 10 students in his Year 11 physics class.²⁸⁸ In relation to the analysis of standardised testing results, he said:

And again can you just explain again, keeping it as simple as you can, what's involved in analysing the results of standardised tests? -Yes, so our faculty leader gets all of the results. We sit down as a faculty and analyse where there's deficiencies across the board for our students and whether we can better teach certain content.

And how is the analysis actually carried out? Is it a matter of sitting down looking at the results and - well, what happens then? -Yes. Yes, so the faculty leader has the results, goes through them with us. She actually has on her wall like sheets of paper where she has the students' names and the different - so she does a lot more work than obviously we do. We sort of look at it and then reflect on it and then look at how we can implement improvements to the curriculum, which seems to be an ongoing thing.

Right, and are you also referring at paragraph 10 to improvements in data analysing? What are the improvements that you're referring to? -Well, I guess 20 years ago we didn't really look at data at all and I guess certainly with the VCAA their tools for analysis are a lot greater. So we get a printout of say our Year 12 results, how every student has gone and how they line up with their predictor score from the general achievement test, and then the onus is more on staff to ensure we're evaluating. In other words the students are getting their projected score or better. If not then, you know, the question's asked are we teaching at the level that we should be teaching at.

²⁸⁵ Exhibit 8

²⁸⁶ Transcript, 11 June 2019, PNs 429-434

²⁸⁷ Ibid, PNs 444-448

²⁸⁸ Ibid, PNs 480-481

That's a kind of accountability for you that if the student's not reaching what their projected to achieve, that you have to do something about it? -Yes, it's a fair accountability but it's certainly due to the improvement in analysis tools I guess it's improved our work - you know, our work complexity of what we can do to help, which improves - increase - it improves the student outcomes which is our end goal, but increases our complexity or workload I would suggest.²⁸⁹

[419] In relation to individualised learning plans, Mr Foster explained that they are prepared by school's Welfare Team in collaboration with the teacher.²⁹⁰ He described the process as follows:

Okay, can you just explain that process to me a little bit? The student goes to see the welfare team and together they come up with this plan or what's the process? -The process is fairly long and complicated but I'll go through it quickly. So when the student comes in in grade 5 they have a trial day then in grade 6 they have a second trial day. Then, when they enrol, information is fed from the primary schools and that information starts a template of the initial individual learning plan. So it's determined from their primary school report if we feel that they would be candidate to have some additional time spent on them with an individual learning plan and then this student - this is probably finalised by the end of term 1 after you've had six, seven, eight weeks working with a student. As a group of teachers you get together and help finalise the learning plan but the actual writing it is a collaborative effort.²⁹¹

[420] Mr Foster described the Math Pathways diagnostic tool, which his school had been using for three years. He said that it is an adaptive online textbook used in Years 7, 8 and 9 which diagnoses what level a student is at, what their deficiencies are and the facilitates individualised learning.²⁹² Finally, Mr Foster gave the following evidence about the use of standardised testing at his school:

Now this is the final issue, Mr Foster. You deal at paragraph 10 of your statement with standardised testing. Can you just again in simple terms explain what standardised testing is required at your school? -Certainly. So we try to I guess triangulate data. We don't just take it from one source. So we might have, say, the Math Pathways as a source of some data as you've suggested, through their diagnoses tools and what they're doing. We'll have NAPLAN data, which is only biannually, and we'll do things like ICAS maths testing or some other tool, adaptive testing online, and then that gives us - you know, triangulates at least three sources to give an accurate snapshot of where the students are at and then we use that data obviously to try to see how we amend curriculum programs to improve learning. So we obviously don't teach the same class - if you have a Year 8 maths you're not going to teach the Year 8 maths the same from year to year. It will change with the cohorts.

And having conducted that standardised testing at point A, that then provides some kind of base line or some picture of where each student is at that you can then measure that

²⁸⁹ Ibid, PNs 452-455

²⁹⁰ Ibid, PN 469

²⁹¹ Ibid, PN 470

²⁹² Ibid, PNs 471-474

student's progress against as time goes on. Is that right? -Yes, that's correct, and I guess there's a lot of focus on the NAPLAN or NAPLAN data with My School's website and that kind of thing, because it does affect enrolments is the message that we get from the top down. So we certainly work hard to try to improve student performance as well - you know, not just day to day but also toward standardised testing.²⁹³

Simon Huntly

[421] Simon Huntly is a secondary school teacher at Mount Carmel Catholic College in Varroville, NSW teaching PDHPE and Religion. Mr Huntly has been a teacher for 28 years and previously worked at as an Assistant Principal at Kildare Catholic College in Wagga Wagga for 10 years and as a PDHPE teacher at St Gregory's College in Campbelltown for 14 years. Mr Huntly was awarded a Bachelor of Education from the University of Wollongong in 1989, a Graduate Certificate in Religious Education from the Sydney College of Divinity in 2008 and a Masters in Educational Leadership from Charles Sturt University in 2017.

[422] In his statement of evidence dated 23 November 2018,²⁹⁴ Mr Huntly observed that the introduction and incorporation of technology into teaching, and its use in standardised testing and results, has been the biggest change to teaching in his career. He said that the proliferation of student management platforms and individualised data generated for each student has placed a greater demand on teachers in the classroom. This includes having to manage "teething problems" when integrating new platforms and interpreting data as it pertains to individual students and planning lessons accordingly. He said that the requirement to break down standardised test results, analyse teaching methodology accordingly and plan creative and effective strategies was entirely new and allowed him to identify particular strengths and weakness of students and adapt accordingly. PAT, which allows instantaneous feedback on the performance of students, requires teachers to analyse and filter significant amounts of data and implement it in their teaching practice by identifying student strengths and weaknesses and to further differentiate students' learning on that basis.

[423] Mr Huntly also described adapting to a new teaching pedagogy and method which has accompanied increased technology whereby the emphasis on creativity, problem-solving and collaborative learning in the classroom requires teachers to become "*the problem solver for students*" for any topic, to respond with agility and tie the exercise back to the curriculum and learning outcomes.

[424] Mr Huntly stated that his role has also changed as the number of students with learning difficulties and behavioural problems has increased and as teachers have become expected to manage a broad range of welfare concerns across the student body while supporting students in their social and emotional development. This includes increased administrative functions like navigating new system referral processes from schools to support officers, liaising with counsellors and drafting personalised lesson plans to accommodate these needs. Mr Huntley also stated that there is little formal training at university which adequately prepares teachers for the social and emotional aspects of the profession and that these skills are learnt on the job.

²⁹³ Ibid, PNs 475-476

²⁹⁴ Exhibit 28

[425] Mr Huntly said that developments in the curriculum and the requirement to assess students “*in the moment*” requires a greater amount of attention to an individual student’s performance during class time. The need for teachers to comply with legislative requirements relating to teacher registration, their work health and safety obligations, child protection matters and national curriculum programming is also increasingly difficult to balance on top of developing and delivering lessons.

[426] Mr Huntly further stated that parental accountability and contact with teachers has increased compared to previous years, where teachers are now expected to be accessible during non-term periods and the recent requirement for teachers to keep a written record of any phone contact with parents.

[427] In his oral evidence, Mr Huntly said that:

- the development of technology has allowed almost instantaneous feedback on tests that students sit, which allows the teacher to have access to standardised norms based on how students are performing compared to other students across the State and country, and based upon analysis of the results, teachers may adjust their teaching programs and implement various strategies;²⁹⁵
- PAT testing was initially used to identify students who might have learning deficiencies, but it is now a more mainstream test for all students as a means to analyse every student’s abilities;²⁹⁶
- testing was historically of a summative nature which was used at the end of a unit and was closely aligned with the curriculum content, while NAPLAN and PAT testing is specifically targeted at literacy and numeracy and provide comparative data that indicate a student’s capacity on a given day and can be used to strategise different interventions that may be needed;²⁹⁷
- the use of Google, Moodle and similar programs have allowed 21st century learning skills of collaboration, teamwork, critical thinking and creativity to be incorporated by teachers, and allows work to be individualised for particular groups of students and for more adept students to lead others through working in small team situations;²⁹⁸
- social media has created new problems with discipline, such as disputes between students about postings on social media, and interactions which may cause friction and upset are “*relentless*”;²⁹⁹ and

²⁹⁵ Transcript, 18 June 2019, PN 1772

²⁹⁶ Ibid, PNs 1773-1775

²⁹⁷ Ibid, PNs 1779-1782

²⁹⁸ Ibid, PNs 1787-1791

²⁹⁹ Ibid, PNs 1794-1795

- at his school, staff emails are made available to parents, so there is an unlimited capacity for parents to be in contact with teachers “24/7”, and there is an expectation of a response at some stage even if not outside of working hours.³⁰⁰

Anthony Cooper

[428] Anthony Cooper is a secondary school teacher who has worked in the teaching profession for 21 years. At the time that he made his witness statement, he was employed as a History and English teacher at Clairvaux Mackillop College in Mount Gravatt, Brisbane, and had held the positions of Deputy Head and Head of Social Science at various times during his employment at the College. Mr Cooper was awarded a Bachelor of Arts (1992) and a Diploma of Education (1997) from the University of Queensland, and was awarded a PhD (2001) from Griffith University. He retired in 2019.

[429] In his statement of evidence filed 23 November 2018,³⁰¹ Mr Cooper first described the marked increase in professional development required to maintain teacher registration and accreditation, whereby 10 hours a year professional development was mandated by the QCT about 10 years ago, and this was increased to 20 hours a year about five years ago. Mr Cooper said that professional development directed by Catholic Education at a system level as well as that provided by his school meant that he and other teachers approached about 40 hours professional development per year, well above the minimum. He said that while professional development was undertaken prior to the QCT requirements, the total quantum has certainly increased.

[430] Mr Cooper also described “*constant changes*” in teaching methodologies and pedagogies that have characterised the last 12 to 13 years of his career and created “*an entirely new language of teaching*”. He said that he had been required to learn a range of new abstract frameworks (including their theory, underpinnings, intention and meta-language), integrate them into teaching and lesson plans, move between the frameworks and navigating the compatibility of new teaching methodologies with other changing frameworks such as those relevant to behaviour management protocols. They required him to adapt his language in the classroom to the use of the new frameworks and revise documentation that is sent to students and parents to ensure that it properly references the language of the framework. He said that the Graduated Release of Responsibility Model is currently being used in his school and in his teaching practice. This model provides an exacting and specific framework for lesson and unit planning and requires each lesson to be segmented into four stages: first, the teacher explicitly models the learned content or skill; second, the teacher works with the students as a group to apply the model or skill or acquire the knowledge through guided practice; third, the students apply the model, skill or knowledge working within their own groups without teacher input; and, finally, the students attempt to apply the model, skill or knowledge individually.

[431] In relation to the various teaching models he has been required to adopt, Mr Cooper said that “*irrespective of what they are called or the meta language that is being used, it is usually the same thing being described*”, but that the “*constant churn amounts to a significant cognitive complication*” and that is was “*my impression that the anxiety at a system and school level to outcompete other schools causes this constant churn.*” In this respect, Mr Cooper pointed to the

³⁰⁰ Ibid, PNs 1796-1798

³⁰¹ Exhibit 46

increasing publication of standardised testing including NAPLAN results, as well as ATAR results, as allowing his school to compare itself competitively to others, both at the Catholic system level as well as on a school level. He said that this had led to cycles between teaching models and frameworks being short, “*as school managers become more and more anxious about improving the school’s data*”. Mr Cooper said that, in addition to teaching and pedagogical models, other frameworks had changed including those relating to behaviour management.

[432] In relation to teacher accountability more generally, Mr Cooper said that when he began his career, he conducted only an annual parent-teacher interview per year. This has been changed to two parent-teacher nights per year of longer duration, and parents are increasingly attending such interviews. In addition, he said that over the past 10 years there has been a proliferation of interviews in addition to scheduled parent-teacher interviews, including mentoring, intervention or enrolment interviews with parents. Mr Cooper also described the increased accessibility of teachers to parents by email, and he said that managing these interactions was an increasingly complex task. Parents’ emails might concern their child’s learning performance, behaviour, disciplinary issues, assessments, the teacher’s teaching style and the child’s relationship with their teacher. This has resulted in an escalation of work by teachers, with teachers having to conduct correspondence at all hours of the day, including from home and having to answer emails when they arrive at work in the morning before they can attend to planning and carrying out their day. There has also been an increased tendency, Mr Cooper stated, for the school to encourage or direct teachers to phone parents at home to discuss behavioural management, academic underperformance and other issues. Mr Cooper said that this was very rarely done earlier in his career, and was part of a shift towards more intensive one-on-one student management which required him to be more careful and reflective in the way he considered student discipline and related to parents.

[433] Mr Cooper said that there has been an increase in standardised testing over the past ten years, including the national introduction of NAPLAN, the Queensland Core Skills test required for all Year 12 students in Queensland, and the use of PAT-R which measures the extent to which student literacy has improved over the year. Data produced by these tests is represented visually on “data walls”, which portray the relative placement of students in their year on a large, wall-sized chart. Mr Cooper said that teachers are required to prepare classes for these tests, administer the test, assess the test papers, analyse test results, discuss the patterns of the data, and meet in teams to identify specific learning strategies for specific students. This, he said, constituted an escalation of work demands on the teacher, both in quantum and complexity. In the case of his teaching load of 160 students, he is required to accommodate his lesson plans to enable everyone to have their specific learning needs met, no matter where the student is placed on the hierarchy of learning, by providing individualised instruction to enable them to improve. Mr Cooper said that he found it difficult to use and adequately respond to the significant amount of data being generated by the testing.

[434] Mr Cooper also said that teacher administration has increased in various ways, resulting from the requirement to write academic programs and assessments for specific subjects, the need for teachers to ensure they are covering the “*content-heavy*” Australian Curriculum, the reduced clerical support for teachers, the requirement to design alternative assessments and planning lesson delivery to cater to specific students such as those with special needs, the planning and delivery of lessons which take into account students’ previous academic results and data, and the need to record data for the adjustments made for students with learning difficulties as required by the NCCD reporting requirements. In relation to NCCD reporting

requirements, Mr Cooper said that adjustments made for special needs students such as reading out a text to the student, assigning the student a “study buddy”, or giving the student a “chill-out card” allowing the student to leave the classroom to settle down, have to be recorded.

[435] Mr Cooper referred to the Business Intelligence Tool used in Brisbane Catholic Education, which he described as a “*one-stop-shop for teachers to get data on their students*”, and which he uses to identify the academic profile of each of his students and then tailor the planning and delivery of learning based on his analysis of the data shown on Business Intelligence. He is also issued with a Students With Additional Needs list, which identifies every student who has a learning difficulty, and has to individualise the planning and delivery of students on the list. Mr Cooper said that “*the aggregation of these types of measures add up to a significant escalation of work from teachers, both in quantum and complexity*”.

[436] In relation to the curriculum, Mr Cooper said that for junior levels in Queensland schools prior to about 2001, there was an ill-defined syllabus which largely left schools free to compose the course. In about 2001, an outcomes-based curriculum was introduced, which required an entirely different approach to assessment. The 5-point A-E grade structure was abolished and replaced with a requirement to report on the student’s learning outcomes or demonstrated abilities by non-judgmentally reporting on what they could do and what they knew using descriptive language sourced from a curriculum cognitive hierarchy. Mr Cooper described this as a “*radically different teaching practice to what teachers understood and performed*” and as “*challenging, both cognitively and practically*”.

[437] In regard to the changes in expectations of schools, Mr Cooper said that the increase in students’ co-curricular activities, the increased pastoral care expected from teachers and expectations in regard to the use of IT and new technologies have escalated work demands for teachers both in quantum and complexity. In relation to IT, Mr Cooper referred to the program to deliver one-to-one computers to high schools introduced by the Federal Government in 2008; he said that, prior to this, his school only had a few computer rooms, many classes scarcely used computers at all and many teachers did not have computers either. Since that time, every student and staff member has been provided with a laptop by the school. Accompanying this, many aspects of work have been computerised, including report cards and behaviour management records. However, Mr Cooper said, the lack of professional development provided in relation to IT and deficiencies in the design of applications have meant that computers have not reduced work demands on the teacher, either in quantum or complexity.

[438] Mr Cooper was not required for cross-examination.

Larry Grumley

[439] Larry Grumley is a teacher and English Coordinator for Catherine McAuley High School in Westmead, NSW, which is operated by the Catholic Education Diocese of Parramatta and is a girls Years 7-12 school. He has been a teacher at a number of other schools prior to his current position and was also a Supervisor of Marking for the Higher School Certificate and chaired and was a member of several committees for the (then) Board of Studies, Teaching and Educational Standards. He now sits on the Curriculum Committee for the NESA. He received his Diploma of Education in 1970 from Drake University, Iowa, USA and has taught in Australia since 1974.

[440] Mr Grumley gave evidence in his witness statement filed on 26 November 2018³⁰² that there has been a fundamental change in teaching due to the introduction of outcomes-based syllabuses as the result of NESAs directives. He said that all syllabuses specify outcomes to be achieved by students which are detailed and specific in nature but also often expressed in abstract or theoretical terms. All assessment must now be designed to test specifically whether students have achieved the specified outcomes, and a marking scale needs to be developed based on achievement of the outcomes. The assessments must also be broken into formative and summative assessments. Mr Grumley said, by way of example, that previously an essay would be marked holistically and given a mark of 14/20; now, individual outcomes are marked separately, and the marks are added up to give a total out of 20. All assessment tasks must be precisely constructed, as the full range of outcomes must be assessed. If a student misses an assessment task, an alternative task must be constructed or a mark estimated on the basis of data collected and in accordance with strict criteria. The teacher is accountable for any estimated mark.

[441] Mr Grumley gave evidence that there is constant change and amendment to or clarification of the syllabuses of which he is required to stay abreast and in some cases this means assessment schedules must be altered during the term. There are also weekly NESAs updates which he must review and communicate to his staff. In addition to NESAs requirements, his school must meet system/diocesan requirements, such as completing review documentation which is time consuming and extensive.

[442] In addition to class preparation and teaching, Mr Grumley gave evidence that teachers are now also expected to be technologically proficient, insofar as they must assist students in computer-based learning, use them to complete administrative tasks and be conversant with Google Drive/Spreadsheets/Classroom. He noted that his school has also changed the programs they are expected to use, such as OneNote, Publisher and Garage Band but within two years moved to others and no longer supports these. He also referred to the increase in professional development to maintain his accreditation. The NESAs requires a Proficient teacher to complete 100 hours of professional development over 5 years, 50 hours of which must be NESAs-accredited. Mr Grumley stated that in previous years this professional development was mostly completed during school time, whereas now the majority is completed outside of work hours.

[443] Mr Grumley gave evidence that teachers' work had changed and their workload increased in the following respects:

- There has been an increase in parents' expectations from schools compared to 10 years ago, based on their knowledge of schools' NAPLAN and ATAR results, and parents may pressure teachers to make a student sit a particular course in the belief that it will maximise their mark and may challenge outcomes of assessments.
- Teachers are more obliged to have ongoing contact with parents. Mr Grumley's email address is now available to all parents and he is expected to respond to any parental emails in a timely manner and may be required to call parents as well. This type of accessibility and engagement did not exist 10 years ago. Parents' emails are often demanding and challenge teachers' professionalism, and dealing with these types of

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inquiries and complaints is new to teaching and stressful for new/younger staff especially.

- Schools are demanding more participation in and organisation of extracurricular activities, so much so that prospective teachers are assessed on their ability to contribute to extracurricular activities at the school.
- WWCCs, anaphylaxis and epi pen training, fire training, first aid, CPR and WHS training, working with diversity students, child protection updates and Canberra Disability Standards for Educator's Training have been introduced.
- The school maintains a Diversity is Normal folder, which gives details for every student with special needs. Mr Grumley said that every school would have its own iteration of this. He is required to look through the folder and identify every student that has been determined to have learning needs or other special circumstances. He has six such students in one of his classes, and it is necessary for him to complete a written record for what he has done to accommodate the student's learning and his evaluation of his success in this regard. This was not required to be done 10 years ago. Mr Grumley said that the number of students in his Diocese identified through the use of standardised testing such as PAT-R with special needs has been growing.
- Changes in teaching methodology which means only some classes are streamed, thereby resulting in a very wide range of abilities in non-streamed classes. When this occurs, teachers need to cater for a wide range of abilities by offering different options. Teachers are required to differentiate so that, rather than setting a single assessment task for all students in a class and then marking them, teachers must consider different kinds of assessment for students of different capabilities to allow students to grow and learn at appropriate rates and to demonstrate their achievement in accordance with the requirements. Differentiated assessment tasks create considerable difficulty in grading students in a single class.
- Mr Grumley is required to demonstrate that he has analysed data from standardised testing. He said that this takes a significant amount of time, and that this is an entirely new feature of teaching with no equivalent value to any work done by teachers 10 or 20 years ago.

[444] Mr Grumley was not required for cross-examination.

Mark McKinnon

[445] Mark McKinnon is the Mathematics Coordinator at St John the Evangelist Catholic High School in Nowra, New South Wales, which is a part of the Catholic Education Office Diocese of Wollongong. He has a Diploma of Education from the University of Wollongong and a Bachelor of Engineering (Electrical) from the University of New South Wales and has been teaching for approximately 25 years. In his statement of evidence filed on 23 November 2018,³⁰³ he first stated the view that there had been a significant increase in the complexity and quantity of teaching over his career. Mr McKinnon said that the biggest change in teaching

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during his career is the move towards differentiation in teaching. He said that when he started teaching, he taught a class to a single program, and differentiated for individual students to a level he thought appropriate. In 2018, he said, a teacher is required to teach 30 individuals at their respective levels, which involves a significant increase in accountability towards individual students and their education. He said that teachers are increasingly being required to think, plan and record variations of their programs and teaching practices to account for the different learning requirements of different students and special needs students and other individual learning needs. While teaching involved levels of differentiation in the past, the trend to do this to a greater degree only increases and the requirement to record the differentiation and be accountable for it is entirely new.

[446] Mr McKinnon referred to an increase in students on special learning plans or other behavioural management plans, which represent about 74 students (10%) at his school, whereas 10 years ago this was only about 5 students in the school. He said that in 2018, a new program was introduced for specialised learning plans, which are negotiated with students and their parents, and are reviewed every six months or so. Mr McKinnon stated that he receives approximately two new notifications a week of learning plans for students in his classes and for other medium-high risk students. The plans will identify his responsibilities as a classroom teacher, and affect his teaching by requiring him to differentiate the program and assessment for that individual student, and provide specialised and sensitive pastoral care. Mr McKinnon said that differentiation is especially important for special needs students because of the new level of recording and accountability required for funding of these students, which is based on the data collected by him as the teacher. He said that the school only received its first special needs student about 10 years ago, and the number has increased to approximately 6 or 7 students in each year group with significant needs. These increased numbers of special needs students at his school have created more work in terms of recording data in order to receive funding, specialised attention in class and differentiation such as altering assessments in line with the student's learning needs, even with specialised support present.

[447] Mr McKinnon gave evidence that assessment structures had changed in recent years, and he is now required to plan the year's assessment ahead of time to be provided to the students, rather than changing and deciding assessments as necessary throughout the year. Under the NESAs he has been required in the past 3-4 years to complete "progress grades" - that is, a grade provided to parents in approximately Week 7 in Terms 1 and 3. He described this as challenging because most assessments have not yet been completed by this stage and instead, he has to make continual assessment of students by way of entries in a mark book for a "Record of Progress" throughout the term as students prove their ability. In terms of marking, teachers are now required to record not just a single mark, as was the case when Mr McKinnon began his career, but also to record all of the various curriculum outcomes as part of the trend towards outcomes-based teaching. This has increased his marking time from 15 minutes per paper to at least one hour's work. Teachers are required to retain students' work so as to allow for increased accountability by being subject to checking by inspectors.

[448] Mr McKinnon said that the Catholic Education Office now requires all schools to administer PAT tests in maths and English to students, and together with HSC Minimum Standards, a year 10 student could have up to 11 standardised tests per year. He said that pressure to use the results of standardised testing to adjust teaching programs is increasing and constant, with the expectation being that he would identify a need within the results and then build that into future learning. Mr McKinnon said that data is complex and difficult to interpret in a meaningful way, requiring an entirely new set of skills, but must be used to identify

individual student progress. HSC Minimum Standards is a new form of standardised testing introduced in NSW in 2018, to ensure that students reach a certain band of NAPLAN before they undertake the HSC. Teachers are required to use the results in a similar fashion to PAT testing to inform teaching practice, particularly for students in the bottom percentiles.

[449] Mr McKinnon stated that there is also an increasing expectation to contact the parents of underperforming and misbehaving students in accordance with a directive issued at his school. In the first 15 years of his career, he would usually keep track of any such issues but was never required to phone parents, however he is now required to make these calls and record incidents in the school's admin database. He gave evidence that he makes about one of these calls a week as a coordinator, however most classroom teachers would make about 3-4 calls to parents each week. The NESA's guidance is that teachers cannot fail students, which means that students' performance must be assessed halfway through an assignment period and, if the student has not met the required standard, it is necessary for him to inform the parents. Additionally, in recent years, parents also phone or turn up at the school unannounced wanting to see him to ensure he is meeting their child's individual needs, whereas previously teacher-parent contact would be limited to parent-teacher nights or if a serious issue arose.

[450] Mr McKinnon said that professional development planning was introduced into his school around 2010, and as a coordinator he is responsible for ensuring that teachers in his department meet their professional development requirements, which requires him to coach, interview and develop plans with them. Professional development planning, he said, has become more important as teacher accreditation has grown in importance. Undertaking this professional development, and the recording of plans by him as a coordinator, was according to Mr McKinnon an additional level of responsibility.

[451] Mr McKinnon gave evidence on impact of technology on teaching methods. He stated that in some ways, it requires more teacher time and learning new skills. He gave the example of the introduction of "flip learning", which involves him recording a video lesson to upload to Google Classroom for his students to watch at home and then allocated class time is used to assist students work through maths problems. This he compared to the traditional method of teaching which involved giving a lecture at the front of the classroom. He described as a big change the use of online software programs, such as Maths Pathway, to assess students' capabilities, provide them with relevant problems, and build pathways of learning to ensure that students' master initial concepts before they move on. This program reports to Mr McKinnon as the teacher on the levels of growth of each individual child, which he can then monitor closely and feed back into his teaching practice. Mr McKinnon said that this required a significant re-skilling of teachers, and has required him to shift from being a "*sage of the stage*" to being a motivator of 30 individuals. He also referred to the increasing amount of resources available online and the additional time required to ensure links to websites and internal digital folders of resources within the maths department are up to date, rather than just relying on textbooks and worksheets as was the case when he commenced his teaching career. McKinnon also described the burden placed on him by the increasing expectation to check and respond to emails throughout the teaching day.

[452] Mr McKinnon was not required for cross-examination.

Ruth Pendavingh

[453] Ruth Pendavingh is a generalist teacher at Catholic Ladies College in Eltham, Victoria who teaches across the Science, English and Humanities faculties in addition to teaching Religious Education. She has been in the teaching profession for 39 years and holds a Bachelor of Behavioural Science from La Trobe University (1978), a Diploma of Education in from Australian Catholic University (1979) and a Postgraduate Diploma in Child Psychology from the University of Melbourne (1990). In her statement of evidence filed on 23 November 2018,³⁰⁴ Ms Pendavingh stated that over the last 15 years she increasingly needs to tailor her teaching and practice to the individual needs of students, particularly for students with special and additional needs. She said that in the past Special Education Teachers would look after students with additional needs but over the last 20 years special need students have been increasingly integrated into mainstream schools. She stated there had been a shift from teaching classes that had been “streamed” based on ability to mixed ability classes, which might include bright and talented students as well as students with significant difficulties in literacy and numeracy.

[454] Ms Pendavingh also described the effect upon her work of the NCCD, which has required her to attend NCCD professional development sessions, write descriptions of the learning needs of special needs students, create PLPs, set learning Smart Goals and outcomes, collate evidence from each student to report on the goals and outcomes, and report to parents at meetings each term. She said that funding depends on the proper documentation of all these measures. In addition, she also has to prepare modified material and specific learning plans form students with additional needs who do not qualify for funding and said that there had also been an increase in students with learning difficulties and social emotional issues such as mental health difficulties. Ms Pendavingh said that she is required to take into account all of the learning difficulties and social and emotional issues outlined in a student’s PLP in her teaching, as well as to ensure the student’s wellbeing. In the case of students with mental health difficulties, this can necessitate time-intensive individual teaching. She also said that compliance with child protection legislation has become very onerous in terms of the amount of responsibility held by classroom teachers, and she said that the professional development required to ensure that she has an understanding of her responsibilities in child safety and mandatory reporting has increased.

[455] Ms Pendavingh gave evidence that her school is currently moving “*beyond differentiation*”, which she said had increased substantially in practice over the last 10 years, to a model of individual learning, which inherently requires students to perform more project-based learning and allows students to have greater control over what content they learn and how they learn it. She said this was far removed from teaching earlier in her career “*which involved students sitting at their desk and receiving a lecture from the front of the class, to which they would simply listen together*” and described her role as having become one of a “*facilitator of multiple learnings*”. She outlined an individual learning project being undertaken at her school as a collaborative exercise between herself and 10 other teachers, in which each student must work on a program they have devised themselves, with the teacher’s role being to support them, whilst completing more documentation to ensure that the curriculum is being addressed. The aim of this is to build a methodology for project-based learning for students on one entire day each fortnight. She said her role now is to enable and develop skills in information management,

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including to inform and guide the use of information that is available on the internet, and described this as involving an entirely new set of skills.

[456] Ms Pendavingh described how the development and delivery of the curriculum is increasingly being completed through collaborative exercises between teachers, with the design of programs, lesson plans and assessment instruments now being always done between groups. She also described how technology has also changed her role. She has had to become proficient in computer programs and apps provided by the school, such as Education Perfect, or STILE, which is a web-based science learning program created by science teachers and the CSIRO. This internet has vastly increased the range of accessible content, but this needs to be identified, assessed and filtered. She has also had to learn how to use Google Classroom to interact with her students, which is a learning management system which allows her to post her lessons, interact with students online, check their work and allow them to hand up work. Ms Pendavingh said that the use of technology has been difficult for her to adjust to, requires a huge commitment of time, and allows tasks previously carried out by administrative staff to be undertaken by teachers. She also described how email increased accessibility of teachers to parents. Teachers at her school have been instructed not to respond to parents' emails after 8pm, but she said that there are many emails out of hours and on weekends, and parents are not always patient about waiting for a reply.

[457] Ms Pendavingh stated that her work has become more complex due to standardised testing such as NAPLAN and PAT, and there is an expectation that she analyses results data to incorporate into planning and assessments. The interpretation of this data can be challenging to interpret and she stated that she has not been given additional time to complete this work in her working week. She also mentioned the requirement to be registered with the Victorian Institute of Teaching and the 20 hours of CPD required to maintain her registration each year. She must also document and provide evidence of her skills measured against the standards set by the APST, which are reviewed annually. Ms Pendavingh also mentioned that "best practice" for pedagogical and student welfare interactions is changing increasingly quickly and she is required to keep on top of each new approach introduced at her school.

[458] Ms Pendavingh was not required for cross-examination.

C.5 *The ACA's Case*

[459] The ACA's area of interest in respect of the IEU's work value claim is confined to early childhood teachers. It opposed the claim on the basis that the IEU had not demonstrated, in respect of early childhood teachers, that any increase in award wages on work value grounds is justified. It submitted that the Commission should make the following factual findings:

- the evidence in relation to primary and high school teachers is inadequate to permit any realistic assessment of the work value of those teachers;
- changes to the regulation of early childhood teaching, while substantial, have not resulted in substantial changes to the nature of the work of early childhood teachers, their working conditions, or the skills and responsibility exercised, with the objective and effect of regulatory change having been to promote uniformity and consistency, not to bring about fundamental change in the work of early childhood teachers or other educators;

- the responsibilities of early childhood teachers are no different to those of any other educators in early childhood education and care, namely to care for and educate the children directly in their care;
- early childhood teachers do not have any broader responsibility for broader educational or operational management of a service;
- the duties and responsibilities highlighted by the IEU's witnesses as indicia of increased work value attach not to the role of early childhood teacher but to the statutory positions of Educational Leader, Nominated Supervisor, Approved Provider and person in charge;
- there are various ways in which the work of early childhood teachers has become easier over time, including by the prescription of child/teacher ratios and increased use of technology; and
- if anything, the evidence indicates that the premiums currently paid to early childhood teachers by comparison with diploma-qualified educators and to experienced early childhood teachers by comparison with newer early childhood teachers cannot be justified on work value grounds.

[460] The ACA submitted that the Commission should conclude that the variations sought are not justified by work value reasons, are not necessary to achieve the modern awards objective, and that there are powerful discretionary reasons to refuse the claim, including because the grant of the claim would jeopardise the viability of many services and would substantially increase childcare costs.

[461] In relation to the National Law and the National Regulations, the ACA submitted that the IEU's contention that early childhood teachers are responsible for their implementation and enforcement and are otherwise charged with operational and educational leadership is wrong. Rather, it submitted:

- the National Law prescribes in minute detail the allocation of responsibilities to owners, Directors, Educational Leaders (or Room Leaders) and educators;
- the National Law does not impose any obligations at all on early childhood teachers specifically, as distinct from educators more broadly, and in that way does not distinguish between early childhood teachers and non-degree qualified educators or impose any additional responsibilities on degree-qualified early childhood teachers;
- the obligations imposed by the National Law on educators are limited to the children directly in the care of the educator, with the single exception that an educator is required to ensure that every reasonable precaution is taken to protect children being cared for by the service from harm;
- educators have no responsibility for the overall management and quality control of a service, unlike the Nominated Supervisor and Approved Provider;
- the responsibilities imposed on educators are intrinsic to childcare and in effect consist of the requirements of adequate supervision and care together with some

simple record keeping, risk assessment and notification requirements, and in that sense the National Law and the National Regulations did not impose any fresh responsibilities on early childhood teachers or other educators;

- most of the responsibilities described by the IEU's witnesses as attaching to early childhood teachers in fact attach to Nominated Supervisors, Approved Providers or Educational Leaders, including responsibility for the development and implementation of the educational program, the development and enforcement of policies, the preparation and maintenance of the QIP, and the observance of staff ratios; and
- services are legally required to have in place an appropriately-qualified Nominated Supervisor, a person in charge who is appropriately trained, and a "responsible person" must be present at all times, so that early childhood teachers and other educators are always supported.

[462] The ACA submitted that the tenor of the IEU's lay witnesses is that early childhood teachers, as opposed to educators, Directors or owners, bear the burden of educational and operational leadership of childcare services, but that this cannot be reconciled with the legislative framework. It referred, as an example, to the evidence of Ms Connell, who was for 18 years a Director of a community pre-school and failed to distinguish between her duties in that role and the duties of an early childhood teacher in the service in which she worked.

[463] Much of the IEU's lay and expert witness evidence, it was contended, took the form of "*broad conclusory opinions unsupported by factual observations or reasoning*". It submitted in relation to the IEU's lay witnesses:

"[36] ... It is replete with broad conclusions, commonly couched in passive tense, describing the alleged requirements and expectations of ECTs. It consistently fails to reveal the source and extent of the alleged demands on ECTs and lacks any serious attempt to distinguish the duties of ECTs from directors, educational leaders, room leaders and non-teacher educators.

[37] A further recurrent problem in the lay evidence is that it simply does not describe the day-to-day work of ECTs in any comprehensible way. For reasons which are unclear, the lay witnesses adopt an academic and abstract style of description which conceals more than it reveals..."

[464] As a result, it was submitted, the IEU's evidence gives little assistance in understanding the essential matters relevant to the work value application, being the real nature of early childhood teachers' work, the conditions under which it is done, and the way in which the work and the conditions have changed over time.

[465] The ACA submitted that although there had been significant regulatory change in recent years, that is not of itself an indicator work value changes, with the question being whether and to what extent those changes have in fact impacted upon the work of early childhood teachers. While those changes had codified and harmonised standards, and perhaps established a common minimum standard, it had not been demonstrated that the standards are more demanding than those which applied in the past or have resulted in a greater degree of difficulty in the work of early childhood teachers.

[466] In relation to the EYLF, the ACA submitted that this was a high-level document identifying broad principles to be applied in early childhood education, was not directed to early childhood teachers specifically but applies to all educators and providers, did not on its face prescribe new content and outcome expectations (as contended by the IEU), and did not increase the burden on early childhood teachers. The IEU's witnesses left unclear how the EYLF actually translated into changes in day-to-day work, and the ACA's witnesses explained that the EYLF, as well as the NQS and related innovations have codified existing expectations of educators and rationalised and harmonised, rather than increased, standards. Therefore, it was submitted, the EYLF and the NQS have not affected the day-to-day work of educators.

[467] In relation to the increased integration of technology into the classroom, the ACA submitted that the evidence of the IEU did not explain how this had created more difficult working conditions, and that the use of technology in some respects had made the job easier. It gave an example of this as being the preparation of daily reports by the use of iPad applications, which it contended reduced the time and effort required to produce reports.

[468] The ACA submitted that the IEU's evidence concerning changes in pedagogical understanding and practices and a shift to a focus on individual child outcomes rather than collective assessment, did not demonstrate that that this is a recent innovation or indicates increased work value. As to the IEU's contentions concerning changing student demographics, the ACA submitted that there has been little or no increase in the inclusion of additional needs students into mainstream classrooms, and the burden of such students has if anything been reduced as a result of funding increases and the increased presence of teachers' aids.

[469] The ACA submitted, in response to the IEU's contentions concerning an increase in the level of skill and responsibility exercised by early childhood teachers, that:

- the IEU's evidence does not explain exactly how the complexity of the work of early childhood teachers has increased in recent years;
- there is no real evidence to suggest that early childhood teachers prepare complex day-to-day reports, that there has been a change in the nature of reports produced, or that the production of such reports has increased in a substantial way the burden on early childhood teachers;
- the requirement for a 4-year degree is already comprehended in the wages structure in the EST Award, and this requirement has no relationship to any increased complexity introduced by the NQS, the EYLF, or the National Law or National Regulations;
- ATAR qualifications for the relevant teaching degrees are among the lowest of all bachelor degrees;
- the introduction of professional development requirements merely formalised or systematised something that was, or should have been, already occurring, and is not in any event onerous;
- the IEU's evidence did not demonstrate that the introduction of the APST impacted upon the day-to-day work of early childhood teachers, or give any insight into

whether the APST had increased rather than merely formalised teaching standards or required a level of teaching skill higher than that inherent in any four year teaching degree;

- the requirement for registration of teachers has no bearing on work value, and is simply a procedure for achieving national harmony;
- the evidence did not support the contention that greater engagement with parents constitutes an increase in work value;
- new teacher-student ratios are not an indicator of increased responsibility on the part of early childhood teachers, but have rather reduced their responsibility; and
- there is no evidence of any changes to the physical layout of classrooms in the early childhood sector.

[470] The ACA also submitted that:

- working conditions of early childhood teachers have improved substantially in recent years, having regard to the introduction/lowering of teacher-student ratios, increased levels of funding and support for additional needs children, and the use of technological aids which have simplified and expedited some tasks; and
- the divergence between NSW and modern award rates for the same work is not peculiar to teaching or indicative of a failure to reflect work value in modern awards, but is rather a function of the fundamentally different approaches to wage fixation as well as differences in award coverage.

[471] The ACA submitted that the variation sought by the IEU would create serious disconformity between the EST Award and other modern awards. It submitted that the internal relativities between classifications proposed by the IEU had no apparent logical or principled basis, and the relativities between more experienced workers and the work of a graduate cannot be justified on work value grounds. The external relativities between the rates proposed and other modern award rates would render the rate of pay for an early childhood teacher with eight years' experience higher than that of any other award worker except for the most senior doctors, some very senior academics and some Directors of Nursing, and on par with senior medical specialists and internationally recognised academics. The grant of the IEU's claim would, it was submitted, destabilise minimum wage fixation and generate unsustainable claims.

[472] The ACA also submitted that the grant of the claim would result in an increase to childcare fees, which will operate to suppress female workforce participation. Additionally, the wage increases proposed, or even more modest wage increases, would represent an "*existential threat*" to the viability of many early childhood businesses because of an incapacity to pay. These constituted discretionary reasons for the rejection of the IEU's application.

C.6 The ACA's evidence

[473] The ACA filed four statements in opposition to the work value application made by persons involved in the operation or management of early childhood businesses. In addition, it relied on the nine witness statements it filed in respect of the equal remuneration application

(five of which were made by its work value witnesses), except for part of one statement (although, unhelpfully, it also did not explain precisely what aspects of this evidence related to the work value application). The evidence given by these witnesses is summarised below insofar as it relates to the issue of whether there are work value reasons for a change to the rates of pay of early childhood teachers. These witnesses also gave a significant amount of evidence concerning the capacity of their respective witnesses to pay the wage rates proposed in the IEU's claim. For reasons which are explained in our later conclusions concerning the work value claim, it is not necessary or appropriate for us to deal with this evidence at this time. Accordingly it is not referred to in our summary of the witness evidence below.

Jennifer Kearney

[474] Jennifer Kearney is one of three Directors and an Approved Provider Representative of Kekeco Childcare Pty Ltd as a trustee for Kilmore Kids Trust, which operates four centres in Victoria. Sutherland Street Childcare and Kindergarten Long Day Care (Kilmore) and Dudley Street Childcare and Kindergarten Long Day Care are long day care centres which offer kindergarten programs. The other two centres are both out of school hours care centres and are not relevant to these proceedings. In her roles, she is responsible for managing the operations of the four separate sites, including relationships with landlords who own the premises, compliance, employee relations, rostering, budgeting and relationship management with various local, state and federal government and regulatory authorities. She said this is a full-time commitment. Prior to working in the early childhood education and care sector, Ms Kearney worked in the telecommunications sector.

[475] In her statement of evidence dated 23 May 2018,³⁰⁵ Ms Kearney said that in her two long day care centres, there are approximately 77 permanent part-time employees, the majority of staff work 37.5 hours per week and there are an additional 3-4 casual employees that can be called upon as needed. Employees in these centres are employed under the CS Award and the EST Award. The Dudley Street centre is licensed for 90 children, operates 6.30am to 6.30pm 52 weeks per year and only closes for designated public holidays. It has 22 core staff including two Victorian Institute of Teaching registered early childhood teachers, one who teaches the kindergarten program and one who is not currently employed in a teaching capacity by request. The Sutherland Street long day care centre has the same operating hours, is licensed for 120 children and has 28 employees including two Victorian Institute of Teaching registered early childhood teachers, one who runs the kindergarten program as Room Leader and one who is Centre Director and does not teach. She also employs other staff with degrees who are not engaged as early childhood teachers. Ms Kearney said that most of her educators work a 7.5 hour day, five days a week between the centres' hours of operation. She pays some employees above-award rates of pay where they have performed well and consistently delivered an excellent service. Some early childhood teachers are paid above-award rates in order to retain the staff at her centres due to the presence of five council-operated early learning centres in the region who offer higher wages because they are eligible for different funding arrangements. Above-award payments are also used to attract prospective employees relocating from Melbourne.

[476] Ms Kearney said that changes to the NQS that came into effect on 1 February 2018 created an enormous amount of additional work for early childhood education and care

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operators and staff. The ultimate responsibility of ensuring staff are compliant with the NQS falls to her as the Approved Provider Representative or the Centre Director by delegation. Centre Directors, Room Leaders and Educational Leaders are responsible for day-to-day compliance with the NQS, relevant legislation and established procedures and the development and application of programs which comply with the EYLF. In respect of children with additional needs, early childhood teachers are generally only involved with dealing with external parties when the child is in the kindergarten program or if the child is in their room. Educators and early childhood teachers have a personal responsibility to ensure processes developed to comply with children under Family Court Orders.

[477] In respect of responsibilities, Ms Kearney said that in Victoria, Room Leaders do not have to be registered teachers and four out of five Room Leaders in her long day care centres are diploma-qualified educators rather than early childhood teachers. Her centres have one Educational Leader who works between the four centres and is not an early childhood teacher. In Victoria and under the National Law, the Educational Leader is not required to be a Victorian Institute of Teaching registered early childhood teacher. Ms Kearney identified several responsibilities she considered to be shared by everyone employed at the centres, regardless of whether the employee is an early childhood teacher or not. These include ensuring children's safety, supervising children in the service at all times and taking and sharing observations of the children's behaviour, development, comments or action to be incorporated into the child's development plan. Ms Kearney said all of her educators perform the same sorts of functions, unless they are more experienced, and referred to educators that had been employed with her centres for 10 years. She said these educators possess more practical child management knowledge than some of their newly graduated early childhood teachers. Ms Kearney also described a typical day for their early childhood teachers, commencing at 7am to undertake two hours of planning or programming prior to running an educational program for the children in the classroom for 1.5 hours. The children then have morning tea, during which the early childhood teacher often takes their 10 minute morning break. The early childhood teacher then runs an outdoor educational program for an hour, weather permitting, prior to the children's lunch time. The early childhood teacher will usually take their 30 minute lunch break during this time. Finally, the early childhood teacher will return to the classroom and run further educational programs for the children for two hours before both the children and the early childhood teacher finish at 3pm.

[478] Ms Kearney gave evidence that the recruitment of early childhood teachers at her centres is affected by the labour market in a rural location and the prevalence of the aforementioned council-operated centres that pay higher wages as they receive funding from local and state governments. Her centres have a policy of recruiting from within where possible by encouraging young staff to undertake further study and assessing student teachers on placement from Melbourne universities for future employment potential. In the past 10 years, early childhood teachers have resigned from her centres for various reasons, and she gave the example of one early childhood teacher who left to work at a higher paying council-operated centre and two early childhood teachers leaving to work at primary schools. She said her centres' income is derived from fees and a low level of universal access funding for operating a kindergarten program for 4-year-olds.

[479] In her statement of evidence dated 28 March 2019,³⁰⁶ Ms Kearney gave evidence that:

³⁰⁶ Exhibit 78

- the regulatory changes introduced in the past 12 years, including the introduction of the NQF, the NQS, the EYLF, registration requirements for early childhood teachers and requirements for additional qualified staff, have codified and regularised the standards across the industry, have not affected one section or type of employee more than any other, and have impacted more on the administration of the business than at the early childhood teacher or Room Leader level;
- the regulatory changes have not increased the need for early childhood teachers to have more time off the floor as, in her centres, early childhood teachers have always had considerably more time off the floor than other staff because time is allocated depending on the number of children enrolled in each room;
- at her centres, the overall centre-wide educational program is developed between the Educational Leader, the Nominated Supervisors and an Approved Provider Representative, any of whom may or may not have a degree and be a teacher;
- Room Leaders develop the educational program for each room, with the exception of kindergarten, which is created by each early childhood teacher for their kindergarten room only;
- there has always been an expectation that educators provide quality care and teaching to children, and the regulatory changes have not altered this;
- she has not observed an improvement in graduate quality due to new entry requirements such as literacy tests and, in her experience, bachelor degrees are not an indicator of the quality of an educator, as they often commence work with little to no working experience;
- the Approved Provider is responsible for the creation of policies and QIPs, with collaborative input from all staff whether they are early childhood teachers or not;
- the purpose of the introduction of the APST was to create a uniform national standard for teachers across the country, not to create or set new benchmarks for teachers, and in any case, has not impacted the work of early childhood teachers in her centres;
- at her centres, teachers must maintain registration with the Victorian Institute of Teaching. The purpose of the registration system was not to improve standards of early childhood teachers but to create compliance with standards and expectations that already existed and to document continuing professional development, which was already always provided to early childhood teachers and educators at her centres;
- at her centres, early childhood teachers have always been given paid days off and paid travelling costs to attend professional development and the centres usually pay for these courses. In her experience, the cost of professional development is borne by most centres;
- early childhood teachers at her centres do not guide and mentor junior early childhood teachers at her centres, as she does not have enough early childhood teachers

employed for there to be a junior/ senior distinction, however early childhood teachers do mentor students carrying out a placement at their service;

- early childhood teachers at her centres are the Room Leader of the kindergarten room and are expected to supervise and direct other employees working in that room, but that function arises from them being Room Leader and is not tied to being an early childhood teacher or having a degree;
- diploma-qualified Room Leaders in rooms other than the kindergarten room also supervise and direct other employees in their rooms consistent with the CS Award which covers them, and this has been the practice at her centres for as long as she can remember;
- there is a system whereby experienced early childhood teachers are paid to mentor graduate Provisionally Registered Teachers as part of the transition from Provisional to Full Registration, and her centres engage an independent mentor who is a fully-registered early childhood teacher to undertake this function;
- the duties of early childhood teachers at her centres do not vary as they gain experience unless they take on a more senior role;
- Directors and Educational Leaders are not usually roles held by degree-qualified teachers at her centres;
- her centres are not required to have any early childhood teachers at the two outside of school hours care centres as those educators are not teaching an educational program, but rather are caring for children outside of school hours;
- technology has made early childhood teaching easier and more efficient, for example: the federal government has mandated the use of iPads in foreign language learning rather than using a blackboard; communications with families are now done using electronic systems, digital photos and videos rather than talking with every family each day to update them on their child's progress as in the past; and an electronic sign in and sign out system is used to check attendance;
- early childhood teachers are not required to liaise with families any more than other educators in her centres, and this has always been a task of any senior employee and has been listed as a duty under the CS Award in Level 4 and above;
- how much an educator interacts with parents is determined by the needs of the children in the room each year;
- there has not been any change in the overall numbers of additional needs children in her centres since the regulatory changes commenced and, in any case, early childhood teachers and educators have the same responsibilities in this respect;
- changes in the numbers of additional needs children tend to be a reflection of government funding, as each child is first assessed and if diagnosed and deemed necessary, additional funding is applied for where additional non-degree support staff are required;

- if there is a child demonstrating difficult behaviours with no diagnosis, the centre engages additional staff without third party funding; and
- her staff have never had to assist children with colostomy or tracheotomy bags or interpret reports from medical specialists.

[480] Ms Kearney also identified improvements in working conditions for early childhood teachers that have made the job easier, such as the introduction of technology into the planning and recording of programs and outcomes which record information more quickly rather than operating off hardcopy documents; meetings of early childhood teachers between her centres to enable staff to share ideas and maintain consistency; and ratio changes from 1:15 to 1:11 educators to children which has increased staff numbers in the rooms, providing more time for each child with an educator.

[481] In her oral evidence, Ms Kearney said:

- she has no qualifications in early childhood education, having come from a corporate background;³⁰⁷
- the two long day care centres operated by the business are rated “exceeding” under the NQF, and they are funded by the Victorian Department of Education and Training to provide a kindergarten program (for the last year or, for some children, two years before school);³⁰⁸
- she accepted that kindergarten services provide an important role in identifying children and families that may be vulnerable and in delivering services that meet their needs;³⁰⁹
- she had not experienced an increase in the proportion of children who are at risk or in out-of-home care attending her centres, but said that most such children are referred to a council kindergarten or a not-for-profit kindergarten in her area;³¹⁰
- Victorian Government kindergarten funding is predicated on the kindergarten year being taught by an early childhood teacher to ensure the highest quality of the teaching program, and (subject to temporary exemptions) the program must be planned and delivered 15 hours per week for 40 weeks a year by an early childhood teacher;³¹¹
- her business had not considered entering into an enterprise agreement in order to access the Victorian Government’s early childhood teacher supplement funding because when the kindergarten started there was only one teacher employed;³¹²

³⁰⁷ Transcript, 27 June 2019, PN 4672

³⁰⁸ Ibid, PNs 4675, 4678, 4683

³⁰⁹ Ibid, PNs 4698-4699

³¹⁰ Ibid, PNs 4702-4704

³¹¹ Ibid, PNs 4705-4712

³¹² Ibid, PNs 4736-4753

- her business supports its two early childhood teachers to practice in accordance with the APST by sending them to a minimum of four days training per year, ensuring they comply with all of the reporting procedures, develop and write transition statements and work with families of children who are special needs or might need additional support;³¹³
- her two early childhood teachers had approached her about the gap between their pay and conditions and those applying under the VECTEA, and one had left and the other stayed on a renegotiated arrangement whereby she received close to VECTEA conditions in return for spending more hours on the floor;³¹⁴
- the teacher who had left was replaced with a kindergarten teacher with New Zealand qualifications, who was also placed on conditions similar to the re-negotiated arrangement;³¹⁵
- the business has had to deal with the position that there are five council-operated early learning centres within the region which provide higher pay and better conditions to early childhood teachers, and an early childhood teacher who left went to work for one of these centres, as well as two previous early childhood teachers who went to work in primary schools;³¹⁶
- at the two long day care centres, in each kindergarten room there is an early childhood teacher Room Leader supported by subordinate educators, and the early childhood teacher is the person responsible for the planning and programming of the children's educational activities;³¹⁷
- when the business started in Kilmore in 2007, early childhood education was referred to as creches or day care, there was no respect for any of the educators, and staff recruits did not understand the level of professionalism required;³¹⁸
- she has tried to raise the professional and educational levels of staff and the level of understanding in the community about what the educators are doing;³¹⁹
- the early childhood teachers wear a different coloured uniform shirt to other staff, to give them respect and assist in visual identification as to whether required staff ratios are being maintained;³²⁰
- her centres use a software program to record individual and group observations and quality improvement data and communicate with parents in real time, and it prompts

³¹³ Ibid, PNs 4762-4765

³¹⁴ Ibid, PN 4771, 4779

³¹⁵ Ibid, PNs 4772-4774

³¹⁶ Ibid, PNs 4800-4805

³¹⁷ Ibid, PNs 4814-4817, 4934-4937

³¹⁸ Ibid, PN 4862

³¹⁹ Ibid

³²⁰ Ibid, PN 4902

staff when they are doing observations to link them to particular parts of the EYLF and identify to parents how their children's activities relate to EYLF outcomes;³²¹

- the role of the Educational Leader in the business is to operate autonomously across all the centres, undertake performance reviews, observe staff practices and give individual feedback, but not to assist the early childhood teachers to plan and deliver the teaching program;³²²
- the integration of special needs children is the responsibility of Room Leaders with the assistance of the Centre Director and sometimes third-party providers;³²³
- kindergarten teachers are required to personally observe and complete an individual observation of each child in their care a minimum of once a month;³²⁴
- child-guided learning programs are focused on listening to the child's voice and trying to develop the program for the children based upon how they will be interested and be engaged, rather than learning by rote as was done a very long time ago;³²⁵
- although she has found some educators without degrees to be better qualified or more experienced than qualified early childhood teachers, that is not to suggest that early childhood teachers have the same responsibilities or duties as educators;³²⁶
- a top-quality diploma-qualified educator may be better than a poor quality early childhood teacher;³²⁷
- the APST may create benchmarks but in her experience, no-one checks the benchmarks;³²⁸
- early childhood teachers are not required to liaise with families any more than any other Room Leader;³²⁹
- early childhood teacher meetings between the centres to enable staff to share ideas in paid time have made the job easier because early childhood teachers have additional peer support;³³⁰

³²¹ Ibid, PN 4905-4922

³²² Ibid, PN 5121

³²³ Ibid, PNs 5126-5132

³²⁴ Ibid, PN 5185-5188

³²⁵ Ibid, PN 5262

³²⁶ Ibid, PNs 5268- 5271, 5281-5282

³²⁷ Ibid, PN 5288

³²⁸ Ibid, PNs 5326-5328

³²⁹ Ibid, PN 5337

³³⁰ Ibid, PNs 5349-5356

- the teachers in her centres attend conferences on changes, research outcomes and developments on a regular basis, which gives them knowledge which they can use to further improve the program;³³¹ and
- ratio changes from 15:1 to 11:1 have increased staff numbers in the kindergarten rooms, which in her opinion, has potentially allowed an early childhood teacher to produce a better program for the children.³³²

Jae Dean Fraser

[482] Jae Dean Fraser is the Vice President of the Australian Child Care Alliance Queensland and is a member of ACA’s National Committee. He characterised the ACA as the peak body in the early childhood education and care sector. Mr Fraser was awarded a Bachelor of Education from Griffith University and an Advanced Diploma of Early Childhood from Gold Coast Early Childhood College. Mr Fraser has worked in the early childhood education and care sector for 18 years. At the time of making his first statement dated 25 May 2018,³³³ Mr Fraser was the Managing Director and Approved Provider of Edge Child Care Management Pty Ltd and Little Scholars School of Early Learning Pty Ltd. Prior to these roles, Mr Fraser worked as an early childhood teacher and primary school teacher before being employed as the General Manager of G8 Education between 2006-2014. In his current roles, he is responsible for the day-to-day operation of the centres that the companies operate and must ensure they operate in accordance with the National Law. He is also a member of several workforce groups which regularly meet with the Queensland Department of Education to discuss issues in the sector.

[483] Little Scholars has 36 full-time employees, 96 permanent part-time employees and 33 casuals engaged under either the CS Award or EST Award. Edge Child Care operates five long day care services across Queensland and NSW and employs more than 100 employees. Mr Fraser’s centres are open five days a week for 12 hours a day and most centres open between 6.30am and 6.30pm. The majority of early childhood teachers in his business work core hours of between 8.30am and 4.30-5.00pm. Early childhood teachers are given 3-4 hours per week off the floor for programming (in excess of the statutory mandated 2 hours) and Lead Educators who are diploma-qualified get 2 hours. He said that the workload of an early childhood teacher compared to a Lead Educator is not any greater in terms of programming and this extra time allocated is about “*keeping them happy*”. Early childhood teachers and Lead Educators work together with parents to set a play-based program that is aligned with the interests of the children. All employees write up observations about the children, which are ultimately recorded on an iPad or tablet. Mr Fraser observed that in his experience, early education is very different to school because at school, children are assessed on their knowledge of a much more prescriptive curriculum whereas early education is a play-based program with no set curriculum, goals or testing. All staff are equally responsible for ensuring the health and safety of the children, including maintaining a WWCC and carrying out or conducting training for other staff on emergency procedures and fire safety. Mr Fraser said that all educators develop relationships with families for there to be a consistent dialogue about the child. He noted that consistency of care is important in relation to developing and maintaining relationships with the families of the children, and is often created from a centre that has more reliable, consistent

³³¹ Ibid, PNs 5358-5360

³³² Ibid, PNs 5361-5367

³³³ Exhibit 84

(and generally permanent) staff members. Childcare centres are also rated by ACECQA on consistency of care.

[484] Mr Fraser said that when graduate early childhood teachers first start working at any of his centres, they are not immediately equipped to carry out the practical demands of childcare work and require ongoing development and on the job training to get them up to speed. In his experience, his diploma-qualified educators with many years' experience in early childhood education and care often run a much smoother program and classroom than graduate early childhood teachers. He described the daily duties of an early childhood teacher in his centres as caring for children aged 0-5 years and engaging and participating in play-based learning such as drawing, painting, arts and crafts, fitness and games. Generally, the Lead Educator is in charge of the educational program. There is often an early childhood teacher in his kindergarten rooms, which makes compliance with the QKFS easier. He said that the Department of Education QKFS audit team recommend that the Educational Leader role is assigned to a Lead Educator that is not the early childhood teacher in the kindergarten room. In other rooms, there is no requirement or increased likelihood that an early childhood teacher would perform the Lead Educator role and this is more likely to be allocated to a diploma-qualified employee.

[485] Mr Fraser stated that the daily rates received by his centres are from fees paid by parents and subsidies from government, which are paid to centres on behalf of parents. The federal government also provides funding to early childhood education services to support the provision of kindergarten programs in the National Partnership Agreement on Early Childhood Education, which is available to all children in the year before school. In Queensland, this funding is provided by the QKFS. He referred to the 2017 IBISWorld Child Care Services in Australia Report, which found that long day care centres account for 51% of 4-5 year-olds enrolled in a kindergarten/ preschool program for that year. Children enrolled in this program at his centres have access to an early childhood teacher during all core hours of operation in accordance with funding requirements. At the time of his statement, centres also received the Childcare Benefit and Childcare Rebate for the entire day an eligible child attended, irrespective of how many hours the child actually attended. This was set to change to the Childcare Subsidy from 2 July 2018, which was to be calculated on a sessional rather than a daily basis.

[486] At the time Mr Fraser gave evidence in his witness statement dated 29 March 2019,³³⁴ Mr Fraser had assumed the duties of Managing Director and Approved Provider of The Scholars Group Pty Ltd and Scholars Consulting Pty Ltd. He gave evidence that:

- the regulatory changes introduced in the early childhood education and care sector between 2012 and 2019 have streamlined state-based regulations and implemented a national quality framework for early childhood teachers to work within, and have codified the standards and expectations early childhood teachers and all educators at his centres were already subject to;
- the regulatory changes do not require early childhood teachers to have more time off the floor, however many Approved Providers such as himself allow early childhood teachers additional time off the floor to ensure they have quality educational programs;

³³⁴ Exhibit 85

- the EYLF describes the principles, practices and outcomes that support and enhance young children’s learning from birth to five years of age, as well as their transition to school, and is the framework that educators must use when planning and delivering an educational program;
- the EYLF is the childcare version of a school curriculum, but it is different in outcome and delivery and sets out principles in broad terms only;
- Room Leaders, who are early childhood teachers or diploma-qualified educators, are responsible for creating and developing an educational program for the group of children they are responsible for in accordance with the EYLF. This was the responsibility of Room Leaders even prior to the implementation of the EYLF;
- the introduction of the EYLF has not changed the role of an early childhood teacher but rather has streamlined individual state requirements of early childhood teachers and ensured educators are focused on outcomes. If anything, the introduction of the EYLF has reduced workload as the program is developed based on children’s interests and ideas and is not a formal curriculum;
- the EYLF has raised the professional expectations of all teachers and educators, but this does not mean that they have more work or any greater responsibility since early childhood teachers have always been required to deliver quality educational programs;
- the EYLF has ensured that all employees, not just early childhood teachers, focus on outcomes, and it is up to the teachers and educators as to how these outcomes are obtained;
- as an example, an EYLF outcome is that “*children are effective communicators*”, and a teacher or educator could reach this outcome by planning an experience (such as a group story time or a game whereby children tell each other a secret or a story), and can determine whether the children are participating and communicating effectively through these activities;
- the EYLF has given clearer direction for educators and early childhood teachers to meet the required outcomes, and has encouraged a focus on the individual child and desired outcomes, but it has not changed what teachers do;
- Bachelor’s degrees are not an indicator of a quality educator at his services, and many of his experienced diploma educators are far stronger educators than some of his Bachelor-qualified teachers;
- the quality of graduates has not improved due to degree entry requirements such as literacy tests;
- under the National Law the Approved Provider is responsible for the creation of policies and QIPs, and early childhood teachers should not have responsibility for this work as it would not be legal, and would not have the skills or knowledge to complete this work unless they held a more senior role such as Director or Approved Provider;

- he has not seen a change in work that early childhood teachers do since the introduction of the APST because they are simply a uniform framework/standard rather than a detailed proscriptive curriculum or list of duties, and he does not think the standards define the work of teachers due to differences in teaching environments;
- the creation of a registration system for teachers in Queensland was not about improving the quality of teachers but rather to determine how many teachers were actually working in the early childhood education and care sector;
- all educators, whether early childhood teachers or not, have always engaged in some form of professional development, long before any mandated legal requirement under the NQF. In his experience, most services pay for professional development of teachers and other educators in their centres;
- at his centres, both early childhood teachers and diploma-qualified educators can engage in mentorship of junior employees, however this is not a requirement. Early childhood teachers never supervise and direct non-teacher educators, rather this is the work of Room Leaders or the centre manager;
- in his centres, Room Leaders might have a teaching degree, but only in the kindergarten room;
- early childhood teachers are employed to deliver a quality educational program to a group of children, but their duties and responsibilities do not change as they gain more experience;
- the use of technology such as iPads and apps (such as the ELLA program, which is a digital, pay-based learning program for preschool children) has made it easier and more efficient for early childhood teachers to deliver a quality educational program as they can document learning outcomes in real time rather than manually;
- there has been no increase in the requirement for early childhood teachers to deal with parents/liaise with families due to the NQF;
- there has been a decrease in additional needs children enrolling in his centres due to a funding decrease in 2018, however when such children are enrolled, educators in Queensland are provided with additional support in the form of the Inclusion Support Subsidy which provides another educator for one-on-one interaction and support with the additional needs child;
- in his 20 years in the industry, he has never had to assist children with colostomy or tracheotomy bags and is not aware of this occurring at his centres; and
- there have been some changes in recent years that have made the job of early childhood teachers and educators easier, such as the reduction of student/ teacher ratios and the introduction of kindergarten funding in Queensland which allows Approved Providers to put additional staff in the room, invest in additional resources and provide more professional development and non-contact time.

[487] In his oral evidence, Mr Fraser said that:

- online platforms such as Kindyhub have streamlined the role of an early childhood teacher or educator. Kindyhub is a platform to both communicate with families and to capture observations, reports and learning examples of children and activities throughout the day using premade templates whereby staff type up information in fields. Prior to the implementation of these online platforms, everything was manual and was required to be handwritten or printed out;³³⁵
- since the NQF was introduced, assessors encourage less paperwork as they would prefer that educators and early childhood teachers are interacting with children, engaging in meaningful conversations and participating in experiences rather than documenting them;³³⁶
- in Queensland, privately owned long day care centres generally only started employing early childhood teachers when the NQF was introduced because centres were then required to do so;³³⁷
- he accepted that early childhood teacher ratios are not about a minimum number of teachers in a room but rather about access of a service to the skills of a teacher;³³⁸
- he shares the ACA view that he is unconvinced as to the benefits of teachers being employed in early childhood education;³³⁹
- he accepted that the early childhood industry has experienced very high growth in the past few years, but was not sure if a contributor in this growth was the movement of the sector from childcare to early education;³⁴⁰
- average wages are increasing due to early childhood teacher ratio requirements stipulated by the NQF, award wage increases getting larger and Approved Providers paying staff above award wages to attract them to the industry and retain them;³⁴¹
- approximately half of educators and early childhood teachers are paid above award;³⁴²
- some early childhood teachers are paid above award to retain them, in particular because early childhood teachers often leave for the school system where they are afforded more holidays and the conditions are different, such as school hours;³⁴³

³³⁵ Transcript, 1 July 2019, PNs 5548, 5551

³³⁶ Ibid, PN 5554

³³⁷ Ibid, PN 5577

³³⁸ Ibid, PN 5594

³³⁹ Ibid, PN 5616

³⁴⁰ Ibid, PNs 5623-5628

³⁴¹ Ibid, PNs 5679-5681

³⁴² Ibid, PNs 5683-5686, 6289

³⁴³ Ibid, PNs 5688-5689

- private long day care centres also compete for early childhood teachers with community preschools who pay their teachers at above award rates;³⁴⁴
- the early education sector is undervalued in terms of wages which is a barrier for men entering the sector, as men typically have to forfeit higher salaries;³⁴⁵
- in an ideal world, he would like to see his early childhood teachers paid better than they are now, being no less than the rates they might get if they taught at a government primary school;³⁴⁶
- his long day care centres receive kindergarten funding from the Queensland Government, which involves a learning program being delivered 15 hours a week over 40 weeks to children the year before attending school and must be delivered by a qualified early childhood teacher;³⁴⁷
- his centres receive approximately \$1,700 per child to deliver the kindergarten program and this funding is used to reduce fees for parents or to provide professional development for those early childhood teachers, not pay above award wages;³⁴⁸
- early childhood teachers in his centres receive an additional 2-4 weeks paid annual leave;³⁴⁹
- he reiterated that he doesn't view the EYLF as a curriculum but rather a guideline because it is not as structured as a curriculum, instead stipulating learning outcomes for educators and teachers to use for children to achieve and work towards;³⁵⁰
- he did not find his degree to have any utility in equipping him to be an early childhood teacher;³⁵¹
- he accepted that an early childhood education degree would potentially provide early childhood teachers with skills and knowledge which allow them to deliver the EYLF;³⁵²
- he accepted that his degree-qualified workers obtain a more thorough understanding of pedagogical principles than his other educators;³⁵³

³⁴⁴ Ibid, PN 5693

³⁴⁵ Ibid, PNs 5698-5699

³⁴⁶ Ibid, PNs 5789-5790

³⁴⁷ Ibid, PNs 5806-5812

³⁴⁸ Ibid, PNs 5829-5832, 5839

³⁴⁹ Ibid, PNs 5832-5837

³⁵⁰ Ibid, PNs 5908-5912

³⁵¹ Ibid, PNs 5900-5903

³⁵² Ibid, PN 5906

³⁵³ Ibid, PN 6024

- early childhood teachers are no more able than educators to provide the educational program required under the EYLF;³⁵⁴
- early childhood teaching is less rigorous than primary school teaching because early childhood teachers do not need to follow a set curriculum and teaching is planned around children's interests;³⁵⁵
- to plan and have children play in a way which achieves the EYLF requires careful consideration and planning by educators, but this does not mean early childhood teachers have to exercise a greater degree of individual decision-making as to how to best achieve EYLF outcomes;³⁵⁶
- in his centres, only two children are special needs students medically diagnosed with a condition;³⁵⁷
- at his centres, the service and relevant Lead Educator sometimes develop individual education plans/ inclusion support plans for children who do not qualify for special needs funding but need additional assistance prior to speaking with the family and engaging a medical expert;³⁵⁸
- he agreed somewhat that he has a higher expectation as to the quality and complexity of the work of university-educated teachers as against your other educators;³⁵⁹ and
- if a service is rated "working towards" under the NQS, it is a matter of consequence because the community image of that service is lower than its competitors and there is a higher level of interaction and observation from the regulatory authority, which can be weekly, monthly or fortnightly assessment or observations.³⁶⁰

Alexandra Hands

[488] Alexandra Hands is a Director of two companies that hold the approved provider certificate for two long day care centres, Unley Early Learning Centre and Daws Road Early Learning Centre in Adelaide. She obtained an Advanced Certificate in Child Care in approximately 1976 from Croydon TAFE in Adelaide and has been involved in child care for the past 45 years. She opened her first child care centre in 1996. In her statement of evidence dated 21 May 2018,³⁶¹ she said the Unley centre operates 52 weeks a year between 7.00am and 6.30pm and is licensed for 55 children across three rooms, including a kindergarten room. The centre has 15 employees, including a Director, Assistant Director/ Educational Leader, two early childhood teachers, seven diploma-trained educators and the remainder are Certificate III-qualified. The Daws Road centre operates between 6.30am and 6.30pm and is licensed for 60

³⁵⁴ Ibid, PNs 6031-6033

³⁵⁵ Ibid, PN 6082

³⁵⁶ Ibid, PNs 6091-6095

³⁵⁷ Ibid, PN 6122

³⁵⁸ Ibid, PNs 6129-6135

³⁵⁹ Ibid, PN 6335

³⁶⁰ Ibid, PNs 6349-6350

³⁶¹ Exhibit 112

children across four rooms, including a kindergarten. The centre has 18 staff, including three early childhood teachers (one has been appointed the employed Director under the award and another the Educational Leader), 10 diploma-trained educators and the remainder are Certificate III-qualified.

[489] Ms Hands said that as a Director for the centres she is responsible for ensuring that the centres meet their obligations in relation to the NQS, developing health and safety policies for the centres, ensuring that the services' physical layout complies with the National Regulations and preparing the rosters, ensuring that the service complies with the necessary ratios required by the NQF, developing centre policies and ensuring that the policies, processes and procedures are implemented and adhered to, and facilitating collaborative partnerships with families and communities to better inform the development of centre policies and achieve first class outcomes for the children in the service.

[490] Ms Hands stated that the daily duties of an early childhood teacher at her centres include conducting opening procedures and greeting families, supervising meal times, sleep time and indoor and outdoor play and conducting programmed activities in groups. She also said that if a child asks a question about a specific topic, an educator or early childhood teacher might spend some time conducting research on the specific topic or take the time to document a new skill or interest the child is developing to share with the child's parents. Ms Hands also said that there is no difference between what an early childhood teacher and an educator does in terms of daily duties with the exception of an Educational Leader (either an early childhood teacher or an educator) who will have some additional non-contact time to check staff learning outcomes in relation to the children they are responsible for and to ensure staff are on the right path. She also said that the fact an employee holds a teaching qualification does not guarantee any greater involvement in the delivery of an educational program. The degree of involvement or leadership that an educator employed at her centres has will depend on the individual, their experience, their passion and dedication to the children.

[491] In her statement of evidence dated 28 March 2019,³⁶² Ms Hands said despite the regulatory changes introduced over the last 10 years, the expectations and duties of early childhood teachers in South Australia have not changed. She gave evidence that:

- prior to the recent regulatory changes, the South Australian Curriculum Standards and Accountability Framework (SACSA Framework) had been in place since 2011 [sic, presumably 2001] which also required all educators (early childhood teachers or otherwise) to construct teaching and learning programs, conduct assessments, monitor children's progress and report this progress to children's families;
- regulatory changes had not increased the standards required of early childhood teachers, and the NQF largely replaced a lot of regulations that were already adhered to in South Australia and created consistency across the country;
- the regulatory changes have not caused a demand or increased need for non-teaching time in South Australia due to professional development, curriculum development or registration requirements, as those requirements already existed in some form;

³⁶² Exhibit 113

- at her centres, early childhood teachers have always had the same time off the floor (2 hours) to construct and evaluate programs as diploma-qualified educators do, and she has two early childhood teachers who do not construct or evaluate any programs in the centre but still have one hour of non-contact time to compile learning stories or document observations in addition to the programming time provided for in the applicable awards;
- at her centres, early childhood teachers do not have an obligation to create and develop an educational program, as this is the responsibility of Room Leaders. In cases where the early childhood teacher is also a Room Leader, they are responsible for creating and developing their own programs for their particular room which is then implemented by all educators (including Certificate III qualified employees);
- the EYLF has led to community awareness of quality teaching in a positive way, but prior to the introduction of the EYLF, South Australian centres were already programming quality outcomes for children under the SACSA Framework, and the EYLF has not changed the professional expectations of teachers and educators at her centres;
- a Bachelor's degree does not indicate the quality of educators, and some of her diploma-qualified educators offer higher quality outcomes to the children than a degree-qualified early childhood teacher;
- the quality of early childhood teacher graduates have not improved in recent years, and centres have to support graduate teachers with on-the-job learning and help them gain experience;
- while the duties and tasks of an early childhood teacher's role will remain the same, the quality of an early childhood teacher can improve with experience;
- early childhood teachers do not create and review policies or QIPs, rather she prepares these herself as the company Director and Approved Provider;
- the introduction of the APST did not lead to new benchmarks but rather codified what the expectations are and what should be achieved, and in any case, she has not seen any difference in the quality of teachers or their work between now and prior to the APST being implemented;
- her centres have always provided continuing professional development to all educators, including teachers, and pay for the time spent at training and the cost of the training;
- early childhood teachers are not required to guide and mentor more junior early childhood teachers or supervise and direct non-teacher educators at her centres. Lead Educators have this responsibility of guiding educators in their room, and some but not all Lead Educators are early childhood teachers;
- there has been an increase in work on the computer, however this is universal across all industries and staff, and in any case has made their work easier and has streamlined processes;

- all educators deal with parents on a daily basis and this is not occurring more than it ever has in the past, and each early childhood teacher only liaises with parents of children in their room;
- there has not been an increase in additional needs children in the rooms at her centres, and such children have always been included in their service. Where there is an additional needs child who is severely disabled, her service can apply to be assigned a case support person from the Inclusion Support Program and the Inclusion Agency in South Australia who assists the child in joining the centre and provides training of relevant staff, and the cost of any additional staff provided by the centre can sometimes be partially offset by funding from the Inclusion Support Program;
- the reduction in educator to child ratios has improved working conditions of all educators (including early childhood teachers) and reduced workload; and
- employees at her centres are not contactable after hours aside from herself and the Centre Directors.

[492] In her oral evidence, Ms Hands said that:

- programming in her centres is created over the course of each fortnight, adding to the program depending on whether a child is interested in something to develop this further and also with the consultation of parents;³⁶³
- early childhood teachers have two hours to program, however this varies depending on whether additional time is needed and whether they are an Educational Leader at the centre;³⁶⁴
- the NQF requires critical reflection, which required an engagement with pedagogical theory;³⁶⁵
- the perception of their work in the community as childcare is shifting to that of early education, and centres like her play a role in changing that perception;³⁶⁶
- the Unley centre employs more early childhood teachers than is required under the National Law in case someone is away, they still have an early childhood teacher on the premises;³⁶⁷
- as Approved Provider Representative for the company, it is her responsibility to ensure compliance with the National Law and is liable for any fine related to non-compliance;³⁶⁸

³⁶³ Transcript, 3 July 2019, PNs 8575-8577

³⁶⁴ Ibid, PNs 8578-8579

³⁶⁵ Ibid, PNs 8610-8611

³⁶⁶ Ibid, PNs 8627-8629

³⁶⁷ Ibid, PNs 8680-8681

³⁶⁸ Ibid, PNs 8724-8731

- educators and early childhood teachers have individual responsibilities to work in accordance with the NQS and are trained to ensure they are aware of these obligations, however their non-compliance would not have the same impact as what it would on the Approved Provider Representative, such as being fined;³⁶⁹
- while degree-trained early childhood teachers have a higher level of knowledge about early childhood education, theory and technique than someone with a diploma, they perform the same duties as other educators, and may not always have a higher skill level than other educators;³⁷⁰
- in her experience, educators with higher qualification levels and standards of training are not better equipped to provide improved learning environments and mentor other educators in quality practices;³⁷¹
- South Australia has been ahead of the curve in terms of quality early childhood, having had ratios prior to 1998, higher ratios than what are required under the NQS and a specific curriculum in place for preschool since 2004;³⁷²
- the skills of staff are better understood viewed through examples of individual interactions with children rather than looking at the daily routine of educators and early childhood teachers in a centre;³⁷³
- her employees work a range of different start and finish times and do not get the same holidays as school teachers;³⁷⁴ and
- she accepted that when people first start working in childcare, they tend to have a period where they get sick frequently, however their immunity builds up over time.³⁷⁵

Karthiga Viknarasah

[493] Karthiga Viknarasah is the Director and Educational Leader of Lidcombe Preschool Kindergarten and Choice Preschool Kindergarten and is a committee member of the ACA NSW. She has been a NESA accreditation supervisor for early childhood teachers since 2017. Ms Viknarasah is also the Vice President of the Australia Childcare Alliance NSW. Ms Viknarasah holds a Bachelor of Business (Accounting) from the Australian Catholic University, Certificate III in Children's Services from the Community Childcare Cooperative, a Graduate Diploma in Education from the University of South Australia and a Masters Degree in Educational Leadership from Macquarie University.

³⁶⁹ Ibid, PNs 8732-8735

³⁷⁰ Ibid, PNs 8755-8765

³⁷¹ Ibid, PNs 8782-8784

³⁷² Ibid, PNs 8797-8804

³⁷³ Ibid, PNs 8907-8915

³⁷⁴ Ibid, PNs 8962, 8965-8966

³⁷⁵ Ibid, PNs 8972-8974

[494] In her statement of evidence dated 23 May 2018,³⁷⁶ Ms Viknarasah described her role at the centres which involves supervising the day-to-day operations and ensuring compliance with various laws, including the National Law, supervising educational programs and inspiring, motivating and affirming the work of educators, including early childhood teachers. She also prepares the rosters across the centres which, she said, must meet the staffing ratio requirements prescribed by the National Law. She takes full responsibility as the Director for all regulatory and compliance matters, and non-compliance could result in significant penalties including the closure of her centres. Ms Viknarasah stated that she has written the centres' education curriculum in her own time to supplement the EYLF as she considers the EYLF to be insufficient given how broad it is. She has also developed eight health and safety policies for the centres including a child safe environment policy, nutrition, food and beverage and dietary requirements, sun protection and water safety.

[495] Ms Viknarasah gave evidence that the duties of early childhood teachers and educators at her centres include supervising and engaging with the children while they are playing and eating, ensuring the children eat enough food during meal times and talking to them about nutrition or various topics, conducting indoor and outdoor activities in small groups, preparing the children for rest, cleaning duties such as disinfecting toilets and mopping the floor, administrative tasks and discussing the program with other colleagues. Nominated supervisors (one step below the level of Director) are additionally responsible for ensuring educational programs are delivered correctly, children are supervised adequately, health, nutrition and hygiene standards are maintained, medical conditions and medications are managed correctly, staff are managed and mentored and parent demands and complaints are dealt with. Nominated supervisors are also somewhat accountable for breaches and non-compliance. She also said that there are children at the centres with additional needs such as autism spectrum disorder, allergies and anaphylaxis and that she is continually ensuring the centres' compliance with the relevant policies. In respect of children with additional needs, she said it is imperative for teachers to work collaboratively with parents and specialists, such as occupational therapists or psychologists, to ensure the best care for the child.

[496] Ms Viknarasah said that she regularly undertakes reviews of the centres' policies, processes and systems in consultation with the parents and families of children at the centres. She said that this process is as collaborative as possible and often will involve tailoring the policies specifically to the demographics for the centre. For example, she stated that there is a large cohort of children who are from Muslim families at the Choice Centre which has resulted in a change to dietary requirements that do not apply at the Lidcombe Centre. Ms Viknarasah also said she is responsible for organising consultation meetings with parents and ensuring the relationships between parents and the centres remain strong and are maintained. She also said that the amount of regulatory change in the industry requires that she remain ahead of the implementation of regulatory change to ensure the centres are continuously compliant.

[497] Ms Viknarasah also said that the work allocated to educators and early childhood teachers at her centres is the same and that allocation of work is determined by individual preferences, traits and the enthusiasm of her staff. She said that because she pays teachers more than educators, she may allocate early childhood teachers more work than educators and/or assign them writing tasks, such as writing the newsletter or lessons plans based on the written skills developed through their tertiary studies. Ms Viknarasah also said that in the past, it has

³⁷⁶ Exhibit 116

been frustrating being required to pay early childhood teachers higher rates than educators who are doing a better job and that it is only due to the requirements under the National Law that she is obliged to employ early childhood teachers and pay them the award rate given their qualifications.

[498] She gave evidence in her witness statement dated 29 March 2019³⁷⁷ that the regulatory changes experienced over the past 10 years in the early childhood education and care industry have put in place more formal guidelines for centres to comply with but have not changed the work of educators or early childhood teachers in the sector. Rather, the regulatory changes have simply codified and regularised the standards always required of early childhood teachers and educators. Her experience of the regulatory changes is that they have made the job easier insofar as required teacher-child and educator-child ratios have increased the number of staff to children. She also referred to the introduction of technology decreasing the amount of manual administration required, and gave as an example that recording the activities of a child in a day can now be completed using an iPad with quick drop down options, whereas previously this would have required taking photos with a camera, downloading the photos to a computer, printing, cutting and sticking them into a portfolio book, writing an observation using child development language and decorating the page before providing this to parents. The introduction of the requirement for other educators to be qualified with a Certificate III or diploma and for 50% of staff to have a diploma or higher educational attainment has also assisted early childhood teachers and all educators to perform their role with a more highly trained and qualified team.

[499] Ms Viknarah said that there had been no changes in the actual work of caring and educating children as a result of regulatory changes. She said that there had been some minor changes to displays, re-arrangement of materials and the words used to describe the work, but she said this would have happened anyway as they were always evolving based on new research and trends. There had not been any need to increase non-contact time for early childhood teachers or educators for tasks like programming or developing an educational program as a result of regulatory changes, with early childhood teachers and educators always having been allocated two hours per week to carry out these tasks. However Ms Viknarah also said:

“However, at many centres it is often the case that in order to attract and retain high quality teachers, centres will offer above award conditions – including significantly increased off the floor time. I know this because I discuss it with other centre owners and committee members of ACA NSW. It is a sad state of affairs because Centres are effectively taking these highly qualified, expensive teachers away from children and replacing them (due to ratio requirements) with either casual staff who cannot teach the children as effectively or replacing them with less qualified staff.”

[500] Ms Viknarah stated that many of the requirements of the regulatory changes are no different between early childhood teachers and other educators, such as who is responsible for the development of an educational program or QIP and who deals with parents or additional needs children. A teaching degree is not a prerequisite for assuming higher duties such as being a Room Leader, Educational Leader or Director within a centre.

³⁷⁷ Exhibit 117

[501] In relation to the EYLF, Ms Viknarasah said that it had not affected the work of early childhood teachers and educators, but had just provided more clarity as to what dispositions for learning children should be exposed to before school. She said that the principles described in the EYLF are fluid and open to interpretation, making them difficult to assess, and centres sometimes have to translate the principles into their own curriculum. The EYLF had not raised professional expectations or led to a stronger focus on quality teaching in the early years, since this had always existed and preschool teachers were always expected to care for and educate young children. She said that the EYLF had nothing to do with being taught by an early childhood teacher, and in states such as Queensland and Victoria which have more rigid separate funding connecting the kindergarten program to an early childhood teacher, they can have their own separate curriculum but these are in essence very similar to the EYLF.

[502] Ms Viknarasah said that she has not found that having a degree is an indicator of the quality of an educator and, in her centres, she would prefer to hire Certificate III graduates who she can train the way she needs them to be without paying the premium for an early childhood teacher or a diploma-qualified worker who cannot work the way she needs them to. She stated that the quality of an educator depends on their personality and passion for working with children and the fact that someone is degree qualified does not necessarily improve their performance in their role. If she has to employ an early childhood teacher, she prefers to hire employees with a 0-5 degree rather than a 0-8 or 0-12 degree as she can be sure that these individuals are passionate about teaching in the early childhood education sector and not simply working there as a placeholder until they are able to secure a job in a primary school setting. She said that degree entry requirements had not changed the quality of degrees in recent years.

[503] As to QIPs, Ms Viknarasah said that in practice it is likely that an early childhood teacher will assist with the development of the plan for a centre as they tend to have more developed writing skills, but there is no legal responsibility for the Educational Leader or the early childhood teacher to create or ensure that this plan is followed or implemented. In relation to the APST, she said that these formalise what was already expected of early childhood teachers but was unwritten, and that the NESAs does not say that accreditation improves teachers' work in any way but rather recognises teachers as professionals. The written, uniform APST, she said, had not changed the actual work or duties that any early childhood teacher does. Ms Viknarasah stated that the introduction of mandatory professional development is not a new concept to early childhood teachers as this was offered by centres when and if they could afford it to all employees before registration requirements for teachers were introduced. Funding for this purpose was introduced between 2015 and 2017 in all long day care centres, so almost all educators and teachers would have already engaged in professional development. Payment for professional development varies between services, but Ms Viknarasah said it is paid for by the employer at her centres.

[504] Ms Viknarasah said that early childhood teachers at her centres are not required to guide and mentor more junior early childhood teachers or supervise and direct non-teacher educators, nor are these tasks responsibilities of the job outlined in the classifications in the EST Award. The system whereby the NESAs contracts experienced early childhood teachers to mentor graduate early childhood teachers sits outside the modern award system, and is unlikely to involve a teacher in the same service acting as a mentor. In respect of technology, she said that this had generally made the work easier. Apps had been developed to make the duties associated with programming and reporting less manually burdensome and time consuming, and the ELLA language program had also made teaching languages easier, in that educators can sit children down with their iPads and leave them to learn from it while supervising their progress.

[505] Ms Viknarasah stated that early childhood teachers are not required to deal with parents any more than in the past, or any more than other educators; however, some responsibilities associated with parents may attach to the employee who is closing the centre or the Director of the centre. She said that she had not seen an increase in the number of additional needs students at her centres, and early childhood teachers worked with children with additional needs in the same manner as any other educator. There were a range of support mechanisms in place available for dealing with additional needs children, such as funding to provide an additional educator (non-degree qualified) in the room. She said that a requirement to provide care to severely disabled children was required in very few cases and was not more prevalent than before. It was not a duty specific to early childhood teachers to interpret, for example, a specialist's report, and it would likely be given to the most senior employee due to its complexity.

[506] In a further statement of evidence dated 3 July 2019,³⁷⁸ Ms Viknarasah gave evidence that at her service, the introduction of the EYLF had not resulted in a change to their approach to the educational program or how they deal with children. She said that it has placed a particular emphasis on some matters, such as inclusion and diversity, but has not brought about any basic change and did not introduce play based learning, the requirement for intentional teaching or the child-led curriculum. In respect of documentation, she stated that her centres have been taking observations and reporting on their progress for as long as she has been involved in the sector, and the NQF has neither increased nor specified a particular number of observations or reports required. In her experience, some centres specify a particular number of observations or reports while others do not. In her centres, the staff take observations on paper and create a portfolio for each child and are guided by principles Ms Viknarasah created, such as “[o]ur relationships and interactions with children are more important than documenting their experiences” and “[t]here are no set number of observations required for each child. Educators should document as they feel is necessary and useful”. Ms Viknarasah stated that there has always been a prohibition on working at home in her centres, and this is formalised in her centre guide.

[507] In her oral evidence, Ms Viknarasah said:

- there is a funding gap between long day care centres and community preschools, in that the former are funded under the federal government childcare subsidy scheme to 85% of the rate cap, or about \$8 per hour per child at her centre (and more where higher fees are charged), whereas under community preschool funding, it is about \$11 per hour per child, and additional funding for special needs children and regional areas might take this up to \$24 per hour;³⁷⁹
- her view is that centres should not be required to employ early childhood teachers, and it should be up to centres to decide whether to employ an early childhood teacher or not, and she valued not the qualification of the person but their ability to work with children;³⁸⁰

³⁷⁸ Exhibit 118

³⁷⁹ Transcript, 4 July 2019, PNs 9358-9361

³⁸⁰ Ibid, PNs 9385-9389

- she had said in a podcast in February 2019 that her position was: “*We will do the minimum that we need to comply with the regulations*”;³⁸¹
- of her two centres, one is rated as “meeting” under the NQF and the other is rated as “working towards”;³⁸²
- she had obtained a Graduate Certificate at the University of South Australia for the purpose of allowing her to be counted as a degree-qualified teacher for ratio purposes on the basis that she had a previous (non-education related) degree, and she selected this course because it was the shortest one she could find;³⁸³
- the Graduate Certificate did not teach her anything about teaching, but only about management, even though it entitled her to be treated as a teacher;³⁸⁴
- she accepted that university teaching courses provide pedagogical knowledge of the sort that she did not obtain with her Graduate Certificate training;³⁸⁵
- she had, as a personal project, developed an education program/curriculum for 2-5-year-olds based on the Australian Curriculum for Early Stage 1 in primary schools as well as the EYLF and other leading early years frameworks from around the world;³⁸⁶
- this curriculum is for the purpose of informing staff, who she considered are not getting enough information in their studies, what they should be doing;³⁸⁷
- her website stated that her centres had an “*advanced academic program*” arising from the curriculum she had developed for her centres, and even prior to this curriculum she used to teach children to write, which many centres did not;³⁸⁸
- she recalled “*a time years ago when we used to hide our teaching materials when the regulatory authority came because they would, you know, didn’t like to see that, so we just put it away in a cupboard somewhere and only show[ed] them the documents that they were interested in*”;³⁸⁹
- in the podcast, she had agreed that she was “*a rogue in the industry*”, and she accepted that she was a rogue in the approach she took to academic programs as well;³⁹⁰
- she believed in learning through play, but tried to give an academic focus to most of the activities set up in the environment and, unlike many centres, she liked to give

³⁸¹ Ibid, PNs 9402-9412, 9441

³⁸² Ibid, PN 9422

³⁸³ Ibid, PNs 9442-9448

³⁸⁴ Ibid, PNs 9455-9460

³⁸⁵ Ibid, PN 9461

³⁸⁶ Ibid, PNs 9464-9473

³⁸⁷ Ibid, PNs 9474-9478

³⁸⁸ Ibid, PNs 9493-9494

³⁸⁹ Ibid, PN 9494

³⁹⁰ Ibid, PNs 9495-9498

colouring-in worksheets, writing pencils, puzzles, number tables and letter charts to children;³⁹¹

- under the QIAS system when there was a validation visit, they would put away books children had been writing in and show the things the validators wanted to see;³⁹²
- the only early childhood teachers her centre currently employs have their degrees but are still working towards their registration;³⁹³
- in NSW, unlike the rest of the country, there have been requirements to have early childhood teachers in preschools and long day care centres for decades, but they were not required to be accredited until 2016;³⁹⁴
- there needs to be a balance between allowing children to do what is interesting on the day and pre-prepared plans, and as an example of the latter, her centres have a Science Week and the children practise speeches and learn songs and dances well in advance so that that “*we can have a really good performance for parents*”;³⁹⁵
- she did not necessarily accept that teachers are able to plan particular educational activities to obtain learning outcomes based on observation at a higher level than other educators, and it could be “*just somebody who is absolutely really passionate about what they’re doing as well*”;³⁹⁶
- tertiary-educated teachers come out of university with a sound knowledge of theories and pedagogies for teaching but not with a sound knowledge of the regulations and compliance requirements for the industry, unlike non-degree qualified educators;³⁹⁷
- she had earlier written that non-degree qualified educators had little knowledge of the key aspects of teaching children, such as numeracy and literacy for 2-year-olds, but she said that they were not all that way;³⁹⁸
- she encouraged her staff to upgrade their qualifications, and accepted that it is beneficial for the educational outcomes of children to have better educated staff;³⁹⁹
- she would prefer that early childhood teachers only be required to study a 0-5 degree rather than a 0-12 degree because they don’t adequately cover the 0-5 age and cannot focus on it in their studies;⁴⁰⁰

³⁹¹ Ibid, PNs 9499-9505

³⁹² Ibid, PNs 9507-9509

³⁹³ Ibid, PN 9516

³⁹⁴ Ibid, PNs 9540-9543

³⁹⁵ Ibid, PNs 9591-9592

³⁹⁶ Ibid, PNs 9642-9643

³⁹⁷ Ibid, PNs 9644-9646

³⁹⁸ Ibid, PNs 9649-9656

³⁹⁹ Ibid, PNs 9704-9710

⁴⁰⁰ Ibid, PN 9723

- there is a problem with early childhood teachers going off to teach in primary school settings and until this supply issue is rectified, the requirement to have early childhood teachers onsite should be removed for smaller centres;⁴⁰¹
- the introduction of the National Law was the biggest change for many other states, however it was not a big change for NSW because it was already very highly regulated;⁴⁰²
- under the National Law, record keeping obligations significantly increased and there was no longer a codified checklist in place for business owners to follow to ensure compliance in order to be accredited, as there was under the QIAS;⁴⁰³
- there are no Room Leaders in her centres, and she does not expect more from her early childhood teachers as everyone in her centre shares the work equally;⁴⁰⁴
- her centres are located in areas where there are many parents who are non-English speaking, so she tries to employ staff to reflect the children she has in her centre and who speak different languages. If these language skills are required at another centre, she will do a swap for a day to ensure parents can be communicated with;⁴⁰⁵
- she accepted that the intention of the NQS is to raise the bar on quality and continuous improvement in children’s education and care services but does not agree that this happened in practice, as it may have raised the bar in some areas but not others;⁴⁰⁶
- she believed that the number of centres rated “exceeding” under the NQS had significantly declined in the last few years;⁴⁰⁷
- the educational program under the QIAS system was exactly the same as that under the EYLF, except it did not have to link to a specific learning framework and had no requirement to have links to documentation showing individual children’s developmental outcomes;⁴⁰⁸ and
- in her centres, children are assessed in their progress against the EYLF once a term and parents are provided with a report.⁴⁰⁹

Merran Toth

[508] Merran Toth is the Approved Provider and Managing Director of two long day care centres, Sandon Point Children’s Centre and Balgownie Early Learning Centre in New South

⁴⁰¹ Ibid, PNs 9734-9735

⁴⁰² Ibid, PNs 9744-9756

⁴⁰³ Ibid, PNs 9760-9764

⁴⁰⁴ Ibid, PNs 9782-9783, 9785-9787

⁴⁰⁵ Ibid, PNs 9800-9802

⁴⁰⁶ Ibid, PNs 9905-9909

⁴⁰⁷ Ibid, PNs 9915-9916

⁴⁰⁸ Ibid, PNs 9983-9995

⁴⁰⁹ Ibid, PNs 10040-10047

Wales. Prior to owning and operating these centres, Ms Toth worked as a casual teacher in the public education system (1989-1995) before securing a full-time position as an Integration Teacher at Peakhurst High School (1996-2010). Ms Toth holds a Diploma of Teaching in Primary Education, a Bachelor of Education (Primary Education), Masters in Teaching, Graduate Diploma in Integration Studies and a Certificate III in Children's Services.

[509] In her statement of evidence dated 27 March 2019,⁴¹⁰ Ms Toth said that she is responsible for the day to day operational and financial leadership of the two centres, prepares and implements company policies for the centre and ensures work is performance according to those policies. Ms Toth also oversees the development and delivery of educational programs at the centres, guides educators towards a greater understanding of child development and how to deliver an effective educational program. Ms Toth also regularly participates in training and reading research to ensure the centres' programs and practices are sound and assists educators to identify improvements to the programs with a view to reducing documentation and increasing the quality of interactions with children and families.

[510] Ms Toth said that it is critically important for teachers to practise autonomous teaching at the centres which ensures children's interests are brought to the fore and are central to the learning experiences provided to the child. Ms Toth said that all employees are responsible for contributing to educational programs which involves consulting using web-based programming to take photographs of the children throughout the day, making notes based on their interactions and planning programs based on this. The development of programs, she said, may also involve consultation with therapists and family members to meet the individual needs of each child. She also said that staff will reflect on the program every fortnight as a group to evaluate its effectiveness and to ensure it remains useful. She also said that every few months, the staff meet to discuss the centres' WHS policies and procedures or child protection matters and to discuss any incidents that present new hazards. She also said that some early childhood teachers will assist with amending centre policies to comply with changes to the National Law, the National Regulations, the WHS Act and the NQF. She said she is acutely aware of the shortage of qualified early childhood teachers that are experienced and competent in their role and in her experience, there are personal qualities that are critical to being a successful early childhood educator and these are not necessarily present in some of the early childhood teachers she has employed in her centres.

[511] Ms Toth said that the daily duties of an early childhood teacher at her centre include greeting the children and families when they arrive at the centre, completing administration such as receiving messages about children's needs for the day or medication requirements, engaging the children to assist with setting up indoor and outdoor spaces and settling distressed children, marking the roll and directing and supervising children in play areas, taking notes and photos of the children's work as needed and assisting children with morning tea. Ms Toth said that all early childhood teachers and educators participate equally in daily activities.

[512] Ms Toth said that compared to her experience as a teacher in a secondary school, the work in early childhood centres is quite different to the requirements under the NQF. In comparison to schools, the learning in early childhood centres is much less structured, is undertaken by many educators (including early childhood teachers) in a group setting, there is no detailed curriculum or course materials, there are no blackboards, chairs and desks, there is

⁴¹⁰ Exhibit 99

no requirement for the children to demonstrate they have learned particular skills of assessment processes and there is a greater amount of time spent dealing with the care routines of very young children.

[513] In her oral evidence, Ms Toth stated that:

- A day in the life of one of Ms Toth’s centres typically involves staff arriving and stocking their belongings, unlocking the centres and opening the centre, greeting children and families when they arrive and getting “information downloaded” to them regarding the children’s needs or medications, facilitating and supervising indoor, outdoor group activities and free play, supervising morning tea, lunch and afternoon tea, developing and planning future programs, preparing the children for rest time or, for pre-schoolers who don’t sleep and facilitating quiet activities such as guided meditation, yoga and visualisation activities, outdoor or indoor activities after rest or quiet time prior to pick-up.⁴¹¹
- There is no difference in the routines or duties between non-bachelor qualified educators and early childhood teachers at the centres, except for the former being unable to administer first aid.⁴¹²
- The education program planning completed by staff and developed from observations from children throughout the day will involve completing developmental checklists and comments, researching news ideas for weekly activities and critically reflecting on their own teaching practice and the program with regards to social justice, gender bias and the community.⁴¹³
- In regard to technology, Ms Toth’s centres use Quick Kids Kiosk (an app for parents to sign their children in and out of the centres) and KeptMe (a web-based platform for entering observations of children and developing quality improvement plans) which allows for parental input and feedback.⁴¹⁴

Shelley Prendergast

[514] Shelley Prendergast is the owner and Approved Provider of three childcare centres located in Western Australia under the brand Sonas Early Learning and Care. She began working as an early childhood educator in 1994. During her career, Ms Prendergast has managed the operations of over 150 childcare centres.

[515] In her statement of evidence dated 25 May 2018,⁴¹⁵ Ms Prendergast described her role as owner and Approved Provider as looking after the operation of the centres at a high level (including planning, quality of service and human resources) and she said that this was distinct from the role of Centre Directors who look after the day-to-day management of the centres, including managing their teams and the day-to-day care and education of the children. She also

⁴¹¹ Transcript, 2 July 2019, PNs 6815-6842

⁴¹² Ibid, PN 6844

⁴¹³ Ibid, PNs 6847-6849

⁴¹⁴ Ibid, PNs 6867-6871

⁴¹⁵ Exhibit 106

commented on the impact of the regulatory change on the centres in 2012 when early childhood teachers were required to be engaged. Ms Prendergast said that early childhood teachers were required to be paid in accordance with the EST Award, which mandated higher rates than the CS Award and wages were often increased to above-award wages in order to attract and retain those early childhood teachers.

[516] Ms Prendergast said that Centre Directors together with Approved Providers are responsible for developing and implementing the NQF or the Australian Curriculum, creating and maintaining a QIP, ensuring workplace policies are implemented, updated or followed, ensuring children's safety and that the needs of children with additional needs are met, managing the development of children and engaging with the EYLF. Ms Prendergast stated that for early childhood teachers, daily duties may differ between centres with an early childhood teacher at her Wattle Grove Centre performing the tasks of both an early childhood teacher and Centre Director. She said this early childhood teacher is not required to be registered by the Teachers Registration Board unless they are delivering an educational program. She also said that all staff at the centres, including educators who are not working towards a teaching degree, are required to participate in programming which involves working as a team to carefully choose activities and develop daily activity programs for the children which are dynamic, responsive to the children and exposing them to new content.

[517] In her statement dated 1 July 2019,⁴¹⁶ Ms Prendergast gave evidence about the differences between the QIAS and its successor, the NQF. She stated that under the QIAS, accreditation was effectively mandatory as it was a requirement to access childcare subsidies. The accreditation process involved registration, self-study and continuing improvement, validation, moderation and an accreditation decision. The NQS stipulates that educators are required to participate in self-assessment and Assessment and Rating Visit. Ms Prendergast stated that in her experience, the Assessment and Rating Visit under the NQS is less stressful than the validation visits under the QIAS because there is less emphasis on the provision of records and documents to demonstrate historical compliance than there was under the previous system.

[518] Ms Prendergast stated that observations are not a new development, as she learned about them in her training in 1991, however the approach taken to observations had changed in the sector and would probably continue to change over time. Her understanding of what is required under the EYLF is that each child be observed and that a learning journey can be demonstrated, which she said was no different to what was required and what was done prior to its introduction. She said that the EYLF does not require a certain number of observations or a certain number of reports. She stated that technology such as the Xplor app makes it easier for educators to take observations, for example, if a photo an educator has taken shows a significant step in a child's learning, the app allows them to create an observation, include a photo and link it to an EYLF outcome. In respect of programming, Ms Prendergast stated that all staff contribute to the program and are allocated at least two hours per week to program, however this can vary depending on the programming or documentation to be completed, the number of children present and the number of staff available. When less children come in, less staff may be required on the floor and there is more time to program and complete documentation. She said that none of her staff are expected to do any work outside of their working hours and as far as she knows, none of them do.

⁴¹⁶ Exhibit 107

[519] In cross-examination, Ms Prendergast gave the following evidence:

- she believes that childcare centres should be required to employ an early childhood teacher with the relevant qualifications for the 0-3 years old age group, rather than the older age group;⁴¹⁷
- childcare centres should be required to employ a university qualified early childhood teacher because they are trained to think more deeply and are taught theoretical perspectives of early childhood development compared to diploma qualified educators, especially given this is the most important time of a child's life, the opportunities for learning are not available to those children later on if the foundations aren't built in those first few years;⁴¹⁸
- in Western Australia, there is a non-compulsory year of pre-kindergarten taught at schools by early childhood teachers applying the EYLF in a format adapted by the WA Education Department, called the Western Australian Kindergarten Curriculum;⁴¹⁹
- she accepted that parents generally view what occurs in long day care centres as childcare where children are cared for and also receive some socialisation, and parents' demand for formal education commences when they move to school;⁴²⁰
- the majority of early childhood teachers in Western Australia are employed by schools rather than long day care centres;⁴²¹
- in her experience, it is difficult to recruit graduate early childhood teachers to work in long day care centres because many students completing a tertiary early childhood qualification would prefer to work in schools once they complete their degree due to better conditions of employment;⁴²²
- the majority of applicants for vacant positions in her centres are students completing a tertiary early childhood qualification who are at least 50 per cent through their degree;⁴²³
- she thinks that early childhood teachers are not applying for jobs in the sector because of the remuneration;⁴²⁴
- she could increase remuneration for early childhood teachers in her centres but she has a whole workforce of people who work just as hard as early childhood teachers

⁴¹⁷ Transcript, 3 July 2019, PN 7903

⁴¹⁸ Ibid, PNs 7904-7905

⁴¹⁹ Ibid, PNs 7956-7966

⁴²⁰ Ibid, PNs 7996-7998

⁴²¹ Ibid, PNs 8006-8007

⁴²² Ibid, PNs 8008-8010, 8013-8015, 8112-8115

⁴²³ Ibid, PN 8115

⁴²⁴ Ibid

and in most cases deliver the same outcomes and wants to keep an even playing field between employees;⁴²⁵

- there was no *legal* obligation to have an educational program based on an approved learning framework under the QIAS like there is under the NQS and EYLF, and the obligation under the QIAS was derived from an accreditation program which linked subsidies to parents;⁴²⁶
- the EYLF contains learning outcomes which are not prescriptive, for example, it does not say at what age a child should be able to cut paper with scissors or hold a pencil but rather provides a broad guide to assist educators to plan programs of which skills they need to learn based on their developmental progression;⁴²⁷
- prior to the regulatory changes in 2012 requiring centres to employ early childhood teachers and pay them in accordance with the EST Award, her centres did not employ many early childhood teachers, and those that were employed at this time were employed as diploma qualified and paid in accordance with the CS Award to adhere to the regulatory scheme in place at the time;⁴²⁸
- since 1994, the QIAS was amended several times, each time placing a higher expectation on educators to improve the quality outcomes they were providing to maintain accreditation;⁴²⁹
- the QIAS didn't mandate any staff/child ratios, staff qualifications, a curriculum or learning framework in order to achieve the standards, or identify learning outcomes for children attending long day care centres, but she thinks it did specify that children have the opportunity to learn in or be exposed to experiences that would progress them through developmental domains;⁴³⁰
- the QIAS did not apply to early childhood teachers teaching a kindergarten or preschool program in school settings in Western Australia;⁴³¹
- the introduction of the NQS didn't change the way educators worked with children; what changed was how the assessment of educators took place, including in respect of the QIP, and she felt that the work created by these changes was something an Approved Provider or manager should be responsible for;⁴³²
- the obligation to produce documentation for accreditation purposes has not changed with the introduction of the NQS, however instead of requiring centres to produce a

⁴²⁵ Ibid, PN 8016

⁴²⁶ Ibid, PNs 8018-8026

⁴²⁷ Ibid, PN 8080-8083

⁴²⁸ Ibid, PNs 8094-8095

⁴²⁹ Ibid, PNs 8177-8181

⁴³⁰ Ibid, PNs 8275-8280

⁴³¹ Ibid, PN 8211

⁴³² Ibid, PN 8229

certain number of observations per child, assessors now request to see the learning records of only a handful of children;⁴³³

- under the QIAS, assessors were looking for documentation evidencing what staff were doing to help children reach whatever milestone that they were reaching, whereas now under the NQS, they are looking for how they are working towards EYLF outcomes and what they are doing to provide opportunities for children to become confident learners, not for children to have achieved outcomes in any learning records;⁴³⁴
- developmental milestones are not contained in the EYLF as they were prior to its introduction, but have since been re-introduced by the AQECQA albeit on a non-compulsory basis;⁴³⁵
- technology has not changed the workload for educators in respect of taking observations, as it is just a different mode and a different mechanism to record children's learning and development;⁴³⁶
- the requirement for educators to engage in critical reflection of the outcomes that have been achieved and how they can be altered to achieve better outcomes as prescribed by the NQS is not new, however she accepted that most services may not have been evaluating to that same depth prior to its introduction;⁴³⁷ and
- educators now have training and support in dealing with children with special needs or from traumatic backgrounds and access to funding and support services, which were not available in the early 1990s.⁴³⁸

Gary Carroll

[520] Gary Carroll is the CEO and Managing Director of G8, which provides care and education facilities in Australia and Singapore. G8 holds a market share of approximately 6.8% and owns and operates around 500 centres in Australia under approximately 50 subsidiary companies. The centres are long day care centres and the majority of them also offer kindergarten or preschool services. Mr Carroll holds a Bachelor of Commerce and a Bachelor of Laws, and is a certified practising accountant.

[521] In his statement of evidence dated 22 May 2018,⁴³⁹ Mr Carroll described the responsibilities of early childhood teachers. He said that like educators, early childhood teachers must exercise a degree of personal responsibility to work in accordance with the National Law and G8's policies. At his centres, there is no hierarchy in respect of educators and early childhood teachers. Graduate early childhood teachers are not always where he would expect

⁴³³ Ibid, PN 8340

⁴³⁴ Ibid, PN 8361

⁴³⁵ Ibid, PNs 8391-8393

⁴³⁶ Ibid, PNs 8426-8437

⁴³⁷ Ibid, PN 8446

⁴³⁸ Ibid, PNs 8492, 8498-8502

⁴³⁹ Exhibit 94

them to be when they join his centres, so they are supported by a more senior member of the team, which can be an educator. Mr Carroll said that G8 pays its employees under the CS Award and the EST Award as a starting point and their rate of pay may be higher as a result of market conditions and their relevant experience.

[522] Mr Carroll's evidence was that the level of regulation in early childhood operations and children's services is comparatively high when set against other industries, and that virtually every aspect of a centre's operations is impacted in some way by the NQF, National Law and National Regulations. He referred to changes to teacher/child ratios scheduled to take place in 2020, in which services with more than 60 licensed places will be required to employ two early childhood teachers, rather than a single early childhood teacher or access to an early childhood teacher 20% of the time. In terms of leaders within a centre, Mr Carroll said he likes to have a mix of personnel in each position, which may be an educator or an early childhood teacher. With respect to Educational Leaders, he stated that the Queensland Government encourage centres to appoint someone other than an early childhood teacher to the role.

[523] In his statement of evidence dated 29 March 2019,⁴⁴⁰ Mr Carroll said that, as of 1 October 2018, G8 had increased early childhood teachers' remuneration to a uniform percentage amount above the minimum wage rates provided in the EST Award (the precise amount is confidential). Mr Carroll said that the increase was primarily designed to attract and retain early childhood teachers, which was challenging as the sector had to compete with schools, and that the increase provided was sustainable and allowed G8 to remain competitive in the sector without passing the cost onto families. Mr Carroll said that paying the award rate was causing attraction and retention challenges for G8, and the increase to early childhood teacher wage rates has added to G8's value proposition for early childhood teachers and has assisted with attraction and retention. This had in turn reduced the turnover in early childhood teachers and allowed each G8 centre to provide a more consistent, quality education offering to children and families, which would drive increased occupancy and improved financial performance over time.

[524] In his oral evidence, Mr Carroll said that:

- G8 is the largest for-profit early education provider in Australia, with almost 10,000 employees (with a full-time equivalent basis of approximately 7,700 employees);⁴⁴¹
- of these, around 550 are early childhood teachers and 9,250 are diploma or Certificate III qualified educators;⁴⁴²
- he accepted that the early childhood industry is in the growth phase of its life cycle, due to the supply of new centres increasing and is expected to outperform the wider economy until at least 2023;⁴⁴³

⁴⁴⁰ Exhibit 95

⁴⁴¹ Transcript, 2 July 2019, PNs 6492-6495

⁴⁴² Ibid, PNs 6617-6618

⁴⁴³ Ibid, PNs 6507-6510

- the focus of the childcare sector has been gradually shifting from being primarily care-based to being a mix of care and education, and the starting point for early learning is being determined by the centre earlier and earlier;⁴⁴⁴
- the NQS and the National Law, in addition to a growing body of research which demonstrates the power of early learning on a child's brain development, has shifted the focus of the childcare sector onto increasing the qualifications of staff providing early learning outcomes;⁴⁴⁵
- in terms of demand and supply for childcare services, he had seen projections that the market is to be more in balance in the next 12-24 months;⁴⁴⁶
- the government's childcare subsidy introduced in 2018 increased demand at his services, both in terms of existing families taking additional days and also new families;⁴⁴⁷
- improving retention in centre managers and early childhood teachers improves parental engagement, as parents like the continuity of the same teacher in the kindergarten room;⁴⁴⁸
- early childhood teachers are recruited from other long day care centres and the school system, as graduates from universities, upskilling existing G8 diploma-educated staff, and students completing an early childhood teacher tertiary qualification who are more than halfway through their studies who may be treated as a teacher for regulatory requirements;⁴⁴⁹ and
- the difference between teaching in schools and in an early childhood education and care setting is due to the setting and the framework. The EYLF is a play-based curriculum, whereas the primary school framework is a classroom-based curriculum. In terms of setting, children in his centres play about 4-5 hours a day outside whereas in a primary school, children spend the vast majority of their time in a classroom environment at a desk.⁴⁵⁰

C.7 AFEI submissions

[525] The AFEI submitted that the IEU's work value claim did not meet the threshold requirement of establishing that a variation to the EST Award is justified on work value grounds, and that the rates of pay claimed by the IEU could not be included in the EST Award because they are contrary to, or are not necessary to achieve, the modern awards objective or the minimum wages objective. The AFEI submitted, in respect of the assessment of work value, that the wage-fixing principles established by the AIRC are directly relevant to any proposal to

⁴⁴⁴ Ibid, PN 6521

⁴⁴⁵ Ibid, PNs 6522-6523

⁴⁴⁶ Ibid PN 6539

⁴⁴⁷ Ibid, PN 6539, 6553-6554

⁴⁴⁸ Ibid, PNs 6575-6577

⁴⁴⁹ Ibid, PNs 6625-6629

⁴⁵⁰ Ibid, PN 6691

vary minimum wages under s 157, due to the statutory mandate for awards to include terms only to the extent necessary to achieve the modern awards objective or the minimum wages objective. In particular, it was submitted that the following wage-fixing principles are necessary to ensure a fair and relevant minimum safety net:

- fixing rates that are relative to classifications in other minimum rates awards;
- the avoidance of double-counting of work value reasons; and
- the avoidance of leapfrogging.

[526] The AFEI further submitted that the job evaluation evidence comparing the work value of teachers and professional engineers shows that there is no basis for any increase to teachers' minimum wages on work value grounds, that the variation proposed by the IEU would result in unfair and irrelevant margins in minimum wages between the EST Award and other modern award classifications, and the proposed rates would discourage enterprise bargaining.

[527] In respect of the relativity between teachers and the classification structure in the *Metal, Engineering and Associated Industries Award 1998* (Metal Industry Award 1998), the AFEI submitted that more would be required than simply holding a degree in order for the C1 classification (180% of C10) to be appropriate, and the requirement for minimum degree training for C1 in the Metal Industry Award should not be viewed in isolation from other work value factors likely to be relevant to a C1 classification. However, insofar as there is a differential between a degree-trained C1 (at 180% relativity to C10) and a graduate professional engineer/scientist (potentially 125% relativity to C10), it would be an oversimplification to treat the reason for the differential as being only related to an ability to perform the work unsupervised or with minimum on-the-job training. The AFEI pointed to the classification descriptor for the C2(b) classification in the Manufacturing Award as requiring not only the completion of an advanced diploma or equivalent but also the completion of sufficient training to fulfil the requirements of the role. It also relied upon indications of the nature of the work, level of skill and responsibility, and conditions under which the work is performed, in the C2(b) classification descriptor. The AFEI submitted that the specialist technical nature of the work, complexity of the work, high level of autonomy and responsibility, co-ordination of projects and staff, and expectation of mature knowledge, and originality indicate that more is required to be at C2(b) (or 160% relativity) than simply being able to perform work in a position that requires minimal on-the-job training, and indirect supervision, as a graduate. It further submitted that the Level 3 rate in the PE Award, described as C1(b) or 175% relativity to C10, would inevitably involve a higher work value than C2(b); therefore, to the extent that the IEU claims an appropriate starting point for teachers as being 180% or 175% of C10, the work value of a teacher would need to exceed that of a C2(b), and it does not suffice in that connection to say that teaching requires a degree.

[528] The IEU, it was submitted, had not produced any evidence comparing the work value of graduate teachers to graduate professional engineers or scientists, or comparing the work value of graduate teachers to professional engineers or scientists performing the full professional role, noting that the IEU did not rely on the Mercer Report to support its work value claim. The AFEI, by contrast, relied on the Egan Report which scored the work value of a graduate early childhood teacher as 94% of that of a graduate professional engineer and scored the work value of a Level 5 Teacher as 88% of the Level 2 Professional Engineer. Accordingly, the AFEI submitted, the relativities sought by the IEU, both internally and as compared to professional engineers, were not justified on work value grounds.

[529] In relation to the now-rescinded NSW *Crown Employees (Teachers in Schools and TAFE and Related Employees) Salaries and Conditions Award* (NSW School and TAFE Teachers Award), the AFEI submitted that this was irrelevant to the teachers the subject of the IEU application because:

- (a) The NSW School and TAFE Teachers Award covered employees of the NSW Department of Education and Training, and did not cover teachers outside of NSW, teachers in independent schools or teachers in the non-government early childhood sector. The findings of the NSW IRC in *Re Crown Employees (Teachers in Schools and TAFE and Related Employees) Salaries and Conditions Award*⁴⁵¹ (*NSW School Teachers decision*) did not include evidence in relation to these categories of teachers.
- (b) The NSW Government Schools Teaching Service operated pursuant to the framework established by the *Teaching Services Act 1980* (NSW). That Act conferred broad statutory authority with respect to the transfer, discipline and termination of teachers which are notably different to those applying to teachers in independent schools or early childhood centres.
- (c) The NSW IRC rejected parity between early childhood teachers and school teachers in 1990, 2001 and 2009.

[530] The AFEI also submitted that the rates in the NSW School and TAFE Teachers Award do not demonstrate undervaluation of the rates in the EST Award because:

- (a) The NSW School and TAFE Teachers Award rates were set pursuant to a statutory mandate to set “*fair and reasonable conditions of employment*” for employees, as distinct from the safety net of fair minimum rates of pay required by the FW Act.
- (b) It cannot be inferred that the rates of pay in the NSW School and TAFE Teachers Award were fixed purely on the basis of work value. While the IEU’s case referred to a number of NSW IRC decisions to increase rates of pay in the NSW School and TAFE Teachers Award on work value grounds from 1990-2009, it provided no evidence of any total valuation or total scoring of the work value of government-school teachers and the assignment of a rate commensurate to the score, or any other evidence to verify that the rates set in that award were based on work value alone. It was not possible to identify the basis upon which earlier agreed rates, to which later work value increases had been applied, were established.
- (c) The rates in the NSW School and TAFE Teachers Award bore no stated relationship to rates in federal minimum-rate awards, and accordingly there was no meaningful basis for comparison.

⁴⁵¹ [2004] NSWIRComm 114, 133 IR 254

[531] In relation to the IEU's evidentiary case, the AFEI submitted that the small number of teacher witnesses providing evidence in support of the IEU's application meant that it would be difficult for such evidence to be informative of the experiences of all teachers in a single workplace, or a State/Territory, let alone all teachers in the entire national system. That evidence had predominantly been from teachers in NSW, with some evidence coming from Queensland, Victoria and the ACT. It did not depict the teaching profession across the whole country.

[532] The AFEI also submitted in relation to the IEU's evidentiary case that:

- certain aspects of change relied upon by the IEU, such as increased reliance on technology, should not be treated as involving a change in work value;
- it is clear from the evidence that the main function of a teacher has been, and continues to be, the creation and delivery of developmentally appropriate learning material to children, and the use of technology had not fundamentally changed this;
- the evidence suggests that the EYLF did not change the way that work is performed, but standardised nationally what was, or should have been, already occurring; and
- a number of the witnesses bore additional responsibilities such as being appointed as a Director, Educational Leader or Nominated Supervisor, and it is necessary to exercise caution in distinguishing between their duties and the minimum requirements of the classifications in the EST Award.

[533] The IEU's claim for the decompression of relativities, it was submitted, should be rejected because the flat dollar increases in previous national minimum wage decisions had the effect of compressing internal relativities across the entire award system, and it would not now be appropriate to unwind this for a single award. The AFEI also submitted that disregard for the internal and external relativities in minimum award rates would inevitably impact on the relevance and fairness of those rates. Further, the rates proposed by the IEU would create an artificially high safety net which could largely, if not entirely, displace enterprise bargaining, particularly in the early childhood sector.

C.8 Submissions of other interested parties

Australian Council of Trade Unions

[534] The Australian Council of Trade Unions (ACTU) supported the IEU's work value application and urged the Full Bench to grant the increases sought. The ACTU submitted that the EST Award contains rates of pay that are manifestly unfair and inadequate and considerably below the rates necessary to achieve the modern awards objective. In respect of work value, it submitted that there have been significant changes in the work of early childhood teachers over the past two decades due to increased professionalism, work complexity and work intensity in the sector and award rates have not shifted to consider work value changes in the sector since at least 1996. It submitted that most early childhood teachers are paid at or only marginally above the award rate and are therefore paid significantly less than primary or secondary school colleagues who are covered by enterprise agreements, despite the fact industrial tribunals have recognised the value of their work. The ACTU supported the IEU's contention that gender-related factors contribute to the undervaluation of this work, such as gendered assumptions

about the role of early childhood teachers as “nurturers” and “carers” of preschool-aged children rather than teachers, early childhood teaching skills being skills that “naturally” occur in women rather than skills that are learned or developed and the discriminatory view that the work of early childhood teachers is not skilful or valuable. The ACTU submitted that the undervaluation of the work of early childhood teachers is unfair and contributes to high turnover and low tenure in the sector, which reduces the quality of educational outcomes for children in their crucial first five years of life.

Australian Education Union

[535] The AEU also supported the IEU’s work value claim and urged the Commission to find that there has been substantial work value change in the work of teachers justifying a substantial increase in the rates of pay under the EST Award. It submitted that it has coverage of early childhood teachers in Victoria including those who work in the long day care sector, except where they are employed by independent schools, who would be affected by any order made in respect of the work value claim. The AEU supported the submissions filed by the IEU on 21 August 2019 and noted the following submissions in particular:

- the current award wage rates are wholly inadequate in that they do not reflect the work value of teachers and the EST Award needs to be amended to meet the modern award objective and the minimum wages objective;
- the overwhelming evidence demonstrates that a teacher is a teacher and the work value of an early childhood teacher is no lower than that of other teachers, noting that they have the same qualifications and in most locations a requirement to meet the same national teaching standards; and
- there have been significant changes in work value that have occurred for teachers over the last two decades, including increased professionalism, the work being substantially more complex and more intense and demanding than it was.

United Voice

[536] United Voice supported the IEU’s work value application and noted generally that the work of all early childhood teachers and educators is undervalued. It submitted that it represents early childhood educators across Australia and their members hold the qualifications of certificate III, diploma or a bachelor’s degree in teaching. It also covers workers in early childhood education and care with no formal education qualifications and there is some variation in coverage across states. United Voice said its position is that there has also been an increased in the value of the work performed by educators holding a certificate III and diploma qualifications who are covered by the CS Award but are not pursuing a work value case of this nature at this stage.

Catholic Commission for Employment Relations

[537] The Catholic Commission for Employment Relations (CCER) is an employer body representing Catholic employers in NSW and the ACT. It said that Catholic employers run Catholic Early Learning Centres (CELCs) on a not-for-profit basis. It made submissions in relation to the IEU’s equal remuneration application which appear to us to be equally applicable to the work value application. It submitted that it recognises there is a disparity in the award

rates of pay for early childhood teachers compared with those paid to primary and secondary school teachers and acknowledged the legitimate aspirations of early childhood teachers for increased rates of pay. At the same time, it submitted, Catholic employers in NSW have limited means to fund the proposed increases as staffing costs represent approximately 80% of the operational budget of CELCs and are reliant on State or Commonwealth Government contributions and subsidies and fees paid by parents. The CCER submitted that if the Commission determines to increase rates of pay, it would be essential that State and Commonwealth Governments fully adjust funding to provide for such increases in a timely way otherwise CELCs would almost certainly need to increase the fees charged to parents. Failure to fund the transition, it said, may have the unintended consequence of forcing many CELCs to reduce the level of service, the number of employees and/ or withdraw from providing some services. The CCER requested that any decision of the Commission to increase rates of pay be phased in to reflect changes in funding and minimise the adverse impact on the provision of services and the rate of employment in its affiliated CELCs.

C.9 Consideration - whether adjustment to EST Award rates justified by work value reasons

[538] In our earlier discussion concerning the statutory framework and principles applicable to the consideration of the IEU’s work value claim, we referred to the Full Bench *Pharmacy Award decision*⁴⁵² as establishing that the judgment required under s 157(2) of the FW Act as to whether a variation to minimum award wages is “*justified by work value reasons*” is relatively broad and unconstrained in nature. It may include but is not confined to whether the work value of the relevant class of employees has changed since a past “datum point” in time when there was last a consideration of the work value of the employee, and may extend to a wider consideration of whether the work of the employees in question has been undervalued. Undervaluation in a broader sense may arise because the award rates of pay for the relevant class of employees have never been fixed on the basis of any assessment of their work value or in accordance with the established principles for the proper fixation of minimum rates.

[539] Consideration of what the datum point should be for consideration of whether there have been any changes to work value in respect of teachers covered by the EST Award, and whether there has ever been a proper consideration of the work value of such teachers, requires an examination of the history of federal industrial relations regulation of teachers.

C.9.1 History of federal award regulation of teachers

[540] Federal award coverage of non-tertiary teachers is a comparatively recent phenomenon, since teachers (whether in government schools, Catholic schools, independent schools, pre-schools or childcare) have traditionally been regulated by State industrial relations systems. The origin of the rates of pay in the EST Award may be traced back to the *Teachers (Victorian Government Schools Interim) Award 1993*⁴⁵³ (Interim GS Award). The circumstances in which this award was made may briefly be explained. Government school teachers in Victoria had previously been covered by the *Teachers (Government Teaching Service) Award*, an award of the Industrial Relations Commission of Victoria made under the *Industrial Relations Act 1979* (Vic). In addition, there were collective agreements which supplemented this award which dealt

⁴⁵² [2018] FWCFB 7621, 284 IR 121

⁴⁵³ Print [L2535](#)

with matters such as staffing arrangements, class sizes and teaching hours. However, under the *Employee Relations Act 1992* (Vic), the Industrial Relations Commission of Victoria was abolished, awards of this Commission expired on 1 March 1993, and employees previously covered by such awards were transitioned into individual employment agreements containing the terms and conditions of the previous award (unless a new award or collective agreement was made). The *Teachers (Government Teaching Service) Award* accordingly expired in accordance with this legislation on 1 March 1993 and, in addition, the Victorian Government by orders made pursuant to the *Public Sector Management Act 1992* (Vic) terminated key provisions concerning teaching hours and class sizes in the then applicable collective agreement. This resulted in considerable disputation in the government schools sector in Victoria, and caused the AEU to seek and obtain dispute findings in the AIRC.

[541] On 15 December 1993 the AIRC (Riordan DP) determined to make the Interim GS Award, which simply preserved the terms and conditions of employment of Victorian Government school teachers as they were at 20 October 1993.⁴⁵⁴ On appeal, an AIRC Full Bench varied the Interim GS Award to clarify its operation by including specific provisions of the former *Teachers (Government Teaching Service) Award* but declined to include provisions concerning teaching hours and class sizes which would maintain the position which had operated under the collective agreement.⁴⁵⁵

[542] In 1995 the AEU applied to vary the Interim GS Award to increase the rates of salary by 4 percent on work value grounds. In a decision issued on 16 October 1995,⁴⁵⁶ a Full Bench of the AIRC dealt on an interim basis with this claim. The Full Bench noted that it had earlier, on 1 September 1995, issued a statement in which it had indicated that it would not proceed to determining the matter until the parties had explored the possible negotiation of a certified agreement. In that statement, which is reproduced in the decision, the Full Bench expressed a number of provisional views, including the following (underlining added):

“(e) the Commission inclines to the view, but has not decided, that the Teachers (Victorian Government Schools - Interim) Award, 1994 is a safety net award made as a first award. The rates were set in 1991 by the Industrial Relations Commission of Victoria (IRCoV) on an “actual rates” basis after a Special Case component of an industrial arbitration process which adopted a national benchmark for teachers’ salary in the IRCoV State Teachers Award and the Australian Industrial Relations Commission’s ACT Teaching Service Award. The rates set for the VTS [*Victorian Teaching Service*] have not been independently evaluated by the Commission for changes since 1991, other than by the addition of two safety net adjustments. For the purpose of an interim application there is no adequate reason for contending the rates should now be adjusted unless it be accepted that there is a compelling special case, or at least a strong case based on some other available provision of the Statement of Principles. The Commission accepts that changes to teaching arrangements and requirements in Victoria since 1992 are among factors which may relevantly be taken into account for purposes of an enterprise agreement, or under the work value changes principle, or as part of a special case.”

⁴⁵⁴ Decision, Print L0454; Award, Print L0553

⁴⁵⁵ 25 March 1994, Print L2535

⁴⁵⁶ Print M6311

[543] Having found that there was no reasonable prospect of the parties reaching agreement, the Full Bench proceeded to determine the AEU's claim on an interim basis, and stated the following conclusions:

“In relation to the AEU claim for a 4% interim increase we are not satisfied we should make an award in the terms sought. It is not necessary or appropriate at this stage of the proceeding to develop our reasons other than to state that we are not persuaded that the movement of existing classification rates by 4% on an interim basis is compatible with a proper final determination of the matter. However, we are satisfied in all the circumstances that a modest interim increase to the current award classification structure should be made. We consider that the minimal outcome of our arbitration of a final award will be an increase in excess of 1.8% to the existing interim salary rates. Accordingly, we will grant an interim increase to award rates of 1.8%.

We are satisfied that on the material presented to this point, an increase of that dimension to award classification salary points is justifiable by reference to considerations of significant net additions to work value. There is no issue about there having been work changes since October 1992; it is the character and impact of the general changes in application to the work value principle which are challenged by the DSE. We consider that there is a strong case that there have been significant net additions to work of a character which demonstrably have warranted consideration as factors consistent with upgrading within the existing attenuated classification structure for teachers under the Award. The DSE has acknowledged that work value changes are among the factors taken into account in the decision to introduce the new PRP classification structure as an overaward payment available on election by individual teachers. We note that the effect of an increase of about that size will be that the rates of employees at award classification level Sub 12 will have been adjusted by about 4% over the period which has elapsed since the first arbitrated safety net adjustment of the rates in the Award in December 1994. The annual salary of such employees will be just below the current salary Level 2-11 of the PRP classification structure. Two \$8.00 safety net adjustments are also reflected in but absorbed in the PRP classification structure rates currently on offer.”

[544] The “PRP” mentioned in the above passage refers to the Professional Recognition Program, a new career and salary structure for teachers unilaterally introduced by the Victorian Government which was voluntarily accessible by teachers on an individual basis.

[545] As part of a separate series of decision, the AIRC established the *Teachers' (Victorian Government Schools) Conditions of Employment Award 1995* (CoE Award), which initially was made in resolution of a dispute concerning teachers' working hours and workloads.⁴⁵⁷ After this award was made, the AEU applied for its variation in respect of salaries and a new career structure for Victorian Government school teachers. In a decision issued on 1 March 1996,⁴⁵⁸ a Full Bench of the AIRC decided to vary the CoE Award to provide for a classification and pay structure which, subject to some modifications, replicated the PRP. Of relevance to the current proceedings, the Full Bench said:

⁴⁵⁷ 24 February 1995, Print 23; May 1995, Print M2054

⁴⁵⁸ Print M9746

“With respect to the Commission’s wage fixing principles, the AEU submitted their application in this matter came within the provisions of the Commission’s Statement of Principles at Attachment A to the Third Safety Net Adjustment and Section 150A Review October 1995 Decision (the October 1995 decision) [Print M5600] concerning special cases and perhaps work value changes. However, the State of Victoria and the Minister for Education (Victoria) submitted the first award provisions of those principles are relevant.

We believe the Teachers (Victorian Government Schools - Interim) Award, 1994 [Print L3637 [T0426]], made by a Full Bench on 1 June 1994 comprising Boulton J, Harrison DP and Frawley C, constitutes the first award of this Commission for teachers in government schools in Victoria.

....

The special case provisions of the Statement of Principles attached to the October 1995 decision are contained in paragraph 3.3 of those principles concerning “Making and Varying an Award Above or Below the Safety Net”. Paragraph 3.3 of the Statement of Principles provides as follows:

‘Generally an application to make or vary a minimum or paid rates award for wages and/or conditions above or below the award safety net shall be referred to the President for consideration as a special case. A party seeking a special case must make an application pursuant to s.107 supported by material justifying the matter being dealt with as a special case. It will then be a matter for the President to decide whether it is to be dealt with by a Full Bench. Exceptions to this process are applications which fall within the provisions in the Statement of Principles dealing with a Consent Award or Award Variation to Give Effect to an Enterprise Agreement and with a First Award and Extension to an Existing Award.’

We are satisfied there is a special case in this matter. It arises out of a combination of circumstances but is constituted particularly by the unilateral implementation of the PRP in response to and as an agent of structural change in teaching work since the current award structure and rates were established through the processes of the Industrial Relations Commission of Victoria (IRCoV) in which there was a significant degree of consensus between the industrial parties. That change is linked with other changes to teaching arrangements and requirements in government schools in Victoria, particularly those associated with the Schools of the Future Program. Further, notwithstanding the changes since 1991 the salaries of the teachers who have not joined the PRP have only moved by the two \$8 per week arbitrated safety net adjustments and the 1.8% interim increase awarded by the Commission while PRP teachers, as earlier indicated, have received and are to further receive salary increases substantially in advance of this.

As we said in our Statement of 1 September 1995:

‘(The State of) Victoria has acknowledged, and the Commission notes, that some changes to (teachers’) work and work organisation since 1992 are already assimilated and are of a character properly to be taken into account as productivity enhancing measures contributing to the classification changes and salary increases reflected in the PRP classification structure. ...

... The Commission accepts that changes to teaching arrangements and requirements in Victoria since 1992 are among factors which may relevantly be taken into account for purposes of an enterprise agreement, or under the work value changes principle, or as part of a special case.”

[546] In deciding to adopt the PRP as the basis for the new classifications and salary structure, the Full Bench said:

“The AEU put that we should recognise and be guided by the fact that the existing award career structure for teachers in government schools in Victoria was established by the former IRCov after much careful consideration. Accordingly, rather than adopt the career structure in the PRP, we should integrate the changes to teaching arrangements and requirements in Victorian government schools into the present award career structure. The AEU submitted that approach would give necessary recognition to:

- the collaborative and collegiate character of teaching work;
- the need to achieve an appropriate balance between the benefits of individual performance review against the importance of orderly progression through a career path;
- the fact that the existing structure was a response to a need to encourage teachers to pursue a career path in the classroom; and
- the increased management and administrative functions now being performed in schools.

These factors, they maintained, demanded that the career structure proposed by the AEU be accepted.

While we accept there is some force in those contentions and considerations, we are satisfied that they have not been excessively discounted in the alternative career structure proposed by the State of Victoria and the Minister for Education (Victoria) and reflected in the PRP. Moreover we are of the view that we should attach weight to the de facto replacement of the existing award career structure by the PRP structure for those not insignificant number of teachers who have signed up for it. Unless there is good reason to adopt a different approach, we consider the appropriate course is to heed the employer’s priorities in identifying duties and classification requirements related to work performance. Accordingly we have decided that we should adopt essentially the career structure in the PRP and its associated classification definitions and other provisions, although the award will provide for some changes to that career structure.”

[547] Finally, the Full Bench stated the following about the proper characterisation of the CoE Award:

“As earlier indicated, the application in this matter seeks to vary the Teachers’ (Victorian Government Schools) Conditions of Employment Award, 1995. The submissions of the State of Victoria and the Minister for Education (Victoria) were directed towards us prescribing minimum rates. In reply the AEU submitted:

‘The character of the Award is that it is not a paid rates award ... the union has had on foot an application with respect to the paid rates status of the Award. That

application will be progressed at the appropriate time. The union does not concede that the Award, as it is presently framed, is a minimum rates award. It states that the issue of the Award is yet for determination and will be determined in that case...

... the Commission should not, in my submission in this decision, foreclose the question of the status of the Award as it will have to be determined in the application that stands behind the one presently being determined.’

The form of the Teachers’ (Victorian Government Schools) Conditions of Employment Award, 1995 is dealt with in the decisions leading to that award. In light of that and the parties’ positions, at this stage we indicate only that we are satisfied the wages and conditions we have decided to adopt in this matter are fair and enforceable safety net provisions.”

[548] The Full Bench issued a further decision on 5 July 1996⁴⁵⁹ to finalise the form of the variation. The CoE Award that was made provided for a three-level classification structure. Levels 2 and 3 were classifications by appointment only. Level 1 was divided into twelve sub-classifications (described as “sub-divisions”), with annual progression subject to one “hard barrier” after five years’ service. The entry level for a four-year trained teacher was Sub-division 3. The annual salary rates for Sub-divisions 1, 3 and 12 were \$28,030, \$30,135 and \$43,677 respectively.

[549] In parallel with the process by which Victorian Government school teachers moved from State to federal industrial relations regulation, independent school teachers in Victoria also moved to the federal system in the same time period. This began with the making of the *Independent Education (Victoria) Interim Award 1994* (Interim IE Award) by the AIRC (Riordan DP) on 8 September 1994.⁴⁶⁰ No decision accompanied the making of this award. Similar to the Interim GS Award, the award provided for minimum terms and conditions of employment as per the *Independent Schools Award* and the *Independent Schools Superannuation Award* of the former Industrial Relations Commission of Victoria as at 28 February 1993.

[550] On 20 December 1996, the AIRC (Frawley C) made, by consent, the *Victorian Independent Schools - Teachers - Award 1996*⁴⁶¹ (VIST Award). No decision accompanied the making of this award either. The 1996 VIST Award provided for a 12-level classification structure based on annual progression, with a four-year trained teacher starting at Level 3. The annual salary rates at Levels 1, 3 and 12 on and from 1 February 1997 were \$28,400, \$30,600 and \$44,100 respectively. Thus, the consent VIST Award, presumably by design, achieved pay parity with the CoE Award.

[551] Thereafter, the CoE Award and the VIST Award were varied by the AIRC to provide for the standard wage adjustments allowed by annual safety net review decisions.

⁴⁵⁹ Print N2940

⁴⁶⁰ Print L4880

⁴⁶¹ Print N6751

[552] The next development of importance was the making of the *Victorian Independent Schools - Early Childhood Teachers - Award 2004* (ECT Award). The AIRC (Watson SDP) made this award, on the application of the IEU and by consent, on 18 June 2004.⁴⁶² The award applied to early childhood teachers employed by respondent independent schools in Victoria, and was made pursuant to the “first award” principle of the then-applicable wage-fixing principles.

[553] The classification structure provided for in clause 13.1.1 of the ECT Award contained nine pay levels, based on annual progression. A document provided by the IEU at the hearing before Watson SDP compared the rates of pay for Levels 1 and 9 of the proposed ECT Award with the equivalent classifications in the VIST Award (Levels 3 and 12) and with the Metal Industry classification structure. The annual salary rates for Levels 1 and 9 were \$36,838 and \$50,301 respectively. The annual salary rates for the VIST Award for Levels 3 and 12 were, at that time, \$36,757 and \$50,049 respectively, thus making clear the alignment in rates. However, the classifications in the Metal Industry classification structure which the document treated as being equivalent, namely C1(a) and C1(b), had annual rates of \$46,388 and \$52,916 respectively. The document in fact showed that the Level 1 classification in the proposed ECT Award was aligned in terms of salary with the C4 classification in the Metal Industry classification structure.

[554] Senior Deputy President Watson said in relation to the making of the new award (footnotes omitted):

“[6] I am satisfied that the minimum wages prescribed in Part 4 of the proposed award are properly fixed minimum wages having regard to relevant minimum wage rates in other awards. The rates are based on and reflect those fixed in the *Victorian Independent Schools - Teachers - Award 1998* in respect of similarly qualified employees performing teaching duties in the schools. There is nothing to suggest that the early childhood context would warrant different rates. Accordingly, the wage relativities are properly based on skill, responsibility and the conditions under which the work is performed. Further, the minimum rates proposed fall within the range of rates for classifications for similarly qualified employees in the *Metal, Engineering and Associated Industries Award, 1998 Part I* [AW789529].

[7] I am also satisfied that the incremental progression provided for in the award is work value based in the sense required by the *Paid Rates Review* decision, with progression dependent upon the satisfaction of criteria reflective of changed work value. The relevant clause is in the same terms as in the *Victorian Independent Schools - Teachers - Award 1998*, a simplified award of the Commission, and other teaching awards of the Commission.”

[555] The conclusion in the extract above that the ECT Award minimum rates “fall within the range of rates for classifications for similarly qualified employees in the *Metal, Engineering and Associated Industries Award, 1998*” does not appear to us to be correct, and indeed the document provided by the IEU at the hearing demonstrated that this proposition was not correct. It cannot be said therefore that the ECT Award rates were properly fixed as minimum rates of pay in accordance with the principles stated in the *ACT Child Care decision*.

⁴⁶² PR948154

[556] When the AIRC conducted the award modernisation process mandated by Part 10A of the *Workplace Relations Act 1996*, the non-tertiary educational services sector was included in Stage 3 of the process. The AIRC published an exposure draft for the EST Award on 22 May 2009.⁴⁶³ The exposure draft contained the same 12 level classification structure, based on annual progression, as was then contained in the VIST Award. The salary rates proposed were those contained in the VIST Award as produced after the last safety net adjustment by the AIRC and as at 20 August 2005 and then increased in accordance with the decisions of the Australian Fair Pay Commission (AFPC) made pursuant to the WorkChoices manifestation of the *Workplace Relations Act 1996*. The proposed award only covered early childhood education insofar as it was provided by a school.

[557] In submissions in response to the exposure draft, the proposed rates of pay proved not to be controversial, but a number of submissions sought the inclusion of teachers employed in non-school early childhood education. The EST Award was made by the AIRC on 4 September 2009,⁴⁶⁴ and retained the same coverage and salary rates as the exposure draft. However, on 25 September 2009 the AIRC published draft amendments to the EST Award which were primarily directed at extending the award's coverage to teachers in the early childhood sector. On 4 December 2009 the AIRC varied the EST Award in accordance with these proposed amendments.⁴⁶⁵

[558] The following conclusions may be drawn from the above industrial history:

- (1) The salary rates in the EST Award rate are not the product of any comprehensive assessment of the work value of school teachers or teachers in the early childhood education sector that has ever been carried out.
- (2) The VIST Award, from which the EST Award salary rates were derived, was established as a consent award with the inferred objective of achieving pay parity with Victorian Government school teachers covered by the CoE Award.
- (3) The salary rates in the CoE Award were drawn from the actual salary rates payable in Victoria as at 1993, as adjusted to account for developments specific to Victorian Government school teachers in the period 1993 to 1996. This is the only point in the history where wage increases were awarded outside of national wage adjustment decisions. They were not based on any comprehensive assessment of the work of Victorian Government school teachers.
- (4) The awards from which the EST Award salary rates were derived post-dated the structural efficiency process conducted by the AIRC in the 1988-1991 period, and were thus not subject to the requirements of that process. Accordingly, they cannot be taken to incorporate all past work value considerations, as was required in respect of awards that were the subject of the structural efficiency process.⁴⁶⁶

⁴⁶³ [Exposure Draft](#), Educational Services (Teachers) Award 2010, 22 May 2009

⁴⁶⁴ [2009] AIRCFB 826 at [7], [56]-[58]

⁴⁶⁵ [2009] AIRCFB 945 at [40]

⁴⁶⁶ See *National Wage Case Decision*, 7 August 1989, Print H9100, 30 IR 81 at 99

- (5) The award modernisation process conducted in 2009 which led to the establishment of the EST Award adopted the rates in the VIST Award and did not involve any consideration as to whether they fairly reflected the work value of teachers to be covered by the EST Award.

[559] As earlier stated, the IEU advanced the work value change aspect of its case on the basis of a datum point in 1996, when the VIST Award was made. The award history set out above supports a datum point of at least 1996 and, accordingly, the IEU case can be assessed by reference to the basis upon which it was advanced. However, the better view is, we consider, that no clear datum point can be identified by reason of the fact that the work value of school teachers and early childhood teachers has never been the subject of a proper work value assessment in the federal industrial relations system. That itself has significance for the question of whether an adjustment to the rates of pay in the EST Award is justified for work value reasons, as discussed later.

C.9.2 Whether EST Award rates are properly fixed minimum rates

[560] The history of wage fixation for teachers in the federal industrial relations system also gives rise to another relevant consideration: whether the wage rates in the EST Award have ever been properly fixed as minimum rates. In the *Pharmacy Award decision*,⁴⁶⁷ the Full Bench described in detail the development by the AIRC of an approach whereby the proper fixation of award minimum rates of pay required an alignment between key classifications in the relevant award and classifications with equivalent qualification and skill levels in the classification structure in what was originally the *Metal Industry Award 1984 – Part I* and subsequently became the *Metal, Engineering and Associated Industries Award, 1998* (Metal Industry classification structure). We endorse and adopt that analysis without repeating it. It is sufficient for present purposes to refer to the following passage from the *ACT Child Care decision*:

“[155] In the context of the matter before us, the principles established in the *Paid Rates Review decision* mandate a three step process for the determination of properly fixed minimum rates:

1. The key classification in the relevant award is to be fixed by reference to appropriate key classifications in awards which have been adjusted in accordance with the MRA process with particular reference to the current rates for the relevant classifications in the *Metal Industry Award*. In this regard the relationship between the key classification and the Engineering Tradesperson Level 1 (the C10 level) is the starting point.
2. Once the key classification rate has been properly fixed, the other rates in the award are set by applying the internal award relativities which have been established, agreed or maintained.
3. If the existing rates are too low they should be increased so that they are properly fixed minima.”

⁴⁶⁷ [2018] FWCFB 7621, 284 IR 121 at [150]-[161]

[561] The Metal Industry classification structure, as originally formulated, provided for 14 classifications with different qualifications and skill levels. Each classification was assigned a wage relativity, expressed in percentage terms, with the C10 tradesperson classification. However that structure in its current form has been altered in two ways. First, because of flat dollar increases awarded in safety net reviews by the AIRC, in wage decisions of the AFPC and in the initial annual wage reviews of this Commission, the relativities between classifications became compressed. Second, although the full Metal Industry classification structure was incorporated by the AIRC into the modern Manufacturing Award when it was made on 19 December 2008 in the course of the award modernisation process,⁴⁶⁸ the highest Level C1 classification was deleted on 30 December 2009.⁴⁶⁹ This was done on the basis that degree-qualified professional engineers and scientists previously covered by the classification would now be covered by the PE Award. However, the salary rates provided for in the PE Award were not consistent with the relativities originally provided for in the Metal Industry Award classification, and were generally lower than the Level C1 rates which originally appeared in the Manufacturing Award and were themselves the result of the compression of relativities.

[562] It is clear from the industrial history earlier described that the minimum rates in the EST Award are not the product of any proper fixation of minimum rates in accordance with the principles stated in the *ACT Child Care decision*. The Interim GS Award and the and the Interim IE Award were first awards based on pre-existing actual rates, and all subsequent adjustments were made by reference to those first award rates without any proper minimum rate assessment process. The following table sets out the relativities between the current pay rates in the Metal Industry classification as provided for in the *Manufacturing and Associated Industries and Occupations Award 2020*, with the Level C1 rates in italics extrapolated from those appearing in the award as originally made on 19 December 2008 as adjusted consistent with Annual Wage Review increases since then:

Manufacturing Award 2020 classification	Qualification	Original relativity to C10 (%)	Current wage rate (\$)	Current relativity to C10 (%)	EST Award Classification – preschools and schools	Current weekly salary rate- preschools and schools (\$) ⁴⁷⁰	EST Award classification – long day care (\$)	Current weekly salary rate -long day care (+4%) (\$)
Level C1(b)	Degree	210	<i>1462.80</i>	<i>167</i>				
							Level 12	1445.62
					Level 12	1390.02	Level 11	1406.13
					Level 11	1352.05	Level 10	1366.57
					Level 10	1314.01	Level 9	1327.05
Level C1(a)	Degree	180	<i>1297.20</i>	<i>148</i>				
					Level 9	1276.01	Level 8	1287.48
					Level 8	1237.96	Level 7	1247.98
					Level 7	1199.98	Level 6	1211.19
Level C2(b)	Advanced Diploma or equivalent + additional training	160	1186.80	135				

⁴⁶⁸ [2008] AIRCFB 1000, PR985120

⁴⁶⁹ [2009] AIRCFB 996, PR992240

⁴⁷⁰ Current EST Award salary rate in clause 17.1 divided by 52.18 in accordance with clause 17.3

					Level 6	1164.60	Level 5	1174.37
Level C2(a)	Advanced Diploma or equivalent + additional training	150	1137.20	130				
					Level 5	1129.21	Level 4	1134.83
Level C3	Advanced Diploma or equivalent	145	1109.50	126				
					Level 4	1091.18	Level 3	1095.33
							Level 2	1066.31
Level C4	80% towards an Advanced Diploma or equivalent	135	1054.20	120	Level 3	1053.20		
							Level 1	1044.78
Level C5	Diploma or equivalent	130	1026.70	117	Level 2	1025.30		
Level C6	C10 (Trade certificate III) + 80% towards Diploma or equivalent OR 50% towards Advanced Diploma or equivalent	125	1006.10	115	Level 1	1004.60		
Level C7	Certificate IV OR C10 (Trade certificate III) + 60% towards Diploma/45% towards Advanced Diploma or equivalent	115	957.60	109				
Level C8	C10 (Trade certificate III) + 40% towards Diploma/Advanced Diploma or equivalent	110	932.60	106				
Level C9	C10 (Trade certificate III) + 20% towards Diploma or equivalent	105	905.10	103				
Level C10	Recognised Trade Certificate or Certificate III or equivalent	100	877.60	100				

[563] The above table shows that at no point prior to seven years' service (that is, at Level 10) for a preschool teacher or six years' service in the case of a teacher at a long day care centre (Level 9) do the minimum wages for a 4 four-year trained teacher under the EST Award reach the C1(a) or C1(b) relativities originally intended for a worker requiring an undergraduate degree in the Metal Industry classification structure. A four-year trained teacher in a preschool or school receives a starting salary under the EST Award which is equivalent to that for a C4 worker in the Metal Industry classification structure - that is, someone who is diploma-qualified and working towards an advanced diploma - with an equivalent teacher in a long day care centre receiving slightly more than this. These are consequences of the fact that the EST Award rates are not properly fixed minimum rates.

C.9.3 Work value decisions in New South Wales

[564] As earlier discussed, the IEU places reliance on a number of pre-FW Act decisions of the NSW IRC concerning the work value of teachers employed (or then employed) under State awards. We consider these decisions to be of significance to our consideration below concerning whether there have been changes in the work value of teachers covered by the EST Award, and they require some analysis.

[565] Three of these decisions relate to early childhood teachers. The first of these decisions was that of the Commission (Schmidt J) in *Teachers (Non-Government Pre Schools) (State) Award*⁴⁷¹ issued on 14 December 2001 (2001 decision). The decision concerned claims by the NSW IEU for a new minimum rates award and increases in pay for teachers employed in preschools and long-day care centres. The claims, and their background, were described by Schmidt J in the following terms:

“[3] The claims were made in relation to teachers employed in certain preschools and long day care centres. The Union estimated that some 600 teachers were employed in preschools and 2000 in the long day care centres covered by those awards. Some of those were employed in privately owned long day care centres operated for profit. Others were employed in not for profit centres.

[4] The claim for increases in rates seeks to establish rates similar to those provided by awards applying to school teachers in Government and some Catholic schools, with rates for teachers employed in long day care centres, some 4% higher. It is relevant to an understanding of the parties' respective positions as to this aspect of the claim to deal at the outset with the evidence as to the award history. I turn to that matter.

[5] The need to consider the claims here advanced in the context of the relevant award history is an obvious one. Awards do not exist in a vacuum, but are the product of agreements and awards made in the past...

[6] Here, the current awards were made by consent in 1999, with a one year life. A 5% wage increase was then agreed, phased in over the course of the year, together with various alterations in conditions. The agreement was reached on the basis of an acceptance by the employers that the Union remained free to pursue these applications.

(b) ⁴⁷¹ [2001] NSWIRComm 335, 120 IR 3

That agreement reflected a significant departure from a position which had been first agreed in 1970, namely that these teachers should be paid the same as those employed in schools. It was also a departure from the 1990 agreement, that teachers employed in long day care centres should receive 4% more. When the first award for these teachers was made by the Commission, by consent, in 1970, rates for both preschool teachers and those employed in long day care centres were fixed at 80% of those of school teachers, with parity phased in over the period until 1974. That parity was reinstated from time to time over the following years, until 1990, where rates 4% higher than those paid to salaried teachers was agreed for teachers in long day care.

[7] It was not until 1999, when the parties could not agree to a reinstatement of that position, that these proceedings ensued.”

[566] Justice Schmidt noted that this was the first time that the NSW IRC had been called upon to arbitrate the rates of pay for early childhood education teachers, and the first time that the work value of such teachers had been considered since 1990.⁴⁷² The decision then summarised the position of the employer interests in the case as follows:

“[20] While the employers opposed the increases in rates sought in the applications, they made no application themselves to vary the awards in question, seemingly content that they continue to operate undisturbed. Despite this, and in order to support its opposition to the claims advanced, evidence was called by the ACCC from witnesses who called into question the appropriateness and relevance of the existing award arrangements.

[21] Mrs Bardetta, for example, gave evidence that teachers employed in long day care centres were overpaid; that the existing award structure, which like other awards which regulate the employment of teachers in both the Government and non-Government sectors and in both schools and other early childhood centres, requires the payment of increasing salary to teachers holding higher educational qualifications and with greater experience, was inappropriate; that neither such qualifications nor experience warranted additional payment; and that the value of the work that teachers performed in long day care centres was no higher than the value of the work which lesser qualified child care workers employed under the *Miscellaneous Workers’ Kindergartens and Child Care Centres (State) Award* performed, they being entitled to significantly lower rates than those paid to teachers.”

[567] The position described above was rejected outright,⁴⁷³ and Schmidt J then proceeded to consider the respective evidentiary cases of the parties. The competing positions of the parties were summarised as follows:

“[307] The evidence and cases advanced by the parties were difficult to reconcile from a number of perspectives. The Union’s case was that teachers’ work was seriously undervalued, the employers that they were adequately paid - perhaps overpaid. The Union sought large increases in rates, to reinstate teachers to their former wage parity with teachers employed in schools, but the employers resisted any increases at all being granted, leading to an increasing wage disparity, shortly to be in the order of 26%

⁴⁷² Ibid at [15]

⁴⁷³ Ibid at [22]-[23]

between the two groups. The Union argued that the undoubted changes, which have occurred in these industries, have impacted upon teachers in a variety of ways, warranting the awarding of higher rates of pay. The employers' position, at some odds with the views of some witnesses called, was that while changes had occurred, they had not affected the value of the work which teachers had performed and thus no increases were warranted, for either teachers or directors.

[308] There was common concern amongst the parties about the difficulty of recruiting teachers in these industries. The Union argued that increasing rates would stop the move of teachers to the school sector, they being attracted to the better pay and conditions which their training permitted them there to earn. The employers argued that such increases would price teachers out of this market and that the answer was to refuse any increases and for Government to amend the regulatory regime which requires the employment of teachers, so that fewer would be required to be employed.

[309] The Union argued that the skills which teachers possessed were increasingly being called upon by their employers, who were faced with more stringent regulation by Government to ensure that better quality education was being delivered to preschool aged children attending these centres. These requirements were reflecting ongoing international research into the importance of high quality education at these early ages, particularly a growing understanding of the way in which the human brain develops. The employers argued that child care centres in this State were at the vanguard of these developments, delivering high quality care to children, but that in reality, the work of teachers added but little to this picture and that no greater calls were now being made upon teachers' skills to ensure that Governmental requirements were being met; that centres were acting to reduce their licensed numbers in order to remove the obligation to employ any teachers at all and that teachers' work added nothing to the quality of care being provided at their centres, compared to what was being delivered by lesser qualified child care workers.

[310] One immediate observation which must be made about the parties' starkly competing cases, is that the Union's case sought to emphasise the work performed by teachers in delivering the education which children received in the early childhood sector, the employers' case concentrated upon quality care. The two are obviously interlinked, but not interchangeable aspects of the services which are provided by the centres which employ teachers. On the evidence, teachers, like child care workers, have work to perform in both areas."

[568] The decision then referred to the position advanced by some but not all employer child care witnesses that early childhood teachers were overpaid compared to other child care workers:

"[311] ...The ACCC, through witnesses such as Mrs Bardetta and Mrs Skoulogenis, sought to advance a case that teachers were overpaid by way of comparison to child care workers, who were employed to do the same work and were in fact more desirable employees. Witnesses called by the EF, such as Ms Kynaston and Mr Alchin, did not support those views. Union witnesses also disagreed. Apart from Mrs Bardetta and Mrs Skoulogenis expressing such views in the most vehement terms, there was in reality little attempt made to establish a basis for them. There was, for example, no comparison of what the training of the two groups actually involved and no examination of the work

actually performed, other than to observe that these employees worked together with the same children in delivering their care and education. That approach was entirely too superficial a basis to make out the startling views here advanced, especially given other evidence that, for example, while some teachers worked with child care workers as members of a team, others were required to supervise their work and others to train them. The overwhelming evidence was that the quality of understanding and knowledge brought to the work by the two groups differed.

....

[313] I was uncomfortably left with the impression that the views advanced, especially in the evidence called by the ACCC, in relation to comparisons drawn with child care workers, had been overstated in a rather unfortunate way. The evidence does not permit a conclusion to be drawn that teachers are presently overpaid or that these comparisons with the qualifications and work of child care workers was valid.”

[569] Justice Schmidt then stated her conclusion that the evidence demonstrated that the work of early childhood teachers was significantly undervalued:

“[335] It is convenient to state firmly at this point that the evidence led demonstrated change in work of a kind sufficient to satisfy the requirements of the Work Value Principle. It also demonstrated that the work was significantly undervalued.

[336] The time has long passed since teachers employed in the early childhood services sector were regarded as providing merely a child minding or child care service, rather than an educational one, given the ages of the children attending the centres at which they are employed and that they are not employed in schools. Indeed, such views are inconsistent with the Regulations which govern the operation of centres in this sector. They are views which in reality have not had currency since the first consent award was made in 1970 for these teachers, when they were immediately brought up to 80% of the rates paid to teachers in schools and parity was phased in over the following 4 years.

[337] Some 30 years later, the position today is that 3 and 4 year trained teachers employed in this sector have the same training as those employed in primary schools, employed to teach children of up to 8 years of age. Others have specialised in early childhood education. On the evidence children of up to 6 years of age attend these preschools and long day care centres and those as young as 4 years of age attend schools, a considerable period of overlap in age groups. There was evidence of considerable movement of staff between employment in these preschools and long day care centres and schools. It is undoubted that the skills with which such teachers are equipped by their training, is available to be called upon, when employed in either sector and that experience in one sector does not exclude them from employment in the other.

[338] As I have already noted, given the recognition which these awards and their predecessors have long given in the incremental salary scales to the holding of various university degrees and years of experience, I doubt the correctness of the view expressed by Mrs Bardetta, that such education does not appropriately prepare such teachers for employment in these early childhood services or that experience does not add to the value of their work. The overwhelming evidence was to the contrary.”

[570] The specific findings as to changes in the work of early childhood teachers since 1990 made by Schmidt J identified the following matters:

- changes to the way children in preschools and long day care centres are taught, having regard to research into how children learn and how the brain develops;⁴⁷⁴
- changes to the regulatory environment, including in relation to the licensing scheme which required demonstration of best practice through an onerous self-assessment process and in relation to the Commonwealth Quality Assurance Scheme for preschools, and the introduction of child protection legislation and the associated introduction of new policies and work requirements;⁴⁷⁵
- an increased emphasis on school transition, with additional reporting requirements;⁴⁷⁶
- increases in the number of children with special needs, as a result of a removal of the caps on numbers of such children and the integration of children with disabilities;⁴⁷⁷
- increases in the number of children needing to be taught, with consequent increases in the number of children who had to be observed and for whom individual programs had to be prepared, implemented and reported to parents;⁴⁷⁸ and
- involvement in writing or giving feedback in relation to new policies, implementing such policies and communicating them to parents.⁴⁷⁹

[571] Reference was made to the difficulties experienced by employers in recruiting and retaining staff. In relation to this issue, Schmidt J said:

“[391] There was also evidence led in relation to difficulty in recruitment of staff by the preschools and long day care centres covered by these two awards. Some witnesses gave evidence about the desirability of salaries being increased, for attraction and retention of staff. Others doubted whether this would have an impact. Wage increases are undoubtedly regarded as a useful device and are often used by employers for this purpose. Consistently with the requirements of the Act, rates in these awards are fixed as minima and there is thus nothing to preclude employers paying higher than award rates of pay, if they chose. There was indeed evidence that higher rates were being paid by some employers.

[392] It might be the case that such agreements were directed in part to retention or attraction of staff. That is not usually an award provision, although there are exceptions. Awards aiming to provide employees with appropriate career paths, is in part to meet concerns such as these. Nevertheless, the Commission’s wage fixing principles do not provide for attraction or retention payments being awarded. (See the Full Bench in *Local Courts Anomaly Case* at p643). To the contrary, they are concerned to ensure that award rates of pay have regard to matters such as skill, responsibility and the conditions under

⁴⁷⁴ Ibid at [368]

⁴⁷⁵ Ibid at [370]-[374]

⁴⁷⁶ Ibid at [376]

⁴⁷⁷ Ibid at [376]

⁴⁷⁸ Ibid at [377]

⁴⁷⁹ Ibid at [381]

which work is performed. As the various Full Bench decisions earlier referred to have observed, attraction and retention can be but a by-product of the proper fixation of rates of pay by the Commission in proceedings such as these.”

[572] In terms of the effect that any wage increases awarded might have on the viability of employers’ businesses and the employment of employees, Schmidt J said:

“[404] Labour costs account for a large part of operating costs of these services. Wage increases, whether agreed or awarded by the Commission, are undoubtedly likely to be reflected in fee increases for parents, unless increased funding flows from Governments, other operating costs can be reduced, which seems unlikely on the evidence, or in the case of privately owned centres, proprietors are prepared to accept smaller profit levels.

[405] On the evidence, there was no reason to expect that funding increases will emerge, although it seems that there are current discussions underway about the freeze on State funding of preschools, which has been in place since 1990. I have been concerned to take these difficulties into proper account in the award made.

[406] I also have taken the view that the fixing of fair and reasonable conditions of employment should not result in the employees the subject of that consideration being put out of work. The converse is also true. The employees’ rates of pay should not be fixed at such a level that they are required to support what, in reality, would be an unviable business, if fair rates had to be paid for the work in question. Nor should rates be fixed on a basis, which, in reality, had the effect that teachers were required to subsidise the fees which parents should fairly be paying for the service which they are availing themselves of for their children.

[407] It follows that there is good reason to adopt the approach advocated by the Union, in its application for the increases awarded, to be phased in. The Union sought initially to have a significant amount of retrospectivity awarded, but accepted in its closing submissions that a proper basis had not been established for a departure from the normal approach, that increases should operate prospectively.”

[573] The remedy ultimately granted was for an initial pay increase of 5%, followed by five increases of 3% phased in at six monthly intervals.⁴⁸⁰ In relation to the work of directors, Schmidt J found that this had been affected by the changes identified to an even greater degree than teachers, and awarded a total 30% increase to the directors’ allowance, to be phased in over six stages, each six months apart.⁴⁸¹

[574] A Full Bench of the NSW IRC subsequently refused leave to appeal the 2001 decision.⁴⁸²

[575] The rates of pay for early childhood teachers were again the subject of proceedings before the NSW IRC (Wright J, President) in 2005-2006. The matter was initiated by an application by the IEU for a new award containing higher rates of pay, but was ultimately

⁴⁸⁰ Ibid at [411]

⁴⁸¹ Ibid at [419]

⁴⁸² [2002] NSWIRComm 113

resolved by agreement. The decision giving effect to the agreement⁴⁸³ (2006 decision) relevantly stated:

“[8] The Commission was advised of the following details of the consent award proposed by the parties: the first aspect was that there was a 13.5 per cent increase in salaries, payable in three stages. The first increase of 4.5 per cent is operative from the first full pay period commencing on or after today; the second increase of 4.5 per cent will be operative 12 months hence, and the third increase of 4.5 per cent will be operative 12 months thereafter. In other words, the last two pay increases will be operative from the first full pay period to commence on or after 23 January 2007 and 23 January 2008 respectively.

....

[11] The parties are to be congratulated on having reached agreement in these matters. The Commission finds that the proposed awards are consistent with the provisions of the Commission’s wage fixing principles and the provisions of the *Industrial Relations Act 1996*.

[12] Accordingly, the Commission makes a new Teachers (Non-government Early Childhood Service Centres other than Pre Schools) (State) Award 2006 in terms of Exhibit 6 in these proceedings, and also makes a new Teachers (Non-government Pre Schools) (State) Award 2006 in terms of Exhibit 7. Both awards shall commence from the first pay period to commence on or after today and shall remain in force until 31 December 2008. It is to be noted that each award replaces each respective predecessor award.”

[576] The third decision concerned further applications by the NSW IEU for new awards to cover teachers in non-government pre-schools and long day care and to provide for substantial wage increases. The matter was heard by a Full Bench of the NSW IRC and its decision was delivered on 24 November 2009⁴⁸⁴ (2009 decision). The NSW IEU’s case, which was upheld by the Full Bench, had two aspects. First, the NSW IEU contended, wage increases should be granted on special case grounds because of the shortage of early childhood teachers. In respect of this, the Full Bench said:

“[76] We find that a special case has been made out by the applicants for increases to rates of pay under the two Awards. There is a critical shortage of early childhood teachers that is almost certainly going to get worse as the Commonwealth’s policy agenda on early childhood is implemented. As we have noted, without adequate intervention, a shortfall of at least 7000 early childhood education and care workers by 2013 is estimated.

[77] We are satisfied that the very large gap of up to 27 per cent between the pay of early childhood teachers in the non-government sector compared to the government sector, is a significant contributing factor to the teacher shortage. The gap is not justifiable on any test, especially when what is at stake in early childhood education. Ms Press noted in her evidence that the link between poor wages and conditions and the

⁴⁸³ [2006] NSWIRComm 4

(c) ⁴⁸⁴ *Teachers (Non Government Early Childhood Service Centres other than Preschools) (State) Award 2006* [2009] NSWIRComm 198, 191 IR 14

shortage had been identified in numerous reports over recent times. Her unchallenged evidence concluded:

Unless teachers in early childhood programmes achieve wages parity the early childhood sector will continue to be beset with teacher shortages. These shortages seriously erode the quality of children’s care and education and undermine policies designed to improve children’s educational outcomes.

[78] It was submitted for the respondents that the shortage of teachers could not be resolved by industrial means and that a political solution was required. A political solution is not likely to repair the pay gap. Significant extra funds have been made available by governments in relation to early childhood services. We deal with the detail of that funding later in this decision, but part of it is to enable centres to employ more teachers. The Commission may facilitate the application of that funding to employ more teachers by increasing current award rates of pay and, in doing so, assist in ameliorating a major disincentive to teachers being attracted into and retained in the early childhood sector.

[79] In our opinion, for the reasons we have explained the public interest would be best served by increasing rates of pay in the subject awards...”

[577] The second aspect of the NSW IEU’s case was that wage increases were justified on the basis of changes in work value. The Full Bench accepted that, from a datum point of January 2006 (when the 2006 decision was issued), there had been changes in the work of early childhood teachers which had manifested itself in four areas: the teaching regime; administrative responsibilities; client requirements; and regulatory requirements (including the QIAS).⁴⁸⁵ This was found to encompass:

- greater complexity of programming and reporting particularly on child development over recent years;⁴⁸⁶
- parents having increasing expectations for structured education and detailed recording and reporting of their child’s progress;⁴⁸⁷
- an increase in the proportion of children with special needs, intellectual or physical, which had created a more complex environment in catering to a diverse range of special needs children;⁴⁸⁸
- teachers are now required to develop a greater range of policies and review them more regularly;⁴⁸⁹ and
- in relation to regulatory requirements, there were more extensive requirements in relation to accident recording in services, stricter requirements in relation to

⁴⁸⁵ Ibid at [172]

⁴⁸⁶ Ibid at [174]-[175]

⁴⁸⁷ Ibid at [174]-[175]

⁴⁸⁸ Ibid at [176]

⁴⁸⁹ Ibid at [177]

supervision of children while toileting, changed procedures in how animals are handled within the centre, and new standards in relation to food hygiene.⁴⁹⁰

[578] The Full Bench said in relation to the identified work value changes:

“[179] When regard is had to the combination of all of the work value factors that have been addressed in the IEU’s evidence, it is overwhelmingly in support of an increase having occurred in the work value of preschool teachers. However, having regard to the employers’ evidence, we accept that whilst changes had occurred during the relevant period, there were elements of the change that did not constitute a significant net addition to work requirements, that in so far as responsibility was concerned a significant proportion of this had to be borne by the licensee or owner and not teachers or directors, and that some of the changes relied upon by the IEU were more in the nature of evolutionary change to work that had always been undertaken by teachers and directors. These are considerations to be taken into account in assessing the size of any wage increases justifiable on work value grounds.”

[579] The Full Bench also found that there had been an increase in the work value of directors and accredited supervisors due to:

- increased workload as a result of the increasing turnover of Management Committee members;
- the involvement of Committee members in running centres on a day-to-day basis had diminished and contact with those members was now often after hours and in evenings;
- increased involvement in family law disputes including custody disputes, discussions with the solicitors of parents, the role of family counselling and support for single mothers;
- significant government funding changes requiring community consultation, meetings with the department, transference of information to Management Committee and the use of on-line system for updating information;
- the new on-line system for funding;
- increased departmental focus on regulatory compliance, including more frequent compliance visits;
- expectations from parents to be provided detailed reports in relation their children’s progress;
- dealing with policy requirements for the Children’s Services Regulation;
- the requirement to manage the process of indicators required for accreditation;

⁴⁹⁰ Ibid at [178]

- the requirement for directors with a dual role as teacher to work with the committee as pedagogical leader; and
- an increase in responsibility of authorised supervisors.⁴⁹¹

[580] In determining the pay increases it would award, the Commission took into account as “a consideration of the utmost significance in these present proceedings and which was not in 2001 is that both the Commonwealth and State Governments have increased funding of early childhood services very substantially over recent years”,⁴⁹² and set out the details of this.⁴⁹³ In relation to the comparative value of the work of early childhood teachers and school teachers, the Full Bench said:

“[260] Similarly, on this occasion we cannot ignore the rates paid to the counterparts of preschool teachers employed in Catholic and Government schools. As we earlier noted, even if we were to award the full extent of the increases sought, that would still leave early childhood teachers approximately six per cent behind the teachers as of 1 January 2011.

[261] There was insufficient comparative analysis to allow us to conclude that the work value of preschool teachers is precisely the same as their counterparts in Government schools: it may be less, it may be more, it may be the same. Whatever may be the case in that respect, it is patently apparent that it is not a fair and reasonable state of affairs, nor in the public interest, to have preschool teachers being paid 21 to 27 per cent less in salary. This is especially so in circumstances where there is a critical shortage of university trained preschool teachers at a time when a concerted effort is being made by governments to provide universal access to early childhood education. The evidence strongly suggests that unless salary levels are increased teachers will not be attracted to work in preschools and attempts to achieve an exponential improvement in childhood education standards will fail.”

[581] The Full Bench ultimately concluded that it would award three wage increases of 4 percent each, operative respectively from the date of the decision, 1 September 2010 and 1 September 2011.⁴⁹⁴ It also increased directors’ and supervisors’ allowances by 12 percent, in three instalments.⁴⁹⁵

[582] It is useful to compare the salaries outcome of the NSW IRC’s comprehensive work value assessments of the work of early childhood teachers in the 2001, 2006 and 2009 decisions compared to salaries in the federal jurisdiction, in which as earlier explained there has never been a proper work value assessment. At the time the EST Award took effect on 1 January 2010, the rates for a 4-year trained teacher under that award working in early childhood education compared to the two awards made by the NSW IRC arising from the 2009 decision were as follows:

⁴⁹¹ Ibid at [201]

⁴⁹² Ibid at [230]

⁴⁹³ Ibid at [231] – [235]

⁴⁹⁴ Ibid at [266]

⁴⁹⁵ Ibid at [268]

EST Award classification	Salary – Teachers in schools and preschools (\$)	Salary – Teachers in schools and preschools (\$)	Teachers (Non-Government Pre-Schools) (State) Award 2009	Salary (\$)	Teachers (Non-Government Early Childhood Service Centres Other Than Pre-Schools) (State) Award 2009	Salary (\$)
Level 3	40,201	41,809	Step 1	43,946	Step 1	45,704
Level 4	41,701	43,369	Step 2	46,671	Step 2	48,536
Level 5	43,201	44,929	Step 3	49,294	Step 3	51,265
Level 6	44,597	46,381	Step 4	52,205	Step 4	54,292
Level 7	45,993	47,833	Step 5	54,909	Step 5	57,106
Level 8	47,493	49,393	Step 6	57,210	Step 6	59,498
Level 9	48,993	50,953	Step 7	59,494	Step 7	61,877
Level 10	50,493	52,513	Step 8	62,074	Step 8	64,557
Level 11	51,993	54,073	Step 9	64,558	Step 9	67,139
Level 12	53,493	55,633				

[583] The differential in the above table between the NSW IRC award rates for early childhood teachers and the EST Award rates upon establishment illustrate the difference, we consider, between award minimum rates which have been fixed on the basis of a proper work value assessment and those which have not. It may be noted from the above table that there remained a 4 percent pay differential in the two NSW IRC awards between teachers in long day care centres and teachers in pre-schools. This reflected the fact, as explained by Schmidt J in the 2001 decision, that the former work additional weeks in the year and thus had more face-to-face teaching hours.⁴⁹⁶ This is consistent with the wage differential in the EST Award between the same categories of teachers.

[584] The two NSW IRC awards had limited application after incorporated employers were moved into the federal system when the main amendments to the *Workplace Relations Act 1996* effected by the *Workplace Relations Amendment (Work Choices) Act 2005* commenced on 27 March 2006. The terms of the two awards, as they were at that date, became notional federal instruments and were subject to wage adjustments made by the AFPC. The two awards ceased to have any practical application on 1 January 2010 when the *Industrial Relations (Commonwealth Powers) Act 2009* (NSW), under which the State of New South Wales transferred its industrial relations powers in the private sector to the Commonwealth, came into effect. The transitional provisions in Schedule A of the EST Award, in the form it was when it took effect on 1 January 2010, phased down minimum wages for employees in five stages through to 1 July 2014. Thus, NSW early childhood teachers lost the benefit of award minimum wages which had been the subject of a proper work value assessment.

[585] One further NSW decision requires consideration. In the 2004 *NSW School Teachers decision* a Full Bench of the NSW IRC undertook, among other things, a comprehensive work value assessment of the work of government school teachers. The Full Bench concluded, in summary, that the work of school teachers had been the subject of profound change since the datum point of 1991 in the following respects:

⁴⁹⁶ [2001] NSWIRComm 335 at [352]

- “dramatic” changes in curriculum content, structure and theory,⁴⁹⁷ encompassing a requirement for teachers to use and teach information technology;⁴⁹⁸
- the introduction of outcomes-based education, representing a shift in both the philosophy and provision of education services;⁴⁹⁹
- an increase in the pace of curriculum change;⁵⁰⁰
- the implementation of standards-referenced or outcomes-based assessment practices, requiring the exercise of professional judgement in a far more complex and refined manner;⁵⁰¹
- the integration of cross-curriculum areas into teaching, including the State Literacy and Numeracy Plan, with changes in the content, philosophy and focus of the curriculum requiring teachers to develop new ways of teaching to accommodate these changes;⁵⁰²
- changes in the nature of training available to students under the VET program, and the manner in which the training is provided (albeit affecting a relatively low proportion of teachers);⁵⁰³
- qualitative change in the work performed by teachers to manage and discipline deteriorating student behaviour;⁵⁰⁴
- changes in the expectations of students, parents and the community, requiring greater responsibility, transparency and accountability on the part of teachers as to education outcomes and the management of student behaviour;⁵⁰⁵
- significant change in the provision of education services to students with disabilities, relating to both the manner in which those services are provided and the administration of funding and support for the provision of those services, and requiring teachers to learn new teaching techniques and to cope with an increasing range of educational needs;⁵⁰⁶ and
- the administration of new child protection legislation (the *Children and Young People (Care and Protection) Act 1998* (NSW)), representing a significant change to the work, skills and responsibilities of teachers.⁵⁰⁷

⁴⁹⁷ [2004] NSWIRComm 114, 133 IR 254 at [145]

⁴⁹⁸ Ibid at [241]

⁴⁹⁹ Ibid at [145]

⁵⁰⁰ Ibid at [148]

⁵⁰¹ Ibid at [167]-[169]

⁵⁰² Ibid at [202]-[203]

⁵⁰³ Ibid at [223]-[224]

⁵⁰⁴ Ibid at [262]

⁵⁰⁵ Ibid at [274]-[275]

⁵⁰⁶ Ibid at [296]

⁵⁰⁷ Ibid at [314]

[586] The NSW IRC determined that these changes in work value warranted a total wage increase of 12 percent (made up of a 6.5 percent increase awarded in addition to a previous interim increase of 5.5 percent).⁵⁰⁸

[587] These decisions of the NSW IRC are useful in two respects. First, in relation to early childhood teachers, they provide additional information about changes in the work value of such teachers in the earlier part of the period commencing from the 1996 datum point, in circumstances where the evidence of most of the teacher witnesses before us did not extend back this far. Second, the decision in respect of NSW government school teachers, which was the subject of fully contested proceedings before the NSW IRC, has utility as a verification source in circumstances where that part of the IEU's case which concerned school teachers did not have a contradictor before us.

C.9.4 Findings re work value change

Datum point

[588] For the reasons earlier explained in connection with the history of the federal award regulation of teachers, we will assess the issue of whether there has been any work value change by reference to a datum point of 1996, consistent with the IEU's primary case.

Matters raised by the ACA

[589] Before we turn directly to the issue of whether there has been work value changes of significance since 1996, it is appropriate that we deal with some matters raised by the ACA that were depreciative in varying ways of the work value of teachers and were said to be relevant to the IEU's work value change case.

[590] The first matter, which was raised squarely in the ACA's case, was specifically directed to the position of early childhood educators. The ACA contended that the responsibilities of early childhood teachers under the NQF were no different to those of non-degree qualified educators, namely to care for and educate children directly in their care. It also advanced a related contention that the "*premiums*" paid to early childhood teachers compared with diploma-qualified educators are, if anything, not justified on work value grounds.

[591] We do not accept those contentions. The ACA's case in this respect was founded primarily on the proposition that the NQF does not impose any distinguishable responsibilities on teachers alone but rather refers to educators generally. Thus, when Associate Professor Irvine gave evidence at length about the "*expectations*" of early childhood teachers under the NQF, the ACA was at pains to point out that the NQF contained no differentiated expectations for degree-qualified teachers and applied equally to all educators and, also, that leadership positions under the NQF including those of Educational Leader, Nominated Supervisor and Director could be held by non-degree qualified educators.

[592] The ACA's characterisation of the NQF is correct to a point but in our view fails to take two fundamental matters into account. The first is that the *capacity* of educators to discharge

⁵⁰⁸ Ibid at [501]

the educational responsibilities imposed by the NQF will vary depending on the nature of their qualifications. Thus, when it comes to meeting the quality areas established by the NQS, namely *Educational program and practice*, teachers by virtue of their university training will be in a better position to contribute to the achievement of the elements of each standard in that quality area in terms of the exercise of skills such as curriculum decision-making, programming to maximise learning opportunities, the practice of intentional teaching, engagement in the teaching cycle and critical reflection. This is amplified by the EYLF, which emphasises the importance of professional expertise, judgment and pedagogy in the delivery of early childhood education and predicates that educators will draw upon different developmental, socio-behaviourist, critical and post-structuralist theories in discharging their educational functions. Clearly, these are matters which are referable to university training and direct attention to the greater expectations upon teachers in the delivery of educational programs in the way described by Associate Professor Irvine.

[593] The evidence of the early childhood teachers supports the existence of higher expectations upon teachers in the delivery of educational programs in accordance with the NQF. For example, Ms Vane-Tempest described being appointed Educational Leader of her centre within 12 months of her commencement of employment upon graduation, with the expectation that she support all other educators in their programming and planning and with her own sphere of responsibility for pedagogical and educational planning, programming and observations. This role, for which she received no additional pay increment, may be inferred as recognising the value of university training in the delivery of educational programs. Other teachers such as Ms Hilaire and Ms Ames described being appointed as Room Leaders or given charge of educational programs by virtue of their teaching qualifications and given supervisory and mentoring responsibility over non-degree qualified educators. Ms Cullen, a Centre Director, gave evidence concerning her expectation that teachers assume an educational leadership role in respect of other staff almost from the commencement of employment. Ms Connell, also a (former) Centre Director/teacher, described the special educational responsibilities expected of teachers and the expectation that they perform the documentation requirement of the educator role in a “*skilled and complex*” way and at a higher level than non-degree qualified educators. Ms Finlay, another teacher/Director, referred to it being the role of the teacher (as distinct from other educators) to lead rooms and to direct and guide how special needs children are to be dealt with on the basis of their “*deeper knowledge of child development and how to implement different strategies*”. This all reflects, in our view, the greater capacity of teachers, by virtue of their university training, to lead the delivery of educational programs to the standard required by the NQS.

[594] The second matter concerning the NQF which the ACA’s submissions fail to take into account is the teacher-child ratios required by the NQF. This is not an arbitrary imposition but a recognition that university-trained teachers are necessary for the delivery of the educational policy goals which underpin the NQF. The policy rationale is that stated in the 2008 COAG discussion paper, *A national quality framework for early child education and care*, to which we made reference at the outset of this decision. This discussion paper set out the policy foundations for the subsequent NQF and EYLF, referred to “*staff qualifications*” as one of the “*iron triangle*” of indicators of quality early childhood education and care, and specifically referred to the importance of early childhood teachers in delivering quality services because “*they are skilled in early childhood learning and development*”.

[595] The ACA relied on the evidence of some of its witnesses to support the proposition that there was little to distinguish the work value of early childhood teachers and non-degree

educators, and thus the pay advantage of teachers was, if anything, excessive. However, we do consider that, on proper analysis, the evidence of those witnesses made out this proposition. Those witnesses fall into three categories. In the first category, Ms Kearney, a Director and Approved Provider Representative of four centres in Victoria, gave evidence that the educational programs at the centres were developed by persons holding roles which did not require them to be teachers, that all staff whether teachers or not had input into the creation of policies and QIPs, that teachers only supervise and direct other employees as a function of being Room Leaders and not because they have a degree, that diploma-qualified Room Leaders also direct and supervise other employees in their rooms, that the Director and Educational Leader roles are not usually held by degree-qualified teachers, and teachers and non-degree educators have the same responsibilities in respect of additional needs children and liaise with parents to the same degree. Although Ms Kearney said that she has found some non-degree educators to be better than some qualified teachers, she also said that she did not suggest that teachers had the same responsibilities or duties as educators. Ms Hands gave evidence to similar effect about the use of teachers as compared to other educators in the two centres of which she is the Director, and said that teachers generally perform the same duties as other educators and may not always have a higher skill level than such educators. However, she accepted that teachers have a higher level of knowledge about early childhood, theory and technique than someone with a diploma. Ms Toth similarly said that teachers and educators at her centres had, for the most part, the same routines and duties, although at the same time she recognised the critical importance of teachers' practice of autonomous teaching as central to the learning experiences of children and bringing children's interests to the fore. It appears to us that the position described by Ms Kearney, Ms Hands and Ms Toth at their centres is a reflection of how their business chooses to utilise their teachers rather than to be understood as commentary on the work value of teachers vis-à-vis that of non-degree educators. The inspections conducted by us confirm, in our minds, that some centres choose to utilise the professional skills of their employed teachers to a far greater degree than others. Their evidence that, at an individualised level, they find some non-degree educators to have more skill and experience in practice than some degree-qualified teachers is unremarkable, but work value is not assessed by reference to the quality of individual workers.

[596] The evidence of Mr Fraser and Ms Viknarasah fall into a second category of witnesses who expressed opposition to the regulatory regime including the requirement to employ qualified teachers, and their evidence must be seen through that lens. Mr Fraser, as the Managing Director and Approved Provider of a chain of some 14 centres, said that he was unconvinced as to the benefits of teachers being employed in early childhood education and, consistent with that view, he said that in many instances he considered that both teachers and educators could deliver achievement of the outcomes prescribed by the EYLF. At the same time, however, Mr Fraser said that the early education sector was undervalued in terms of wages and that, in an ideal world, he would like to see teachers be paid no less than what they would be paid at a government primary school. Ms Viknarasah, a Director of two centres, went further and said that her view was that centres should not be required to employ early childhood teachers. The weight to be given to her evidence must, in our view, be limited given her apparent resistance to regulation of the sector, her self-description as a "*rogue in the industry*" and her idiosyncratic views concerning early childhood pedagogy. It may also be noted that she accepted that it is better for the educational outcomes of children to have better educated staff.

[597] We note that the position of Mr Fraser and Ms Viknarasah was not dissimilar to that taken by some of the employer witnesses in the proceedings before Schmidt J in the NSW IRC in 2001, who said that teachers in the long day care sector were overpaid, that their

qualifications and experience did not merit higher payment, and that their work was not higher in value than the work of lesser-qualified child care workers. That position, as earlier noted, was firmly rejected by Schmidt J, who pointed to the lack of evidence concerning what the training of other workers actually involved and no detailed examination of what work they actually did. We are inclined to adopt, in respect of the evidence of Mr Fraser and Ms Viknarasah, Schmidt J's conclusion that "...*the views advanced...in relation to comparisons drawn with child care workers, ha[s] been overstated in a rather unfortunate way*".

[598] In the third category, Ms Prendergast and Mr Carroll gave evidence which contradicted ACA's position. Ms Prendergast gave the following evidence concerning the fundamental importance of employing university-trained teachers:

I'll come to the younger age group and older age group issue in a moment, but when you say that you believe that childcare centres should be required to employ a university qualified early childhood teacher what's the reason why you're of the view that that is an appropriate requirement for childcare centres such as the ones that you operate?---I have a fundamental belief that early childhood is the most important time of a child's life, and that the opportunities for learning are not available to those children later on if the foundations aren't there in - aren't built in those first few years. A qualification that is a university level qualification asks students to think more deeply about children, children's development and children's learning so that's why I think that we need to have an early childhood professional, someone with a higher qualification than the Diploma.

When you say that an early childhood teacher is trained to have students think more deeply, you might've made this clear at the end of your answer, but just to get clear more deeply than educators; is that the understanding?---More deeply than a VET qualification or a vocational education training qualification, which is very practical and doesn't delve into theoretical perspectives of early childhood development.⁵⁰⁹

[599] Mr Carroll gave similar evidence concerning the change in the focus of the long day care sector from being primarily care-based to providing a mix of care and education, with a consequence of this being to focus on increasing the qualifications of the staff who provide the early learning outcomes. His evidence was that teachers fill critical roles in the G8 business's organisation, and that investment into increasing the wages of its teachers to improve retention would improve financial performance and improve family engagement, team engagement and safety.

[600] The next proposition advanced by the ACA as a matter relevant to the assessment of the work value of teachers generally is that ATAR scores for entry into university teaching courses "*are among the very lowest of all bachelor degrees*". We are not persuaded that there is any relationship between ATAR entry scores and the relative work value of the various professional occupations requiring a bachelor's degree. ATAR scores are not a mark, nor are they a reflection of the academic rigour of particular university courses or the degree of difficulty of the occupation which may follow from obtaining a particular degree. An ATAR score is a ranking which measures a student's position relative to all the students in their age group. The entry-level ATARs for university courses are supply and demand driven – that is, they reflect

⁵⁰⁹ Transcript, 3 July 2019, PNs 7904-7905

the number of university places on offer and the number of applicants for those places. A low ATAR would suggest a relatively low proportion of applicants to the number of available university places, but the reasons for this might vary. One possible reason for this might be that the occupation to which the degree leads is relatively low paid and/or lacking in social prestige. However, the evidence before us was not such as to permit any firm finding to be made about the reason why teaching degree courses have relatively low ATARs. There was evidence that there has been some degree of concern about the ATAR levels for teaching degrees, and that steps have been taken to deal with this, and we deal with this later in this decision.

[601] Finally the ACA submitted that early childhood teachers do not have broader responsibility under the NQF or otherwise for the educational and operational management of a service or its quality control, and that much of the witness evidence adduced by the IEU conflated duties attaching to the roles of Director, Educational Leader, Room Leader, Nominated Supervisor or person in day-to-day charge with that of early childhood teacher *simpliciter*. This submission has a degree of substance, particularly in relation to those IEU witnesses who occupied Director or teacher/Director positions. For example, Ms Connell spent most of her career at the Albury preschool as a teacher/Director, but her evidence did not clearly distinguish between her duties as Director as distinct from her duties as a teacher or make clear the differentiation between her duties as teacher/Director and those of other teachers at the centre. Ms Gleeson's evidence concerning her role at the Keiraville Community Centre was of a similar character. Where a teacher holds the role of Director, as earlier explained, clause 19.2 of the EST Award prescribes an additional allowance to be paid, inferentially in recognition of the separate and additional duties attaching to this position. Thus some care is required in assessing the evidence to ensure that the broader management, operational and leadership duties of Directors are not ascribed to early childhood teachers.

[602] However, the position is less clear when it comes to teachers who hold the positions of Educational Leader, Nominated Supervisor, person in day-to-day charge or Room Leader. The first three of these are positions required under the NQF, but attract no additional remuneration under the EST Award. The position of Educational Leader in particular, as explained at the outset of this decision, has statutory responsibility under the National Law to lead the development and implementation of education programs at the service. Although the position of Educational Leader is not required to be filled by a teacher, it will often be. The evidence did not disclose much about the extent to which teachers fill the NQF positions of Nominated Supervisor or person in day-to-day charge, but in relation to the large majority of centres which operate with Room Leaders (or equivalent), the evidence showed that, except for the most inexperienced, teachers almost always hold the Room Leader position in the rooms in which they teach. This typically means that they have responsibility for the room's educational program and supervise and direct the other staff working in that room. The EST Award provides for no additional compensation for these responsibilities.

[603] In addition, it is important to bear in mind that early childhood education and care services are in nearly all cases small workplaces (whether run by large scale operators or not) in which the strict demarcation of job roles is not practicable and flexibility is at a premium. In that somewhat fluid context, the evidence shows that teachers, as employees with presumed expertise in the education function, are commonly expected to discharge responsibilities beyond those immediately attaching to the children in their care. In this respect, for example:

- Ms Hill said she was involved in the development and review of the QIP and mentored certificate III and trainee educators;

- Ms Vane-Tempest described being expected to take on a leadership role in the first 12 months of her employment;
- Ms Hilaire worked collaboratively with her centre's leadership to create and maintain the QIP and supervised the compliance of other staff with centre policies;
- Ms Ames had responsibility for creating and maintaining the QIP, creating, maintaining and applying centre policies, and was expected to act as a leader for diploma or certificate III qualified staff;
- Ms Cullen said that teachers at her centre are required to assume a leadership role in relation to other staff and in the management of the centre almost from the commencement of employment; and
- Ms Connell said that all teachers are required to contribute to the QIP and policy development.

[604] Accordingly, we consider that the wider duties we have described above, apart from the duties attached to holding a Director's position, are common incidents of the position of an early childhood teacher and may be taken into account for work value purposes.

Main areas of work value change

[605] For the reasons which follow, we are satisfied that there has, since 1996, been a significant net addition to the work value of teachers covered by the EST Award in all classifications. This change has occurred in the following main areas:

- (1) Additional training requirements for entry into the profession.
- (2) Increased professional accountability associated with registration requirements, standardised testing and greatly increased expectations concerning reporting and being accessible to parents and families.
- (3) Greater complexity of work resulting from a shift to outcomes-based education and differentiated teaching, with associated requirements for greater documentation and analysis of individual educational progress.
- (4) Teaching and caring for a more diverse student population including, in particular, additional needs children.

[606] We deal with each of these areas of change in greater detail below, but two preliminary points must be made at the outset. First, the changes described above have not occurred uniformly across all areas of teaching, and different changes have impacted upon the work of teachers in early childhood education, primary school teaching and high school teaching in varying ways and to varying degrees. Different school systems and school systems in different areas are not precisely the same in the way that they have implemented change, and important differences can be identified in the work of teachers at community preschools as compared to for-profit long day care centres. Nonetheless we are satisfied that in all areas of the teaching profession covered by the EST Award, a significant change in work value has occurred.

[607] Second, as is typically the case, work value change has occurred as part of a continuum of change and must be assessed as a matter of degree. It is not the case that, simply because the occurrence of some of these developments can be detected as early as the time of the 1996 datum point or before, such developments are to be discounted and the conclusion reached that no change of significance has happened at all. Many of the policy developments affecting the work of teachers have had a long genesis and have taken a considerable period to be implemented and affect the work of teachers in practice. In respect of outcomes-based learning and differentiated teaching, for example, the evidence suggests that this was occurring to some degree at the beginning of the period under consideration. However this does not gainsay the proposition that, since 1996, the degree to which this has been implemented in teaching practice has increased the complexity of teachers' work and contributed to an increase in work value.

Additional training requirements for entry into the profession

[608] It is clear that there has been a change to the training requirements for entry into the teaching profession. The most significant change is that a four-year undergraduate teacher education degree is now universally required, and three-year courses have been abolished. Associated with this is a requirement for two-year post-graduate teaching qualifications, and one-year post-graduate courses have been phased out. These changes were effected by the course accreditation standards introduced nationally by the AITSL in 2011, and are entrenched in the State and Territory teacher registration regimes. In addition, the course accreditation standards and reforms introduced by the Commonwealth Government in 2015 have ensured that courses are more rigorous and must meet strict quality assurance standards. This has meant that graduates must now meet literacy and numeracy standards that place them in the top 30 percent of Australian adults, must have demonstrated "classroom readiness", and have undergone extended and more intensive practical training requirements.

[609] The ACA submitted that, because the classification/pay structure in the EST already recognises that additional value of a 4-year degree by requiring teachers with this qualification to be commenced at the Level 3 pay rate, the move to 4-year degrees did not require further consideration as a work value issue. We do not agree. Under the current classification structure, 5-year, 4-year, 3-year and 2-year trained teachers are paid according to a common pay structure which was developed before a 4-year degree requirement became standard and thus does not take this into account in the pay rates which have been set. Although a person with a 4-year degree has an accelerated progression through the annual increments provided by the existing structure by virtue of starting at Level 3, there is no distinction to be made between the educational qualifications of teachers made once the annual increments have been exhausted and the top of the scale has been reached. The move to a requirement for a 4-year degree is a straightforward and significant change to entry training requirements which is indicative of an increased level of skill, and it is necessary that this be taken into account in the EST Award wage rates.

Increased professional accountability

[610] We find that the level of responsibility on the part of teachers has increased as a result of changes which have made them more accountable for their performance and conduct and has increased transparency in this respect.

[611] The first major change in this area has been the introduction of regimes for the registration of teachers and the associated uniform national standards introduced by the APST. As we have earlier explained, school teachers must now be registered in every State and Territory. Early childhood teachers generally must also be registered in four States (New South Wales, Victoria, South Australia and Western Australia), and the remaining States and Territories are expected to move to full registration of early childhood teachers in the near future in line with the 2018 AITSL recommendation. Registration requires adherence to professional standards and the completion of 100 hours of professional development every five years. In addition, there are requirements concerning English proficiency and personal conduct which attach to registration.

[612] The ACA submitted that the content of the APST, and the concept of professional standards, are not new for either school teachers or early childhood teachers, and that professional development has always been an expectation of teachers. Both propositions may broadly be accepted. At least for school teachers, various forms of professional standards have existed since before 1996 and, in relation to early childhood teachers, the QIAS at least indirectly imposed expectations on the standard of their performance. In respect of professional development, we generally adopt what was said by the Full Bench in the *Pharmacy Award decision*:

“It is fundamental that any professional must engage in continuing and self-driven education and development in order to stay abreast of new knowledge, technology and other changes in the profession. It is a defining feature of a profession. Accordingly the introduction of CPD requirements merely formalised and systematised something that was (or should have been) already occurring.”⁵¹⁰

[613] However, the fundamental point about the requirement for registration and the associated requirements concerning compliance with professional standards and professional development is that teachers are now accountable for their professional employment. The common national requirement of the registration schemes is that graduate teachers must demonstrate that they meet the requirements for registration within a period of employment of not less than one year and not more than five years, and thereafter must renew their registration at regular intervals (in practice, ranging from every one year to every five years). This means that the continuing employment of any teacher to whom the registration requirements apply is dependent upon demonstration of continued proficiency by reference to the professional standards and undertaking the prescribed amount of professional development activities. This makes teachers accountable to external regulatory authorities for the quality of their work in a way that did not generally exist prior to 1996. Previous decisions have recognised the concept of accountability being an indicator of increased work value on the basis of its relationship with the level of responsibility attaching to a role and the quality of services.⁵¹¹

[614] In schools, the introduction in 2008 of external standardised testing for literacy and numeracy in the form of NAPLAN for year 3, 5, 7 and 9 students has also increased the accountability of school teachers. The witnesses highlighted the effects of NAPLAN testing. Ms Hickey’s evidence was that, because NAPLAN results for schools are made public, this had

⁵¹⁰ [2018] FWCFB 7621, 284 IR 121 at [184]

⁵¹¹ See e.g. *ACT Child Care decision* PR954938, [2005] AIRC 28 at [190]; *NSW School Teachers decision* [2004] NSWIRComm 114, 33 IR 254 at [274]-[275]; *Pharmacy Award decision* [2018] FWCFB 7621, 284 IR 121 at [188]

increased pressure on schools and in turn on teachers, to lift NAPLAN scores. Mr Donnelly thus referred to NAPLAN as “*high stakes*” testing, Mr Foster said that NAPLAN results affected school enrolments, and Mr Cooper described how, in the private sector, schools compete on the basis of NAPLAN results (amongst other things). Mr Grumley said that parents’ expectations concerning school performance had increased as a result of their knowledge of NAPLAN as well as ATAR results. In short, the effect of NAPLAN has been to make publicly transparent the outcomes at individual schools and thereby expose the teachers of the tested students to a degree of scrutiny and pressure to improve performance that did not exist before 1996.

[615] An analogue of this effect has occurred in early childhood education as a result of the conjunction of the operation of the NQF and the EYLF. As we have earlier explained, the NQF introduced an assessment and quality rating process which is linked to accreditation. Early childhood services are quality-rated by reference to each of the seven quality areas in the NQS. The first quality area is “*Educational program and practice*”, and the three standards and nine elements of which it is comprised are based on the delivery of early childhood education in accordance with the EYLF (as the ACECQA Guide to the NQF makes clear). NQF quality ratings are publicly available and affect parental patronage. The consequence of this is that teacher performance in delivering the EYLF is reflected in the publicly-available ratings of each service in the first quality area of education program and practice.

[616] As Associate Professor Irvine said in her evidence, the operation of the EYLF in conjunction with the NQF rating system has raised professional expectations of teachers. Services which strive to achieve the highest NQF ratings need to maximise the value of the work of their teachers; in this connection we refer to Ms Gleeson’s evidence that early childhood teachers will need to engage in significant networking and collaboration with external agencies and community involvement in order for a service to demonstrate satisfaction of the assessment criterion of collaborative partnerships with professional, community and research organisations. By contrast, as the evidence of Ms Viknarasah suggests, services which disregard or eschew the pedagogical methods in the EYLF and do not place value on professional teaching are likely to receive a poor NQF rating. The evidence also suggests that these changes have led, in aggregate, to improved levels of teacher performance. Associate Professor Irvine’s evidence that NQS data has shown continuing quality improvement in early childhood education and care since the introduction of the NQF, and that many services have improved their quality rating, is at least indirect evidence in this respect.

[617] Additionally, teachers at both the school and early childhood education levels are more accountable to parents in respect of individual children because of their accessibility via email and other online modes of communication – a phenomenon which had not manifested itself prior to 1996. Ms Hill, Ms Cullen, Dr Heggart, Ms Connell, Ms Connellan, Ms Ames, Mr Margerison, Mr Donnelly, Mr Foster, Mr Huntly, Mr Cooper, Mr Grumley, Mr McKinnon and Ms Pendavingh all described the extent of expectations that they respond to parental emails in a timely manner and the burden this imposes upon them. The increase in the extent to which teachers report to parents concerning their children’s outcomes has greatly increased, as we discuss further below, and this in turn has increased the degree to which parents communicate with teachers concerning, as Mr Cooper said, their children’s learning performance, behaviour, disciplinary issues and assessments, as well as the teacher’s teaching style and the child’s relationship with their teacher. In our assessment, the result of this has been a significant enlargement in the scope of parental interaction with teachers and a concomitant addition to the degree of accountability on the part of teachers to parents.

Greater complexity of work – outcomes-based education and differentiated teaching

[618] The evidence before us shows that in the period 1996 to date, there has been a major shift in focus of education towards outcomes-based curricula which are less focused on the delivery of prescribed content and more focused on setting broad benchmarks of student achievement which are observable and assessable. This has required a differentiated teaching method which is focused on the learning of the individual. As we have earlier stated, this is not to say that this developed only its entirety since 1996; rather, it is a longer-term development which, since 1996, has been implemented to a more intensive degree with the result that there has been a significant change in the work of teachers. The precise way in which this has occurred also differs somewhat as between early childhood, primary and secondary education.

[619] From a national perspective, Professor Aspland identified the national curriculum framework established by the Australian Education Council in 1991 as a starting point of a shift towards learning outcomes taking priority over prescribed curriculum content in schools. Professor Aspland said that this process developed unevenly across Australia, but identified that this new focus meant that teachers have had to reconceptualise their planning and assessment, with a greater freedom as to content and pedagogy. She characterised this process as placing additional demands on teachers that were not previously present before 1998, and placed it within the context of an international trend towards direct forms of teaching for enhance student outcomes. This evidence was not contested.

[620] The practical consequences of this change in approach to school teaching, as described by the witnesses, fall into four main areas. First, the change from a concentration on delivering curriculum content to a class as a group to one whereby the focus was on individual achievement of broadly-described learning outcomes was one which, as Mr Cooper described it in the Queensland context (where an outcomes-based syllabus was introduced in about 2001), required radically different teaching and was cognitively and practically challenging. The different teacher witnesses described this nature of this change in varying ways: Ms Pendavingh referred to her role changing from one whereby students sat at their desks and received a lecture from her, to one whereby she has become “*a facilitator of multiple learnings*”; Mr Huntly referred to teachers becoming “*the problem solver for students*” as part of a more agile, creative and collaborative approach which constantly seeks to tie students’ exercises back to learning outcomes; and Mr McKinnon referred to his role changing from that of the “*sage on the stage*” to being “*a motivator of 30 individuals*”. In general, all these witnesses were referring to a shift of emphasis away from the block delivery of curriculum content by the teacher to an approach which takes account of learning differences between students and adapts the teaching plan to the needs of individualised students. In a lot of cases, the contemporary approach is facilitated by the use of technology, with online platforms and apps such as Google classroom, Education Perfect, STILE and Moodle used to personalise the learning experience and for teaching targeted at particular students or groups of students at varying stages of learning progress. We do not think the requirement to learn and use this technology itself constitutes an increase in work value; rather, its incorporation into an outcomes-based, differentiated mode of teaching is demonstrative of the greater complexity of this method of teaching.

[621] Second, there has been a substantial increase in the need to obtain data concerning student performance from testing, to analyse this data, and to adjust teaching programs on the basis of this analysis, as a means to achieve prescribed outcomes. We have earlier referred to NAPLAN testing as a means by which teachers have become accountable for the performance

of students; of equal importance is the way in which the incorporation of NAPLAN testing into teachers' work has fundamentally changed that work. Teachers are now required not just to prepare students for external NAPLAN testing, but also to analyse each individual students' NAPLAN results and implement teaching programs which are responsive to those results.

[622] The requirement for testing and data analysis has extended far beyond NAPLAN, and modern teaching practice incorporates a quantity of performance testing which was previously unknown. For example, Mr Margerison, a teacher of 21 years' experience, said that at the beginning of his career as a primary school teacher (that is, at a point in time soon after the 1996 datum point), he was required only to produce half-yearly reports and to collect student data for that purpose (Mr Jenkins-Flint's evidence was that a similar position prevailed when he was a graduate teacher, which appears to have been at about 2007). By comparison, Mr Margerison said he has to produce and update student data every three to four weeks, which requires him to test his students in mathematics weekly and to use "writing clusters" to assess where students sit individually within writing standards three or four times per year. In addition, his school has begun to use standardised, online PAT testing for literacy and numeracy. Mr Donnelly gave a similar picture, and referred to the distinction which is now made in primary schooling between diagnostic testing - that is, testing undertaken before teaching is delivered to assess what the student's starting point state of progress is - formative testing, which produces data during the learning process to help direct what should be done next, and summative testing to collect data as to whether the prescribed learning outcomes have been achieved. This, we consider, bespeaks of a degree of sophistication and precision in the delivery of teaching to meet individual students' needs that was not previously required.

[623] In secondary school, although less so in the senior years than in the junior years, a similar change has occurred. Standardised NAPLAN testing, PAT, the Business Intelligence Tool, the Maths Pathways diagnostic tool and other forms of standardised testing and assessment are now likewise used to provide data as to progress towards learning outcomes and to facilitate the planning and delivery of lesson plans which take into account students' test results and other data. Mr Huntly, a secondary school teacher with 28 years' experience, emphasised the need to master the information technology used to deliver standardised testing and to interpret the data produced by such testing as an important element of the change. All the school teacher witnesses, to varying degrees, described the intellectual challenge and the work burden involved in analysing test data and incorporating this into teaching practice. In relation to PAT, Mr Huntly described how the technology now available allowed instantaneous feedback on individual students' performance compared to State and nationwide norms, required the analysis of large amounts of data to identify students' strengths and weaknesses, and then required the use of the data to further differentiate students' learning. Mr Cooper's evidence was that the demands of preparing students for standardised testing, administering the tests, assessing the test papers, analysing the results, discussing data patterns and identifying specific learning strategies for different students constituted an "*escalation of work demands*" in terms of quantum and complexity to the extent that he is now required to accommodate his lesson plans and provide individualisation instruction to all of his 160 students. Mr McKinnon referred to the data produced by standardised testing as being "*complex and difficult to interpret in a meaningful way*" and requiring "*a new set of skills*". This evidence, and evidence to similar effect given by the other school teacher witnesses, persuades us that this aspect of outcomes-based learning in particular has made the work of teachers more complex and demanding and has required the exercise of a greater level of skill. There is also a straightforward workload element to the change, with Ms Pendavingh saying that no additional time in the working week

had been allowed for her to perform the task of analysing test data and to incorporate it into planning and assessment.

[624] Third, associated with this is an increased requirement to document the stages of individual student progress, data collection and analysis and any adjustments to lesson planning to accommodate the needs of individual students.

[625] Fourth, a concomitant of the individualised approach is that greater degree of communication and liaison with parents is now required. Mr McKinnon described how, at his school, that if students are assessed during an assignment period as not meeting the required standards, the teacher must inform the parents, resulting in teachers having to make three to four calls to parents each week. Mr Cooper said that, over the course of his career, he had moved from one parent-teacher a night per year to two and, in addition, a “proliferation” of other interviews with parents concerning aspects of student performance. Mr Margerison said that if it looks like a student is going to receive a D or an E grade on their report card based on assessments, he is required to ring the student’s parents and invite them in for an interview. Other witnesses gave evidence to similar effect. This demonstrates the interlinkage between an outcomes-based, individual-focused approach to learning and greater teacher accountability to parents which we have earlier discussed.

[626] Our findings concerning the importance of the shift to outcomes-based learning in schools is, we consider, fortified to a substantial degree by the findings of the NSW IRC in the *NSW School Teachers decision* in relation to NSW Government schools, albeit at a significantly earlier point in time and by reference to a datum point of 1991. The NSW IRC said:

“In our view, there is overwhelming and compelling evidence to support a finding that there have been dramatic changes in curriculum content, structure and theory since the datum point. Those changes have fundamentally altered the work performed by teachers. The introduction of outcomes based education represents a shift in both the philosophy and provision of educational services. The systematic overhaul of each syllabus in the K-12 curriculum since the datum point has been phenomenal, and has had significant implications for every aspect of teachers’ work. The K-12 curriculum culminates in the HSC, which itself has undergone significant review.

The respondents contended that much of the evidence presented to the Commission focused on the increase in workload associated with the introduction of outcomes based education. Our views in relation to increased workload have been stated earlier, but it must be emphasised that this submission profoundly understates the extent of change in the skills and responsibilities of teachers in this area.”

[627] The above finding was made at a time before the introduction of standardised testing, and so we consider the position to be *a fortiori* here for the reasons given above.

[628] We consider that the current position is not substantially different in early childhood education. The EYLF is an outcomes-based document which operates as part of a continuum of outcomes extending into the primary school curriculum, and the play-based teaching and assessment methods used in early childhood education extend into the primary school years. The effect of the National Law is that early childhood and care services must deliver an education program that seeks to deliver the outcomes specified in the EYLF (or an equivalent approved framework), in circumstances where there has not previously been any such

requirement or framework in place on a national level and a diversity of approaches had been taken. The early childhood teachers who gave evidence consistently described, as best pedagogical practice under the EYLF, a “*cycle of learning*” involving observation of children’s learning and development level, an assessment of how each child’s learning has progressed and can be improved with the EYLF outcomes in mind, the design and planning of learning experiences in play and discovery consistent with the assessment, the implementation of planned learning experiences using intentional teaching, the making of further observations, and critical reflection as to achieved progress towards the EYLF outcomes. Such teaching is focused on the needs of individual children in that it is highly responsive and adaptive to the displayed interests and behaviour of individual children. Observations of value concerning each child’s learning progress which meet the standards required by the NQS must be regularly recorded and communicated to parents. Various means including the use of online platforms and apps, are used to do this.

[629] We are satisfied that the exercise of professional skills and judgment, and the overall work value, involved in early childhood teaching in accordance with the EYLF and the NQF is the same or equivalent to that of school teachers. Leaving aside the obvious fact that registered early childhood teachers have a tertiary qualification which will allow them to work interchangeably in early childhood education or in primary school education, we have placed weight on those witnesses who have worked in both sectors and are in a position to make a proper comparison. Ms Hilaire, as earlier set out, works simultaneously in both sectors, and her evidence was that essentially the same work is performed albeit at different levels for what is developmentally appropriate for the children in her charge. She pointed out that school teaching was more structured than early childhood education to facilitation programming and planning, and that early childhood teaching required a more comprehensive and detailed knowledge of child development. Mr Donnelly was able to make a detailed comparison, on the basis of his experience, between the work of early childhood teachers and primary school teachers, and emphasised that the shift towards differentiated education and individualised learning in schools was similar to the philosophy and pedagogy in early childhood education. He also regarded the assessment in early childhood education of children’s social, emotional and communication skills as comparable to NAPLAN and PAT in schools in term of the “high stakes” for teachers and services. We accept this evidence as demonstrative of equivalence of work value.

[630] Of greater difficulty is assessing the degree to which the work of early childhood teachers has changed over time. The evidence of both the IEU’s and the ACA’s witnesses tended to a significant to degree to provide high-level opinions about whether the regulatory changes associated with the introduction of the EYLF, the NQF and NQS had or had not changed the value of the work done by early childhood teachers without providing a neutral, fact-based comparison of the work done now as compared to the work done at a time at or close to the 1996 datum point. A bigger difficulty with comparing the position in 1996 to now is that, at least in the long day care sector, early childhood education delivered by teachers was in its comparative infancy in 1996. Only New South Wales had a teacher/child ratio in 1996, and the 2001 decision of the NSW IRC disclosed, as at that time of that decision, there were still only some 2,600 early childhood teachers in that State. There are now over five times that many early childhood teachers in New South Wales. In the other States and Territories, teacher/child ratios were only introduced well after 1996, and the evidence suggests that many long day care services did not employ teachers as such at all or in any significant number until they were required to do so. This, and a generally acknowledged shift in the long day care sector from the provision of simply care to the provision of a mix of education and care, makes a longitudinal

work value comparison based on a datum point of 1996 difficult. There also appears to be biases in the respective evidentiary cases of the IEU and the ACA. The witnesses called by the IEU tended to come predominantly from preschools and the community sector, where the employment of teachers has a longer history; by contrast, the ACA's witnesses all came from the for-profit sector and mostly from long day care, where the employment of teachers in significant numbers appears to be a comparatively recent phenomenon (with the possible exception of New South Wales). Even after the NQF, a much greater proportion of the workforce in preschools (38.3%) are degree-qualified than in long day care (11.5%).⁵¹² There is also the associated difficulty in making a historical work value comparison in that, before the EYLF, the NQF and the NQS, there was considerable diversity between the States and Territories as to the regulatory approach to early childhood education.

[631] There is some evidence which points to a change in the actual work of early childhood teachers over time. Ms Gleeson's evidence referred to a teaching methodology in existence when she started teaching in a preschool in 1999 whereby the day was strictly timetabled and teaching was "*highly regimented*", in comparison with the more flexible, individualised and self-directed teaching methodology now used. Ms Finlay, whose career in early education in Queensland stretches back for a number of decades, said that the complexities and skills required of early childhood teachers had significantly increased, especially over the last decade, and she identified in particular the documentation requirements associated with writing assessments of the learning progress of individual children in accordance with the quality standards of the NQF and the QKFS. Ms James, who had previously worked as an early childhood teacher beginning in the late 1990s, said that the planning and implementation of indoor and outdoor learning programs has become more complex and structured since the introduction of the NQF and teacher accreditation.

[632] This evidence was not rebutted by the evidence of the ACA's witnesses, none of whom (except for Mr Fraser during the period 2001-2004) had worked as an early childhood teacher or was in a position to give a longitudinal analysis of the nature of the work of early childhood teachers over the period since the 1996 datum point. Ms Kearney's evidence that the NQF, the NQS and the EYLF had "*codified and regularised the standards across the industry*", to the extent it suggested that they did not impose any new requirements, cannot be accepted since there was no previous equivalent to the first quality area pertaining to education in the NQF or to the EYLF in each State and Territory. Beyond this proposition, Ms Kearney did not in her evidence undertake any analysis of the "before and after" position of the work of early childhood teachers, although we note in her evidence that her business had put in place a software system to record observations, improvement data and communications with parents and required linkages with EYLF outcomes. Mr Fraser likewise sought to portray the EYLF and the NQF as a streamlining and codification of what went before which did not change the role of a teacher, but at the same time he described the EYLF as "*the childcare version of a school curriculum*" which has ensured educators are focused on outcomes and has encouraged a focus on the individual child and desired outcomes. Ms Hands said that, in South Australia, the expectations and duties of early childhood teachers had not changed as a result of regulatory changes over the last decade, and in this respect she pointed to the SACSA Framework as having likewise required teachers and other educators to construct teaching and learning programs, conduct assessments, monitor children's progress and report this progress to children's families. An examination of the SACSA Framework shows that it did indeed involve

⁵¹² Productivity Commission Inquiry Report, *Childcare and Early Childhood Learning*, 2014, Table 8.3, p.315

the introduction of an outcomes-based learning framework in early childhood education (and was the first in Australia to do so for children aged 0-3), but this occurred in 2001, placing it as an innovation falling well inside the datum point period. Ms Viknarasah's evidence suffers from the difficulties we have earlier identified. Ms Prendergast's centres employed few persons with a teaching qualification before the requirement to employ teachers was introduced in 2012, and such persons were not actually employed or paid as teachers. Accordingly her evidence is not relevant to the work for teachers before that time, although we note that she at least accepted that the preceding QIAS did not specify a curriculum, a learning framework or learning outcomes, that the approach taken to observations had changed in the sector, and that the NQF has resulted in a greater depth of critical reflection in the sector. Mr Carroll's evidence tended to demonstrate the existence of work value change: he emphasised that the for-profit child care sector had been gradually shifting from being primarily concerned with the provision of care to being a mix of care and education, with the NQF having shifted the focus of the sector.

[633] The decisions of the NSW IRC concerning early childhood education teachers to which we have earlier referred provide considerable assistance in making a historical work value comparison – bearing in mind, again, that New South Wales was the state that most early on mandated the employment of teachers in early childhood care services. The 2001 decision of Schmidt J summarises the evidence of teacher and employer witnesses about the work of teachers and, for the most part, that evidence does not describe the cycle of learning under the EYLF using intentional teaching which the witnesses before us gave evidence about, nor does it refer to outcomes-based learning. The closest one gets to this is the evidence of a pre-school teacher, Ms Butler, who described her duties with children as:

“...including planning and programming for her groups; writing individual programmes for 60 children and performing ongoing observations and evaluations of them and what this involved. Observations were done to keep a track of programs.”⁵¹³

[634] As earlier discussed, Schmidt J was able to find that the work value of teachers had changed significantly since 1990, including in respect of changes to the way children in preschools and long day care centres were taught. Reference was also made to changes flowing from the QIAS, with Schmidt J finding that additional work requirements had flowed from the requirement for centre to self-assess in connection with 52 principles and rejecting an employer submission that the QIAS had no consequence for the value of the work performed.⁵¹⁴

[635] In the NSW IRC's 2009 decision, the Full Bench made a finding that there had been further changes to the work value of early childhood teachers in 2006. We have earlier summarised the key findings made by the Full Bench in this respect, including in relation to a greater complexity of programming and reporting, especially in relation to child development. It is notable that in making its findings about work value, the Full Bench expressly placed reliance on the evidence of a number of teacher witnesses including two witnesses who also gave evidence before us, namely Ms Connell and Ms James. In respect of Ms Connell, the Full Bench set out a “snapshot” of the changes she had identified over the previous three years which, as relevant to pedagogy, were:

“Programming, Documentation, Accountability

⁵¹³ [2001] NSWIRComm 335, 120 IR 3 at [148]

⁵¹⁴ Ibid at [371]

- Digital Documentation – commenced 2006
- Daily Diaries – commenced 2006
- Photostories – commenced 2008
- Portfolios
- Time consuming but expected by the parents. Digital copies and hard copies supplied.

New Philosophies of Education, Research

- High Scope –training, implementation,
- training for new framework”⁵¹⁵

[636] The Full Bench then said:

“To take just a few of the matters referred to earlier in the applicant’s evidence: first, there was evidence of Ms Connell, Ms James, Ms Connors, Ms Fanning and Ms Simon of greater complexity of programming and reporting particularly on child development over recent years. Parents have increasing expectations for structured education and detailed recording and reporting of their child’s progress. It was Ms James’ evidence that:

The emergent curriculum means a style and philosophy about teaching in the early childhood sector that includes the child’s focus as primary, with the focus of learning from the child’s perspective. Teachers are now completing very detailed portfolios of children that include work samples, digital photographs, interactions with peers and staff, emerging skills and interests, and strengths in the Curriculum Framework domains. These domains are language/communication, social-emotional development, creativity, thinking/problem-solving, physical development (skills and activity levels), spirituality and moral development. Teachers are also responsible for daily journals (written and digital), which demonstrate to parents the interactions and learning that have occurred throughout the day. Teachers plan individual activities based on their observations and interactions with children and evaluate these on a daily basis in order to modify their programs to better-assist children to achieve desired outcomes.”⁵¹⁶

[637] The above evidence is indicative of further progress towards the type of teaching which now prevails under the EYLF, with emphasis on the recording and reporting of observations and the adjustment of teaching plans. However, it is reasonably apparent that the pedagogy being described is not yet at the point of development it has reached on the evidence before us, particularly in a context where the New South Wales curriculum framework for early childhood education which was then current and had been introduced in 2002 was only voluntary and meant to serve as a guide.

[638] It is important to observe that the evidence before the Full Bench anticipated the introduction of the mandatory EYLF and the changes this would bring. The evidence of an

⁵¹⁵ [2009] NSWIRComm 198, 191 IR 14 at [173]

⁵¹⁶ Ibid at [174]

academic witness, Ms Sandra Cheeseman, in relation to the anticipated introduction of the EYLF was quoted by the Full Bench and included the following:

“...This important document will see all early childhood teachers, no matter the setting, having responsibilities for the delivery of educational programs based on agreed national outcomes. This will carry with it responsibilities for teachers in relation to the delivery of curriculum and the assessment and reporting to families of children’s progress against the stated outcomes. The educational programs and therefore the expectations on teachers will be consistent across all early childhood settings in Australia both in the school sector and the prior to school sector.

The introduction of the EYLF will bring increased responsibilities and expectations for staff working in prior to school settings. Early childhood teachers will be expected to carry the major responsibility for implementation of the EYLF and ensuring that all Australian children experience high quality teaching and learning in the early childhood years and in particular in the year prior to full-time schooling. The Rudd government’s announcement of a Universal preschool year for all four year old children which is to be delivered by four year qualified early childhood teachers is a recognition of the important role that University qualified teachers will play in the introduction of the EYLF and the success of this policy initiative. These changes will see early childhood teachers in prior to school settings required to demonstrate accountability under the EYLF in relation to the stated outcomes for all children and commitment to assessment and reporting against these outcomes. For the first time in history, Australia will have stated outcomes and expectations for all children in prior to school settings for which early childhood teachers will be responsible. This will place teachers in prior to school settings in the same position as teachers in primary schools in relation to their responsibilities for curriculum development, assessment and reporting and as such it will be essential that their pay and working conditions reflect this parity.”⁵¹⁷

[639] The 2009 evidence of Ms Cheeseman above concerning the changes which the EYLF would bring has, we consider, been borne out by the evidence before us. The 2001 and 2009 decisions of the NSW IRC clearly confirm, in our view, that there has been a continuum of change in the pedagogy of early childhood teachers since 1996 towards outcomes-based education and differentiated teaching in which intentional teaching and the cycle of observation, analysis, documentation, planning, implementation and reflection are essential ingredients. We are satisfied that this has made the work of early childhood teachers more complex and involves the exercise of greater levels of skill and responsibility.

Teaching and caring for a more diverse student population

[640] We consider that the evidence before us demonstrates that the work of teachers has become more demanding and requires greater skill and responsibility because of the need for teachers to respond to a more diverse student population in the context of the more individualised approach to teaching which we have earlier identified.

[641] The principal way in which this has manifested itself is in relation to additional needs students. In relation to schools, the witnesses gave consistent evidence concerning the increase

⁵¹⁷ Ibid at [134]

in the proportion of students requiring special adjustments to be made to the teaching program because of disabilities, learning disorders, mental health issues, behavioural problems and other special needs. This is in part a long-term consequence of the policies of State and Territory Governments, implemented at various times, for students with disabilities to be enrolled in mainstream rather than special schools, and also flows from the more effective early diagnosis of students with learning disorders. Mr Donnelly gave evidence which we have earlier summarised concerning the effect on his work of the “mainstreaming” of additional needs students in schools. He said that in his school, there were a total of 98 students out of 401 on PLPs required because of a diagnosed or suspected disability, including four in a class of 16 that he taught. Mr Foster similarly described a class of 20 in which he had 7-8 with special learning needs, and he compared this to the position 20 years ago where it was more typically one or two in a class of 25. Mr McKinnon said that at his school about 74 students are on special learning plans, compared to ten years before when there were about five. Mr Huntly and Mr Grumley gave similar evidence. The evidence is that the management of students on PLPs is difficult and challenging, in that the teacher is required to make an assessment of the capability of the student, create tasks consistent with their capabilities, and modify assessments appropriately. Even where teachers are not directly involved in the preparation of PLPs, the teacher must deliver the plan and report upon its outcomes. Professor Aspland described teaching special needs students as requiring the acquisition of new skills and knowledge. Liaison with external professionals is also required, and teachers must now record all adjustment for learning difficulties according to NCCD reporting requirements. We note that the NSW IRC made equivalent findings in the *NSW School Teachers decision* in respect of the demands of providing educational services to students with disability.

[642] In relation to early childhood education, there was a degree of sample bias in the respective evidentiary cases of the IEU and the ACA. The ACA witnesses generally gave evidence that there has been no increase in additional needs students, but that appears to be a consequence of the fact that they were all from the for-profit sector. A preponderance of special needs students are enrolled in the community/not-for-profit sector, and consequently the evidence of the IEU’s witnesses from this sector reflected this. Ms Hill, Ms Hilaire, Ms Cullen, Ms Connell, and Ms Finlay all gave evidence of the demands which teaching additional needs students placed upon early childhood teachers, which generally correspond with those of school teachers: individualised plans, specialised observation and reporting requirements; and intensive liaison with parents and external specialists.

[643] Both Dr Press, Ms Finlay and Associate Professor Irvine gave evidence which we consider to be significant that there has been experienced a much greater diversity in the demographic profile of children attending early childhood education and care as a consequence of the massive increase in the numbers of children attending. Ms Finlay in particular emphasised the introduction of universal access funding as effecting the biggest change in the early childhood sector in the past two decades. This has caused not just an increased proportion of students with disabilities and other additional needs, but has also changed the socio-economic profile of children attending, with there being more children from families dealing with social disadvantage and low incomes, families that speak English as a second language and indigenous families, and also children the subject of non-parental care for child safety reasons. In this connection, Dr Press referred to the need for teachers to develop and implement an inclusive curriculum that takes into account a wide range of variation in development to help remediate the impact of physical or cognitive impairment or social disadvantage. We accept her evidence, as well as the evidence of the teacher witnesses generally, that this is equally more challenging and demanding work. We also place weight on Associate Professor Irvine’s reference to the

NQF requirements for inclusive practices and the promotion by the NQS and the EYLF of individualised teaching and learning practices in this respect.

[644] The change in the student profile in schools has been less dramatic. However, Mr Margerison gave evidence concerning the significantly greater portion of the student population speaking English as a second language due to greater ethnic diversity in Australia since 1996 and the challenges this presented. Mr Foster also gave evidence concerning the highly personalised approach required of a student whose family had recently immigrated with very little knowledge of English. We accept however that there will be significant differences in the degree of student ethnic diversity depending upon where a school is located.

C.9.5 Conclusions re work value

[645] We are satisfied that an adjustment to the minimum rates of teachers covered by the EST Award is justified by the following work value reasons:

- (1) The rates for teachers under the EST Award and its federal predecessors have never been fixed on the basis of a proper assessment of the work value of teachers nor are they properly fixed minimum rates. In particular, the rates of pay do not recognise that teachers are degree-qualified professionals and accordingly do not have an appropriate relativity with the Metal Industry classification structure.
- (2) There have been substantial changes in the nature of the work of teachers and the level of their skills and responsibility since 1996. This constitutes a significant net addition to their work value which has not been taken into account in the rates of pay in the EST Award.

C.10 Consideration – what is the appropriate adjustment to EST Award rates to properly reflect work value

[646] The next step in our consideration of the work value application is to determine what adjustment to the minimum rates in the EST Award is appropriate to ensure that they properly reflect the work value of teachers consistent with our earlier reasons. In this respect, it is first necessary to consider the primary and alternative variations proposed in the IEU's claim. The IEU's primary claim, as earlier stated, seeks to retain the existing classification structure, adjust internal relativities to remove compression at higher rate levels, and then add 17.5 percent. The alternative claim also retains the existing classification structure and adds 25 percent.

[647] We do not consider that either proposed variation would result in a rate structure that properly reflects the work value of teachers. The fundamental problem with both proposed variations is that they retain a classification structure which, we consider, is inappropriately based on years of service rather than the essential elements of qualifications, displayed competence and acquired experience and responsibility. It may be accepted, at a high level of generalisation, that a certain level of experience in an occupation will usually lead to an incrementally higher level of work value on the part of an employee, even if the nominal role of the employee has not changed. However, as the ACA submitted, there is no evidence before us to suggest that the work value of a teacher increases year by year for (in the case of a four-year qualified teacher) the first seven years of employment. Such a proposition is entirely counter-intuitive. As we have earlier outlined in our discussion of the federal award history of

teachers, the current rate structure has its origins in the structure applicable to Victorian Government teachers in the early 1990s. Annual incremental pay scales were long a feature of government service employment conditions, but we consider them to be an anachronism in the context of the current statutory regime for the fixation of minimum wage rates. We note that, even in the context of government school teachers, there is a move away from annual incremental salary scales to more modern classifications structures. For example, in the NSW Teachers Award 2020, an award of the NSW IRC, teachers employed after 1 January 2016 are paid in accordance with a new “*Standards Based Remuneration*”. We will return to the NSW classification structure in due course.

[648] Insofar as the IEU’s primary proposed variation would seek, by adjusting internal compression of relativities, to unwind the effect of flat amount wage increases awarded in Safety Net Reviews and Annual Wage Reviews from 1993 through to 2010, we do not accept that as a matter of policy this should be done. An analogous proposal was rejected by the Full Bench in the *Pharmacy Award decision*⁵¹⁸ as follows:

“[191] ...The compression of relativities was the intended effect of the award of flat dollar increases to awards, in that it was considered appropriate to adopt an approach to improve the relative position of lower-paid award-wage workers and to depress that of higher-paid award-wage workers. This may be illustrated by the following passage in the *2009-10 Annual Wage Review* decision, the last in which a flat-dollar increase was awarded:

‘[336] We consider there is a strong case for a percentage adjustment to all modern award minimum wages. While not all award-reliant employees are low paid, uniform dollar increases reduce the relevance of the safety net at the higher award levels and erode the real value of award wages at most levels. These are particularly important considerations at the commencement of the modern awards system. Nevertheless most of the major parties supported a dollar increase rather than a percentage one.

[337] With some hesitation we have decided on a dollar increase. There are two reasons. The first is that to the extent there is a choice between a percentage increase benefiting the higher levels and a dollar amount benefiting the lower levels we think that the current circumstances favour a greater benefit for the lowest paid. We are required in particular to take the needs of the low paid into account. In light of the fact that award-reliant employees have not had an increase in wages since 2008, it is desirable that we increase award rates by the largest amount consistent with the statutory criteria. Secondly, we have very little data concerning the impact of a percentage increase on costs and employment. We have insufficient information to be confident that a percentage increase would not have disproportionate effects on employment at the higher award levels...’

[192] It may also be noted that this position was one urged by the union movement over a long period of time. Because flat-dollar increases were applied across all awards, the compression of relativities has occurred across the entire award wages system. We do

⁵¹⁸ [2018] FWCFB 7621, 284 IR 121

not think that there is any proper basis to attempt to unwind now, in one award only in response to a claim by a single union, a common approach to the adjustment of wages which was taken for deliberate policy reasons with the support of the union movement as a whole. It is obvious, in addition, that if the approach now urged by the APESMA was taken in relation to the *Pharmacy Award*, there would be no logical reason why this would not sought to be flowed on to every other modern award, with ramifications that need not be spelled out.”

[649] The IEU submitted that the above reasoning in the *Pharmacy Award decision* was erroneous and should not be followed because:

- the statutory requirement is that fair and relevant minimum rates be set, being rates that are appropriate today, regardless of past history;
- the position put by unions in past wage cases resulting in flat rate increases was in fact regularly for flat increases for some, and percentage increases at the higher classifications, or adjusted flat rate claims to preserve relativities; and
- wage fixing benches, when awarding flat dollar increases, identified on a number of occasions that this was being done to aid a range of policy considerations and that relativity compression, rather than a goal, was an undesirable consequence which would inevitably need to be addressed in the future.

[650] We reject the IEU’s submission. The requirement for a fair and relevant safety net embedded in the modern awards objective in s 134(1) does not, we consider, exclude consideration of the basis upon which existing rates of pay in an award which are sought to be varied were arrived at. The proposition that rates of pay which are in part the product of flat rate increases intended to disproportionately benefit lower-paid workers should now be adjusted to restore the original relativities by way of increases which will only benefit higher-paid workers clearly has implications for fairness in respect of both lower-paid employees and for employers. The ACTU, on the part of the union movement, was an active participant in the outcomes that pertained. It is true that, on some occasions early in the relevant period, it sought a combination of flat rate increases for low-paid workers and percentage increases for higher paid workers, but its approach was clearly focused on improving the relative position of lower-paid workers and the AIRC responded accordingly. That the ACTU’s approach would narrow earnings distribution was a clearly understood and intended consequence of its approach.⁵¹⁹ For the last four safety net reviews conducted by the AIRC in the period 2002-2005,⁵²⁰ the ACTU claimed only flat rate increases of the same amount for all award classifications. This followed the outcome determined in the *Safety Net Review 2001*,⁵²¹ in which the AIRC Full Bench said:

“Since 1994 the adjustments to award rates in safety net review cases have all involved flat dollar amounts. In most cases the increase has been the same at all award levels. On two occasions the amount of the increase has been less in dollar terms at the higher than the lower levels. As a result those employees on award rates at the middle and upper

(d) ⁵¹⁹ See e.g. *Safety Net Review 1998* Print Q1998, [1998] AIRC 544

⁵²⁰ PR002002, [2002] AIRC 530, 112 IR 411; PR002003, [2003] AIRC 482, 121 IR 367; PR002004, [2004] AIRC 430, 121 IR 389; PR002005, [2005] AIRC 508, 142 IR 1

⁵²¹ PR002001, [2001] AIRC 421, 104 IR 314

levels have received less in relative terms than those at the lower levels. Although it would be open to the Commission to award an increase only to those persons employed on the federal minimum wage or only to those employed at or below the level of the C10 classification in the Metal Industry Award we are convinced it would be unfair to limit the increase in that way because of the effect on employees at the higher levels. In the May 2000 decision we decided that because of our concern about compression of relativities we would award a uniform increase at all levels rather than one which was lower at the higher levels. On this occasion we think that it is appropriate to recognise the different impact of flat dollar increases at the different award classification levels by awarding higher amounts at the middle and upper levels. At the same time while the increase at the lower level is substantial it is not so great as to put undue pressure on employment. The amount and form of the increases are an appropriate outcome to the ACTU's claim. The form of adjustment is appropriate for reasons of fairness and as a measure towards avoiding the further compression of relativities between job classifications. Furthermore the result is consistent with the obligations upon us to have regard to economic factors, including the desirability of attaining a high level of employment, and to have regard to the needs of the low paid. The adjustment will be the following:

1. a \$13.00 per week increase in award rates up to and including \$490.00 per week;
2. a \$15.00 per week increase in award rates above \$490.00 per week up to and including \$590.00 per week; and
3. a \$17.00 per week increase in award rates above \$590.00 per week.”

[651] In short, compression of wage relativities was understood by the AIRC, the ACTU and other parties to be an undesirable but necessary consequence of an approach designed to benefit the lower paid. Contrary to the IEU's submission, we do not detect any intention on the part of the AIRC to rectify this at some future time. We consider that it would be unconscionable to take an approach whereby wages are to be adjusted in such a way as to reverse what was done in the 1993-2010 period outside of the annual wage review process.

[652] Finally, we consider that the uniform wage increases of 17.5 percent (under the primary proposal) and 25 percent (under the alternative proposal) sought by the IEU would overcompensate for the work value considerations we have earlier identified if simply applied in a uniform way to the existing classification structure.

[653] We consider that the correct approach is to fix wages in accordance with the principles stated in the *ACT Child Care decision*. As earlier set out, this requires us to identify a key classification or classifications, align it with the appropriate classifications in the Metal Industry classification structure, and then set other rates for other classifications based on internal relativities that are assessed as appropriate. As earlier stated, we consider that the current classification structure with its annual increments is anachronistic and does not properly relate to the work value of teachers. We consider that a new classification structure should be established which is anchored upon the professional career standards established by the APST and is tied to teacher registration (where applicable). The key classification, in our view, would be a Proficient Teacher who has a degree and has obtained registration (or, in the case of an early childhood teacher, if registration is not yet required in their jurisdiction, has met the

requirements for registration as if they applied). A teacher at that level is fully qualified and capable of exercising the skills and discharging the responsibilities of the profession in an entirely unsupervised and autonomous way. In reaching this conclusion, we accept the submission made by the AFEI that a graduate teacher will not be the appropriate anchor classification for fixing wage rates because at that level the skills and responsibilities of the profession are not yet being fully exercised, as is recognised in the national registration system requirements.

[654] We consider that the appropriate alignment of this Proficient Teacher classification would be with Level C1(a) in the Metal Industry classification structure. As set out in the table in paragraph [562] above, the notional salary for the classification C1(a) at the compressed relativity of 148 percent compared to C10 is \$1297.20 per week (or \$67,688 per year). Because the Metal Industry classification structure is implicitly premised on the employee working a normal working year of 48 weeks on average, we consider that the alignment should be with teachers who do not receive the benefit of the “*school hours provision*” in clause 15 of the EST Award – that is, generally speaking, teachers employed in long day care centres. Teachers in preschools and schools who receive the benefit of school hours would therefore have the 4 percent increment currently provided for by the current clause 17.2 of the EST Award deducted. In our assessment this would produce a properly fixed rate of pay for a Proficient Teacher that properly takes into account the work value attaching to the practice of the teaching profession at that level.

[655] The Standards Based Remuneration structure in the NSW Teachers Award 2020 contains the following classifications:

Band 1	Graduate
Band 2.0	Proficient - Upon confirmation of proficient accreditation and after two years’ full-time service.
Band 2.1	Proficient - After two years’ full-time service at Band 2.0 and maintenance of proficient accreditation and satisfactory performance of duties
Band 2.2	Proficient - After one year’s full-time service at Band 2.1 and maintenance of proficient accreditation and satisfactory performance of duties
Band 2.3	Proficient - After one year’s full-time service at Band 2.2 and maintenance of proficient accreditation and satisfactory performance of duties
Band 3	Highly Accomplished/Lead - upon confirmation of Highly Accomplished/Lead accreditation and after one year’s service at Band 2.3 and satisfactory performance of duties

[656] We consider that the above structure, which is built on the APST professional career standards, may with some modifications be adapted for use in the EST Award. We consider that the structure has, to an excessive degree, retained service-based requirements which are unlikely to be related to work value. We do not consider that, once a teacher has been accredited at the Proficient Level, there should be in addition a requirement for two years’ full-time

service. Further, we think that the further service-based progressions at the Proficient level occur at intervals which are too short to properly relate to the acquisition of additional skills and responsibility through experience. A better approach would be to have two service-based increments at the Proficient level at three-intervals. The rates for these incremental levels, and the higher classification for teachers registered at the Highly Accomplished/Lead levels should, we consider, be fixed at levels which, broadly speaking, maintain the current internal relativities of the EST Award. The Graduate-level pay rate may be fixed by an alignment with Level C2(b) in the Metal Industry classification structure.

[657] This would produce the following classification and pay structure:

Classification	Criteria	Weekly salary - preschools and schools \$	Annual salary - preschools and schools \$	Weekly salary - long day care centres \$	Annual salary - long day care centres \$
Level 1	Graduate teacher with provisional or conditional accreditation where applicable	1,141.20	59,545	1,186.80	61,927
Level 2	Teacher with proficient accreditation or equivalent	1,247.30	65,085	1,297.20	67,688
Level 3	Teacher with proficient accreditation after three years' satisfactory service at Level 2	1,357.90	70,854	1,412.20	73,688
Level 4	Teacher with proficient accreditation after three years' satisfactory service at Level 3	1,468.40	76,623	1,527.20	79,688
Level 5	Teacher with Highly Accomplished/Lead Teacher accreditation	1,579.00	82,392	1,642.20	85,688

[658] In addition, we consider that it is necessary to make provision for additional remuneration for any early childhood teacher appointed to the statutory role of Educational Leader. As earlier noted, clause 19.3 of the EST Award provides for a regime of leadership allowances payable to school teachers only, with the Level 1 allowance being applicable to positions of educational leadership. We consider that the Level 1 allowance for schools in the smallest category (category C) should also be payable to early childhood teachers who are required to discharge the responsibilities of the education leader under reg 118 of the National Regulations. This allowance is currently \$3,302.46 per annum.

[659] The ACA submitted, in respect of the IEU’s work value application, that the wage increases claimed by the IEU should not be granted because, among other reasons, it would disrupt the wage relativities between the EST Award and other awards which established minimum rates of pay for professional employees required to hold 4-year university degrees. Such a submission would also, presumably, equally be advanced in opposition to the wage structure set out above. The submission is rejected, for two reasons. First, the ACA did not demonstrate that there is any historical nexus or relativity between the EST Award and the other modern awards to which it referred. Second, it is open to question whether the rates for professional employees in a number of modern awards have been properly fixed in accordance with the principles stated in the *ACT Child Care decision*.⁵²² The AFEI relied upon the Egan Report to submit that the work value of teachers was less than that for professional engineers, and that minimum increases contrary to the relativities established in the Egan Report should not be awarded. We likewise reject this submission because, for the reasons outlined in relation to the equal remuneration application, the methodology used in the Egan Report (and the Mercer Report) does not establish a sound basis for the assessment of comparative work value for award wage-fixing purpose. Nor, we emphasise, is the wage structure above founded on any conclusion about the comparative work value of teachers and professional engineers.

C.11 Consideration - the modern awards objective and the minimum wages objective

[660] We have identified the modifications to the remuneration structure in the EST Award which would, in our view, be justified by work value reasons, would properly reflect the work value of teachers covered by the EST Award and would constitute properly-fixed minimum rates of pay. However, in order to give effect to those modifications by making a determination to vary the EST Award, we must first be satisfied under s 157(2)(b) of the FW Act that making the determination outside the system of annual wage reviews is necessary to achieve the modern awards objective. In addition, the modern awards objective in s 284(1) applies. Both objectives require us to take into account a number of specified matters. We must also take into account the rate of the national minimum wage pursuant to s 135(2).

[661] In relation to the matters specified in s 134(1), we are able to make the following findings:

- *Paragraph (a)*: This is not relevant and has no weight in our consideration because employees covered by the EST Award are not low paid.
- *Paragraph (b)*: Nearly all school teachers covered by the EST Award receive rates of pay and conditions of employment pursuant to collective agreements that are significantly more beneficial than those in the award both as it currently stands and under the contemplated modified remuneration structure. The variation of the EST Award will not affect collective bargaining in this area. In respect of early childhood teachers, there is a low incidence of collective bargaining, particularly in the for-profit sector. We do not consider this will change if the EST Award is varied as proposed. Because the variation of the award will not positively “*encourage collective bargaining*”, this must be regarded as a matter which weighs against the variation, albeit only to a marginal degree.

⁵²² See *Pharmacy Award decision* [2018] FWCFB 7621, 284 IR 121 at [194]-[198]; [2019] FWCFB 3949, 287 IR 129 at [1(3)],[15]; [2019] FWC 5934

- *Paragraph (c)*: We consider that there is a strong possibility that the higher wage rates proposed will, at least in the early childhood sector, attract greater workforce participation by teachers in that sector. We note in this respect Mr Carroll’s evidence that, at G8, the decision taken unilaterally to substantially increase the wages of its early childhood teachers has “*added to G8’s value proposition*” for such teachers and assisted in attracting teachers to employment with G8 and in retaining them. In circumstances where there is a shortage of teachers in the early childhood sector, and a number of witnesses referred to the difficulty in recruiting suitable persons for teaching roles and retaining them in the face of the superior employment conditions prevailing in the school sector, this consideration weighs significantly in favour of granting the application.
- *Paragraph (d)*: We consider that the variation would likely have a neutral effect on “*flexible modern work practices and the efficient and productive performance of work*”. Because we are unable to positively find that the variation would “*promote*”, this must be regarded as a marginally neutral consideration.
- *Paragraph (da)*: This is not a relevant consideration.
- *Paragraph (e)*: The variation would significantly improve the remuneration of a female-dominated area of the workforce. However, its purpose would not be to equalise the remuneration of workers in this sector with any group of male workers performing work of equal or comparable value, accordingly this is not a relevant consideration.
- *Paragraph (g)*: The proposed new classification structure, which aligns payment rates to teacher registration, is to some degree simpler and easier to understand than the current structure. This weighs in favour of the variation to a minor degree.

[662] We do not consider we are currently in a position to make findings in respect of paragraphs (f) and (h). In relation to paragraph (f), it is clear that the proposed remuneration structure would have no, or virtually no, effect upon school teachers and their employers, because the actual rates of pay for school teachers are generally already well in excess of the proposed rates of pay. However, in respect of the early childhood sector, there was considerable evidence concerning the cost of the IEU’s claim and the effects the grant of claim would have on the viability, profitability and prices of for-profit employers in particular. However, the wage rates claimed by the IEU were significantly in excess of the wage rates contained in our proposed new classification structure and, accordingly, this evidence is of limited utility in making findings concerning the matter specified in paragraph (f). In relation to paragraph (h) also, it is conceivable that, to the extent that the making of the variation might cause an increase in childcare costs, this could possibly have relevant macro-economic effects. The evidence to this point has not addressed this.

[663] As to the minimum wages objective in s 284(1), the considerations in paragraphs (b), (c) and (d) correspond respectively with paragraphs (c), (a) and (e) of s 134(1), and we make the same findings in respect of these. Paragraph (e) is not relevant. Paragraph (a) is in similar terms to paragraph (h) of s 134(1) and, for the same reasons, we are not in a position at this time to make findings about it.

[664] In accordance with s 135(2), we have taken into account the rate of the national minimum wage and have treated it as a neutral factor in our consideration.

[665] We consider that the appropriate course is to afford interested parties the opportunity to adduce further evidence and make further submissions which respond to the modifications to the remuneration structure in the EST Award which we consider to be justified by work value reasons, and which address s 134(1)(f) and (h) and s 284(1)(a), before we make findings concerning whether the variation of the EST Award to give effect to those modifications is necessary to achieve the modern awards objective and would be consistent with the minimum wages objective. Such further evidence and submissions might, among other things, usefully deal with the following matters:

- what the operative date of the variation should be if it is made;
- whether any phasing-in arrangements should apply; and
- the capacity of the Commonwealth Government and State and Territory Governments to assist in funding the wages of early childhood teachers.

C.12 Next steps

[666] After interested parties have had an opportunity to peruse this decision and consider its contents, we will list a directions hearing in the matter and determine the appropriate procedural course for the final disposition of the proceedings.



VICE PRESIDENT

Appearances:

Mr *I Taylor SC* with Ms *L Saunders* of counsel on behalf of the IEU.

Ms *R Mooney* on behalf of the AEU.

Mr *O Fagir* of counsel on behalf of the ACA.

Mr *R Warren* of counsel on behalf of the AFEL.

Ms *K Eastman SC* with Ms *E Raper SC* of counsel on behalf of the Commonwealth.

Hearing details:

2018.

Sydney:
July 26, 27, 30.

2019.

Sydney (with video-link to Melbourne, Perth, Adelaide and Canberra):
11, 12, 13, 17, 18, 19, 20, 25, 26, 27 June, 1, 2, 3, 4 July and 4, 5 September.

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