



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

**VICE PRESIDENT CATANZARITI
DEPUTY PRESIDENT KOVACIC
COMMISSIONER JOHNS**

s.156 - 4 yearly review of modern awards

**Four yearly review of modern awards
(AM2015/6)
Educational Services Awards**

Melbourne

10.01 AM, THURSDAY, 3 NOVEMBER 2016

Continued from 2/11/2016

PN9268

VICE PRESIDENT CATANZARITI: Yes?

PN9269

MS GALE: Good morning, your Honour. The NTEU calls Dr Michael Dix.

PN9270

THE ASSOCIATE: Could you please state your full name and address for the records.

PN9271

MR DIX: Michael Ross Dix, (address supplied).

<MICHAEL ROSS DIX, SWORN [10.03 AM]

EXAMINATION-IN-CHIEF BY MS GALE [10.03 AM]

PN9272

MS GALE: Dr Dix, could you state your name and address again for the record, please?---Michael Ross Dix, (address supplied).

PN9273

Have you prepared a statement in these proceedings?---I have.

PN9274

Do you have a copy with you?---I do.

PN9275

Have you had an opportunity to read it recently?---I have.

PN9276

I understand that you have two corrections you wish to make to that statement?---That's right.

PN9277

The first of those is at paragraph 28 where it currently reads: "A subject I teach in summer and winter, Critical Thinking, has been SUT's most successful." You wish it to say, "has been one of SUT's most successful?"---That's right.

PN9278

And the second correction is at paragraph 37. In the third line, you wish to delete the word "I" between "but" and "as" so that it reads: "research, but as a teaching-intensive academic I have no workload allocation?"---That's right.

PN9279

With those corrections, do you say that the statement is true and correct?---I do.

*** MICHAEL ROSS DIX

XN MS GALE

PN9280

VICE PRESIDENT CATANZARITI: Exhibit AU.

**EXHIBIT #AU STATEMENT OF MICHAEL ROSS DIX DATED
10/08/2016**

PN9281

MS GALE: And you adopt that as your evidence in these proceedings?---I do.

PN9282

Thank you. No further questions.

PN9283

VICE PRESIDENT CATANZARITI: Thank you. Thank you, Ms Pugsley.

CROSS-EXAMINATION BY MS PUGSLEY

[10.05 AM]

PN9284

MS PUGSLEY: Dr Dix, I'm from the Australian Higher Education Industrial Association representing our members which includes Swinburne University in these proceedings and I have a few questions for you arising out of your statement. In your statement you go through quite a long working history in the higher education industry, so that's since about 1990?---Yes.

PN9285

And you're currently employed by Swinburne on an ongoing basis as a teaching-intensive academic at level B?---That's right.

PN9286

And that's the only time you've held an ongoing position with any university?---It is, yes.

PN9287

You have your statement in front of you. Can I ask you to turn to paragraph 25?---I'm sorry, I'll have to get it. May I get it?

PN9288

Yes. I'll take you to page 4 and paragraph 25?---Yes.

PN9289

You refer there to a short fixed-term contract that you held in 2005, and you refer to the industrial award in place at that time. In fact, you're referring to the Swinburne enterprise agreement at that time, is that correct? That's what - - -.---
Thank you.

PN9290

In fact, the effect of the relevant clause was that if a sessional academic was allotted a certain number of teaching hours, they were to be offered part-time rather than casual employment?---I'm sorry, I don't understand the question.

*** MICHAEL ROSS DIX

XXN MS PUGSLEY

PN9291

You state that the industrial award would not commit the university to employ a sessional teacher to teach more than a half-time load, and the effect of that was

that a sessional who was teaching a half-time load would then be put on to a part-time arrangement rather than sessional, and that's why you're on a fixed-term contract?---I believe that was the case then.

PN9292

It's a matter of history, just a matter of clarification. I'm going to hand a document to the witness which is his current contract of employment dated 9 July 2014.--- Thank you.

PN9293

At clause 1.1 it states that you're on a 40/52-week employment arrangement?---That's right.

PN9294

So you are paid for 40 weeks per year and that's averaged across the year, so you're paid the same each week?---Yes.

PN9295

You might not know about other staff at Swinburne but you're not the only staff member at Swinburne who's on that arrangement?---Yes, I know that.

PN9296

As you state in your paragraph 66, there's no actual research component in your workload, is there?---That's correct.

PN9297

In effect, your ongoing contract is the work required of a sessional staff member but it gives you greater security because you're ongoing?---No, it is not the work required of a sessional staff member. It includes participation in faculty meetings, in department meetings and in discipline-level meetings. It also includes supervision of sessionals where appropriate. None of that is part of a sessional's duties any more at Swinburne.

PN9298

Thank you, and I stand corrected, but there is no research component?---No research component.

PN9299

In fact, sessionals generally teach 26 weeks a year, don't they, whereas you're paid for 40?---It is difficult to generalise because sometimes sessionals are employed only for one semester. At Swinburne I was not the only sessional who taught more than twice per year.

PN9300

You're one of only two staff in Philosophy at Swinburne who are employed on an ongoing basis?---No. We now have four, so there are the two who have been employed in an ongoing basis for a number of years - Dr Healy and Associate Professor Gare, and then there's myself since 2014, and also since 2014, on an ongoing contract, Dr Glenn McLaren, so there are four of us now.

*** MICHAEL ROSS DIX

XXN MS PUGSLEY

PN9301

Philosophy is a smaller department than, say, Sociology or Education within the same faculty?---Yes, it's a smaller discipline area. It's not classified as a department. The department is a larger grouping at Swinburne.

PN9302

In paragraph 65 of your statement, you state that you do have some unallocated - -
-

PN9303

VICE PRESIDENT CATANZARITI: Are you tendering this - - - ?

PN9304

MS PUGSLEY: Yes, thank you.

PN9305

VICE PRESIDENT CATANZARITI: Exhibit AHEIA 13.

**EXHIBIT #AHEIA13 CONTRACT LETTER FROM SWINBURNE
TO DR DIX**

PN9306

MS PUGSLEY: If I could take you to paragraph 65 of your statement?---Yes, I have that.

PN9307

There is unallocated time of 10 per cent?---There is, yes.

PN9308

Do you use that unallocated time to do some of your research?---I use some of that unallocated time to do some of my research. I couldn't fit all of my research in what unallocated time I have available remaining in that 10 per cent given the other things that come out of it.

PN9309

You also refer to the fact that you've worked summer school and also winter terms?---Summer term and winter term, yes.

PN9310

And that's a choice that academics have at Swinburne, isn't it?---It is a choice, yes.

PN9311

As a casual, if you work a summer or winter term then you are paid for that work?---Yes.

*** MICHAEL ROSS DIX

XXN MS PUGSLEY

PN9312

If you're an ongoing staff member, you can elect to do that work and be paid over and above your normal workload?---If you're an ongoing staff member, I don't believe so. There are stricter requirements around that, but as you said before it is

a choice, and the academic does get a choice in the matter as to whether or not she or he will work in summer or winter terms.

PN9313

At paragraph 39 to 42, you refer to your sessional work at Swinburne?---Which paragraph was that, I'm sorry?

PN9314

39 to 42?---Thank you.

PN9315

And in particular, the number of teaching hours that you were doing at that time?---Yes.

PN9316

Provided the work is available at one or more universities, a sessional can really work as much as they like, can't they?---They can, as much as they can cope with, yes.

PN9317

So you could hold down, say, five jobs?---I have in the past held down six.

PN9318

So it's your choice to cut back on that so that you can focus on research, because that's not paid to sessionals?---That's correct.

PN9319

Would it be fair to say that research is a passion for you, something that you really enjoy doing?---I love it, yes.

PN9320

In an ideal world, would you prefer to be employed on a teaching and research basis rather than a teaching-intensive?---Yes, indeed, and I've just applied for such a conversion.

PN9321

And that's in line with the contract that you've got in your hand, isn't it?---That's in line with the contract and the terms of the agreement, yes.

PN9322

I might just take the Bench to AHEIA13 at 1.5, which provides that a teaching-intensive staff member is entitled to apply for a standard academic position after 12 months of service in the position. Will your success in that application depend on whether Swinburne has the need for research as part of another ongoing role?---Sorry about this answer - yes and no. Swinburne will certainly have a quota - an approximate quota of how many of these conversions they will allow. I believe I put in a very strong application and I confidently expect to be accepted.

*** MICHAEL ROSS DIX

XXN MS PUGSLEY

PN9323

And the number of staff always depends on the number of enrolments, doesn't it - student enrolments?---Mostly it does, yes.

PN9324

So if there was to be a huge spike in Philosophy enrolments then the university would be more likely to provide more ongoing positions?---Yes. One of my colleagues has recently announced his retirement in January, so there may not be a spike in the student numbers but there'll be a reduction in ongoing staff numbers.

PN9325

At pages 8 to 13 of your statement you list a number of works that you've read or re-read over the past five years?---Sorry, which - - -?

PN9326

Pages 8 to 13 of your statement?---Thank you.

PN9327

So it's the number of works, so some of them are extracts, book chapters, extracts of articles?---Yes.

PN9328

A fair amount of that reading was for the purpose of your own research leading to the publication that you refer to?---All of that was directly referred to in publications that I've made in the last three years, yes.

PN9329

So that's as opposed to being required for your teaching when you were teaching as a sessional?---That's correct.

PN9330

You do and have supervised sessional staff over the years?---I have.

PN9331

How many of those would generally be PhD students?---Nearly all of them. There are usually plenty of applicants and we can pick and choose.

PN9332

You refer at paragraph 51 on page 15 to the ongoing research and publications that those sessionals undertake. When they arrive at Swinburne they already bring some expertise with them and some research they've begun to undertake?---Not necessarily research they've begun to undertake. It can be more preliminary than that. Given that they've mostly fairly recently completed PhDs, they may be polishing up some of their chapters for publication, or they may be thinking of a new project in its earlier stages.

PN9333

As sessional staff, they're not required to convene the subjects they teach, are they?---No longer, no. In the past as a sessional they convened almost every offering that Swinburne has in Philosophy.

*** MICHAEL ROSS DIX

XXN MS PUGSLEY

PN9334

But that's no longer the case?---It's not allowed, no.

PN9335

And sessionals are required to undertake compulsory paid compliance training?---They are.

PN9336

To the extent that they have to deal with student complaints and misconduct and so on, do they generally seek guidance from you or from HR or student services if that arises?---They seek guidance from me or from someone more senior than myself.

PN9337

Just turning to what you've said about ICT and the use of your personal IT, you say that it's not possible to perform all of your work during office hours. By office hours, do you mean 9 to 5, Monday to Friday?---I use that definition - I don't believe in office hours - but I use that definition, yes.

PN9338

And you have access to your office outside of standard office hours?---I do.

PN9339

You refer to accessing journals in electronic version, so you can access those either from home or from your office, depending where you are?---That's correct.

PN9340

These days it's quicker to access them electronically than in the old days when you had to go and find them in the library?---Definitely.

PN9341

Are you aware that you can borrow a university laptop if you happen to be working away from campus?---I am aware.

PN9342

And that's either from the faculty or the library?---Yes, I'm aware.

PN9343

Are you aware that if you've got an ongoing need to do such work you can actually be given a laptop by the university?---I am aware of that possibility. I've not investigated it.

PN9344

With relation to your home internet connection and your mobile phone, you do use that for some personal as well as work use, is that right?---Yes.

PN9345

To the extent that it's work-related, do you make a claim on your tax?---No longer. Many years ago I used to claim it on tax; now I don't bother.

*** MICHAEL ROSS DIX

XXN MS PUGSLEY

PN9346

But it's possible for you to do so?---It would be possible.

PN9347

Thank you. I have no further questions.

PN9348

VICE PRESIDENT CATANZARITI: Yes, Mr Pill?

CROSS-EXAMINATION BY MR PILL

[10.20 AM]

PN9349

MR S PILL: Just a couple of questions, Dr Dix. Can I take you to paragraph 21 of your statement? You've referenced there and in other paragraphs the subject, Critical Thinking?---Yes.

PN9350

And I take it from your statement that's a subject that you've taught many, many times?---Many times, for 20 years.

PN9351

In paragraph 21 you've referenced teaching in the summer teaching period, on my reading of that paragraph from 2000 through to 2016?---Approximately 2000. I can't remember the year that Swinburne began at summer term, but I believe it's 2000.

PN9352

And you also reference that the one exception to that was 2016 - sorry, there's two exceptions - 2016, where Critical Thinking could no longer be offered four times per year?---That was 2015, I thought - sorry.

PN9353

Okay. I'm just reading your statement - except for 2016 when the School of Humanities - - .---Oh, sorry, I missed that. That should be 2015. That was last year.

PN9354

I just wanted to confirm - - .---Sorry, that was the summer - no, I'm confused - yes, that's quite correct, sorry.

PN9355

So just for clarity, should it be 2015 or '16?---That's summer, isn't it, we're speaking of?

PN9356

Yes?---It's 2016, I'm sorry. I was confused there.

*** MICHAEL ROSS DIX

XXN MR PILL

PN9357

The question that I wanted to ask you - it's just to get confirmation - how many times did you teach Critical Thinking each year?---I now teach it three times a year. I used to teach it four times a year but I'm no longer allowed to do that.

PN9358

The three times a year, it's substantively the same subject with substantively the same content?---The same content. Summer and winter are a bit different with regard to the teaching and learning dynamics because of compressed timeframe and because of the vastly larger proportion of international students.

PN9359

Thank you. You also, in response to Ms Pugsley's question about appointment of sessionals and you indicated the majority hold PhDs?---Yes.

PN9360

And that you are effectively oversubscribed and you pick and choose. Do you accept that you would pick and choose based upon those candidates who have the requisite skills, experience and knowledge of the subject area in which you're looking to appoint?---That is the major criterion but not the only criterion that I use and that my immediate colleagues use. I know what they do because they do it in consultation with me.

PN9361

Lastly, your home computer, do you use it for non-work purposes as well?---I do.

PN9362

No further questions.

PN9363

VICE PRESIDENT CATANZARITI: Ms Gale?

RE-EXAMINATION BY MS GALE

[10.23 AM]

*** MICHAEL ROSS DIX

RXN MS GALE

PN9364

MS GALE: You were asked about the criteria on which you choose sessionals that you'll employ. You said that the knowledge they have is not the only criteria you would use. What other criteria do you apply?---First of all, they need experience. We can pick and choose. We don't choose anyone without teaching experience, except for two cases of postgraduate students in recent years. Secondly, they have to care about teaching, so not just have the experience and the knowledge; they have to care deeply about teaching and learning. If it appears in the interview in which we discuss this with them that they don't care deeply about it, we don't employ them. If we find out that someone we have employed doesn't care deeply about teaching and learning even though they may have the knowledge, we don't re-employ them. I would never personally re-employ them, and I strongly recommended against re-employing such a person in the past. Finally, they need to be showing growth as an intellectual. They need to be engaged constantly but not necessarily every day in the intellectual life of their discipline and of the world. If they are not, we can pick and choose, and we don't want them.

PN9365

You were asked whether you had borrowed a university laptop, for example, from the library - sorry, you were asked whether you were aware that was possible. Have you done so?---I've not done so. I'm an impatient person and there's a bit of a rigmarole.

PN9366

You were also asked about, at paragraph 65 of your statement where you've described the division of your workload allocation in your current appointment, and you were asked a question about the 10 per cent unallocated time and whether that's the time you use for research. I think you said not all of your research fits into that unallocated time because of all of the other things that come out of it?---That's correct.

PN9367

Can you tell us what are the other things that come out of that or that time is used for?---Something that I was doing this morning; I was - as a member of a panel of reviewers for a journal, I was reviewing a submitted article, writing my notes on it and so forth. I do possible eight of those a year.

PN9368

Anything else?---I am on the board of management and, when required, on the editorial board of the only refereed Australian journal of community development, New Community. That, this year, has taken a considerable amount of my time because of some problems that have arisen in relation to an associated organisation. Last week - no, the week before last - attended some student presentations in a design subject where the students were doing a design project for which Philosophy at Swinburne was the client, and I gave feedback to the students on their presentations, on their design projects and so forth. That's the second time I've done that for this particular group of students. When required I do that sort of thing. In fact, I like to do that sort of thing. I think that makes really important connections between disciplines at Swinburne and is very valuable for those disciplines and for the students, and for Swinburne.

PN9369

No further questions.

PN9370

VICE PRESIDENT CATANZARITI: Thank you. You're excused.

<THE WITNESS WITHDREW

[10.28 AM]

PN9371

VICE PRESIDENT CATANZARITI: Yes, Ms Pugsley.

PN9372

MS PUGSLEY: Your Honour, I call Diana Chegwidden.

*** MICHAEL ROSS DIX

RXN MS GALE

PN9373

THE ASSOCIATE: Please state your full name and address.

PN9374

MS CHEGWIDDEN: Diana Eileen Chegwidden, (address supplied).

<**DIANA CHEGWIDDEN, SWORN** [10.29 AM]

EXAMINATION-IN-CHIEF BY MS PUGSLEY [10.29 AM]

PN9375

MS PUGSLEY: Good morning, Ms Chegwidden, can you hear me in Melbourne?---Yes, I can, thanks.

PN9376

Could you please repeat for the transcript your full name and your business address?---Diana Eileen Chegwidden, and the business address is 40 Edward Street, North Sydney, NSW.

PN9377

Have you prepared a statement in these proceedings?---I have.

PN9378

Do you have a copy of it with you?---I do.

PN9379

Have you read it recently?---Refreshed for today, yes.

PN9380

Do you now say its contents are true and correct?---I do.

PN9381

I tender the statement of Diana Chegwidden.

PN9382

VICE PRESIDENT CATANZARITI: AHEIA14.

**EXHIBIT #AHEIA14 STATEMENT OF DIANA CHEGWIDDEN
DATED 12/03/2016**

PN9383

VICE PRESIDENT CATANZARITI: Thank you. Mr McAlpine?

CROSS-EXAMINATION BY MR MCALPINE [10.30 AM]

PN9384

MR McALPINE: Thank you. Good morning, Ms Chegwidden. Can you hear me?---Yes, I can.

*** DIANA CHEGWIDDEN

XN MS PUGSLEY

*** DIANA CHEGWIDDEN

XXN MR MCALPINE

PN9385

Thank you. My name is Ken McAlpine, and I don't think we've met face-to-face. Whether this counts as face-to-face I'm not sure, but I don't think we've met

face-to-face before. I'm representing the NTEU in these proceedings. Can I take you to paragraph 3 of your statement, and you've given evidence about some provisions in the Australian Catholic University Staff Enterprise Agreement 2013-2017 about new organisation and disbanded organisational unit, that's correct, isn't it?---It is, yes.

PN9386

You're giving that evidence to the Commission in support of the AHEIA's claim for an additional clause in the underlying modern award, aren't you?---Yes, I am.

PN9387

I'd like to ask you a couple of questions about the clauses and their relationship to the modern award, first of all, in relation to disbanded organisation unit, and you've reproduced the relevant provision. That's a circumstance in which fixed-term employment can be used at the ACU, is that correct?---It is, yes.

PN9388

I put it to you that that provision is already covered, is it not, by the existing modern award which says that work activity that's expected to be completed in an anticipated timeframe can be the basis for a fixed-term contract, wouldn't that be fair to say?---Certainly that is one way that you could look at the clause. Disbanded organisational unit, as we see it, just provides clarity as to the reason why.

PN9389

But it really doesn't add anything, does it? If I've got a - let's say I've got a physiotherapy department and I decide to close that department, then the work activity in that department is anticipated to cease at some point in the future, is it not?---Certainly it's anticipated to cease in the future and may be used under one of the definitions in the modern award, but it is about the circumstances that might give rise to that fixed-term employment under the modern award, which I think is some confusion. So disbanded organisational unit is providing a very specific reason and a condition under which we would use this. To use the current provisions or to use provisions under the modern award I see as somewhat, you know, lacking clarity as to the purpose of the fixed term.

PN9390

Similarly, if I can take you to new organisational unit, which is another ground for the use of fixed-term contracts. The reference in the third line ought to perform specific commencement activities for up to two years from the establishment of any such area. Again, that's a specific, definable work activity that's expected to be completed within an anticipated timeframe, is it not?---That would be the normal expectation of commencement activities, that it would actually have a definable period, yes.

PN9391

So that's already covered by the existing modern award, is it not?---It could be covered through the specific task and project, but it actually - - -

*** DIANA CHEGWIDDEN

XXN MR MCALPINE

PN9392

Yes, so another question about that - - -

PN9393

VICE PRESIDENT CATANZARITI: Do you want to actually put the modern award clause you're referring to for that to make it easier?

PN9394

MR McALPINE: I have a copy of the clause.

PN9395

VICE PRESIDENT CATANZARITI: I just want to assist the witness. Remember this is a person in - not an adversarial, so to assist the discussion.

PN9396

MR McALPINE: I have a copy here.

PN9397

VICE PRESIDENT CATANZARITI: Can you just read it out?

PN9398

MR McALPINE: Okay. There's a provision in the modern award which says, "Specific task or project," and I think it's fair to say this - well it says:

PN9399

Specific task or project means a definable work activity which has a starting time and which is expected to be completed within an anticipated timeframe.

PN9400

That's the provision I'm suggesting to you. That's the term that I'm suggesting to you that the specific commencement activities would fall within. Is that fair?--Certainly it can fall within specific task and project, and that would have been a provision that we had relied upon in the past. Again, the organisational unit provides the clarity and the conditions under which we would seek to use fixed term, or a definable period as well in terms of after two years and the condition that would occur if we needed to extend that. There may in fact be some limitations in relation to specific task or project otherwise.

PN9401

DEPUTY PRESIDENT KOVACIC: Sorry, Mr McAlpine, can I just perhaps ask a question?

PN9402

MR McALPINE: Yes.

*** DIANA CHEGWIDDEN

XXN MR MCALPINE

PN9403

DEPUTY PRESIDENT KOVACIC: Ms Chegwidden, it's Deputy President Kovacic here. Given the responses you've just given to the questions that Mr McAlpine has put to you, was the motivation for including those two provisions in the university's enterprise agreement driven by just a desire to have greater clarity,

or was it as a result of disputes over the particular operation of the award provision or was there some other factor?---Thank you. In relation to the expanded clause within our enterprise agreement, yes, it was to bring to clarity; yes, it was to be clear on the flexibility that we were seeking. In the past - there is challenge to specific task and project and there continues to be challenge to specific task or project, so in terms of the restrictions through which it was being applied we wanted to make sure that we had a fairly expansive list of reasons under which a fixed term could be offered.

PN9404

Thank you, Mr McAlpine.

PN9405

MR McALPINE: Under the new organisational unit provision there's a requirement that there's to be uncertainty as to whether it will continue. The reference to whether it will continue is a reference to the new organisational area, is it?---It is, yes.

PN9406

It doesn't require that there's uncertainty as to whether the work will still be required? Is that fair?---It's the organisational area and whether or not the organisational area will continue, so that's the condition.

PN9407

Right, so if I've got a personnel - just to use ancient terminology - if I've got a personnel section that I split into human resources and salaries payment, but we're not sure whether that arrangement is going to continue, that would justify the use of a fixed-term contract, would it not? Because the requirement is that it's the organisational unit, not the work - it's not by reference to the work, it's by reference to the organisational unit, is that fair?---That's fair, and I've already stated that it is the organisational area.

PN9408

As to the question - and I don't think I need to take you to Appendix A, but in Appendix A you've listed a series of positions that have been created under the new organisational area, is that a fair description of what you've done?---Yes.

PN9409

Only take me to it if you need to, but I'm going to suggest to you that none of those organisational areas have actually not continued to exist, is that true?---I'm just scanning the list. Of those areas they have all continued to exist.

*** DIANA CHEGWIDDEN

XXN MR MCALPINE

PN9410

So I'm just going to ask you a question. There is a requirement for uncertainty to exist. Who makes the decision about the uncertainty, because you do have to jump two hurdles, don't you - it has to be a new organisational unit and there has to be uncertainty about its continued existence? How is that decision made?---It would be made based on what is being established and whether or not at that point in time there is certainty of student enrolments, and these things are all variable.

So the decision is made upfront in relation to we're making a conscious decision to start something new - we are not sure about its viability, and not sure about its capacity to attract a student population and retain that student population, in some new academic areas, for example. In other areas it's about the capacity of the university to perhaps attract new business in terms of some of the new business models that we would be trialling in terms of these new organisational units. So they have a commencing phase, they might have an early phase of development, they might have a commencement; we might choose to, at the time of development, not continue - you know, we would give something a two-year window within which it would reach particular performance expectations. So they are slightly different depending upon what the type of organisational unit is, and quite specifically if it's a new area for the university or business for the university.

PN9411

So for example, and I accept what you're saying, but there was an executive officer position in the Office of the Vice-Chancellor. Was the Office of the Vice-Chancellor a new organisation unit?---Based on the information in front of me it's a new part of the Office of the Vice-Chancellor, and I would - not that I actually have the documentation in front of me as to the specific circumstances of that fixed term - but based on information here I can see that it's got an employee number that's not in NSW, which is where the Vice-Chancellor resides, so it may have been something that we were trialling as a different organisational unit to the office that exists in NSW with the Vice-Chancellor.

PN9412

I'm going to ask you a more general question about fixed-term contract employment. When you use fixed-term contract employment rather than ongoing employment, objectively speaking the only reason the university wants to use fixed-term employment is to deprive employees of entitlements under the award and to deprive them of access to the unfair dismissal jurisdiction, isn't that fair?---No.

PN9413

What other reason would there be?---Because there are genuine circumstances to actually have an employment contract that is other than continuing.

PN9414

But taking your new organisation area as an example, you can employ - if I'm Woolworths or Coles I can open a new shop, employ the people as continuing employees, and if the shop doesn't work out, at the end of three years I make them redundant. The reason you don't do that is because you don't want to have to pay people redundancy pay, isn't it; you put them on fixed-term contracts?---Fixed-term contracts also attract notice and severance provisions. We use fixed-term employment at Australian Catholic University under genuine circumstances of fixed-term employment - that the work is of a kind that is not at this point in time identified as continuing.

*** DIANA CHEGWIDDEN

XXN MR MCALPINE

PN9415

But there's nothing in the award that prevents you using continuing employment for such work, is there?---No. Fixed-term is a definition that is allowable and certainly it's an employment type that is used.

PN9416

Yes, so the advantage for the university is that at the end of the contract the employee essentially can't dispute their termination, that's correct, isn't it? That's an advantage that the university has, objectively speaking?---Post-employment. During employment they can use the provisions if they believe - or they can use university policies if they believe that there's an avenue for dispute or grievance.

PN9417

But if I want to simply - if I have been working on fixed-term contracts for five years and the university simply decides that they want to employ somebody else to do the same work, I have no comeback, that's correct, isn't it?---The enterprise agreement as it currently stands provides the provisions, but there's no comeback, no.

PN9418

I'd like to take you now to the AHEIA's proposed clause, which should be there in Sydney, a document which simply starts with a lower case letter "g" - do you have that in front of you?---I do.

PN9419

So that's simply a sheet of paper with "g" and it starts, "Where uncertainty exists," and finishes, "decrease in student enrolments." So you would agree with me that the claim made by the AHEIA doesn't require that there's any connection between - there's not any requirement that the particular job that is the subject of a fixed-term contract have any connection to the uncertainty about workforce requirements, do you agree with that?---Sorry, I'm getting my head around the clauses. I've not seen this before. Sorry, what is the question?

PN9420

The question is - okay, it seems to me there's a prerequisite for the use of fixed-term contracts, or one of them is:

PN9421

Where uncertainty exists as to future workforce requirements arising from a decision to undertake major organisation change -

PN9422

If we just cut off there - there's no requirement that the actual job that is to be put on a fixed-term contract that there be any uncertainty about that job; simply the requirement is that there has to be uncertainty about - and the term is 'future workforce requirements,' is that correct?---So I would read this in relation to future workforce requirements as being size of workforce, which is made up of jobs.

*** DIANA CHEGWIDDEN

XXN MR MCALPINE

PN9423

And similarly, that could be as a result of a formal review of a work area, is that right?---That is how "g" reads, yes.

PN9424

And then there seems to be a separate ground that fixed-term contract employment can be used where work activity is being introduced or discontinued. I put it to you that that's going to be true in almost every department of the university all the time. Isn't that fair enough to say?---On a simple reading where work activity's being introduced, it's where it could be new work; it could be any work. I can't make comment on the clause that I don't know - yes, sorry, I just - -

PN9425

Your university's a member of the AHEIA and this is their claim, and you're the human resource director - in fact, you're one of the most experienced human resource directors in the country. I'm suggesting to you that the AHEIA's claim would allow for the use of fixed-term contract where work activity is being introduced or discontinued. My question is: isn't it true that work activity would be being introduced or discontinued in just about every department of every university all the time? They're very dynamic organisations.

PN9426

VICE PRESIDENT CATANZARITI: Before you answer that question - Mr McAlpine, what are you seeking this witness - is it the construction of the clause which she is not familiar with?

PN9427

MR McALPINE: No - - -

PN9428

VICE PRESIDENT CATANZARITI: There's a question in my mind as to - you tell her that - it can be a matter of submission as to what you say the clause is ultimately, and you say the effect of it, or are you putting it in front of her and saying what do you understand the clause to mean? I mean, I'm not clear on what basis, given what her evidence is and the clause that they have in their agreement is quite different.

PN9429

MR McALPINE: The question I was putting was a question of fact about whether in universities work activity is being introduced or discontinued in just about every department of the university.

PN9430

VICE PRESIDENT CATANZARITI: Well put that question in that simple form.

PN9431

MR McALPINE: Yes, okay. I put it to you, Ms Chegwidden, that in a university work activity is being introduced or discontinued in just about every department of the university all the time?---I would agree with that statement, yes.

*** DIANA CHEGWIDDEN

XXN MR MCALPINE

PN9432

The university, in fact, conducted a major organisational change and formal review in 2013 and 2014, is that fair to say?---Yes, that's the Futures Project that you're referring to.

PN9433

Yes, and that was a proposal to essentially change the number of faculties, is that correct - amongst other things, I'm sorry?---Yes, three components, one of them faculty realignment, which changed the number of our faculties.

PN9434

Did it change the composition of each of those faculties in terms of the discipline areas they covered?---No. It was about alignment of these schools into faculties. It didn't change the disciplines per se. It removed an aspect of work being done in one faculty and actually elevate it to a school in another.

PN9435

Yes?---But it didn't create new disciplines per se in the university.

PN9436

No, I'm sorry if my question wasn't clear. It meant that the distribution of schools or departments between faculties altered to some extent, is that right?---Yes.

PN9437

You mentioned that there were two other major components of that. What were the other two major components of that?---Research intensification and shared services.

PN9438

What did research intensification - what was that about?---In the main, research intensification was the creation of research institutes across the organisation and how they would move to be structured - Futures proposed three - how they would be structured, and how the assignment of current staff within faculties would occur to the research institutes.

PN9439

How long in your estimation - I mean, there's always follow-up work and implementation work - but how long did that review take from conception to completion?---I would say 18 months.

PN9440

Given the sort of staff changes you talked about, particularly in relation to the research institutes, that means to some extent there was uncertainty about workforce requirements during that period?---No, I wouldn't agree with that statement.

*** DIANA CHEGWIDDEN

XXN MR MCALPINE

PN9441

Why not?---Certainly there were concerns about where people would be placed in the ultimate structure, but it wasn't about changing the current workforce size in any way; it was not its intent. It was placing that workforce within a realigned

area. The ambiguity occurred for academic staff around their academic supervision for a period of time because it was a significant change to the school's structure. So the Futures faculty realignment significantly changed the structure of the faculty and school, executive structure and leadership structure, and the professional staff within the faculties, because there were roles that needed to fit within different structures and some roles duplicated. The uncertainty for academic staff was around academic supervision where we did not have the new school structure in place for some time because some of that required recruitment. So that was some of the uncertainty for academic staff. The placement into the institutes was a process that was defined in relation to people who identified as meeting particular criteria can be considered for membership of research institutes.

PN9442

In relation to general staff there was an audit of the general staff workforce requirements, was there not?---There was a - I don't know that I can agree "audit" of professional staff - certainly in relation to the structures that existed they were different across the six faculties, and a structure through the Futures Project was identified to bring some consistency to each of the faculty structures that professional staff were then assigned into those structures.

PN9443

Is it fair to say that the ACU proceeded on the basis of reassuring staff that there'd be no redundancies arising from this?---That was the university's position, yes.

PN9444

Yes, but as to what staff would be required in what faculty, that was a question that had to be determined through that process?---Through a change plan and a placement process, it went through the normal process of identifying what roles were required, articulating the roles through descriptions; in the main, placing people into those roles, and consulting with them where some of those roles were different and managing the process in relation to where there were more people than what we actually had roles within the full faculties.

PN9445

Thank you. You play a major role in relation to the negotiation of enterprise agreements, is that correct?---I have for the last two agreements to a greater degree, yes.

PN9446

In particular, you were involved in the negotiation of the academic workload provisions?---Yes, I was.

PN9447

Under that agreement there's a reference to a workload policy. You were intimately involved in the establishment and negotiation of that policy, weren't you?---Yes.

*** DIANA CHEGWIDDEN

XXN MR MCALPINE

PN9448

And you've also, I think it's fair to say successfully, negotiated the settlement of a number of disputes and arguments about what should be in that policy and how it should be applied, is that fair to say?---Yes.

PN9449

I'd like to take the witness to the enterprise agreement - the Australian Catholic University Staff Enterprise Agreement 2013 - 2017.

PN9450

VICE PRESIDENT CATANZARITI: Do you want to mark for identification the document you've shown the witness?

PN9451

MR McALPINE: Yes.

PN9452

VICE PRESIDENT CATANZARITI: I'll make that MFI45(sic).

MFI #46 CLAUSE G

PN9453

MR McALPINE: Do you have a copy of that in front of you?---I do.

PN9454

Can I take you to paragraph 5.2 which I think is at page 36?---Yes.

PN9455

Can I take you to the subclause 5.2.1.2, do you see that one?---Yes.

PN9456

Now I'd particularly like to ask you about the second sentence which is the one that starts "the University and its insurers are not normally able to indemnify or provide workers' compensation coverage to a staff member who has not made appropriate prior arrangements with the relevant National Head of School or Executive Dean in relation to any on-campus activities". Is that true? Is that correct?---In terms of if the university does not have knowledge as to where work is being undertaken, and we don't know that work is being undertaken, you know, we may not carry that obligation.

PN9457

Okay, and then in relation to the first sentence, that's the reason why if you haven't submitted a leave form, there's an expectation that staff will work on campus, is that right?---Or will have given prior notification. So this is under the principles of academic availability in bringing clarity to academic staff about how we expect them to work, their workload and to keep their supervisor informed as to how they're conducting their work.

*** DIANA CHEGWIDDEN

XXN MR MCALPINE

PN9458

Would you say that people in fact, tell their National Head of School or Executive Dean if they're going to work at home?---They will certainly be doing that with

their academic supervisor, not necessarily their National Head or School or Executive Dean, but it is their delegate who is their nominated supervisor.

PN9459

VICE PRESIDENT CATANZARITI: Mr McAlpine, can I just ask a question? I'm just intrigued by the relevance of the questions that you're asking - clause 5.2.1.2.

PN9460

MR McALPINE: There's been a suggestion made, your Honour, that academic staff are free to work at - there's been a lot of evidence led that academic staff are free to work at home, to work at the university, to do their work, I think I remember when they like, how they like, etcetera. I think that's often true, but I'm trying to establish, it seems to me that's not always the case, or there's a presumption here, it seems to me, that if you want to work on the weekend at home, you would have to inform the university, that's what the EBA says. I didn't have any further questions about it.

PN9461

VICE PRESIDENT CATANZARITI: All right. MFI45 should in fact be MFI46.

PN9462

MR McALPINE: Can I take you to 5.2.2.1 in relation to hours of work and particularly the last sentence it says "this results in a rounded figure of 15.95 hours per academic staff member". In terms of the way it's applied at the university, what does that - is that just the basis for calculations under the workload policy; it isn't an entitlement to an employee, is it?---It's the clause leads with the basis - or 5.2.2.1 leads with the basis for calculation of the annualised academic workload, so to bring expression to the application of our workload policy, this describes in it that what is the quantum that the university recognises as the hours per academic staff member in any given year.

PN9463

Okay, and the agreement makes clear, does it not, that the allocation of workloads is to occur in accordance with that academic workload policy? So there has to be an academic workload policy and the assignment of workloads has to be in accordance with that policy. Is that a fair summary?---That is a fair summary.

PN9464

If I can take you a couple of pages ahead to 5.2.4. In 5.2.4.1 is set out different academic career pathways and they're referred to in the policy as well, aren't they?---Yes they are.

PN9465

They essentially - and it's set out here in the agreement, but they essentially set out the proportion of - those five career pathways have different proportions of different types of duties allocated based upon whether your research only, teaching focussed or whatever. Is that fair?---That is fair.

*** DIANA CHEGWIDDEN

XXN MR MCALPINE

PN9466

But in 5.2.4.2 it's made absolutely clear, isn't it, which pathway an academic staff member is assigned to, is a university decision. It's up the university to decide which pathway each academic staff member is on. Is that correct?---That is correct, through a process, yes.

PN9467

Does that need a number?

PN9468

VICE PRESIDENT CATANZARITI: Do you want that tendered or marked?

PN9469

MR McALPINE: Just marked I think.

PN9470

VICE PRESIDENT CATANZARITI: MFI47.

**MFI #47 AUSTRALIAN CATHOLIC UNIVERSITY STAFF
ENTERPRISE AGREEMENT 2013-2017**

PN9471

MR McALPINE: Can I ask the witness be shown the - which is already in as an attachment to my witness statement the document which is the academic workload policy which I think has Schedule F on the front page. Is the Academic Workload Policy?---Yes it is.

PN9472

I'd like to - I don't need to - or maybe I'll mark that for identification, do I need to?

PN9473

VICE PRESIDENT CATANZARITI: We might as well mark it because it's the same from your statement. MFI48.

MFI #48 ATTACHMENT F - ACADEMIC WORKLOAD POLICY

PN9474

MR McALPINE: Now I just want you to be able to explain a number of things about this policy to the Commission. If I take you to part seven of that policy, that's Principles for Allocating Academic Workload?---Yes.

PN9475

Now the first three points under there, I put to you essentially mean that the workload policy ultimately has to be consistent with the university's resources. Is that fair to say? In the end you have to cut your cloth, according to how much money you've got?---Correct, yes.

*** DIANA CHEGWIDDEN

XXN MR MCALPINE

PN9476

So, in allocating workload, if you've got a certain amount of say teaching to be done, and you've got a certain amount of staff that you can afford, you have to

allocate workload in order to meet that budget; you can't spend money you don't have. Is that fair?---Yes.

PN9477

I'd like to go to part six of that. Now, and there's a reference there to paid inside work and that's repeated a number of times. That's a particular piece of ACU jargon I understand. Could you explain to the Commission what paid inside work is?---The university has a policy on paid inside work that covers both professional and academic staff members whereby they may have, or may contribute to, if I use the example of a professional staff member, a professional staff member may undertake work to teach in the university's core curriculum. They would retain their full time job and they would actually seek to use the policy that is the paid inside work policy in relation to their work. That would be considered to be concessional employment. There are some circumstances where academic staff members take on activity in other areas of the business that does not impact on their current work activity, but they undertake additional work for the organisation.

PN9478

But sometimes people do pay what's called - sorry, first of all. That's paid at a casual rate? That's paid at the relevant casual academic rate, is that right?---That would be the normal application of the policy, yes.

PN9479

Okay, and that paid inside work is used also in circumstances where staff academic staff actually have a work overload in excess of a full time load. Is that fair?---The policy at section 9 actually deals with the circumstances in which somebody may have allocation in excess of the annualised workload and the conditions under which the university would consider paid inside work.

PN9480

Yes, but so - that is indicative of the fact, is it not, that if your workload is in excess of 100 percent, or 15.95 hours notionally, you can be paid extra money for additional teaching work. Is that correct?---Not as straightforward as that, but certain circumstances the university would consider paying paid inside work as a way in which to deal with a staff member who is in excess of the 15.95.

PN9481

That payment is provided for at casual rates, isn't it?---It is, yes.

PN9482

Okay, can I take you to under 8.5, there's a large heading Workload Activity Calculations and/or Tolerances. You see that?---8.5?

PN9483

Yes?---Not in the version I'm looking.

*** DIANA CHEGWIDDEN

XXN MR MCALPINE

PN9484

Underneath the table?---Section 9 Workload Activity Calculations and/or Tolerances.

PN9485

Yes I'm sorry, yes, yes, sorry. That suggests that where a full annual workload is not achieved, there are a number of options such, as for example, a temporary reduction of fraction or use of excess leave entitlements. Is that how it works in practice?---Yes it is, yes.

PN9486

What are the circumstances, just to inform the Bench, what are the circumstances in which, as it says, a full annual 15.95 hours workload is not achieved. Can you give us an example of where that would arise?---It would arise in circumstances where a staff members I on a particular academic career pathway that may not - it may not be achievable for the staff member to achieve 15.95 without perhaps breaching another element of the enterprise agreement with respect to reasonable hours of work over a distributed period of time, or the CAPS in line with the enterprise agreement around total number of hours per week. So if a staff members is not able to achieve what the university considers to be a full annual workload, in those circumstances, it is looking at the other work activities that those staff members can be making a contribution to. In terms of teaching into other programs, that's less likely if it would breach the other CAPS in the enterprise agreement, but it could be teaching to other programs at other times of the year, other than their two main semesters. It could include teaching into programs such as the university's core curriculum.

PN9487

Okay, thank you, thank you. Now, looking now for section 10 and there's a table in section 10 which sets out a series of activities such as lectures, being a lecturer in charge, student consultation and those sorts of things and next to that it has - next to each of those it has a certain number of hours. Do you see that?---Table one, yes.

PN9488

It's fair to say, isn't it, that the understanding is that when those are allocated, those are used, if you like, as part of that process of adding up to 1595 or whatever the proportion of 1595, for example, that's allocated to teaching. Is that fair?---Yes, these are the identified allocations for a range of academic activities that are undertaken and their value.

PN9489

The assumption of this is that these are all considered to be fair averages across the institution, but obviously I may take longer to prepare this lecture than that lecture, but this is a fair sort of average. That's the sort of assumption that we're using, is it?---The words that we use in our enterprise agreement is the competent academic, so we would expect a competent academic to be able to undertake the work activity that's described within the hours that we've identified for allocation.

*** DIANA CHEGWIDDEN

XXN MR MCALPINE

PN9490

Yes, thank you. In relation to - if I take you down to A18 on that table, it's only teaching focussed staff that receive an annual time allowance to support scholarship of teaching and scholarly activity to maintain professional currency in

the discipline area?---It covers teaching focussed staff and teaching research staff at A18.

PN9491

Sorry, the allocation for teaching only staff is set out there, isn't it? And that's based upon how many hours are face to face or equivalent time the employee has. Is that right?---A18 expresses both allocations for teaching focussed staff and teaching and research staff.

PN9492

Yes, and that's in order that essentially that they can maintain currency in their discipline and carry out scholarly activity in relation to their teaching. Is that fair?---Yes.

PN9493

Now, I'm going to take you now to the question of research workload allocation and I'm not trying to - well I'll just ask the question, sorry. I'm trying to understand this. Under 10.2.2, at point one it says a staff member will submit a three year plan endorsed by the staff member's supervisor detailing the staff member's publications, grants, HDR supervision in the last five years as recorded in research master. This submission will also include a statement from the staff member addressing the quality of their research achievements. I'm asking this because I don't understand; it's described as a three year research plan, but then everything that goes on - that it talks about after that is a report on what you've achieved in the past. Is it actually a plan about what you're going to do in the future, or is it a report on what you've done in the past, or is it both?---10.2.2 is how a research workload allocation will occur. A staff member will submit a three year plan, a proforma to be developed. At the time of the development of the policy it hadn't been developed. So that's one component that goes to the consideration of a research workload allocation. It's endorsed by the staff member's supervisor. The overarching plan which had the proforma to be developed, we were envisaging at the time of the policy that it would actually past to also indicate the plan into the future. So subsequent to the policy there is now research performance review and plan, guidelines and proforma that detail in depth the expectation of what a staff member submits to be considered for a research workload allocation.

PN9494

Okay, but - what I'm just trying to clarify is - and this is important for some other questions I'm going to ask, is that plan that's referred to in point one, is it in fact just a report on what you've done, or is it both report and a list of intentions for what's intended?---It's a three year plan, so it is prospective, so it's three years from the time of submitting, but in includes details of past performance.

PN9495

So it is both, is that fair?---Yes.

*** DIANA CHEGWIDDEN

XXN MR MCALPINE

PN9496

Tell me if I'm wrong, because I'm trying to paraphrase some complicated - not complicated words, but lengthy words. Is it fair to say that as a general rule, the amount of time that is allocated to do what's in the three year plan or perhaps the size of the three year plan, is based upon the employee's past research performance?---It's a contributing factor to the decision on workload allocation.

PN9497

In a sense there's two components - is it fair to say there's two components to workload allocation. One is, for example, Mary has a 40 percent research allocation which is the proportion of her 1595 hours that is allocated for research and then secondly, she has this plan which is what it is she actually intends to do. So there's two components to what you might call an allocation, the proportion of the full time and what it is you're actually going to do. Is that fair?---Not how it's applied at Australian Catholic University.

PN9498

Okay?---So in terms of the academic career pathways, it is on a continuum work based on contribution and participation. So we don't actually have a 40 percent model that you're identifying.

PN9499

Sorry, I picked 40 percent just as an example; I wasn't giving - what I was asking was, is the workload allocation in a sense, two separate things? First is, what proportion of the time is going to be allocated for research activities and secondly, what research activities are actually planned to be done in that time. Is that fair?---Workload allocation is an annual entitlement - sorry, I'll correct that. Is an annual allocation. In terms of the plan, it's part of getting a better line of site on somebody's - similar to a performance review and planning cycle or performance management cycle in many organisations. You would be articulating objectives that you are working towards. The plan actually gives clarity to the staff member and the university in relation to future direction of research. Past performance tells us whether or not somebody will be having great success in researching quality that the university is expecting them to reach. So the research workload allocation is determined on past performance, opportunity, where the plan is going in relation to the trajectory around research quality and a workload allocation identified for that staff member. It's a component of overall workload and then it's the other academic activities that would be distributed to the get to the 1595.

PN9500

Okay, I'll ask the question in a different way. If I take you down to 10.2.5 it's fair to say that in one sense, the workload allocation for research is for example - and these are examples, as set out in those dot points. There's 180 hours, up to 800 hours and in one sense that's your research workload allocation. Is that fair?---10.2.5 really does go from zero to 1595.

*** DIANA CHEGWIDDEN

XXN MR MCALPINE

PN9501

Yes, I'm simply looking at those as examples. Those are examples in one sense of the allocation for research; the workload allocation for research. Is that right?---It's far more complex than what this document at simple expression says.

There is a supporting document; it is the research performance review and planning which describes this policy articulates that the proforma is to be developed and the process was developed around the proforma. In certain - - -

PN9502

VICE PRESIDENT CATANZARITI: Just stopping you there, Mr McAlpine if there's another document which the witness has referred to, is not the Bench better informed by having the other document?

PN9503

MR McALPINE: Well, I think the witness' answer goes to the process by which that is developed, and I'm not asking questions about that; I'm simply asking - - -

PN9504

VICE PRESIDENT CATANZARITI: Well you might not be asking a question about it, but the Bench needs clarity and the witness has identified another document, so we would like the other document.

PN9505

MR McALPINE: Well I don't have the other document.

PN9506

VICE PRESIDENT CATANZARITI: Because it seems to be articulating how this is actually applied and your question is going to application of the policy.

PN9507

Ms Pugsley, can we get that other document into evidence please?

PN9508

MS PUGSLEY: Yes we'll do that as soon as we can.

PN9509

VICE PRESIDENT CATANZARITI: The question of its relevance is ultimately a different issue, but the witness has referred to another document.

PN9510

MR McALPINE: Okay, I'll ask the second part of my question then, which is about the - in another sense, the research allocation is what it is the employee and their supervisor or the relevant supervisor have agreed is the activities that they're going to undertake in some prospective period like a year. So a person might say I'm going to do these journal articles, I'm going to apply for these grants; whatever it is, is that fair?---In simple terms, the enterprise agreement says that a supervisor and a staff member will consult on their workload. An element of that consultation is the plan that the person would be submitting through the process to be considered for a research workload allocation. So certainly there is the discussion around the activities that will be undertaken that would lead to outcomes such as publications and grants or participation in research projects and they would be considered for a research workload in line with the university's processes.

*** DIANA CHEGWIDDEN

XXN MR MCALPINE

PN9511

And depending on the quality of what was planned, and the performance of the employee in the past in relation to research, that would in part, govern what proportion of 1595 hours they were going to receive as their research allocation. Is that correct?---For a component of their research allocation, yes, known as the X3 in this policy or C3 in this policy; it's been updated to X3.

PN9512

Thank you. If I just take you ahead, in fact what you've just mentioned was what I was going to ask you about. 11.4, can you just explain briefly the reference to the university's academic workload planning system and there is reference there to uploading. What is that?---The academic workload planning system is a system that the university has developed that based on somebody's full time equivalency, will calculate the annualised annual hours of workload to be allocated. For all intents and purposes, it's best described as acquitting what would be a 1595 annual workload for an academic staff and demonstrate to the university the academic activities that they are participating in.

PN9513

In order to get to 1595, for most employees there will be an hours allocation for research in that to get to 1595?---Yes the annual workload would be recorded through the provisioning of each of the academic activities in the workload policy.

PN9514

Including research?---Yes.

PN9515

Okay, now I'm going to move to another topic now. Are you the union, the NTEU in these proceedings has made a claim that the Award should include a provision that employers take reasonable steps to ensure that employees are not working additional hours without being compensated? Are you aware of that claim - for general staff, I apologise. You're aware of that?---I'm not fully aware of the complete NTEU claim. I have some understanding, yes but not complete.

PN9516

Do you agree, as a question of general principle that if overtime is worked by - sorry, if additional hours are worked by an employee then subject to the terms of the enterprise agreement they should either be authorised and compensated on the one hand, or shouldn't be worked. Do you think that's a fair position?---I'm not sure that that's - if that's a question, but in terms of if somebody works additional hours if authorised, they should be compensated, or not authorised, they shouldn't be worked.

*** DIANA CHEGWIDDEN

XXN MR MCALPINE

PN9517

Yes I'm asking you that. Do you think that's fair? The choice should be between, on the one hand additional hours are authorised and compensated or on the other hand, additional hours are not worked. Do you think that's a fair choice - do you think that's what should occur?---I think it's a fair choice for somebody to make,

recognising that compensation is not necessarily monetary compensation but could be flexibility with time.

PN9518

No, no, that's right. What I'm suggesting is that as an employer, it's fair to say that either you're compensated, either by for example time off in lieu, flexitime, paid overtime, whatever it is, and the overtime is authorised, or you don't do the work. Is that a fair thing? You shouldn't be doing the work if you're not receiving the compensation?---That's a fair statement.

PN9519

I'm asking you about the practicability at ACU for example, would it be a reasonable thing for the ACU to adopt a policy saying the employees need to advise their supervisor if they're working for example, outside the span of hours?---Yes, they should be speaking with their supervisor.

PN9520

But what I'm suggesting to you is it would be a good idea as a question of good management practice and fairness for the university to have a policy, for example, that said employees need to report the facts to their supervisor, if they're working outside the span of hours. I'm suggesting that's a good management practice. Would you agree with that?---I would agree with that and it's covered in our enterprise agreement.

PN9521

No further questions, your Honour.

PN9522

VICE PRESIDENT CATANZARITI: Ms Pugsley.

RE-EXAMINATION BY MS PUGSLEY

[11.34 AM]

PN9523

MS PUGSLEY: Ms Chegwiddden, you were asked a number of questions about the fixed term employment clause in your current enterprise agreement. Why did ACU seek such a clause given that there are already restrictions - or categories for fixed term employment in the underlying awards?---The way that we looked at the fixed term provisions when we were bargaining, and given challenges and questions in relation to the fixed term reasons, we wanted to make sure that we had a fairly exhaustive list of the sorts of things that we believed would come up in the life - you know the employment circumstances at ACU that we wanted to provide flexibility and clarity around our fixed term reasons. So, it was - we were seeking to actually have an expanded list. We saw a new organisational unit and disbanded organisational unit as very helpful to the organisation in expanding that flexibility and applying that flexibility.

PN9524

The union signed off on the agreement - signed off on that clause?---Yes they did.

*** DIANA CHEGWIDDEN

RXN MS PUGSLEY

PN9525

It was put to you that the only reason for using fixed term employment would be to deprive staff of entitlements. The enterprise agreement and the award both allow specifically for fixed term employment, don't they as separate categories?---They do.

PN9526

If the university were required to use continuing employment in circumstances where the award or the agreement would allow for fixed term employment; for example, a replacement employee, what would be the effect on the university of that?---In terms of the effect, I can speak for ACU and I can't speak beyond ACU. Our provisioning is of a kind that there is a lot of equity across fixed term and continuing staff. In terms of placing the workforce on continuing, it's managing the expectations where circumstances change in a way that is cumbersome for the organisation and lacks clarity for the staff member in relation to the processes that are required to be undertaken where there is a need to workforce size shift or change organisational units or create organisational units. There is a burden in some way placed on the employer to do certain things under the enterprise agreement, you know, if everything is continuing. Certainly it would open things to far greater challenge, between the university and the union that has coverage within the enterprise agreement so I would anticipate there would be a greater number of disputes that have effect on an organisation.

PN9527

So when for instance you would employ someone on a fixed term basis to cover for someone who is on parental leave, is the only reason that they're on a fixed term basis to deprive them of their entitlements?---No because the person who has the substantive role has entitlements as well and return to work. So there is a cost imposition to have continuing employment for somebody that the role does not continue for the person who is in it.

PN9528

You were asked questions about the use of fixed term employment in relation to uncertainty and increasing and decreasing enrolments etcetera, is it the practice at ACU that for instance, you've got decreasing enrolments in philosophy you would then use fixed term contracts for what staff in maths on the basis of the uncertainty in philosophy?---No, it would be specific to the circumstances. So if there was a decision in relation - and it's not just decreasing numbers in an area, it is a decision by the university to perhaps discontinue some teaching in a particular discipline or teaching into a particular area that the university would say we are discontinuing that, but we actually have obligations to teach out our current student cohort. So we would use fixed term in those circumstances, but it would be relevant to the area that's undergoing the change.

PN9529

You were taken to 5.2.12 of the enterprise agreement and the issue about the university and its insurers and indemnification of staff working at home. Once again, that was a clause agreed to by the NTEU in negotiating the agreement?---Yes that was.

*** DIANA CHEGWIDDEN

RXN MS PUGSLEY

PN9530

You were also taken to 5.2.4.3 in relation to academic pathways and you indicated that there was a process by which this is organised for each individual. What is the process?---So in terms of the academic career pathway, it is a university decision; it's based on the contribution and participation, outcomes and outputs of the individual staff member which are elements of the performance planning in review. So, it is covered off in the enterprise agreement at section 4.

PN9531

To what extent does the individual have a role in setting that?---In terms of their academic career pathway, they're participating in setting it is based on their performance across the range of academic activities. So they don't choose the academic career pathway, but based on their contributions and participation to the universities through the academic activities, an academic career pathway is more likely to be representative of their participation and contribution. So if they're got a high teaching load and they're not recognised in relation to research quality outputs, they're likely to be a teaching research at best, or a teaching focus and that's the most sensible pathway for them to be contributing. So the process is the performance review and planning process that articulates all of that through their objective setting and their performance against those objectives.

PN9532

You were asked about research allocation for workloads, and the proportion of the 1595 hours and you referred to the X3 and the C3; what are the other components?---The other components in relation to the research workload go to where somebody is in their research career. They could be an early career researcher and there is an allocation for an early career researcher. If they're undertaking a PhD, there is a workload allocation to that. If they undertake a high degree research supervision or whether or not they are undertaking a particular research project that is approved by the organisation. So they are all allocations under the research activities.

PN9533

You were asked some questions about general staff overtime and hours of work. Clause 5.3.2 of the enterprise agreement provides for flexible working arrangements for professional staff, doesn't it?---It does, yes.

PN9534

And has there been much take up of that at ACU?---As reported by our staff through various surveys, they are indicating that flexibility is applied and meets their expectations; that's part of the university's submission to the gender equality agency on an annual basis. So that's what staff are reporting. There's no centralised recording in relation to participation in flexibility or the hours under which are accruing under flexibility.

*** DIANA CHEGWIDDEN

RXN MS PUGSLEY

PN9535

With regard to paid inside work, you mentioned that for professional staff that can often be where they are employed as a sessional lecturer in addition to their professional staff ongoing role. For academics, how often would it be that an

academic would be - that you would use the clause for academics?---It's rare and it's rare because what is envisaged in relation to the management under the 1595 workload model and our academic workload planning system is the university is monitoring where somebody is close to that 1595. We understand and have written at clause 9 the tolerances, because some years you could be slightly over and in other years you can be slightly under. The way in which paid inside work works in relation to clause 9 of the academic workload policy, is where it's for teaching delivery. So it's not because somebody is over the 1595, it's because we're actually asking them to undertake an activity that has a very tangible face to face component and they're already at load. So, we don't - so there are specific circumstances for academic staff in relation to paid inside work. It's not just because I've gotten over 1595; it's because I've actually agreed to take on an activity that actually places me over 1595 and it is for teaching delivery and I already have a full workload.

PN9536

You've indicated that that's paid at casual rates?---It is.

PN9537

No further questions.

PN9538

VICE PRESIDENT CATANZARITI: Thank you, you're excused.

<THE WITNESS WITHDREW

[11.46 AM]

PN9539

VICE PRESIDENT CATANZARITI: Anything further for today?

PN9540

MR PILL: Your Honour, we had a brief discussion this morning and we thought if you could spare us a couple of minutes, we might give you an update as to the programming discussion and perhaps some indication from the Bench as to whether we're on the right track. It's partly reflected in a document, so I might hand that up and speak to it very briefly.

PN9541

I'll step you through it. Can I indicate that this is substantively being discussed between the parties here present. We have some preliminary input from other participants in AM2015/6 i.e. Bond University. We don't yet have input I am told from some of the other unions and also from AAMRI. In addition to what's - I'll just step you through it. The views of the parties present is that there should be a process that sees the totality of the matters dealt with and the Bench be provided with submissions by all of the parties about that.

*** DIANA CHEGWIDDEN

RXN MS PUGSLEY

PN9542

Consistent with previous directions the basic structure is proponents in support of proposed variations with failed submissions. We've indicated that by 3 February 2017; we're conscious that the last hearing date at the moment is 13 December and we also have the usual issues with Christmas.

PN9543

We then have essentially material from those opposing by 3 March. On the strength of some discussions this morning, it's intended that there be an opportunity for reply from essentially those who were supporting submissions and that's not written in there at the moment.

PN9544

We then envisage that the Bench would wish to be addressed orally. We're in your hands as to how long you might think that will take. We anticipate that it's one to two days. We also wish to raise the possibility for the Bench's consideration that the Bench, having been armed with the written submissions, if there were particular issues that the Bench wanted to be specifically addressed on, I'm conscious that in some of the other award modernisation processes there's been - whether they be a series of questions or a draft clause or something of that nature that could be part of the programming.

PN9545

Having done that, the two days we would see as being subject to some guidance from the Bench as to when some of these discrete issues about Bond, AAMRI, some sub-programming effectively to assist in managing expectations about time across those one or two days.

PN9546

So that's all I wanted to say about it at the moment. I can't present it as an agreed document of all participants in AM2015/6. I seek some indication from the Bench as to its attitude to the matters that we've raised. Otherwise we are obviously prepared to try to conclude an agreed document and put that to the Bench and failing which, perhaps a telephone direction or something of that nature might assist.

PN9547

VICE PRESIDENT CATANZARITI: Yes, well we are reconvening in a couple of weeks' time, I think. If we could have a more detailed document - I don't want to have the first date being a date that is not met. I understand that there is Christmas and New Year and all the other things. If you are going to put forward 3 February, then it needs to be stuck, so you need to be conscious of that. I'd rather it slip back, to make sure it actually happened and then everything build from that. But we'll leave that for your further discussions. Thank you.

PN9548

MR PILL: Thank you, your Honour.

PN9549

VICE PRESIDENT CATANZARITI: The Commission is adjourned.

ADJOURNED INDEFINITELY

[11.51 AM]

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