



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

**VICE PRESIDENT HATCHER
DEPUTY PRESIDENT DEAN
COMMISSIONER SAUNDERS**

C2013/6333 AM2018/9

s.302 - Application for an equal remuneration order

**Application by the Independent Education Union of Australia
(C2013/6333) (AM2018/9)**

Sydney

10.02 AM, WEDNESDAY, 12 JUNE 2019

Continued from 11/06/2019

PN725

VICE PRESIDENT HATCHER: Mr Fagir?

PN726

MR FAGIR: Thank you, your Honour. My client has filed written submissions in both the ERO proceedings and the work value proceedings. I said something about the ERO case many moons ago last time we were here. I don't propose to say anything about that unless the Bench would be assisted by any discussion of that case. I intend to deal this morning only with the work value application.

PN727

I don't intend to rehearse that which is addressed in our written submissions. Rather I wanted to say something about the true nature of this application and some of the hurdles or the size of the task which the applicant has taken on, on our view of things.

PN728

I then wanted to say - - -

PN729

VICE PRESIDENT HATCHER: So when you say "this application", you mean the work value application?

PN730

MR FAGIR: The work value application. And I wanted to say something about the evidence, a series of things about the evidence. Before coming to the nature of the application might I observe in passing that there are a series of statutory requirements of course obtained that have not really been grappled with yet by the applicant. I don't intend to deal with them at great length now, but it is useful to remind oneself that if the variations are to be granted the Commission must be satisfied that the variations are necessary to achieve the modern award's objective. The increases are justified by work value reasons, but making the variation outside the system of annual wage reviews is necessary to achieve the modern award's objective. Terms may be included only to a limited extent and that the minimum wages objective applies.

PN731

Could I firstly hand up to the Bench a document which we have prepared and which sets out comparison on our calculations of award rates for early childhood teachers in long day-care centres by comparison with other professionals.

PN732

DEPUTY PRESIDENT DEAN: Mr Fagir, when you say long day-care centres, are you specifically excluding community preschools, community run preschools?

PN733

MR FAGIR: The distinction, which is relevant for the purposes of the wage calculations, is between centres which are open 48 - - -

PN734

DEPUTY PRESIDENT DEAN: Weeks a year.

PN735

MR FAGIR: - - - weeks a year and those which are not, and that is, as your Honour's knows, because there is a four per cent allowance that is attracted in one case and not the other.

PN736

DEPUTY PRESIDENT DEAN: Yes.

PN737

MR FAGIR: These rates include the four per cent allowance. We note that the rates that have been provided to you by the applicant do not include the four per cent, but given that the focus of the case seems to be very much on the long day-care centre sector, as I have just described it, that is, we would suggest, the appropriate comparison.

PN738

As we hope the document shows and as matters stand a graduate early childhood teacher is paid more, and in some cases, significantly more than an equivalent professional nurse, doctor, lawyer or engineer. As matters stand the premium is somewhere between 15 per cent by comparison with a nurse, nine per cent in the case of a medical practitioner or eight per cent for a graduate lawyer, and it's a really shocking and outstanding figure, eight per cent premium in respect of graduate lawyers, and finally six per cent in respect of engineers.

PN739

If the claim were granted the premium would be somewhere between 30 per cent in respect of nurses, to a minimum of 20 per cent premium in relation to professional engineers. That premium persists through the classification scale. Of course the comparison is not as straight forward as one moves through the ranks but the example that we have taken is the position roughly four years into a professional's career, and, again, there one finds that the premium persists, although the figures were slightly different, and again the premium figures go from three to 18 per cent to 28 to 46 per cent if the claim were granted notwithstanding the fact that the early childhood teachers, unlike medical practitioners and engineers, nurses are in the same category, but unlike the other two categories not required to demonstrate any particular competence in order to access the wage increases. When I said nurses are in the same category that's true up to this level, RN level 4, but nurses to progress beyond that point there are competency requirements.

PN740

Further, the wage rate for early childhood teachers in long day-care centres is higher than equivalent professionals notwithstanding the fact that other professionals, not nurses, for much of the classification scale are in the same category but engineers and doctors are not - is that the early childhood are entitled to overtime and a range of other conventional award conditions more commonly associated with blue collars work. So, in fact, taking into account the other conditions to which ECTs are entitled the premium is in fact larger again.

PN741

VICE PRESIDENT HATCHER: What's the significance of these comparisons? Is this some sort of reverse comparative wage justice argument?

PN742

MR FAGIR: The significance of it is this, that if one assumes, as we say one must, there is a requirement for proper external relativities, that is, relativities between equivalent classifications in different awards then this is absolutely critical perhaps decisive consideration, and on our view of things, and if that proposition, which we say is well entrenched, is accepted the task for the applicant is not to demonstrate that early childhood teachers are professionals, it's much more than that. It's not to demonstrate that their work value is equivalent to a professional engineer, nurse, lawyer or doctor. It's, in fact, to demonstrate, if this application is to succeed the work value is very significantly higher in the order of, but we accept not a matter of mathematical precision, but something in the order of between 20 and 50 per cent higher than equivalent professionals.

PN743

VICE PRESIDENT HATCHER: Yes. If those rates have been properly set and proper relativities have been set with other keystone awards in the system.

PN744

MR FAGIR: In my respectful submission, the starting point cannot be that the fact that the rates are set at a particular level not in one award but across a range of these awards is simply a marginal consideration. In my respectful submission, one must start from the position that external relativities are to be appropriately fixed. Not on an assumption that the rates have come nowhere or are based on - have some arbitrary source but on the basis that they were properly affixed as they were required to be during award modernisation, as they were required to be for 20 years before award modernisation. The starting point, in my respectful submission, can't be that any notion of external comity depends on proof that the wages across the award system are in fact properly fixed minimum rates.

PN745

If that starting point is accepted there are two possibilities or two paths to success, in the applicant's point of view, one is to demonstrate that the work value of early childhood teachers it not only higher but significantly higher than other professionals, or the second is to invite or persuade the Commission to abandon any notion of relativity as between awards.

PN746

If the case involves the second proposition, and we say it must given the state of the evidence, it is the evidentiary ambition, as we understand it, is not to prove that early childhood teachers' work value is in fact significantly higher than equivalent professionals, but only that it is equivalent to other professionals. If that's right, if one accepts the premise that I have suggested, and which your Honour has queried, then the only way home is to abandon what we would regard as being a fundamental principle of award fixation in the Federal sphere. If that is to be done then that - we say two things: first is that that's an exercise that not only is not necessary to be conducted outside the annual wage review but must be

conducted within the annual wage review, because its implications spread far beyond this award, in effect, every award in the system.

PN747

The proposition, as I've just put it, is not the same as saying there should be an investigation of relativities within a C10. It's broader than that. It's a question of whether external relativities between awards are required to be maintained as we say they have been for decades in the Federal sphere.

PN748

That's one aspect of the ambition of this case. The other is that, on one view, and it's not entirely clear because the mathematical justification for the proposed rates hasn't really been articulated, but the increase would take the award from its current minimum rate status to something approaching a paid rates award - not a paid rates award, but something in the vicinity of a paid rates award, and something we would characterise as being very different to a minimum rates award. That again, we would say, would involve a serious departure from the principles of award wage fixations that have operated for decades in this jurisdiction, and, again, it's a matter that should be and only be properly ventilated in the annual wage review process given its significant implications.

PN749

Ultimately - - -

PN750

VICE PRESIDENT HATCHER: So the annual wage review process?

PN751

MR FAGIR: Yes.

PN752

VICE PRESIDENT HATCHER: So how would you do that? Sorry, just explain that proposition.

PN753

MR FAGIR: If a party is to contend that the requirement for comity as between equivalent classifications in different awards is to be abandoned that is a matter that, in my respectful submission, would be ventilated in the annual wage review process.

PN754

VICE PRESIDENT HATCHER: I think the President have issued a statement about that because it was raised in the annual wage review process. It's in the key documents bundle which I think Mr Taylor took us to yesterday

PN755

MR FAGIR: Yes. The proposition there we say was different, but in any case we will in due course come to grips I must say from our point of view. We saw it for the first time yesterday. As I said the proposition that the President was dealing with there it appears to us is not the same as the proposition that's advanced or we say must be advanced in order for the applicant to succeed in this proceeding.

PN756

VICE PRESIDENT HATCHER: It was a proposition advanced by the Catholic employers. I can't remember their current name, Catholic Bishops Conference I think it's called, in response in part to things that were said in the Pharmacy Industry Award decision.

PN757

MR FAGIR: Yes. On our reading of it the question there was about internal relativities, that is, whether the C10 or equivalent in relation to the bachelor or equivalent, or whichever classifications it is, currently stand in proper relation to whether that matter should be revisited. It's a question of internal relativities for a particular award which it appears would be determined by reference to the particular work that's being carried out in the particular industry or occupation.

PN758

The question that we say arises here, which must arise on the applicant's case, is whether awards across the system are to stand in proper relation or whether each award and the rates in it are to be considered and varied independently of any consideration of how those rates would stand in relation to equivalent classifications in other awards. They're not wholly different questions, but different questions and an issue which must necessarily have implications for the whole system and on one view tried to say that there were good reasons why the principle was adopted in the first place in terms of leap-frogging and so on.

PN759

It was said fairly casually at the tail end of the submissions yesterday that those considerations no longer obtain. That's a proposition which can be put. Whether this debate is to be had in the annual wage review or here, in my respectful submission, it requires a bit more of a careful analysis than what we've had so far. It is, aside from anything else, as a minimum it requires some identification in serious consideration of the principles which have operated in this jurisdiction for decades and it's, with the greatest respect, quite inadequate to the task that the submission be put as a kind of normative statement about fairness without any attempt to grapple with the principles and the reasons that the principles were adopted in the first place.

PN760

If it's said that they've run their course and that the world today is different to the world then and if it's said that the statute doesn't entrench those principles or it permits some different approach then so be it, but if that is the submission, then it needs to be put properly and not in the superficial way that the case has been put so far.

PN761

We'd be inclined to say that the Commission is entitled to know now, before it embarks on four weeks of evidence, whether - well, firstly, why it is said that these particular rates are necessary, whether and why the applicant says that a minimum rates award can contain rates which are close to or bargained rates, whether it's said that proper relativities between awards are not required to be maintained, and whether it's said that the work value of these workers is not only higher but significantly higher than other professionals.

PN762

That's what I wanted to say about the nature of the work value application. Could I next deal fairly briefly with the award history. Again, in my respectful submission, the analysis of the award history Federally and in New South Wales is quite incomplete. Now, I don't suggest that what I'm about to say constitutes a complete view of that history, but could I point out, for example - I'll hand up a decision to the Bench - among other things it is said that there's been no consideration of rates for early childhood teachers from a work value perspective since at least 1996. The decision I've just handed up is a decision of Watson SDP making the Victorian Independent Schools Early Childhood Teachers' Award 2004. In it His Honour identified the principles including the requirement that minimum wages be properly fixed, minimum wages having regard to work value considerations. His Honour considered that issue and was satisfied that the rates fell in that category.

PN763

Whether one says this constitutes the kind of consideration which is necessary to fix a datum point is one thing, and there could legitimately be a debate about that, and we'll say something about that in due course, but the point simply is that the award history, as it's been exposed so far, is completely deficient including, for example, that this decision and the fact that this award was made in 1996 for 2004 has not been identified.

PN764

A second relevant event, which has not been dealt with at all, is the making of the State Reference Public Sector Modern Awards for early childhood teachers who fall within the AEU's sphere of influence. Those were awards that were made in 2016. Again, there was a consideration there of the minimum wages to appear in the awards, whether they were properly affixed having regard to the relevant considerations. The Full Bench of this Commission considered that question and fixed rates on a particular basis. They're not identical to the Teacher's Award rates but they're similar. Again, there could legitimately be a debate about whether that constitutes a datum point or not, but if the Commission is really going to deal with this issue in a proper way it is at least necessary to investigate those questions, at least acknowledge the fact that these decisions exist and deal with them properly.

PN765

A discussion of the New South Wales authorities is in the same category. I don't propose to deal with them in detail now, but could I just make three observations about those decisions and their significance here. First, it is trite to say that the statutory context in which the New South Wales awards were made is fundamentally different to that which obtains here. One of the consequences of that difference is that award rates in New South Wales awards are just higher than they are in Federal minimum rates awards. And it's not a factor that's peculiar to teaching awards, it applies, as far as we can see, across the board, and that being the case this really takes the matter nowhere to say that these rates are lower than New South Wales award rates.

PN766

Another relevant feature of the different statutory context or another relevant implication of it is that the cases which have been described as work value cases in the New South Wales context took into account and reflected considerations which were not strictly work value considerations. Special case principles featured in all of the cases referred to and that's a matter which requires demands that this Commission consider carefully the reasoning in the New South Wales decisions to ensure that - to properly understand the basis on which the determinations were reached.

PN767

The second observation I wish to make about the New South Wales awards is that the statutory context - it's not only that the statutory context was different, the award context was different as well and in short - and I don't suggest that this is a fulsome review of the issue, that will have to wait - but the position in New South Wales is that the early childhood teacher award rates were less than the teachers' award rates, which in turn were less than, for example, engineers' award rates. The position today, as far as we can tell - and it's a little complicated today because the award system in New South Wales is so fragmented and many of the awards include particular considerations. Some of them apply to particular departments and so on.

PN768

But so far as we've been able to undertake the comparison between teachers' awards and, for example, engineers' awards, the position in New South Wales is that the teachers' awards rates now, following that series of work value/special case determinations, the teachers' award rates are below engineers' award rates. The point is that the effect of the cases in New South Wales was in terms of commonality between awards was to bring the teachers into a position or somewhere closer to a position that they were already in federally. It is a position where the rates were in the same vicinity; not quite the same but similar to the rates for professional engineers, to use them as one example.

PN769

In 2011 - again, to use an example - Schmidt J pointed out that the award rates for early childhood teachers were the lowest of all teachers' rates. Further observation about New South Wales cases is that the Commission, as far as we can tell, didn't in any of them determine that the work value of early childhood teachers was or is the same as the work value of schoolteachers. Schmidt J in 2001 specifically declined to make that finding. The 2009 Full Bench concluded that the evidence wasn't sufficient to make a precise comparison of the work value of the two groups of teachers. On our reading of it, although work value considerations were clearly a factor, at the end of the day the reason the 2009 Full Bench brought the weights up was on a different basis; that is that it thought it anomalous that there be different rates for the two groups of teachers.

PN770

I said I had three points about the New South Wales cases. There are four. The fourth is the applicant's submissions refer to a 2001, 2006 and 2009 decision. 2001 was the decision of Schmidt J, which was dealt with yesterday. 2006 decision, as far as we can tell, was nothing more than an endorsement of a consent position which said nothing at all about what value - and there is a consent

position reached in the shadow of Work Choices in early 2006, months before the state commission lost jurisdiction over a large tranche of workers. The 2009 decision, again, was made in the shadow of the referral of the New South Wales powers to the Commonwealth. It's not exactly that the decisions were academic but there were indications in each case were limited, for reasons that I've just described; that many of the employees affected were about to move out of that sector and into the federal scheme.

PN771

I now say something about the evidence and I begin by dealing with what I might describe as the false issues or the issues which are not as significant, as controversial, as they appear. A great deal of the IEUA evidence is directed to these questions and there is a real issue as to whether that degree of focus is warranted. In fact, if the Commission ultimately accepts what I'm about to say about these issues, it must follow that at least some of the cross-examination yesterday, today and probably over the coming weeks will be redundant. If we were a little braver than we are we might have decided to let the issues alone say they're irrelevant and conduct our case on that basis. We're not quite that brave and we will explore these issues at least to some extent in our cross-examination but I don't intend for that to detract from our primary submissions, which are that these issues are either not controversial or not relevant.

PN772

The issues in that category are these or they include the following: firstly, the evidence going to the proposition that early childhood teachers are professionals trained in pedagogy and curriculum development and are not simply carers for children; second is that there is a shortage of early childhood teachers at least in some areas; third is that quality early childhood education is socially valuable and that the work of early childhood teachers is therefore socially valuable; the fourth issue in this category is the proposition that there has been a great deal of regulatory reform in the last 10 or 20 years. Fifthly and finally, in this category, is the proposition or the evidence dealing with the proposition that there have been changes in pedagogy over the last 10 to 20 years and changes in theories of learning over that time.

PN773

I deal with each of those issues fairly briefly. Firstly, as to the proposition that early childhood teachers are professionals, trained curriculum workers and are trained in pedagogy and child development, these are not really controversial in these proceedings; nor is the proposition that early childhood services are not concerned simply with child minding but are concerned with early development, learning and care.

PN774

VICE PRESIDENT HATCHER: That's agreed, is it? Maybe we should direct a statement of agreed facts to be developed.

PN775

MR FAGIR: It's a possibility that the Commission might wish to take up. I've not been flippant in saying that but it might well be an appropriate step.

PN776

VICE PRESIDENT HATCHER: All right.

PN777

MR FAGIR: One wonders whether it's necessary to make a statement of agreed facts, given that in this jurisdiction that proposition has been accepted, not only in respect of teachers but in respect of non-degree-qualified educators for at least 20 years. The proposition was explicitly accepted in the ACT child-care case which has been cited in these proceedings and which two of the members of the Bench addressed in the pharmacy industry award. As the schedule that we handed up reveals, the rates are now fixed on that basis; that is that early childhood teachers are professionals. That is an assumption which is latent within the level of the rates as they are now.

PN778

In that context it is a little difficult to understand how it could be said that - at least in the context of this tribunal - wages for early childhood teachers have been suppressed on the basis of gendered assumptions or on the basis of an assumption that the work involved is child-minding as opposed to something else. To say that early childhood teachers are professionals in the context of these award rates takes the matter not very far at all. Nor does it take the matter very far to say that early childhood teachers are better trained or even to say that they are more skilled in some respects than in diploma educators or certificate III educators. Rates are fixed on that basis. We haven't dealt with it in this document but we can.

PN779

The award rates for early childhood teachers are fixed at a premium to diploma educators and other educators despite the fact that the statutory responsibilities of the two groups of workers are identical and notwithstanding that they're tasked to deliver the same learning framework.

PN780

That being the case, in my respectful submission, the evidence to the effect that early childhood teachers are better trained and perhaps more skilled in this field by comparison with diploma and certificate III, and so on, educators simply doesn't take the matter very far. The wages as they're affixed now include a premium presumptively for that reason.

PN781

And next can I deal with the proposition that there is a shortage of early childhood teachers. Now, this again is not really controversial. There's controversy about the extent of the shortage and about the reasons for it, but members that my client would, if asked, probably in many cases agree that there is a shortage of early childhood teachers. The reasons they would give for that might vary, but the basic proposition probably wouldn't be denied.

PN782

VICE PRESIDENT HATCHER: I thought you were intimating in cross-examination yesterday that it was a shortage in the context of meeting demand for a very rapidly growing sector; is that - - -

PN783

MR FAGIR: Yes. Yes, and we say two things about this, firstly, a question of workforce shortages does not bear on any question of work value assessment, and we're not aware of any case where a Commission has held otherwise, and in New South Wales there are cases where award wages have been varied taking into account considerations which included shortages, so at least one Nurses Award case, which did that. That was, firstly, an increase that did not reflect work value considerations necessarily but involved the New South Wales Commission drawing on its rather broader powers.

PN784

The other category of cases where - that is, to deal with questions of public interest perhaps aren't in the rubric of special case principles, although the reasoning sometimes is a little woolly. The other case where workforce shortages can bear on work value is the case where the effect of the shortage is to actually impact the way that the work is carried out, and, again, there's at least one case in the New South Wales jurisdiction in which your Honour, the Vice President, was involved dealing with police prosecutors, and there there was evidence to the effect that the shortage was so acute that it actually affected the way that the prosecutors were required to do their work. There's no evidence of that kind, so far as we've been able to discern, led in this case. There's no one suggesting that because of the shortage early childhood teachers are having to work differently.

PN785

For those reasons we say that the question of shortage is just irrelevant. In any case, even if it were assumed that questions of attraction and retention are relevant, the critical factor here is that the workforce is in fact growing and the shortage is not the result of a problem with attraction and retention but it's a result of a sharp increase in demand over recent years.

PN786

And the third issue is that quality early childhood education is socially valuable. My client embraces that proposition. There's no real doubt about it. There are perhaps questions about the extent to which early childhood teachers produce results which are different to differently qualified educators, but that is really, we say, all by the bye. The social value of the work is not a matter which is relevant to any assessment of work value. There are many cases that we would point to that stand for that proposition, but it's probably sufficient to point to the Pharmacy Industry case as being the most recent authority to that effect.

PN787

The fourth issue is that of regulatory reform and it's self-evident that there has been a great deal of reform in this area in the last 10 or 20 years and that the regulation of the sector has changed over that time. What is less clear on the evidence is whether and to what extent those changes have in fact impacted on the work of early childhood teachers has affected the nature of their work, the skill and responsibility exercised, or the conditions under which the work is performed, and what is relevant, in my respectful submission, is not that there have been changes, but whether there have been changes which have had that impact. The evidence that would justify a conclusion that the regulatory reforms had some impact on work value would, we say, require some description of work then and

now, some description of the previous regimes, the antecedent regimes and the extent to which the later regime has departed from, as opposed to harmonised nationally, that existing regulatory framework.

PN788

The applicant's evidence, we say, doesn't explain how the regulatory changes have in fact affected the work. There is plenty of evidence pitched at a high level about this but what we do not have is an explanation of a way that the work day-to-day has been affected. Nor does the evidence acknowledge, with one or two brief exceptions, the fact that there were predecessor regulatory regimes. The evidence, as I say, with one or two brief exceptions, barely acknowledges that fact let alone identify the nature of those regimes and the extent to which the rules, as they apply today, differ so as to impact the nature of the work, skill and responsibility and the conditions under which work is performed.

PN789

Finally, in respect of pedagogical advances, again, not in doubt that in this field of study, as in all, there are advances and there have been advances over recent years. There's absolutely nothing surprising about that. We would say, nor is there anything exceptional about a need for professionals to keep abreast of those sorts of changes.

PN790

It might be relevant to say that the changes in pedagogy, the science of the method of teaching, had changed such that, for example, an increased focus on individual learning had in fact impacted on the work and in a way which increased its work value in the relevant sense, but, again, what we say is not established on the evidence and is not really grappled with in the evidence is that question.

PN791

As was appropriately acknowledged in opening submissions yesterday, that has always been a feature of the early childhood teaching in particular that the focus is individual, and on individual ability and learning as opposed to prescriptive standards or across school or standardised testing. There's nothing in the evidence, we would say, that indicates that any increased focus - and I'm using this as an example - any pedagogical advances with the result of an increased focus on individual students has in fact impacted on the work of early childhood teachers. The position might be different in respect of the school teachers. What I'm saying is I'm directing my comments to the position of ECTS in particular.

PN792

VICE PRESIDENT HATCHER: Does that infer that the range of work value matters or work value changes identified by Mr Taylor in his opening submissions are not necessarily equally or fully applicable to ECTS?

PN793

MR FAGIR: Yes. Yes, very much so, and in fact taking the evidence, particularly of the teachers, at its highest, and there are many examples of this, from the teachers, and the union officials for that matter, list the things that they say have affected their work value over the last 10 or 20 years. In virtually all instances, there are one or two exceptions, we say, but virtually all of them, at

least the preponderance of them, have nothing to do with early childhood teaching, and Mr Foster was perhaps a good example of that. He was asked to explain the changes that he regarded as being the major developments in his practice over the last 10 to 20 years and none of the issues that he identified have any bearing at all, we would say, on early childhood teaching.

PN794

VICE PRESIDENT HATCHER: So does that amount to a submission that there's not an equality of work value between early childhood teachers and schoolteachers?

PN795

MR FAGIR: Yes, yes, that is a submission that we put squarely in ERO proceedings and that we maintain here. In fact, we will say ultimately that the evidence of schoolteachers makes it clear that the developments they point to are developments that are peculiar to schools. They are many examples of those issues. Could I hand up a document that should have been annexed to our witness submission that was not? I think that's my fault. It might have been Ms Whish's fault but probably mine. It's a schedule that is referred to in our submissions. The documents runs to a few pages but I only ask your Honours to refer to the first two.

PN796

We removed what appears at pages 3 and following to a schedule because it's incredibly tedious but the rest of the various responsibilities assigned to various actors pursuant to the national law and national regulation with references to the particular sections.

PN797

VICE PRESIDENT HATCHER: So we should treat this as part of your work value submission?

PN798

MR FAGIR: Yes. For present purposes could I ask your Honours to look at the table at pages 1 and 2? We have attempted there to put out hopefully in a user-friendly format the effect of what follows in this schedule by identifying the various responsibilities in terms of presence - requirements in terms of presence, qualifications, maintenance of policies, educational program and so on as they apply firstly to the approved provider, commonly referred to as the owner or the licensee; the nominated supervisor, sometimes referred to as the director; the educational leader and then educators. The first point that we would emphasise today is that the position of early childhood teachers does not differ in any way in terms of responsibility, in terms of statutory responsibilities to the position of other educators, and that is why early childhood teachers and other educators are dealt with in a single column.

PN799

The second observation that we would make - and we hope this is visually apparent - is that the responsibilities or the preponderance of the responsibilities attached to the approved provider and to the nominated supervisor, there is one key responsibility in respect of educational program which attaches to the

educational leader. The responsibilities of ECTs and other educators are more limited. As we summarise them in our submission, the responsibility or real difference is that the statutory responsibility is towards the children who are directly in the educator's care as opposed to a broader responsibility for functioning of the service, the compliance of the educational program of the framework and so on and so forth.

PN800

We make this point now because your Honours will see when you come to the evidence, particularly of the early childhood teachers, that there are many instances where the teacher will say, "As an early childhood teacher I am required to ensure that the centre complies with the NQS. I am required to ensure that policies are established and implemented consistent with the national law", and so on and so forth. As we say in our submissions, that evidence is simply wrong. Some of it is probably the product of confusion or a failure to distinguish responsibilities of early childhood teachers on the one hand as opposed to educational leaders and directors on the other. At least some of the witnesses are directors and educational leaders and it's likely that though no doubt they're doing their best, they haven't, in their own minds, distinguished those responsibilities which they have by virtue of their status as directors as opposed to their responsibilities by virtue of their status as educational leader or early childhood teacher.

PN801

That state of the evidence creates what we would regard as a practical difficulty from the applicant's point of view because it's quite unclear from the evidence which responsibilities the teachers say they have pursuant to each pattern or which function. That is a particularly acute difficulty because it is essential, in my respectful submission, that this Full Bench clearly disaggregate the work value of the teacher position from that of educational leaders and directors. Apart from anything else that is necessary because there is an allowance currently paid to directors - a reasonably substantial allowance - and there is an application reserved, part-heard or reserved, before a different Full Bench for an educational leader allowance.

PN802

The other proceeding, the United Voice with the support of the IEUA, is applying for an educational leaders' allowance and lead evidence relevant to that question. That is why we say it is essential that this Full Bench clearly distinguish between the work value attaching to the different positions. That would be true in any case but it's certainly true given the existence of one allowance and the application for another. Given the fact of the other application, this hasn't happened yet but I say this quite (indistinct), but, your Honour, you couldn't be heard to say that the evidence suggests that ECTs are often educational leaders and on that basis the responsibilities of an educational leader should be taken to be the typical responsibilities of an early childhood teacher. We couldn't accept that the evidence makes that out but even if it did, that's a matter to be dealt with by a different Full Bench in the context of an application for an allowance.

PN803

This awkwardness is the reason why we suggested some months ago that this proceeding should abide the result of the other Full Bench proceeding and obviously our view didn't carry the day. Now it really appears to us the applicants - it's not really a problem for us so much as it's a problem for the applicant and to some extent a problem for the Bench. Can I finally say some things about the evidence? Most of them are complaints. A number of them are complaints. I don't say these things to get them off my chest; rather I say them because they will inform the way that this proceeding is conducted, the extent of cross-examination and so on and because we would ask that the Full Bench bear some of these matters in mind when considering the opening submissions that were made yesterday and when considering the matter as a whole.

PN804

The first observation that we wish to make about the evidence is that it habitually takes the form of broad, conclusory opinions rather than descriptions. That is a phenomenon that affects all of the evidence although the evidence of the schoolteachers less so than the others. But certainly the academics, union officials, the early childhood teachers, the evidence is replete with broad conclusions that are unexplained. In fact, one of the remarkably consistent features of the evidence is the use of the passive voice. Time and again, your Honours will see in the statements propositions to the effect that ECTs are required to do X or it is expected that Y. Time and again, the source of the requirements, the source of the expectations, is not identified.

PN805

The second observation we would make is that the evidence of the schoolteachers is in a bit of a different category but certainly in respect of the early childhood teachers there has been no real attempt to describe the day-to-day work in the applicant's evidence. Now, the position is different in my client's evidence and there there has been an attempt to explain in direct terms how the work is done. There are photographs of the rooms. There are some documents annexed and so on, so it's not that there's no evidence about it. It's not that there's a lacuna that should be filled with supplementary evidence given in the witness box, and I'll say something about that in a moment. There is evidence about these matters but it's the evidence from my clients.

PN806

The third observation we would wish to make is that none of the applicant's evidence have any external frame of reference. What I mean by that is, there is - there's not identified any basis upon which the witnesses might compare their work to the work of any other professional or in fact any other person. There's a couple of exceptions. There are a couple of the ECTs who have had at least one early childhood teacher and one school teacher who have had other careers but not attempted any comparison of the relative difficulty and so on of that work.

PN807

The academics early childhood teachers insofar as the evidence goes have given their careers to early childhood and have no basis really to compare with any other work. The significance of that we would say is that when it's said whether it's by an academic or by a lay witness that work is challenging or a program is intellectually rigorous or some other variation of propositions of that kind, that

type of evidence begs the question of complex or rigorous relative to what? The applicant's evidence does not or cannot, given the history of the witnesses that deal with that question.

PN808

In fact, and I say this without any hint of disrespect or criticism but all of the applicant's witnesses have a direct interest in emphasising the importance and the complexity of this work. They're not in the position of an economist who might come along and make observations about the economy without really having a stake in one view of the issue or another.

PN809

VICE PRESIDENT HATCHER: That's a bit nave I suspect, with respect

PN810

MR FAGIR: Can I put it this way, a professor of early childhood education is hardly going to come along to the Commission and say this is actually all terribly straight forward. It's not complicated at all, it's just - it's not within the realms of possibility. Now in saying this I don't suggest that anyone's doing anything other than telling the truth or doing their best, or doing something to communicate their view genuinely to the Commission. But the fact is that this is an unusual milieu in the sense that it's insular. As I say it has invariably a direct interest in emphasising the importance of complexity positions.

PN811

The fourth and I've dealt with this already is that to the extent that actual duties are described, they're described in a way that belies the responsibilities of early childhood teachers and educators generally, educational leaders and directors. Fifthly, the evidence doesn't make any attempt to we would say to segregate the skills for the educational achievements which are inherent in a four year bachelor qualified - bachelor degree, a qualified teacher from those which are not inherent.

PN812

To take the obvious example, Professor Press says early childhood teachers are required to be trained in pedagogy in order to - the propositions put in the context of discussion about the early years learning framework. Now one might consider that as being a statement of the obvious. Teacher goes to university for four years, it's likely that they are trained in the method of teaching and that they always have been. There is no clear statement as far as we can see it, perhaps the Bench will be pointed to one eventually but we're unable to discern any evidence which is to the effect that early childhood teachers graduating now are more skilled in this particular area or have disadvantage over those who graduated 10 or 20 years ago.

PN813

Sixth, the witness statements and the expert reports - - -

PN814

VICE PRESIDENT HATCHER: That implies that the level of work they're performing assessed by its value does not match their qualification, does it?

PN815

MR FAGIR: I might not put the proposition quite in those terms but the fact is or one of the inescapable facts is that there are diploma and sub-diploma qualified educators who are delivering an educational program every day of the week in early childhood services around the country, with no suggestion that that's being done contrary to statutory framework or otherwise. There are diploma qualified educators acting as educational leaders and as directors in services around this country every day of the week, and it's not suggested as far as we can tell that that work is being done incompetently or in the absence of proper qualification. To that extent it's - that's the inescapable fact.

PN816

VICE PRESIDENT HATCHER: Well, that's the facts, what inference do we draw from that? I mean do you say, for example, that therefore ECTs shouldn't be treated as having worked any higher than a diploma qualified person. Is that what you're asking us to accept?

PN817

MR FAGIR: You don't need to go that far because as I said the wage rates can't be fixed on the basis that the premium is paid to early childhood teachers. We said in our written submission that the evidence casts some doubt over the question of whether the premium is justified on work value grounds but we don't come along and suggest that the wages should be reduced or anything of that nature. But this is an issue that arises inevitably and one that we deal with and that our witness evidence deals with repeatedly. That is the extent to which early childhood teachers do the job better than everyone else. In fact the starting point we would say is that from a work value perspective it doesn't really matter if one person's - whether by virtue of qualification or individual talent or whatever else better at a job, more gifted, more brilliant, whatever else it might be, the focus from a work value perspective is what is required by the position.

PN818

The fact that it's demonstrated that one person is a more gifted teacher than another is not a matter that's relevant to work value. Equally, the fact that someone's better qualified or over-qualified is not a matter that goes to a value. So it's perhaps - that is what we would say is the starting point, it's about requirements not the actual level at which the work is being performed. Inevitably some workers will be better at work than others, whether by virtue of qualification or otherwise. But what this - what we will ultimately say is that an educator can do what an early childhood teacher does as a matter of requirements, is competent to do the job, put it that way.

PN819

A diploma qualified educator is not competent to do what a school teacher does, it's not suggested nor could it ever be seriously suggested that a diploma or a Certificate III qualified educator could walk into a school and deliver the Australian curriculum. That's again we would say an inescapable fact and it's many years since I studied logic but there's the syllogism breaks down. It's said that early childhood teachers, the same as school teachers but we know that educators can do what early childhood teachers do. It's a matter of formal logic, the proposition can't be accepted that early childhood teachers in terms of work requirements, in terms of what's required to do the job of an early childhood

teacher in a preschool or a long day care centre is the same as a school teacher would not be accepted for this reason among others.

PN820

VICE PRESIDENT HATCHER: Well, I mean the usual approach is prima facie that an increase or an upgrade to the entry qualification denotes an increase in work value, so prima facie, do you then say well, that in this case shouldn't be given any significance?

PN821

MR FAGIR: We say that question doesn't really arise because the four year bachelor degree qualification entitles an early childhood teacher to begin at level 3. Whatever work value is associated with that qualification is unchanged. It would be different if an early childhood teacher simpliciter began on level 1, whether they were three or four year degree qualified, and if it turned out that instead of three years it's now four years, then one might legitimately say that there should be a difference, but a level 3 rate assumes the four year bachelor degree, so the question just doesn't raise, in my respectful submission.

PN822

The next observation I wanted to make about the evidence is it's short but it's important. The expert reports and the witness statements consistently paraphrase the effect of other papers, articles and statistics in terms which are, we would say, often contestable. I explored that to a certain extent with Professor Press yesterday. There'll be other examples but the point we simply make is that we invite the Bench in those cases to not accept the paraphrase but go to the material referred to to confirm that the way it's described in the statement or the report is in fact accurate.

PN823

The seventh observation, this goes for, perhaps it's unsurprising in respect of the lay witnesses, more surprising in relation to the experts, is that there is no attempt in any of this evidence to grapple with facts, statistics or views which might weigh against the conclusions propounded or the opinions propounded in the statements. And to use an example from yesterday, Professor Press gave her view about wage differentials, and whether one accepts that view or not, it is, in my respectful submission, obvious that there are factors that would suggest a different conclusion. Professor Press, certainly not in her report, and as far as we can discern in her internal reasoning process, has not made any attempt to consider those factors, weigh them up against the matters that she points to, so as to permit this Commission, the Full Bench, to go through that exercise or even to give the Full Bench comfort that the opinion that's propounded properly reflects the full range of matters and circumstances which might be relevant to it. It's, we say, consistent certainly in the lay statements, perhaps that's common, it is also the position in the expert reports.

PN824

Another obvious example is the question of workforce shortages. You see a series of statements and reports to the effect that, Associate Professor Irvine's is another example, there are workforce shortages and the reason for them is competition, superior conditions in the school system. Now, whether that is true, whether it's

partially true, a proper useful opinion or properly useful opinion evidence would have to at least acknowledge the fact that there is, to take again the bleedingly obvious example, there's been a steep increase in demand and take that into account in some way, even that elementary step hasn't been taken.

PN825

It's perhaps straightforward in the case of workforce shortages because we have the statistical information and we have the fact of increased demand that we, for our part, can point to challenge the opinion. There are other opinions which are more nuanced and there are unknowns, perhaps unknown unknowns for us and for the Bench and the difficulty that creates for the Bench and ultimately, we say, for the credibility of this evidence, is that failure to acknowledge or deal with to any extent matters which might weigh against the applicant's case.

PN826

Perhaps this overlaps with something I've said previously, the evidence is almost wholly anecdotal and is wholly qualitative. There is statistical information available that bears on any of the matters that are addressed in this case. There are some very selective statistics that have been identified in some of the reports, but the case is really put on the basis of qualitative, at best really, anecdotal or impressionistic evidence for the most part, and to give an example, witnesses for the IEU say there's an increased prevalence for special needs children in the classrooms. Witnesses for my client say we have not observed any particular increase in the special needs children in classrooms.

PN827

They might both be giving evidence that's perfectly honest and in fact accurate within their sphere of knowledge. That is why that sort of evidence is not particularly useful. If there is data about these things and if it's in the evidence it might be in one of the 275 documents somewhere, but it hasn't been placed anywhere near the forefront of the applicant's case.

PN828

On that topic, we have a bundle of 275 documents, 3000-odd pages, some of them were mentioned in submissions yesterday, some of them are identified in witness statements, others do not seem to be attached to any statement or any submission, and when the time comes we would resist the tender of the bundle as a whole. Rather we would suggest that those documents which are annexures to statements which have been admitted should go in, and perhaps documents that have been highlighted, the significance of which has been highlighted in submissions can go in, but any other document that's to go in it be identified and its relevance to the case articulated so that we can deal with it.

PN829

As I said yesterday, the position has been exacerbated by the introduction casually in opening submissions of a series of further documents. They, on reflection, don't create any real difficulty. We knew about the journal article, the videos aren't an issue, but we would resist, as I say, the tender of the entire bundle without differentiation, and we would resist, aside from the conventional approach of tendering things in cross-examination and so on, the introduction of any further documents, at least without explanations of their significance.

PN830

And tenth, and again, this overlaps with what I've said, but it's important as it influences the approach we take. The statements are replete with assertions, the basis of which is not identified. I give a specific example, Mr Spriggs is a Queensland union official, he says there are 1500 long day-care centres in Queensland and 432 community kindergartens. Now, he does not offer any basis whatsoever for that factual assertion. It may not make any difference really. My point is that when it comes to evidence of that kind, which would be objectionable on a different context, we don't propose to object, we don't propose to cross-examine Mr Spriggs and say, "Give us a couple of cases", but as a general proposition we're not going to take each of these witnesses to the proposition and say, "You haven't explained the reason for it", and invite them to give the reasons. We'll simply submit at the end of this case that that evidence is entitled to no weight whatsoever.

PN831

Finally, there is, in my respectful submission, a serious disconformity between the nature of this case and the evidence that's brought in support of it. As this Commission is invited to enter into a difficult area of policy, invited really to enter into an area of educational policy by making some determination about whether early childhood teachers produce better outcomes than other educators in matters of that nature, on any view of it, an important and vexed policy area. It's invited to enter in to that field and make decisions about it on the basis of evidence which is largely, as I've said, anecdotal.

PN832

There are cases where that sort of evidence might be good enough and might be cases which have limited implications, cases where there's no other alternative but my point is, and perhaps this is the point I've been trying to make very slowly over the last half hour, is that the evidence that's been brought in this case is not sufficient to support the outcome that's sought given the very large consequences, not only for my members, but potentially beyond the particular industry if the application is granted.

PN833

And, finally, I'll just say this, and I hope this isn't trite, but we're answering the opening from yesterday. Really, on a proper view, this application is not an application which contends that the award rates are not properly fixed on the basis of conventional considerations. The real complaint is that the workplace relations framework, or perhaps the labour market more generally, has not delivered the same pay rates to early childhood teachers employed by for profit operators, diverse but often small, that has been delivered to teachers employed either by a government or by large organisations.

PN834

Whatever view one might have about the framework, and whether that outcome is ultimately from a social point of view, what is desirable is by the bye, and I'm sorry if I'm being trite, but the Commission's task is to apply the framework as it is, and recourse to normative notions of unfairness unattached from the legislation and from the principles which have guided the Commission's determinations in this area for decades are insufficient. If the Commission pleases.

PN835

VICE PRESIDENT HATCHER: So, Mr Taylor, what's the next step in the proceedings? If we take a morning tea adjournment will the witness then be available for - - -

PN836

MR TAYLOR: Yes, the witness is currently available, but this might be a convenient time to take a morning tea break.

PN837

VICE PRESIDENT HATCHER: We'll adjourn now. We'll resume not before 11.30.

SHORT ADJOURNMENT

[11.17 AM]

RESUMED

[11.38 AM]

PN838

MS EASTMAN: Before Mr Taylor begins with the next witness, can I deal with the Commonwealth's position?

PN839

VICE PRESIDENT HATCHER: Yes, Ms Eastman.

PN840

MS EASTMAN: You will have probably detected we are sitting quietly in the background so with respect to both applications the Commonwealth's position is neither to consent nor oppose the applications. The Commonwealth doesn't wish to play any active role in the evidence so we will not take a role in leading evidence or cross-examination of any of the witnesses. The Commonwealth may make submissions at the conclusion of the case and so we will continue to be involved in the proceedings but it may be, if it's no discourtesy to the Full Bench, that on occasions Ms Raper or I are not present and it may be that our instructing solicitor from Melbourne is not present but we may have - we will certainly follow the transcripts. We will let the parties know at an appropriate time when we have instructions as to whether the Commonwealth will make a submission.

PN841

There is one correction to the key documents list; so item 10, the Commonwealth's submission, should be dated 4 July 2018. When you open the document you'll see that that's the relevant date. Unless there is any particular matter that the Commonwealth can provide assistance to the Commission then our role will be limited in the manner I've described.

PN842

VICE PRESIDENT HATCHER: Yes, thank you.

PN843

MS EASTMAN: May it please the Commission.

PN844

VICE PRESIDENT HATCHER: Mr Taylor.

PN845

MR TAYLOR: Thank you. Our next witness is Associate Professor Susan Irvine, if Dr Irvine could come to the witness box.

PN846

THE ASSOCIATE: Would you please state your full name and address for the record.

PN847

DR IRVINE: My full name is Susan Lee Irvine and my address is (address supplied).

<SUSAN LEE IRVINE, SWORN [11.41 AM]

EXAMINATION-IN-CHIEF BY MR TAYLOR [11.41 AM]

PN848

VICE PRESIDENT HATCHER: Mr Taylor.

PN849

MR TAYLOR: Dr Irvine, for the purpose of these proceedings you have prepared three statements, each attaching an expert report. Is that right?---That's correct.

PN850

You have those with you?---I do.

PN851

Can I just identify them one by one in date order: the first statement was a statement prepared for the IEUA's application for equal remuneration order. It is six paragraphs statement which is undated and attaches a 17-page report which bears a date on the 17th page of 7 December 2017. It has two attachments. Do you have that document?---I do.

PN852

Is the contents of that statement, attaching that material, true and correct to the best of your knowledge and belief?---Absolutely.

PN853

I tender that first statement.

PN854

VICE PRESIDENT HATCHER: The statement of Susan Irvine dated 7 December 2017 and attached report will be marked exhibit 12.

EXHIBIT #12 WITNESS STATEMENT OF SUSAN IRVINE DATED 07/12/2017

*** SUSAN LEE IRVINE

XN MR TAYLOR

PN855

MR TAYLOR: Can I now turn again in date order to the second statement: this is a statement headed, "Statement in reply of Susan Irvine", a four-paragraph

statement signed by you on 19 July 2018, attaching, as you say in the statement at paragraph 2, an email from the IEUA and also attaching an expert report in reply to the materials referred to in that email. Do you have a copy of that with you?---I do.

PN856

Can I provide the bench with a further copy of that material? The report, as the Bench might see on the material that was filed, did not bear page numbering or paragraph numbering. Those page numbers and paragraph numbers have now been added for ease of reference. Dr Irvine, do you have in the witness box a copy with the page numbering and paragraphs?---I do.

PN857

I'm sorry, your Honours. Mr Fagir appears to have a version which I think has the same text, also has paragraph numbering but inconveniently different paragraph numbering than the one I've just handed the Bench. We were under the understanding that there were only - the non-numbered version, hence we've addressed that numbering issue in the way that we have, and so if there's been some error on our part in our communications with Mr Fagir's instructor's we apologise but can I turn to you, Dr Irvine. Do you say that the contents of that reply statement and its attached expert report is true and correct to the best of your knowledge and belief?---It is.

PN858

I tender that.

PN859

VICE PRESIDENT HATCHER: The statement in reply of Susan Irvine and the attached report dated 19 July 2018 will be marked exhibit 13.

EXHIBIT #13 WITNESS STATEMENT IN REPLY OF DR SUSAN IRVINE TOGETHER WITH ATTACHED REPORT DATED 19/07/2018

PN860

MR TAYLOR: Then coming to the last of the three, you prepared Dr Irvine a statement dated 22 November 2018 that is four paragraphs and attaches a statement of some 18 pages. Do you have that document with you?---I do.

PN861

It also has annexures including a curriculum vitae and a letter of instruction. Is that right?---Yes.

PN862

Do you say that that statement and the attached report are true and correct to the best of your knowledge and belief?---I do.

PN863

I tender that.

*** SUSAN LEE IRVINE

XN MR TAYLOR

PN864

VICE PRESIDENT HATCHER: The statement of Susan Irvine with attached report dated 22/11/2018 will be marked exhibit 14.

**EXHIBIT #14 WITNESS STATEMENT OF DR SUSAN IRVINE
TOGETHER WITH ATTACHED REPORT DATED 22/11/2018**

PN865

MR TAYLOR: Can I just draw attention to - the Bench to the fact that on pages 17 and 18 of the attached report you will see that the numbering has recommenced, and so at the point where parties are referring to paragraph numbers from 48 onwards, there will likely be a need to refer to the relevant page number because there's a doubling up. Professor Irvine, I just want to ask you some questions now just about your curriculum vitae which you - if you can take the third statement in which you summarise some aspects of it at paragraph 6. Firstly, you are yourself a qualified early childhood teacher?---I am.

PN866

You've worked as an early childhood teacher?---I have.

PN867

Can you tell us when and where you did that?---Certainly. I have worked as an early childhood teacher in prior to school services and in the school sector. Most of my direct teaching was in the 80s where I worked in a range of services from preschools in Queensland, childcare services in Victoria, and I also taught reception in the United Kingdom. In terms of my leadership role as an early childhood teacher, I've also led a fairly significant early childhood service, Lady Gowrie Children's Services in Queensland and my role there was a CEO and I led the delivery of a range of early childhood services.

PN868

I do want to ask you a couple more questions about Lady Gowrie but just when you use the expression early childhood teacher, are you using that expression to mean someone who is only teaching pre-primary school or someone who's teaching also early years at primary school?---Well, in actual fact I've taught all of primary school because my qualification qualifies me as a registered teacher, and I've worked in both. So my original qualification was birth to eight, but having gained experience as an early childhood teacher I've actually taught in primary school. And I'm using my teaching qualification now to work with adults in universities.

PN869

Now the Lady Gowrie Queensland, what's the nature - - -

*** SUSAN LEE IRVINE

XN MR TAYLOR

PN870

MR FAGIR: I object. If there are big questions that are in the nature of simple clarification there's no difficulty with that but if there's now to be an introduction of additional evidence-in-chief and we seem to be going in that direction, if we not there already then we'd seek to be heard about that. Certainly seek to be heard

about any application, there should be an application to introduce further evidence-in-chief.

PN871

VICE PRESIDENT HATCHER: Mr Taylor.

PN872

MR TAYLOR: I take my friend's point and I did indicate to him that at an appropriate time I would make such an application but at this stage I thought that application was premature. I'm simply asking the witness to tell the Bench some more things about her curriculum vitae and I will at an appropriate time - and there's only about four more questions on that subject - identify and make an application to ask the witness questions as two subject matters which I will identify at the point of that application. But at this stage I just want to - so the Bench can understand this witness' range of experience.

PN873

VICE PRESIDENT HATCHER: I'll allow the question.

PN874

MR TAYLOR: Can we just identify what Lady Gowrie Queensland doing at the time that you were the CEO 2007 to 2010?---Lady Gowrie centres were established in 1940 so the Lady Gowrie centre in Queensland is an established fixture. At that particular time we ran a number of child care centres and family day care services and an integrated early years centre, and my role was to oversee that and to support the design and delivery of curriculum through those particular centres. We catered for about 1500 families a week across all of those services.

PN875

Now coming to your present position, as Associate Professor School of Early Childhood and Inclusive Education within the Faculty of Education at the Queensland University of Technology, firstly what degrees are being obtained by students at that faculty?---So we - - -

PN876

MR FAGIR: I object on the same basis. This is material, this isn't clarification. This is evidence that's material to the real issues in the case and I object to its admission now. I can't deal with any of this. I don't know what it is. I'm in no position to cross-examine about it or deal with it to any extent.

PN877

VICE PRESIDENT HATCHER: Well, does this go no further than QUT issues, tertiary degrees for teaching qualifications?

*** SUSAN LEE IRVINE

XN MR TAYLOR

PN878

MR TAYLOR: All I was about to do was ask this witness, her position has changed in-between the two statements and the - as I understand it, this witness will give evidence as to the types of students who in effect she has been responsible for, so that one has an understanding of her capacity to give the evidence that she has given about changes in education requirements and the like.

That's as far as this was going, hence I hadn't made the application yet but still really just exploring - doing nothing more than fleshing out her CV. That's all I'm doing at this time.

PN879

VICE PRESIDENT HATCHER: Right, I'll allow the question.

PN880

THE WITNESS: The university offers undergraduate and postgraduate courses in education. So we deal with initial teacher education, we offer courses that specialise in early childhood, teaching in primary and in secondary teaching and my role was initially in the delivery of the initial teacher education for early childhood teachers. My role as of the middle of last year has changed to coordinate our postgraduate offerings, which is our Master of Education, and that spans all education contexts; early childhood, primary and secondary and offers a range of specialisations.

PN881

MR TAYLOR: When you were responsible for the undergraduate program what degree were students who were completing that program obtaining?---The students would actually graduate with a Bachelor of Education Early Childhood which covered the age range birth to eight years and entitled them to teach in prior to school as well as school contexts.

PN882

The postgraduate - - -

PN883

VICE PRESIDENT HATCHER: Just so I understand that. So that degree is specifically tailored to early childhood is it?---It is. It's a specialised degree which is actually recognised by the two external authorities, the teaching authority as well as ACECQA, the early childhood authority, and it entitles students to graduate with a registered teaching qualification to work in prior to school settings, kindergartens, preschools, long day care as well as school.

PN884

Right, and if you don't do that specialist qualification can you still teach as an early childhood teacher?---No, no, you're not able to - you're not able to work as a specialist early childhood teacher particularly in the provision of a preschool program. That's very specific that you need a specialist early childhood qualification.

PN885

Where does that requirement emanate from?---That requirement emanates from a national legislation and from associated funding agreements around state funding of kindergarten programs.

*** SUSAN LEE IRVINE

XN MR TAYLOR

PN886

Thank you?---I should probably use the word, "preschool". I'm sorry, I'm from Queensland so we have different terminology, so preschool programs for New South Wales.

PN887

Thank you.

PN888

MR TAYLOR: Now the postgraduate students that you are now responsible for, you said that that was a degree, a Master of Education?---Yes.

PN889

What prerequisites are there for them to complete that degree?---In terms of entry?

PN890

Yes?---It depends greatly on the actual specialisation that they're doing but predominantly it's registered teachers who actually come into that course. That would be our greatest market. But we do have specialisations that cater for a range of other vocational outcomes. For example, we have a career development and counselling component, so while the majority of those students are teachers, we also cater from business, industry and community groups who want to build their knowledge in that area.

PN891

Thank you. I now turn to making that application, as I said to my friend that I would. The position is we would like to ask this witness to deal with two additional subject matters. She has in her most recent report identified the aim of the report to identify changes in the nature and value of teachers' work and has identified then a series of changes as the Bench - - -

PN892

VICE PRESIDENT HATCHER: Which exhibit is this?

PN893

MR TAYLOR: I'm sorry; it's exhibit 14 dealing with work value. So at paragraph 4, the witness indicates that the report is being prepared in response to an invitation and the second sentence: "The aim of this report is to identify changes in the nature and value of teachers' work from 1996 to the present day." The witness then identifies a series of those changes which include changes to teachers' registration, occurring between 1996 and 2009, and then further changes to teachers' registration occurring in 2010 to date, in particular the changes that occurred in 2011, at paragraph 32. There are also references in that material to the requirement to meet professional standards. Then that is dealt with from paragraph 46 onwards.

*** SUSAN LEE IRVINE

XN MR TAYLOR

PN894

Paragraph 50 onwards the witness deals with changes in curriculum and increased focus on assessment. So the witness has dealt with those subject matters. In light of the questions that are falling from the Bench as to the desire to hear as to how

these things have impacted on a day-to-day basis, the first question or subject matter I wanted to explore with the witness is that question, as to how these changes she's identified as broad changes affecting the work value and complexity of the work impacts on a day-to-day basis. Then the second issue I want to explore with the witness arises out of page 16, paragraph 56. One particular aspect of the change in curriculum, a change to an individualised and personalised learning approach, you've heard submissions to the effect that these are matters which have not impacted early childhood.

PN895

When I opened yesterday I indicated it hadn't impacted to the same degree. We wanted to ask this witness to identify to what extent these changes arising from curriculum changes have in fact given rise to changes in the way in which teaching is done day to day.

PN896

VICE PRESIDENT HATCHER: Mr Fagir.

PN897

MR FAGIR: To state the obvious, the associate professor's filed in accordance with directions three reports, three substantial reports referring to a substantial amount of other material. We've dealt with that. We have made forensic decisions over the life of this proceeding on the basis of the evidence that we had. The complaint that we made in our submissions and which your Honour mentioned yesterday appeared in our written submission months ago so it cannot have taken anyone by surprise. In fact, it is just a bleedingly obvious lacuna in the evidence in this case, in my respectful submission. No explanation has been offered, nor is there likely to be any sensible explanation as to why this evidence couldn't have come in any of the three reports, including the reply report, nor any explanation of why it couldn't have come at any earlier stage, including after receipt of our written submission.

PN898

But the starting point, we say, is there needs to be some adequate explanation as to why this evidence didn't come sooner. Secondly, we are prejudiced by it. This goes, potentially, to the heart of the case. It potentially puts the case on a different footing to what it is now and it introduces an issue that, as we see it, has not previously featured in the applicant's evidence.

PN899

VICE PRESIDENT HATCHER: When you say an issue, which issue is that?

*** SUSAN LEE IRVINE

XN MR TAYLOR

PN900

MR FAGIR: The question of how these matters that the associate professor has dealt with at the highest level actually translate into day-to-day work. I'm not sufficiently expert in this field to cross-examine on the run. I can't deal with it so setting aside the question of whether it should be admitted at all, it creates an acute practical difficulty for me in dealing with it. Thirdly - and can I say as against any suggestion from any quarter that the solution is an adjournment - it is

not. If that is proposed by someone I can deal with that. I'll probably be stating the obvious but I just say for the moment that is not a solution at all. This evidence, for each of those reasons, should not be permitted to be introduced now in this ad hoc way, if the Commission pleases.

PN901

VICE PRESIDENT HATCHER: Mr Taylor, what do you say about remedying any potential prejudice?

PN902

MR TAYLOR: If there is something that emerges from this which is genuinely surprising to my friend such that he says he cannot deal with it, then the solution to that would be that at an appropriate time we ask Dr Irvine to return to deal with whatever further cross-examination is to arise from it. But the notion that this changes the case, with great respect, as Mr Fagir himself said this is front and centre to our case at all relevant times. He has just indicated that he thought it was a particular way in which the evidence has been presented that hasn't explained in a way that, in his submission - we reject this, by the way - full identifies how it's impacted and the issues are no different. It's the same issues, the same changes that I would be asking about that the witness has given evidence and multiple witnesses give evidence about.

PN903

But that to me, respectfully, this is material which can assist the Bench and if there is any prejudice, it's capable of being cured.

PN904

VICE PRESIDENT HATCHER: I suspect this won't be the first time this application is made. Do you anticipate in respect of how many witnesses applications of a similar nature might be made?

PN905

MR TAYLOR: What we are attempting to do - and we weren't able to do with Dr Irvine because of the time when she was giving evidence - is to reduce anything further to writing so we can provide it to Mr Fagir in advance to keep that as short as possible so that any prejudice can then be identified immediately because you can actually see what the evidence is. We anticipate at this stage that that might be three or four witnesses that we've identified so far who are able to say something about - from their personal experience - the way in which they teach early childhood on a day-to-day level. The sooner we get this material to Mr Fagir the better. He can then identify whether that material is in fact causing him difficulty.

PN906

VICE PRESIDENT HATCHER: We'll just have a brief adjournment to consider - sorry, Mr Fagir, did you want to say something else?

*** SUSAN LEE IRVINE

XN MR TAYLOR

PN907

MR FAGIR: Yes, can I just say whether this material comes ad hoc moments before I stand up to cross-examine or in a statement a few days before the witness comes on makes some difference but not very much. If evidence is to come in statement form, setting aside the forensic decisions that we've made over the life of this case, including decisions about what evidence we needed to call, including any expert evidence, if this evidence is to come now I'm going to need - I don't know. As I've said, it's all been a mystery to us so far how it's said these standards actually translate into day-to-day work. We've got witnesses who say it doesn't. Now we keep being told there's evidence about it. If it is, so be it that's where the case should rest. If new evidence is to be introduced, I need to get instructions about it. I don't know exactly who that's going to be. I might conceivably need documents to deal with it and we might need to think about whether we need expert evidence in response, and it'd be in my respect submission seriously prejudicial to require us to do that on the run in the course of this hearing.

PN908

VICE PRESIDENT HATCHER: We'll just take a short adjournment to consider this matter.

<THE WITNESS WITHDREW [12.05 PM]

SHORT ADJOURNMENT [12.05 PM]

RESUMED [12.16 PM]

<SUSAN LEE IRVINE, RECALLED [12.16 PM]

EXAMINATION-IN-CHIEF BY MR TAYLOR, CONTINUING [12.16 PM]

PN909

VICE PRESIDENT HATCHER: So we rule as follows. Firstly, we refuse the IEU's application to call additional oral evidence from Dr Irvine today. Two, we give leave the IEU to file within seven days an additional witness statement of evidence - an additional written statement of evidence from Dr Irvine together with any further statement setting out any additional evidence the IEU wishes to adduce from any of its other witnesses and three, once any such statements are filed we will then entertain the application for the admission of that additional evidence. Mr Taylor?

PN910

MR TAYLOR: Thank you. No further questions, thank you.

PN911

VICE PRESIDENT HATCHER: Mr Fagir.

CROSS-EXAMINATION BY MR FAGIR [12.17 PM]

PN912

*** SUSAN LEE IRVINE

XN MR TAYLOR

*** SUSAN LEE IRVINE

XXN MR FAGIR

MR FAGIR: Associate professor, you have long experience in the field of early childhood?---I do.

PN913

You have no experience in any others?---Sorry?

PN914

You don't have any experience or training in any other discipline?---No, it's all in education.

PN915

Associate professor, do you recall being provided with something called the Expert Witness Code of Conduct together with your initial letter of instruction?---I do.

PN916

Do you recall that code of conduct required you to include a series of things in your report?---I believe so, yes.

PN917

Including, for example, the assumptions, material, facts and reasons for any opinion expressed in the report?---Yes.

PN918

Do you say you have done that?---I believe so, yes.

PN919

To the maximum extent possible do you say you have set out the reasons which you are able to give in support of each opinion you've expressed in the report?---Influenced by the time that I've actually had to be able to invest in this amongst all of my other work, yes.

PN920

What do you mean by that associate professor?---Well, I just mean that I've done my very best here without legal training, so obviously I've my best but I also hold a very demanding position and I was doing this as an expert witness in another context. So I guess that I've done my best and provided maximum information within the time and opportunity that I've had to do that.

PN921

Do you mind turning to paragraph 13 of your first report?---My first report?

PN922

Yes?---Yes.

PN923

You see there the first few words are to this effect, "ECT degree programs are intellectually demanding"?---Yes.

*** SUSAN LEE IRVINE

XXN MR FAGIR

PN924

You will not find anywhere in your reports any explanation for the basis for that proposition?---Right. I can address that now if that is helpful.

PN925

I'm just asking you if that's right or have I overlooked some part of your report?---Well, I think that's an integrated and holistic approach to writing the report, so I haven't provided a glossary or a list of definitions of key terms.

PN926

Are you aware of the ATAR requirements as they attach to various bachelor degrees in Australian universities?---Not so much the ATAR, that's quite specific to New South Wales but Queensland has a similar perspective, yes.

PN927

What's the Queensland version of ATAR?---At the moment it's OP.

PN928

OP?---OP.

PN929

You have some understanding of the scores - - -?---Yes, it's a ranking system that allows students entry into particular courses.

PN930

Do you have some insight into the score that's necessary to enter into a Bachelor of Early Childhood Education as opposed to other bachelor degrees?---Some, yes.

PN931

What is the most recent OP score?---In Queensland the most recent OP score to enter into a Bachelor of Education is around about a 12 or a 13, I think, which is upper middle range.

PN932

Upper middle range is it?---Yes.

PN933

VICE PRESIDENT HATCHER: Is that 12 or 13 out of some notional maximum score?---I think the maximum is around about 25, I think.

PN934

Is that specific for QUT or for universities generally?---No, it's very similar to your ATAR system, as I understand it. So it's a state system but it's based on two things. It's based on the challenge of the course and what people, you know, what's expected of graduates entering the course, what they might need to be able to do in terms of academic work but it's also a measure of the popularity of courses as well, and so you know some of our high demand courses actually have higher OPs as a measure of limiting the number of students who actually enter those courses.

*** SUSAN LEE IRVINE

XXN MR FAGIR

PN935

MR FAGIR: Professor, at paragraph 15 and following you deal with the issue of the roles and responsibilities of ECTs across education contexts. Do you see that?---Yes, I do.

PN936

The basic proposition as I understand it is that when employed to teach children, the professional role and responsibilities of an ECT are similar regardless as to whether the context is an ECEC prior to school service or the early phase of school?---That's correct.

PN937

That's your basic contention?---Yes.

PN938

The next sentence you do set out the reason for that contention, that is that the role is largely defined by - the teacher's role is largely defined by legislation, regulations, quality standards, professional standards and a professional code of ethics. Do you see that?---Yes.

PN939

In the paragraphs which follow from 16 through to 22 you expand on that proposition?---Yes.

PN940

Or you give a bit more detail in relation to the standards and the code of ethics that you refer to in paragraph 15. Is that right?---That's correct.

PN941

Now ECTs are not required to be registered in all contexts in Queensland?---Not at present, no.

PN942

Some cannot be registered?---At the moment there's a legislative barrier, an historical barrier that relates registration to school which is currently being reviewed and anticipating to be changed.

PN943

The National Quality Framework applies in Queensland?---Yes, it does, it's a national framework.

PN944

Perhaps that was a stupid - - -?---Sorry, that was very teacher oriented, wasn't it.

PN945

Perfectly reasonable?---And Queensland is part of the national system, yes.

PN946

Now the National Quality Framework incorporates the National or the Early Years Learning Framework as well as some other things?---That's correct, it's a multi-layered suite of a framework.

*** SUSAN LEE IRVINE

XXN MR FAGIR

PN947

All early childhood teachers in Queensland, registered or otherwise, are bound to abide by the requirements of the National Quality Framework?---All early childhood teachers working in prior to school settings, yes. It only has application to prior to school settings.

PN948

School settings have a different framework?---School settings comply with different - similar aspects but yes, different legislative tools and frameworks.

PN949

Paragraph 20 of your report, associate professor, you say:

PN950

The NQF also addresses process quality factors including educational programs and practices. ECTs have the same professional teaching responsibilities as colleagues working in the school sector.

PN951

You then set out a series of matters that you say are expectations of ECTs?---Correct.

PN952

These are expectations imposed by the National Quality Framework are they?---These expectations are certainly from the National Quality Framework but they're reinforced in other teaching standards and documents, for example, the Australian Professional Standards for teachers.

PN953

But to the extent there is any obligation which attaches to a teacher pursuant to the NQF that obligation attaches equally to non-degree qualified educators, correct?---I'm sorry, could you say that again for me?

PN954

Any obligation which is imposed upon early childhood teachers pursuant to the NQF applies equally to non-degree qualified educators?---It applies to non-degree educators but I perhaps would dispute the idea that it applies equally. The - - -

PN955

Associate professor, can I just interrupt you for a moment. Could you just - - -

PN956

MR TAYLOR: I don't think you should, with the greatest respect. I think the witness should be allowed to finish that answer.

PN957

VICE PRESIDENT HATCHER: Mr Fagir.

PN958

MR FAGIR: Commission please?---I can finish?

*** SUSAN LEE IRVINE

XXN MR FAGIR

PN959

Yes?---Thank you. I guess what I wanted to clarify was that like any education context there is a variety of educators that are involved in the provision of these services and they have different titles, different roles and different qualification requirements and there are different expectations associated to that, so clearly in a workplace where you have people who hold qualifications that start with an AQF level 3 certificate through to a university degree there are different expectations in how particular elements of the National Quality Standard, how particular aspects of curriculum are going to be implemented whether you're assisting, whether you're leading, whether you're leading others.

PN960

Now you've just referred to expectations. Is there anywhere in your report that you can tell us in specific terms as opposed to in a passive voice how the expectations come to apply to early childhood teachers?---How they come to apply to early childhood teachers?

PN961

Could you just point me to the part of your report which tells us - describes the source of these expectations? Is it the matters dealt with in your report or is there some other source of expectations?---Well, perhaps I haven't been clear enough in my report. It is certainly implicit in my report but perhaps I'm not able to point you to something specific in terms of where this actually fits and differentiates the roles and responsibilities of different levels of qualifications, and different roles within these services.

PN962

Associate professor, there's no provision of the national law which deals differently with teachers as opposed to non-degree educators?---The national law actually really focus - - -

PN963

Could we just take this step by step please. Do you agree or disagree with that proposition?---I agree with that proposition.

PN964

The same applies to the Early Years Learning Framework. That is there is no provision of the Early Years Learning Framework which establishes one responsibility or imposes one responsibility on teachers and a different responsibility on non-degree qualified educators. Do you agree or disagree with that proposition?---The Early Years Learning Framework doesn't specify responsibilities for anybody - roles or responsibilities for anybody.

PN965

Associate professor, you deal with the code of ethics at paragraph - - -

*** SUSAN LEE IRVINE

XXN MR FAGIR

PN966

VICE PRESIDENT HATCHER: Sorry, before you move on. So when you were CEO of Lady Gowrie Queensland, so you said that that operated a number of preschools or early childhood centres or whatever?---Yes.

PN967

Did they employ a mix of degree qualified and non-degree qualified educators?---They did. They did. We had the whole spectrum of workforce because it's important to have that.

PN968

Was any distinction made in terms of the allocation of duties and responsibilities as between the degree qualified teachers and the non-degree qualified teachers?---Absolutely.

PN969

So how was that managed?---Well, the degree qualified early childhood teachers led our preschool education programs and were responsible for the design, the implementation and the evaluation of those programs. During my time at Gowrie there was actually a shift in the requirement that that lead position was no longer held by a vocationally qualified person, that it needed to be held by a degree qualified teacher. So teachers led that particular program and were supported by diploma and certificate qualified staff in that - in the delivery of that.

PN970

So the distinction you've making is that the tertiary qualified people are put in leading educator roles?---Absolutely. Yes, but I just want to point out a nuance which is rather difficult to explain to people outside of the system. We have a number of terms in the national framework which are very similar and can be misleading, so there are two roles that are very similarly named. One is lead educator and a lead educator is the person who is responsible for a group of children in a room. The other is educational leader and that person is responsible for leadership of the overall educational program. So that's a senior pedagogue, possibly equivalent to a curriculum lead in a school.

PN971

Thank you.

PN972

MR FAGIR: Associate professor, you have said somethings about the Early Years Learning Framework which you describe as a curriculum in your report?---It is a curriculum.

PN973

One of the issues that you haven't dealt with in your report is the role of the educational leader?---Certainly.

*** SUSAN LEE IRVINE

XXN MR FAGIR

PN974

You have suggested in your report that the curriculum needs to be interpreted by teachers and activated through quality pedagogical practices. Is that right?---Yes, teachers do that role, yes. They perform that particular role.

PN975

Other people who do that role every day of the year in services are non-degree qualified educators?---Correct.

PN976

Those non-degree qualified educators may occupy, for example, educational leader roles?---Correct.

PN977

And director roles?---Correct.

PN978

The director of course or the nominated supervisor strictly speaking, has responsibilities in relation to the educational program, together with the educational lead?---I'm going to dispute the idea that the nominated supervisor has responsibilities. The nominated supervisor is responsible for the oversight that everything is in place to support the provision and delivery of the educational programs. The nominated supervisor isn't responsible for those particular programs, the quality of those programs.

PN979

At paragraph 22 you deal with a code of ethics?---Yes.

PN980

The code of ethics that you refer to is the Early Childhood Australia Code of Ethics 2016, is that right?---Correct.

PN981

This is promulgated by an organisation known as Early Childhood Australia?---That's right, the national peak organisation for Australian Early Childhood.

PN982

This is not a government agency or anything like that is it?---No.

PN983

It's a non government organisation and it publishes this code of ethics in brochure and poster form?---Well, it's published in an accessible form to have impact in the sector, yes.

PN984

Accessible so long as you pay a fee to the organisation?---No, that's not correct. It's publically available and it's free.

PN985

I suggest to you that the code of ethics is available only through the website for a fee?---I don't believe that's correct.

*** SUSAN LEE IRVINE

XXN MR FAGIR

PN986

VICE PRESIDENT HATCHER: Sorry, so it's Early Childhood Australia, that's a peak organisation of what, teachers themselves or child care centres?---No, it's a peak organisation of everyone with an interest in early childhood. So for example when I was working in a government department in policy, the department was actually a member of Early Childhood Australia. So it's seen to be a non-partisan overarching umbrella group for early childhood.

PN987

MR FAGIR: The code of ethics is for everyone who works in early childhood services?---It is.

PN988

A version of this code of ethics has been in place for something like 28 years?---That's right, it was recently updated in 2016 and it's informed by research and has changed in terms of research evidence.

PN989

The NQS you say makes frequent reference for the need for ECTs working in private school services to engage in critical reflection?---Mm-hm.

PN990

That's a proposition that appears in your report?---Yes.

PN991

The NQS doesn't draw any distinction in relation to critical reflection between teachers on the one hand and non-degree qualified educators on the other hand?---The NQS doesn't allocate roles in terms of practice. What it does do is set benchmarks for practice and the NQS actually looks at that in terms of minimum standards and aspirational standards. There are different expectations associated to different roles, responsibilities and qualified staff.

PN992

These are expectations that come from somewhere external to the NQS?---No, you need to look at the NQF which all of these elements that we're talking about at the moment, the majority of them are part of the National Quality Framework, and you need to look at those and read those as a whole, and so you're interpreting on the basis of a whole, an integrated whole.

PN993

In any case you would agree with this proposition: that the capacity to reflect on teaching and learning is a defining professional skill?---The capacity to critically reflect and to be reflexive, which means that you actually critically reflect and change your thinking and your work on the basis of critical reflection, is a significant professional skill.

PN994

You would disagree with the proposition as I just put it to you?---Could you state your proposition again, please.

*** SUSAN LEE IRVINE

XXN MR FAGIR

PN995

The capacity to reflect on both teaching and learning seem to be a defining professional skill?---It is.

PN996

This is not some recent development. It's a characteristic of a professional?---There has been strengthened emphasis placed on critical reflection. In fact the terminology "critical reflection" is really quite recent and has been promoted in the national quality framework. We've been talking about reflection on practice. Critical reflection takes that to a new level.

PN997

You would accept that ongoing professional development again is a feature of the work or practice of any profession?---I would think so, yes.

PN998

Can I ask you some questions about the "ECT workforce challenge", which is an issue you deal with at paragraph 41 and following?---Yes.

PN999

Can I ask you in particular about paragraphs 42 and 43. In 42:

PN1000

There continues to be a shortfall in the number of ECTs who are prepared to work in private school services. In particular, the long day care -

PN1001

et cetera. In 43, you say:

PN1002

This is not a new problem and the reasons for this are known. ECTs working in long day care services continue to experience less favourable conditions - working conditions and lower professional status than colleagues in primary schools.

PN1003

You see that?---Yes.

PN1004

Are you sure that's right?---Absolutely. I'm researching in this area and it continues to be a significant problem.

PN1005

You have referred to three documents there: Productivity Commission 2015, DET 2014 and 2016?---Yes.

PN1006

Can I suggest to you that none of those documents provides a proper foundation for the propositions you have put?---I would dispute that. I think the Productivity Commission final report makes that very, very clear.

*** SUSAN LEE IRVINE

XXN MR FAGIR

PN1007

I suggest to you that the proposition in that form is, at best, incomplete?---No. I won't have that, I'm sorry, no. I don't agree.

PN1008

Have you recently looked at these documents? I want to ask you some questions about them and I'm just trying to work out whether we will need to go to them or whether you think you might be able to - - -?---It depends on the nature and I guess if we're going to get down to specific wording, I will need a copy of those in front of me. If it's about intent and messaging, then I think I can speak to that.

PN1009

Okay. Let me just put the proposition to you and, if you need the document, I assume that it can be provided to you. I want to ask you, firstly, about the 2014 DET document - - -?---Yes.

PN1010

- - - to which you refer. Can I suggest to you that all that document says on this issue is a single line to this effect:

PN1011

Persons consulted expressed concerns that ECEC services are unable to compete with the wages and conditions of work offered by schools.

PN1012

?---It's fairly clear.

PN1013

I suggest to you that the 2016 document says nothing at all about a shortfall being caused by less favourable conditions compared to primary schools?---I can't comment on that.

PN1014

Do you have an iPad or some kind of contraption there?---Thank you.

PN1015

VICE PRESIDENT HATCHER: Mr Fagir, what is the - I'll perhaps ask the witness, what is the DET?---It's the Queensland Department of Education and Training, and the Queensland Department of Education and Training has developed a workforce action plan for early childhood education and care services. The original one was 2011 and there have been several iterations with reviews in between. I believe that the 2014 version was a review, so it was looking at the implementation of strategies to build the workforce, including encouraging more qualified early childhood teachers to work in prior-to-school settings. The 2016 document is the current version of the workforce action plan.

PN1016

All right. Thank you?---I'm sorry, which document - - -

*** SUSAN LEE IRVINE

XXN MR FAGIR

PN1017

MR FAGIR: If you could go to document 58 on that list?---Mm-hm.

PN1018

The proposition I put to you is the document says nothing at all about any shortfall in ECTs being caused by less favourable conditions than primary schools. You told me you couldn't answer that question?---Okay.

PN1019

Could you look at the document and tell me whether it does?---It wouldn't say exactly that, because this is actually a policy framework going forward; so it's actually identifying new strategies to continue to build, which I think the vision is a qualified, skilled and valued workforce. In that particular strategy it identifies the need to do more to recruit teachers.

PN1020

Can I suggest to you that what the document does suggest - you'll find this on page 4658?---4658?

PN1021

Yes. It's the numbers in red, bundle B, dash - - -?---Thank you, sorry. 4658, yes.

PN1022

At the top of the page, the action plan records the facts firstly that the ECEC sector is growing in Queensland?---Yes.

PN1023

It records a 16 per cent increase in three years?---Yes.

PN1024

And that the growth is set to continue, and new staff to child ratio requirements under the National Law are expected to fuel ongoing demand for qualified educators?---Yes.

PN1025

To the extent that this document says anything at all about reasons for workforce shortages, it suggests, doesn't it, that it's a different staff to child ratio requirement?---It identifies those as factors.

PN1026

On the other hand, the document says nothing at all about the shortfall being caused by differences between wages in early childhood services out of school as opposed to school rates of pay?---It certainly wouldn't make any statement about wages. You'll see consistently the government policy documents don't address that because they are seen to be matters outside of policy - government policy.

PN1027

Sorry, what is seen to be a matter outside of government policy?---Wages and conditions, and the lack of parity in terms of wages and conditions between prior-to-school settings and school settings.

*** SUSAN LEE IRVINE

XXN MR FAGIR

PN1028

You see, Associate Professor, we are looking at these documents because you have pointed to them as documents which - - -?---As examples supporting my case. It's not the definitive list of every document that supports this particular case.

PN1029

The third document to which you have referred is the Productivity Commission Report 2015. Can we take it that you regard that as being a reliable source of information?---It's a reliable source of information based on the fairly significant and robust review. I don't agree necessarily with everything that's in there because there is a lot of individual opinion in there, but it's a record of opinion at that time.

PN1030

Certainly. Do you mind going to document 27 on your list?---27, yes.

PN1031

Could I ask you to start on page - red number - 1827?---Getting there.

PN1032

Do you have a heading "8.3. Recruitment, retention and workforce shortages"?---Sorry, almost there.

PN1033

I'm sorry?---It's a long report. Right, "Recruitment, retention and workforce shortages"?

PN1034

Do you have that?---Yes, I do.

PN1035

You see on the next page under this heading there is a discussion about tenure in the ECEC workforce?---Yes.

PN1036

On the right?---Yes.

PN1037

You see that in the second sentence of the first paragraph the commission reports that the average tenure of educators was seven years and for teachers and directors 11 years?---Yes.

PN1038

The overall tenure for the sector was roughly the same as the rest of the workforce. Do you see that?---Yes.

*** SUSAN LEE IRVINE

XXN MR FAGIR

PN1039

No doubt you saw this paragraph when you were reading this report some time before you wrote your report?---Yes, and it's one of the sources of evidence that I used in my report, yes.

PN1040

If you move forward to red number 1830?---Yes.

PN1041

Do you see there a heading, Staff Shortages?---Yes.

PN1042

If you turn to the next page you see there the first proposition the Commission advances - - -?---Sure.

PN1043

- - -is that new staff ratios and qualification requirements made it more difficult for services to attract and retain sufficient staff by substantially increasing the demand for ECEC workers?---Yes.

PN1044

That's true of course?---Yes.

PN1045

The second paragraph:

PN1046

Shortages are most acute in New South Wales in regional areas for diploma qualified educators and teachers.

PN1047

Do you see that?---Yes, I do.

PN1048

Workforce shortages are most evident for centre based services, particularly at long day-care services that don't have a preschool program. They're especially affected because they did not previously require a teacher?---Yes.

PN1049

And that's true of course?---That's true.

PN1050

There's then a reference to skills shortage list and in two dot points the Commission deals with the position of non-teachers and then teachers?---Yes.

PN1051

You see that child-care workers, non-teachers, are classified as being in national shortage?---Yes.

*** SUSAN LEE IRVINE

XXN MR FAGIR

PN1052

And early childhood pre-primary school teachers are in recruitment difficulty?---Yes.

PN1053

And the observation, as you no doubt saw before you wrote your report, was that shortages are particularly acute in New South Wales partly due to the maintenance of above NQF requirements?---Yes.

PN1054

And you would agree that that's the case?---That was the assertion, yes.

PN1055

You see in the paragraph beginning, "Although early childhood teachers", you see half-way through the paragraph - - -?---Yes, I can see that.

PN1056

- - -do you see the sentence beginning, "Before 2009"?

PN1057

Before 2009 ECTs had not been classified as in shortage or experiencing recruitment difficulties since the skill shortage list began in 1986.

PN1058

?---Yes. Yes.

PN1059

On the next page you see a heading, Recruitment of ECTS a Particular Challenge?---Yes.

PN1060

I'm sorry, just before we deal with that issue, can I make this point to you. Childcare workers non-teachers cannot work in schools?---A diploma qualified person, a person who holds a diploma of early childhood education and care can certainly work as a teacher aid in the school as can a person who holds a diploma in early childhood - a certificate in early childhood, so they're para-professionals.

PN1061

The proposition about completion between long day-care services and schools, which appears at paragraph 43, you would accept doesn't operate in relation to non-degree qualified educators?---The problem isn't there because the number of positions is much smaller and they're hotly competed, but the question, could a person with those qualifications gain employment in a school, they would, and they would gain employment as a teacher aid.

PN1062

Notwithstanding that fact childcare workers are in national shortage, and early childhood teachers are in recruitment difficulty?---Well, this was 2015 and also it was a national profile so there are differences across jurisdictions in terms of that.

*** SUSAN LEE IRVINE

XXN MR FAGIR

PN1063

Yes. You would accept that this report rather suggests that whatever the reason is for the shortage in early childhood teachers and non-teachers, it is not in completion with schools because non-teachers are affected more acutely?---No, I wouldn't accept that, and I would like to go back to the paragraph that we were just going to look at which actually is the basis of what I was arguing in my report, which is that the recruitment of early childhood teachers presents a unique set of challenges and this is because many teachers who are qualified to work in early childhood education and care are also qualified to work in primary schools. Now, I don't want to take too much time, but somewhere in here you will also note - here it is here:

PN1064

While both long day-care services and preschools must compete with schools for teachers long day-care services face particular challenges because they also struggle to compete with preschools which typically offer higher salaries, shorter hours and more holidays.

PN1065

Yes. And no doubt the report identifies this as a factor bearing on the question. That's clear as day?---Yes.

PN1066

But you would agree with me, wouldn't you, that on any fair reading of this report the report does not suggest that the reason for the shortage of ECTs is competition?---Yes, it's a mixture of factors and all of these are important.

PN1067

Having worked through the three documents which you've identified as the basis for the proposition, I think you'd now agree with me that what appears at paragraph 43 is at very best incomplete?---Incomplete, I will agree, but it could be incomplete and I would like to add some of my own research as a reference point there.

PN1068

In the course of your research no doubt you've come across something called early childhood preschool teacher labour market rating documents?---Yes, not recently though.

PN1069

Do you know that they issue from time to time in relation to at least Queensland, New South Wales and the Australian Capital Territory?---Skill shortages?

PN1070

I'm talking about a document called Current Labour Market Rating that's issued annually or thereabouts?---No.

PN1071

You're not familiar with those documents?---Not intimately, no. I know - yes, I know of their existence.

*** SUSAN LEE IRVINE

XXN MR FAGIR

PN1072

It's not a trap, Associate Professor?---No, no, I know - - -

PN1073

I'm just trying to understand whether you've encountered these documents or not, whether there's - - -?---I'm aware of these documents, but I haven't drawn on them and certainly haven't had recent reason to do that.

PN1074

No doubt you remember enough about them to agree with this statement, that they do not suggest that the reason for workforce shortages is competition between - - -?---No, you would need to allow me a moment to familiarise myself to be able to make a comment on that.

PN1075

Associate Professor, your report deals with this question of shortage but it doesn't deal with any of the several factors that have been identified in the documents we've just looked at and others as contributing to workforce shortages other than competition between outside of school services and school services?---No, I think that that's unfair. I think that my document makes very clear the impact of the national quality framework and the requirement, the increasing requirement for teachers. I'm sure that in one of my documents I actually stepped out the fact that we have a phased approach to increasing the number of teachers and that in fact in 2020 we're seeing the next phase implemented where we have a second teacher required in larger, long day-care services.

PN1076

Can I ask you some questions about your second report, your report in reply? I don't think you'll need to turn to it, but from the materials that you deal with is something called the EPPE study?---EPPE.

PN1077

EPPE. Now, the EPPE study is a study that emanated from the United Kingdom?---Yes, it was a landmark study in the United Kingdom.

PN1078

The period of the study was something like '97 to 2003?---I think it actually went longer than that. It tracked the children for quite some time, at least 10 years, and there's still research being published from that, because as you would imagine with a study of that size the data was significant and there's ongoing analysis of that data.

PN1079

Professor, just dealing with the materials that are actually included in this case, can I suggest to you the materials deal with the period up to 2003?---I think that the report that I've referenced deals with it, yes. The first phase of the EPPE study.

*** SUSAN LEE IRVINE

XXN MR FAGIR

PN1080

Can I suggest to you that the high point of the conclusion from the EPPE study is that in relation to the preschool, having a teacher as a curriculum leader produced better outcomes than the alternative?---The actual EPPE study put emphasis on the teacher leading the program, so actually working with the children and leading the design of the program as well, so it was not just overseeing, it was actually working at the coalface with the children.

PN1081

We were unable to determine looking at your report or its annexures how the position that applied in English early childhood in '97 through to 2003 might compare with the contemporary position in Australian early childhood services?---Okay. I'm fairly sure that in that same document, or at least in one of my documents I've referred to the E4kids study, the Australian E4Kids study.

PN1082

We'll come to that. Can we just focus on the EPPE study for a moment?---Sure. Well, I'm just linking, because the E4Kids study was actually modelled on the EPPE study.

PN1083

Right. You would say, wouldn't you, that the position in 2003 in Australia in early childhood differs from the position now?---Absolutely.

PN1084

And you would say that the same is likely to be the case in the United Kingdom?---Absolutely.

PN1085

You haven't in your report provided any basis for the Commission to work out whether the conclusions of the report could be safely applied in Australia in 2019?---I'm not sure that there's a need to do that if we're actually establishing that the qualifications of staff is really important in the delivery of quality programs that have positive impact on children's outcomes. That would be a stable finding and a finding that was important then and equally important now.

PN1086

For example, your report doesn't tell us whether the EPPE context involved teachers and diploma qualified educators as the alternative - - -?---Sure.

PN1087

- - - or certificate III qualified educators or people that were not qualified at all?---I probably haven't been specific in that. The context is very similar.

PN1088

You mentioned the E4Kids report a moment ago?---Yes.

*** SUSAN LEE IRVINE

XXN MR FAGIR

PN1089

This seems to be the document that people point to when they say that early childhood teachers produce better results than non-degree qualified teachers?---It's certainly a document that we use in terms of that. It's the most significant

Australian study of early childhood education and care to date, and it's also longitudinal based on the EPPE model.

PN1090

I suggest to you there are two propositions which emerge from E4Kids: (1) directors with degree qualifications produce better outcomes and something called process quality?---I don't believe that that's the case. I think that the focus was on highly qualified educators and teachers signifying the most highly qualified educators produce the best outcomes in terms of process quality. Process quality is seen to have the greatest influence on children's learning and outcomes. It involves things like the relationships, the interactions, the teaching component of the program.

PN1091

You said highly qualified educators?---Yes.

PN1092

What do you include in that category?---It's terminology isn't it. Educators is an umbrella term in the national quality framework so everybody who is working directly with children is considered to be an educator. Within that we have two streams of qualifications, we have vocationally qualified educators and we have degree qualified teachers.

PN1093

I note the time. I think I'll be half an hour with the Associate Professor and I understand she has some travel difficulty this afternoon. I'm content to press on if that's convenient to the Commission and the parties or to take a break. I'm in your Honour's hands.

PN1094

VICE PRESIDENT HATCHER: So what's your difficulty, Dr Irvine?---I don't really have a difficulty. I have a flight at 3, but I'm quite prepared to set that back as needed and I have a flexible fare.

PN1095

What do you prefer, Mr Taylor?

PN1096

MR TAYLOR: I think in light of my friend's estimate it might be appropriate to take a lunch break if that's not terribly inconvenient to the witness.

PN1097

VICE PRESIDENT HATCHER: We'll adjourn now and resume at 2 pm.

<THE WITNESS WITHDREW [12.58 PM]

LUNCHEON ADJOURNMENT [12.58 PM]

RESUMED [2.03 PM]

*** SUSAN LEE IRVINE

XXN MR FAGIR

<SUSAN LEE IRVINE, RECALLED

[2.03 PM]

CROSS-EXAMINATION BY MR FAGIR, CONTINUING

[2.03 PM]

PN1098

MR FAGIR: I have some good news and some bad news. The

PN1099

good news is that I won't be half an hour. I expect to be significantly shorter. The bad news is that I've probably kept everyone, including the Associate Professor, here over lunch unnecessarily. I apologise particularly to you, Associate Professor. Earlier, Associate Professor, you told us that the OP for a bachelor of education is - was it 12 or 13?---It ranges between those two. It fluctuates perhaps yearly.

PN1100

That is, you understand, to be roughly equivalent to a 78 TAR?---I can't say, I'm sorry. I'm not familiar with your system, but it's middle to upper range and of course we have a number of universities who offer it at a higher level and a lower level, as well.

PN1101

Right. In your reply report - you don't need to turn to this. I'll just read it out to you. You say this:

PN1102

All teachers who complete an initial teacher education program at an Australian university develop a deep knowledge of these standards.

PN1103

This is in the context of your discussion of the Australian Professional Standards for Teachers?---Yes.

PN1104

Now, what is the basis on which you make that statement?---All the initial teacher preparation courses are based on the Australian Professional Standards for Teachers, so our courses, all courses nationally, are accredited against those and we need to demonstrate how we ensure that graduates have a deep knowledge and are able to meet those standards. So, that's inherent in every unit that's offered in the course and upon - prior to graduation, the students actually need to demonstrate through the new teaching performance assessment that they meet those requirements to come out with provisional registration.

*** SUSAN LEE IRVINE

XXN MR FAGIR

PN1105

That's the construct. Have you actually researched the outcomes? Do you know whether, in fact, that construct has been producing the result that you say it has?---It's a fairly new - it's a fairly new part of teacher registration, but the fact that we have a very rigorous end point teaching performance assessment where we actually conduct an assessment on every individual student, and all

universities are required to do that, would suggest that we are meeting that requirement.

PN1106

Do you know the IATSL has actually researched this very question of graduates' familiarity with the standards, don't you?---They may have done so recently, yes.

PN1107

You know that their most recent publication on this issue in 2014 said that, in fact, 63 per cent of graduates said they didn't have a good knowledge of the standards?---Well, that would be fair in 2014 because the standards really only came into play in 2011/2012. I think that would be different now.

PN1108

The framework that you have just described was the same then as it is now; correct?---Correct, but it was brand new and I guess that it was in a process of implementation at that stage.

PN1109

You see, the explanation that you gave me as the basis for that proposition was the fact that the curricula required to be based on the standards?---Yes.

PN1110

That was true in 2014?---True.

PN1111

And 13?---Yes, I would expect so. They came in in 2011/2012.

PN1112

Yes, 2011 onwards?---Yes.

PN1113

VICE PRESIDENT HATCHER: Mr Fagir, where in the statement is the bit you are cross-examining about?

PN1114

MR FAGIR: Paragraph 23 of the reply report.

PN1115

THE WITNESS: The reply?

PN1116

MR FAGIR: Exhibit 13.

PN1117

THE WITNESS: That page?

PN1118

VICE PRESIDENT HATCHER: We have got the new numbering system.

*** SUSAN LEE IRVINE

XXN MR FAGIR

PN1119

THE WITNESS: Yes, I have, too.

PN1120

MR FAGIR: So, 13, page 6. The closest heading is "Professional Responsibilities of ECTs."

PN1121

VICE PRESIDENT HATCHER: Thank you.

PN1122

MR FAGIR: The proposition I want to put to you, Associate Professor, is that if, in fact, that framework that you described guaranteed deep knowledge, that would have been the case in 2014 as now?---Yes, yes, that's true, although one would expect that as the framework is implemented over time, that there would be greater capacity for everyone to strengthen their implementation and support of the framework.

PN1123

Thank you, Associate Professor. Thank you, your Honours.

PN1124

VICE PRESIDENT HATCHER: Any re-examination, Mr Taylor?

PN1125

MR TAYLOR: Yes, just a couple of things.

RE-EXAMINATION BY MR TAYLOR

[2.08 PM]

*** SUSAN LEE IRVINE

RXN MR TAYLOR

PN1126

MR TAYLOR: Dr Irvine, more than a couple of times you were asked questions by Mr Fagir about the National Quality Framework and the obligations it places on degree-qualified teachers in preschool and the obligations it places on vocationally-qualified educators, and specifically the proposition was put to you at one point that the National Quality Framework requirements apply equally, and my note is that you said it applies but you disputed "equally" and, in part of your answer in answering that question, you identified and used the expression "different expectations", there were different expectations on these two groups. Can you just explain what you understand to be the different expectations on the two groups that flow from those standards?---Certainly. Well, the National Quality Framework provides a framework for the delivery of high quality early childhood services and it recognises the mixed nature of teams working within those services and the related qualification levels and what those qualifications prepare educators to do. I talked previously about there being basically three streams of classification: the assistant educator classification, which is a Certificate III level qualification; the lead educator, which is a person in charge of a room, who would have an AQF level 5 diploma qualification, and the degree-qualified early childhood teacher, who can lead a program in any room and certainly does so in the preschool room by requirement of funding and expectation.

PN1127

So, the National Quality Framework takes that into account and has different expectations of people in those particular roles. So, when it comes to implementing the curriculum, if we're talking about early childhood teachers, the focus with the spotlight is on their role in terms of active teaching and how they can optimise - I think the words are actually "maximise" - children's learning. That's the focus and that's one of the big changes because it's very much about doing more and doing better and maximising children's learning, and what that means in terms of practise is that there's a much greater emphasis on - - -

PN1128

MR FAGIR: I object. It is non-responsive to the question and a question along these lines would not arise.

PN1129

VICE PRESIDENT HATCHER: Mr Taylor?

PN1130

MR TAYLOR: It wasn't directly responsive, and this witness is giving an answer directly responsive to the question about different expectations.

PN1131

VICE PRESIDENT HATCHER: I will allow the answer to be completed. Mr Fagir, if you want to ask another question arising out of it, you can do that.

PN1132

MR FAGIR: If the Commission pleases.

PN1133

THE WITNESS: Sorry, I've lost my train of thought.

PN1134

MR TAYLOR: The question you were addressing was different expectations on the different - and you have identified three different levels of vocations that arise out of the National Quality Framework?---And I was focusing on the particular expectations of early childhood teachers, so the focus is on maximising children's learning, and in terms of the framework requirements, there is a focus on engagement with a range of theories, a shift from a fairly narrow focus on child development through to a range of contemporary early childhood theories, a very strong focus on intentional teaching and a focus on associated practices to maximise children's learning, a focus on assessment, so a focus on monitoring and assessing learning against new high level learning outcomes, because the Early Years Learning Framework has introduced outcome-based curriculum for the first time, and all of that is monitored and assessed by a national authority.

*** SUSAN LEE IRVINE

RXN MR TAYLOR

PN1135

Before the objection, just one matter of detail you mentioned and I just want to make sure that this is understood, you mentioned a certain level within a pre-primary school education focus, which you called preschool, is to be provided by teachers pursuant to funding requirements?---Yes.

PN1136

Is that something that occurs in Queensland and just can you explain what it is?---Sure. There are examples across Australia. I think Queensland and Victoria are the best. I know it was explored in New South Wales but I don't believe that it was implemented in New South Wales. The requirement is that to meet the new reform of universal access to preschool education, so one year and the year prior to school, and in line with international benchmarks established by the OECD for this, that it's a requirement that a four-year degree-qualified specialist early childhood teacher is employed to lead that particular program.

PN1137

In Queensland and in Victoria, to maximise access and existing resources, that program can be provided in a long day-care service, it can be provided in a community-based not-for-profit and a private for-profit service providing that requirement is met, along with the fact that they must implement the preschool curriculum and meet all of the other expectations of teachers working with the National Qualify Framework.

PN1138

MR TAYLOR: In answer to some questions that Hatcher VP asked you at an earlier time, specifically about Lady Gowrie, at one point, as part of your answer, you said that when discussing a mix of degree and non-degree qualified staff, it is important to have that mix?---Yes.

PN1139

Why is it important to have a mix?---Well, I think from a range of perspectives that, you know, there are different roles and different responsibilities, and I guess that I would have colleagues that would suggest that that required all early childhood teachers. I am not of that view; I think that if you look at the school system, as I was benchmarking before, that you have a mix of staff performing different roles. I think that's important in a profession that provides a career pathway. We see educators making that career progression and progressing from a diploma qualification, articulating directly into a teaching degree. I see those as hallmarks of a good profession and I think that that mix works very well providing we have that mix and we have the leadership that is provided by the higher qualified staff.

PN1140

VICE PRESIDENT HATCHER: Just in terms of teaching delivery, is there any useful distinction to be made between degree-qualified teachers and non-degree-qualified teachers?---Well, the research would certainly suggest that the more knowledge that you have, the higher level of knowledge that you have, the more that you are able to apply that in the design delivery and evaluation and children's learning experiences. So, certainly the E4 Kids study supported that, and so I think that's really the key distinction.

*** SUSAN LEE IRVINE

RXN MR TAYLOR

PN1141

The distinction is that if we are wanting to realise the aim of the national reform agenda, which is about increasing quality and improving children's outcomes and

particularly improving children's outcomes from children who are experiencing disadvantage, the more highly qualified teacher is a requirement and that is signified by the expectation that you have a teacher in a preschool education program. It is also signified by the expectation that in disadvantaged areas that these programs are led by qualified teachers because they can achieve more.

PN1142

VICE PRESIDENT HATCHER: Yes, but, again, that answer was talking about the role of a teacher in leading the program. I am just talking about in terms of just the sheer delivery of the program?---We're talking at cross-purposes. When I say "lead", I mean the person who is on the floor working with the children. That's very important. It's not about the director who's got a teaching qualification, that's not what we are talking about, we are talking about the person who has the daily relationship and interaction with children and families

PN1143

MR TAYLOR: Finally, you were asked by Mr Fagir or he drew your attention to a paragraph in your first statement, paragraph 42, in which you said:

PN1144

There continues to be a shortfall in the number of ECTs who are prepared to work in private school ECEC services, in particular long day-care, which remains the most challenging context for recruitment of ECTs.

PN1145

?---Yes.

PN1146

My note is that in answer to that question, you said, "That's absolutely right" and that you have been conducting research in this area. What is the nature of the research?

PN1147

MR FAGIR: I object. I asked a series of questions about paragraph 43 and the proposition that appears there.

PN1148

VICE PRESIDENT HATCHER: Paragraph 43 of what, the first one?

PN1149

MR FAGIR: The first one, yes. I notice that - - -

PN1150

VICE PRESIDENT HATCHER: What was the question again, Mr Taylor?

*** SUSAN LEE IRVINE

RXN MR TAYLOR

PN1151

MR TAYLOR: The question is - my note is that Mr Fagir took the witness to paragraphs 41, 42 and 43. At the point where he took the witness to paragraph 42, the witness has responded, in effect, that that was absolutely right, that is, the statement she put in that paragraph was absolutely right, and indicated that she

had done some research in this area. I don't think that was the only time she referred to research in respect of shortage, but it certainly was the first time she did.

PN1152

VICE PRESIDENT HATCHER: I will allow the question. Perhaps you could put it again, Mr Taylor.

PN1153

MR TAYLOR: Dr Irvine, in reference to that which you suggested to be right, a shortage, in particular in long day-care, which remains the most challenging context for recruitment of ECTs, you indicated you had done - you were - I can't remember if you said you had done or you were doing research in this area. Can you just explain what that is?---That is both, but the most significant research was an Australian Research Council-funded study which we only completed at the end of last year and that was known as the Early Childhood Education and Care Workforce Study. That was a national study looking particularly at educators and early childhood teachers in centre-based early childhood services, so preschools and long day-care services, and I think that the finding that I was referring to in terms of this is that we have a strong emphasis at the moment on strengthening qualifications in the workforce, a number of government initiatives/scholarships to support diploma-qualified people to upgrade to become early childhood teachers.

PN1154

Our finding was that that was working, but the majority of the people who were upgrading were actually planning to leave the profession. So, we were seeing, on the one hand, the increase in qualified early childhood teachers, but their intent was to move to what they saw were greener pastures, so moving out of the sector.

PN1155

MR TAYLOR: And by "the sector" what are you referring to there?---I am referring to the prior to school early childhood services, specifically long day-care.

PN1156

And moving somewhere in particular, or did the study go that far to indicate - - - ?---Preschools and schools, as suggested by the Productivity Commission, so it concerns that particular perspective.

PN1157

Thank you, they are the questions, if the Commission pleases.

PN1158

VICE PRESIDENT HATCHER: Do you want to ask something, Mr Fagir?

PN1159

MR FAGIR: Yes.

*** SUSAN LEE IRVINE

RXN MR TAYLOR

FURTHER CROSS-EXAMINATION BY MR FAGIR

[2.21 PM]

PN1160

MR FAGIR: Associate Professor, I want to ask you some questions and I wonder, if you wouldn't mind, if you just attend very carefully to the question that I am asking you and only answer the question that I am asking you. Do you remember you gave a series of opinions about expectations of teachers pursuant to the NQF?---Yes.

PN1161

The NQF, you understand, consists of the National Law and National Regulations, the National Quality Standard, Assessment and Quality Rating Process and the National Learning Frameworks?---Yes.

PN1162

Can you just identify for me, firstly, the section of the National Law or the clause of the National Regulation which provides the foundation for the things you said in answer to the question that you were asked?---I cannot because the National Law doesn't address that particular facet; it's about the provider approval process and the assessment and rating process.

PN1163

Could you identify the clause of the National Quality Standard which provides the foundation for the opinions that you expressed in the answer that you gave?---The National Quality Standard doesn't distinguish on the basis of roles.

PN1164

Can you give me the provision or the clause of the Assessment and Ratings Process Framework which provides the basis for the opinions that you expressed in the answer that you gave?---The National Assessment and Ratings Process also doesn't distinguish on the basis of roles.

PN1165

Can you give me the provision of the Early Years Learning Framework that provides the basis for the opinions that you expressed?---The Early Years Learning Framework doesn't address roles at all.

PN1166

Thank you, your Honour.

PN1167

VICE PRESIDENT HATCHER: Thank you for your evidence, Dr Irvine, you are now excused.

<THE WITNESS WITHDREW

[2.22 PM]

*** SUSAN LEE IRVINE

FXXN MR FAGIR

PN1168

MR TAYLOR: I don't make any criticism of this, but we had been advised by Mr Fagir that what we had scheduled for today without Ms Hickey would fill up the day and, as a result, Ms Hickey, who is interstate-based, was not made available, so, unfortunately, we are in a position where we have no further witnesses for today. We would like to think there's sort of a time off in lieu thing going on here

for the extra time that everyone worked yesterday, but we are going to speak to Mr Fagir and those instructing him to do - and I know this is difficult - but to do their best to give us as accurate summaries as they can so that we don't end up in a situation more often than has to occur where we end up like this where we have run out of witnesses for a day.

PN1169

VICE PRESIDENT HATCHER: I wouldn't want the parties to get too upset about it.

PN1170

MR TAYLOR: No, I understand, I understand, but, nevertheless, if it's clear that there will be witnesses who will only take half an hour who are currently scheduled for a whole morning, then clearly it is useful to know that so that we can schedule things. If we can finish the evidence a day early, then no one will be unhappy about that, I am sure.

PN1171

VICE PRESIDENT HATCHER: I raised this morning, half seriously, with Mr Fagir the possibility of an agreed statement of facts being developed.

PN1172

MR TAYLOR: Yes.

PN1173

VICE PRESIDENT HATCHER: Perhaps the parties might want to spend some time this afternoon talking about a proposal by which that can be done, that is, a reasonable timeframe in which that could be done at some time before the closing submissions.

PN1174

MR TAYLOR: Yes, we will do that, thank you.

PN1175

VICE PRESIDENT HATCHER: All right, if there is nothing further, we will now adjourn and resume at 10 am tomorrow morning.

ADJOURNED UNTIL THURSDAY, 13 JUNE 2019

[2.24 PM]

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