



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

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

s.156 - 4 yearly review of modern awards

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

Melbourne

10.12 AM, THURSDAY, 1 DECEMBER 2016

Continued from 3/11/2016

PN9550

VICE PRESIDENT CATANZARITI: Thank you. We've received the draft directions. We propose that on the basis there's agreement in relation to those draft directions to make those draft directions and to also list the matter for hearing to conclude the matter on March 29 and 30. Is there any problem with those dates?

PN9551

MR PILL: No. Just one observation that the dates and so forth are premised on essentially all of the variations concerning the award being dealt with together. There's obviously two days allocated on 12 and 13 December at the moment, and we're not directly involved, but there are a number of witnesses on those days, and so I just wanted to flag that for the Commission.

PN9552

VICE PRESIDENT CATANZARITI: Well, I'm assuming we're going to finish the evidence.

PN9553

MR PILL: Assuming that that occurs.

PN9554

VICE PRESIDENT CATANZARITI: Yes.

PN9555

MR PILL: Yes. That's correct, your Honour.

PN9556

MS GALE: Your Honour, could I add, we're presuming that those directions are with respect to the three awards that we've been dealing with.

PN9557

VICE PRESIDENT CATANZARITI: That's right.

PN9558

MS GALE: And not the remainder of the education group. Not - - -

PN9559

VICE PRESIDENT CATANZARITI: What do you mean by that?

PN9560

MS GALE: Well, we're not aware of where things are at with the schools awards which are part of the group that were originally referred to the Bench.

PN9561

VICE PRESIDENT CATANZARITI: Yes.

PN9562

MS GALE: So we're just not consenting to or disagreeing with any orders in relation to that award.

PN9563

VICE PRESIDENT CATANZARITI: No, no.

PN9564

MS GALE: Yes.

PN9565

VICE PRESIDENT CATANZARITI: No, that's so.

PN9566

MS GALE: Thank you.

PN9567

MR RUSKIN: Your Honour, in terms of those two days for efficiency did you have a view as to whether they're segmented in the particular matters that you're dealing in terms of MRIs done on the second day or the parties - - -

PN9568

VICE PRESIDENT CATANZARITI: Well, I'm happy for the parties to really work that out amongst themselves.

PN9569

MR RUSKIN: Thank you, your Honour.

PN9570

VICE PRESIDENT CATANZARITI: We would anticipate getting very lengthy written submissions, assuming the oral discussions will be brief.

PN9571

MR RUSKIN: Yes. Thank you, your Honour.

PN9572

VICE PRESIDENT CATANZARITI: Thank you, Mr McAlpine?

PN9573

MR MCALPINE: Thank you, your Honour. I'd like to call the next witness, Michael Evans to the stand.

PN9574

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

PN9575

MR EVANS: Michael John Evans, care of 120 Clarendon Street, South Melbourne.

<MICHAEL JOHN EVANS, AFFIRMED

[10.15 AM]

EXAMINATION-IN-CHIEF BY MR MCALPINE

[10.15 AM]

*** MICHAEL JOHN EVANS

XN MR MCALPINE

PN9576

MR MCALPINE: Mr Evans, could you just restate your name and address for the record?---My name is Michael Evans, care of 120 Clarendon Street, South Melbourne, Victoria.

PN9577

Have you prepared a statement for these proceedings?---Yes, I have.

PN9578

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

PN9579

And that's a clean copy?---Yes, it is.

PN9580

And is that a statement of two pages with three attachments; A, B and C?---Yes, it is.

PN9581

And have you had an opportunity to re-read that statement today or recently?---Yes, I have.

PN9582

And do you say that that statement is true and correct?---Yes.

PN9583

Do you adopt this statement as your evidence in these proceedings?---I do.

PN9584

Thank you. I'd like to tender that.

PN9585

VICE PRESIDENT CATANZARITI: Yes. Could I ask, my records are showing, is it AAB or is it AAV? Is everybody on the - - -

PN9586

THE ASSOCIATE: AV.

PN9587

VICE PRESIDENT CATANZARITI: AAB. AV. Sorry, AV.

EXHIBIT #AV WITNESS STATEMENT OF MICHAEL JOHN EVANS

PN9588

MR MCALPINE: Sorry, your Honour, what was it?

PN9589

VICE PRESIDENT CATANZARITI: Sorry, it's exhibit AV. I had some red writing near it. I didn't know what it meant.

*** MICHAEL JOHN EVANS

XN MR MCALPINE

PN9590

MR MCALPINE: AV.

PN9591

VICE PRESIDENT CATANZARITI: Alpha Victor.

PN9592

MR MCALPINE: Yes. Our very efficient administrative person is interstate today otherwise we would've been able to assist. With the leave of the Bench I'd like to tender a document to Mr Evans.

PN9593

VICE PRESIDENT CATANZARITI: Have you shown that to - - -

PN9594

MR MCALPINE: Yes. I have shown it to the other parties. Are you able to identify that document?---Yes. It's an email that was sent from the NTEU national office to all of our members on that date, 8 May 2015.

PN9595

Okay. I seek to tender that.

PN9596

VICE PRESIDENT CATANZARITI: AW.

EXHIBIT #AW EMAIL FROM NTEU NATIONAL OFFICE TO MEMBERS

PN9597

MR MCALPINE: And I just have a couple of question arising out of Prof Wooden's statement. Can you explain how filters work in the online survey instrument that was used to do the NTEU State of the Union Survey?---Yes. There's two methods by which the data can be filtered. At the time of the respondent completing the survey there's a mechanism that enables people to be directed to certain questions depending on their responses to a particular question, so, for instance, if a question is asked whether a staff member is an academic staff member or a general professional staff member they can then be directed to a set of questions relevant to their employment category. And they wouldn't have access to the other questions. So that's the first method. The second method by which the responses can be filtered is when the data is being analysed there's the capacity to be able to filter the answers to any question in comparison to the answers to another question. So, for instance, there's a question in the survey that asks, "If you are full time how many hours per week do you work?" There's also another question that asks responders whether they work full time or part time. Now, in order to ensure that you're only analysing the data for those people who work full time you can, for instance, filter the answers to the first question in relation to the numbers of hours they worked to eliminate anyone who answered the second question to say that they were working part time, so then you would only be looking at the data for those people who say they worked full time.

*** MICHAEL JOHN EVANS

XN MR MCALPINE

PN9598

Thank you. I have no further questions.

PN9599

DEPUTY PRESIDENT KOVACIC: Just a follow up question. So in respect of the second of those filters that you referred to, Mr Evans, was that applied in the analysis of the survey findings?---Yes, it was.

CROSS-EXAMINATION BY MR PILL

[10.20 AM]

PN9600

MR PILL: Thank you. Mr Evans, I'm representing a group of eight universities in this proceeding. I've just got some questions arising from your evidence. Now, you're a national organiser with the NTEU; is that right?---Yes. That's right.

PN9601

And in that role you're involved in promoting the union's industrial interests?---Yes.

PN9602

And including promoting industrial campaigns by the union?---That's right.

PN9603

What qualifications do you have in relation to survey design or survey methodology?---I don't have any formal qualifications at all.

PN9604

You don't claim to be any sort of expert in survey design or analysis?---No, not at all.

PN9605

Now, at paragraph 4 of your statement there's a number of people listed there. See that?---Yes.

PN9606

Yes. And Matthew McGowan is named as the national assistant secretary and together with you, your evidence is you signed off on the content of the survey?---Yes.

PN9607

Now, Mr McGowan, he's still the national assistant secretary of the NTEU?---Yes, he is.

PN9608

Yes. And Dr Paul Kniest, who's also mentioned there, National – well, I don't think we've got his title. But staff from the union's policy and research unit in the national office, Dr Paul Kniest. He's also still with the NTEU?---Yes.

*** MICHAEL JOHN EVANS

XXN MR PILL

PN9609

This is correct, isn't it, that you were not the author of the report State of the Union Survey Report No 2 Workloads?---No, I wasn't. No.

PN9610

Now, you've attached to attachment A the survey and on page 26 there are some workload questions including the question that you mentioned in response to the question about filters; is that right?---Yes.

PN9611

Yes. Did you write those questions?---No, I did not. Most of the questions came about through a process of collaboration mainly. And we would've consulted with relevant members, amongst the staff themselves to try and ensure we were trying to capture data about the sorts of issues that both we and our members are interested in.

PN9612

Yes. Now, in terms of the distribution of the survey and indeed the receipt of the responses and the analysis that was all coordinated and managed by the NTEU rather than an independent body or an independent survey company; is that right?---Yes, it was.

PN9613

And, as I understand your evidence, the NTEU emailed it to every NTEU member that you had details for?---Yes.

PN9614

Sorry, that you had email details for. And beyond that you emailed addresses that you'd been able to find through a variety of means, public resources and so forth that the NTEU thought were probably members of staff at universities?---Yes. That's right.

PN9615

And can I take you to attachment C of your statement. And your evidence is that this is the email that appears following the survey. I think it's your last attachment. And your evidence is that this is the email that was sent out and you'll see under the graphics box:

PN9616

You're invited to participate in the 2015 NTEU State of the Union Survey. To participate in the survey please click here.

PN9617

So I just want to ask you some questions about that. Is it the case that if I have this email, if I click on that link it took me to the survey, and then I could complete it online?---Yes. That's right.

*** MICHAEL JOHN EVANS

XXN MR PILL

PN9618

And if you turn the page of attachment C there's an encouragement to forward the email to others. You see that in the last substantive paragraph?---Yes. That's right.

PN9619

So just to make sure I've understood, if I have received it and I've filled it in and I forward that email to somebody else they can also click on the same link and complete the survey?---Yes. That's correct.

PN9620

Do you have any mechanisms or ways of identifying how many forwarded emails there were?---No. No, there's no way of really knowing that.

PN9621

So you don't know beyond the number that you sent out, of emails, you don't actually know how many people could have accessed this survey?---No, there's no way of knowing that.

PN9622

And I take it from your answer that there's no unique identification number of unique log in provided to a survey recipient that they're required to have to access the survey?---No, there isn't.

PN9623

There'll be expert evidence in these proceedings that typically in an online survey that an online survey would involve providing individual sample members with a unique ID number or a unique log in. But your evidence is that the NTEU survey did not involve either of those things?---That's correct.

PN9624

Now, in addition to attachment C there was a follow up email. Was there more than one follow up email?---No, the one that was tendered earlier is the only one.

PN9625

All right. Now, in that email there are hyperlinks, "For more information please click here". And, "To participate in the survey please click here"?---That's correct.

PN9626

Are you able to tell the Commission where those hyperlinks took the recipients to if they clicked on them?---The first one I understand took them to the relevant web page that gave them information about the survey from memory. The second hyperlink took them directly to the survey.

PN9627

All right. I'd like to hand you a document. Now, it's got at the top right-hand side document number 9. We've written that on there. It's also an attachment to another person's statement. Ignoring that, on its face, this if from the NTEU's website; agree with that?---That's correct.

PN9628

Yes. And in addition to the emails the NTEU promoted the survey through its website?---Yes.

*** MICHAEL JOHN EVANS

XXN MR PILL

PN9629

And also through social media?---Yes. That's right.

PN9630

I'll come back to the social media. Just in terms of this web page here when I click on your email and the hyperlinks, so this is the email of 8 May that my friend took you to, I'm taken to the NTEU's web page with some information about the survey? That was your evidence?---That's right.

PN9631

Ad that includes information of the type that we see here in document 9?---It would've been similar to that, yes.

PN9632

VICE PRESIDENT CATANZARITI: Are you tendering those documents?

PN9633

DEPUTY PRESIDENT KOVACIC: I just have a question in terms of – sorry.

PN9634

VICE PRESIDENT CATANZARITI: Are you going to tender this document or either - - -

PN9635

MR PILL: Look, I will tender the document. It is an attachment to Prof Wooden's statement as well. But I will tender the document. Thank you, Vice President.

PN9636

VICE PRESIDENT CATANZARITI: Twenty-three.

EXHIBIT #23 EMAIL FROM NTEU HEADED HAVE YOU COMPLETED THE STATE OF THE UNI SURVEY

PN9637

DEPUTY PRESIDENT KOVACIC: Can I just perhaps ask a question about the document? When I look at it and under the heading, "Have you completed the State of Union Survey, and then there's that little image, and then it's "Click here to participate". Does that mean that anybody who visited the NTEU's website could actually participate in the survey via that link?---In theory, yes, your Honour.

PN9638

MR PILL: Your Honour pre-empted, there's a second document which I'll hand you nevertheless. I understand your answer. Now, what I've handed to you there, Mr Evans, is a document that we printed when we click on relevant links and obviously at a time where, on its face, the survey had closed. Notwithstanding that are you able to identify that that's the page that people would've been taken to to complete the survey?---Well, in the sense that, at the time the survey was open, the link took you to the survey.

*** MICHAEL JOHN EVANS

XXN MR PILL

PN9639

Yes?---Once we closed the survey this page then automatically appears, so it's effectively the end of the same link.

PN9640

Yes?---Yes.

PN9641

VICE PRESIDENT CATANZARITI: Do you want to tender that as well, Mr Pill?

PN9642

MR PILL: Yes, please, your Honour.

PN9643

VICE PRESIDENT CATANZARITI: Twenty-four.

**EXHIBIT #24 PAGE FROM NTEU WEBSITE - CREATE SURVEYS
GET ANSWERS**

PN9644

MR PILL: Now, on social media it was advertised through social media?---Yes. That's correct.

PN9645

And what social media was that?---It would've mainly been Facebook and Twitter.

PN9646

The NTEU Facebook page?---Yes.

PN9647

And does NTEU have its own dedicated Twitter account?---Yes, it does.

PN9648

And also promoted, perhaps on an ad hoc basis, by local NTEU branches?---Yes, it would've been. Yes.

PN9649

Now, at paragraph 12 of your statement your evidence is for both members and non-members the survey was only sent by email. And so I take it from that that there was no postal survey; there was no interview based survey; is that right?---Yes. That's correct.

PN9650

And then the next sentence says:

PN9651

It was not possible to complete the survey without having access to the log on which was included in the email.

*** MICHAEL JOHN EVANS

XXN MR PILL

PN9652

Now, that's not actually the case, is it?---No, you didn't need to receive the email to have access to the log in.

PN9653

Yes. And if I break that down I could have gone through the NTEU's website and clicked on a relevant link?---Yes.

PN9654

Yes. And I could have been a person who was not a recipient from the NTEU of the email but was forwarded the email and clicked on the link in that email?---Yes, in theory. Yes.

PN9655

And when you say "in theory" given your answers before you don't actually know how many people completed your survey who weren't actually recipients of your original email?---No, I don't. But I can say that on the balance of probabilities the likelihood of anyone other than the targeted audience either having access to the link or, in fact, completing the survey, would be - I would confidently say would be negligible.

PN9656

Yes. You don't actually have any evidence on which you've just based that balance of probability conclusion, do you?---No, I don't.

PN9657

No.

PN9658

COMMISSIONER JOHNS: But it's not as though there'd just be people out there who just want to complete a survey for survey sake, surely?---I think, in terms of the real world, Commissioner, I think you're correct.

PN9659

Yes. We appreciate real world comments.

PN9660

MR PILL: Now, it's apparent, isn't it, on the face of the survey that it's an NTEU survey, and you've indicated in response to previous answers it wasn't being conducted independently; you agree with that?---Yes.

PN9661

And it was promoted by the NTEU particularly to its members?---Yes.

*** MICHAEL JOHN EVANS

XXN MR PILL

PN9662

Yes. And you'd agree that based upon the survey responses, and the response rate was approximately 5.5 per cent based on the number of emails that were sent, that the NTEU concedes that the NTEU members are over-represented in the responses?---If you're saying in proportion to the number of members – proportion of members to overall university staff, if you use that as the sort of

benchmark then, yes, you'd have to say the members are over-represented in the responders.

PN9663

Yes. So approximately 20 per cent of the emails you sent out went to NTEU members, but of the responses, approximately 60 per cent of those who responded were NTEU members?---Yes.

PN9664

And it's also the case, isn't it, that there were significant differences in response rates between institutions?---Yes. That's correct.

PN9665

And the NTEU says that might be explained in part by some automatic university spam filters blocking the emails that came through with the survey link?---It is speculation because we don't know for certain but there was certainly evidence that some emails were blocked. Not necessarily intentionally. Spam filters seem to have a life – a mind of their own. But, yes, that was a factor in the overall process.

PN9666

And just taking into account those two things, so, the significant over-representation of NTEU membership and that there were significant differences in response rates by the institutions, you'd accept that it doesn't constitute a representative set of data across the higher education sector of all staff?---Yes, I would accept that. And I don't think we ever actually claimed that.

PN9667

Now, you mention that there's a couple of protections that you've mentioned in your evidence about ensuring that you got responses from relevant people. And one of them was an email address having a .edu suffix?---Yes. That's correct.

PN9668

Do you accept that that email suffix also applies to really anyone in the education sector; students not just university staff?---Well, perhaps I should clarify my previous response. It wouldn't have been just simply someone with a .edu.au suffix on their email address.

PN9669

Yes?---It would also have required the relevant representation of each university. So, for instance, a Victoria university is vu.edu.au. And those are the email addresses that we would've – that we target.

PN9670

Yes. Okay. And the other one you mentioned is that the survey technology was such that it would not accept more than one response from the same IP address?---That's correct.

*** MICHAEL JOHN EVANS

XXN MR PILL

PN9671

But you accept that that could still mean that I could fill in multiple responses. I could do it from my work computer and I could do it from my laptop at home?---Yes, certainly possible.

PN9672

I have no further questions.

PN9673

VICE PRESIDENT CATANZARITI: Thank you, Mr McAlpine?

PN9674

MR MCALPINE: Thank you, your Honour.

RE-EXAMINATION BY MR MCALPINE

[10.37 AM]

PN9675

MR MCALPINE: Thank you, your Honour. Can I take you back to exhibit 23 which was said to be from the NTEU website? Can you see the name Lachlan Hurse at the top?---Yes, I can.

PN9676

Who's Lachlan Hurse?---Lachlan Hurse is our State organiser in our Queensland division.

PN9677

And does he have the authority to post things on the NTEU's national website?---No, not on the national office's website. I assume – clearly he has access to the Queensland division website, and I would assume our Queensland branch websites.

PN9678

So on the basis of what you can you see there, what do you consider this to be, the coverage of this part of the website?---It's from the Queensland division website. The website is structured in that there is a national office page. Below that there are eight division web pages for the respective State and Territory divisions and then below that a range of websites for the individual branches of which there are approximately 37 or 38. As I said before, Lachlan would have access to the part of the Queensland division website and this is clearly the Queensland division website aimed at those members who live in Queensland.

PN9679

Okay. Have you made any inquiries about any similar posts on any other part of the NTEU website?---I did. I spent – I did a similar exercise for each of the other division websites and as far as I could find there were no other posts in relation to this particular survey, other than what was on the national office website.

*** MICHAEL JOHN EVANS

RXN MR MCALPINE

PN9680

And in terms of administrative arrangements for members what are the reasons why members might wish to go to the NTEU website or to a division or branch website?---Well, probably to find out information of some sort. But probably

more likely to have been directed there for some specific purpose. We would like to think that hundreds, if not, thousands of members spend their days – or spend parts of their days looking at the information on our website but, once again, the reality of that is that that's probably not the case.

PN9681

I have no further questions.

PN9682

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

<THE WITNESS WITHDREW

[10.41 AM]

PN9683

VICE PRESIDENT CATANZARITI: Thank you, Mr Pill?

PN9684

MR PILL: Thank you. We seek to call Prof Mark Wooden. He's outside the court.

PN9685

THE ASSOCIATE: Could you please state your full name and address for the record?

PN9686

PROF WOODEN: Mark Peter Wooden (address supplied).

<MARK PETER WOODEN, AFFIRMED

[10.42 AM]

EXAMINATION-IN-CHIEF BY MR PILL

[10.42 AM]

PN9687

MR PILL: Thank you. Professor Wooden, can I just ask you to state your name and address for the record again, please?---Mark Peter Wooden (address supplied).

PN9688

Thank you. Can you also just state what position you hold for the record?---I'm a professorial fellow at the Melbourne Institute of Applied Economic and Social Research at the university of Melbourne, and I'm also a director of the HILDA survey project.

PN9689

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

PN9690

You have a copy of that with you?---I do.

PN9691

Have you had a chance to read that again recently?---I have.

*** MARK PETER WOODEN

XN MR PILL

PN9692

Is the statement true and correct?---It is.

PN9693

I tender that statement.

PN9694

VICE PRESIDENT CATANZARITI: Twenty-five.

EXHIBIT #25 WITNESS STATEMENT OF MARK PETER WOODEN

PN9695

MR PILL: Now, Prof Wooden, at paragraph 13 you reference a copy of your CV being able to be viewed online. I'd just like to hand you a copy of a document. Just take a moment. Do you recognise that document?---I certainly do.

PN9696

Is that the CV that's referred to at paragraph 13?---It is.

PN9697

I also tender that document.

PN9698

VICE PRESIDENT CATANZARITI: Twenty-six.

EXHIBIT #26 CURRICULUM VITAE OF MARK PETER WOODEN

PN9699

MR PILL: Now, Prof Wooden, if you can remain there and my friend will have some questions for you.

CROSS-EXAMINATION BY MR MCALPINE

[10.44 AM]

PN9700

MR MCALPINE: Thank you, Prof Wooden. My name is Ken McAlpine, and I'll be asking you some questions on behalf of the National Tertiary Education Union. You gave evidence in the reasonable hours test case, didn't you, in the early part of the 2000s; is that correct?---I did. A very long time ago.

PN9701

Yes. Now, it's true, isn't it, that one of the controversies, including controversies between some of the expert witnesses including you, was about the question of unpaid overtime and how conceptually it should be defined? Is that a fair - - -?---Yes, I think that was – I have a vague recollection that that was a big issue then.

*** MARK PETER WOODEN

XXN MR MCALPINE

PN9702

Yes. In those proceedings, as part of that controversy, putting it more specifically there was the argument about if, for example, a person who was manager who was

receiving a high salary didn't receive specific payments for the extra hours the argument was about whether they had unpaid overtime or whether in fact a total salary rate could, in effect, be seen as compensating for the additional hours. Do you remember that?---I can't precisely recollect what the debate was about but I have a view on it.

PN9703

Yes. Yes?---Yes. So - - -

PN9704

Yes, I was about to suggest - and your view that it was reasonable to say that, for example, if - I think you used the term, the standard contract, if they're working additional hours, it was erroneous to say that a person was working unpaid overtime if they were receiving a significantly higher salary which clearly was meant to compensate them in part for those additional hours.

PN9705

MR PILL: Your Honour, before the witness answers, and I appreciate the nature of this inquiry, Prof Wooden has been called as an expert witness to give evidence about the NTEU survey and in response to the late breaking NTEU expert in support of that survey. There may be some relevance to my friend's questions, but, on its face, they're not matters that the expert witness has given evidence about or given an expert opinion about.

PN9706

VICE PRESIDENT CATANZARITI: When I read Prof Wooden's evidence in this case it was limited to that area. But is that where you're going, Mr McAlpine? You wanted - - -

PN9707

MR MCALPINE: Well, Prof Wooden establishes his expertise and talks about his presentation as an expert witness. I wanted to ask him a question - in fact, two more questions that were - - -

PN9708

VICE PRESIDENT CATANZARITI: But his views on overtime, he's not being called in this case on that expertise.

PN9709

MR MCALPINE: Very well, your Honour. Can I take you to paragraph 20 of your statement which starts on page 5 and goes over on to page 6? Okay. And there you're making some remarks about questions 42 and 43 which, in fact, I think you're on page 26 of the survey instrument. By all means if you want to refresh your memory about that, you should have a look at those questions. So the question about academic hours of work?---Yes. I know. Which page is it again, sorry?

PN9710

The 26 and 27 of the survey instrument?---Okay. Yes. Yes, I have them.

*** MARK PETER WOODEN

XXN MR MCALPINE

PN9711

Okay. Now, in particular I'm going to ask you about your comments about the question as best as you can please estimate how many hours you spend on each of the following activities in an average teaching week to meet the work and performance requirements expected of you by your employer. So I'm going to ask you some questions about what you've said about that. And in paragraph 20(c) at the top of the page 6, you've said that your contention is that:

PN9712

Many respondents will have no clear idea what the number of hours that are expected by their employer are. Unless the number of expected hours is written down or specifically articulated to them perhaps as part of an employees' induction or annual review process it's difficult to see how they could know the answer to this question.

PN9713

Now, I suggest that you've actually misconceived the question that was actually asked there. The question was not framed in terms of how many hours are they told to work. The question was how long it takes to do the work that's required of them by their employer. It's not necessary, is it, for the person to have been told how many hours by their employer to be able to answer that question, is it?---Different people will respond differently to this question. This question, one of its problems is, it's vagueness; that it's very nonspecific. Some questions, in their design, we have a problem when different people interpret questions differently. So some people interpret it exactly the way you've interpreted it, and other people will interpret it in the way I suggest some other people would interpret it is, "What are the hours that are required of you?" So some people might infer that's simply the number of hours I work. Other people will say 35 or 38 or whatever they think is some sort of contractual minimum. They'll probably be hard-pressed to find that in our awards and agreements, I suspect, but - - -

PN9714

But taking the question at face value the question isn't asking how many hours they are required to work, is it? It's asking them how many hours - - -?---You're expected.

PN9715

- - -they take to do their required work?---No, it doesn't say that all.

*** MARK PETER WOODEN

XXN MR MCALPINE

PN9716

Sorry, fair point. What it's asking the person is, "How many hours you spend on each of the following activities in an average teaching week to meet the work and performance requirements expected of you by your employer?" So there's no logical requirement that they're told – in fact, academics are not told how many hours to work. And the person reading that question is not going to assume that it requires that they know how many hours they're told to work, because nobody is told to work any hours, are they?---I have no idea about whether they are or not, but reading this question at face value, the key word that I picked up that was different from the first question, the preceding question, was it says "expected". It

says "expected of you", so then they thought, "I have to know what somebody else's expectation is". And that's the point which I think becomes tricky.

PN9717

Yes. Yes?---Okay. It's not what their – it's not their view about how many hours. It's about someone else, someone else has an expectation.

PN9718

The expectation is to do the work?---Correct. Fair enough.

PN9719

And are you suggesting that academic staff don't know what work they're required to do?---It's very – I would suggest to you it's very vague. I mean, I'm appearing in the Commission today. Am I expected to do this? I would count this as part of my working time, but clearly it's not required or indeed expected, but it's part of my work hour, so I'm going to be recording it at the previous question, but I don't think I'd be recording it here. But, you know, it's a very tricky question.

PN9720

And it's a perfectly legitimate thing to ask two slightly different questions to see what the difference is between the answers, isn't it?---If the questions are about seeking different purposes absolutely. I agree.

PN9721

Yes, okay. Now, you said you didn't know – you do have enough experience of academic work to know that people don't, in fact, generally have assigned hours; that's correct? They have assigned work; is that fair?---I would think that's fair from my own experience, yes.

PN9722

Now, you made a number of remarks, and I can take them to you if you want me to, but you made a number of remarks about the question at the top of page 26, and the use of bands. And is it fair to para-phrase your concern about the bands, that is, 35 or fewer, 36 to 40, et cetera, that it could tend to create an upward bias? Is that a fair description of your concern about the bands?---Yes, I have a concern that in this particular context whereby the lowest band is 35 or less, which I understand why, and then there's a whole range of bands further up. So it might lead people to think the norm is that it's at the higher end.

PN9723

Okay. Now, if there were other research that suggested that the average working hours for a full-time person was, say, 49 or 48 or 51, wouldn't it be fair to say that this is in fact perhaps a downward bias? If you knew from other research that the – if other research showed the average around 50, give or take a bit, then would it be fair to say that that upward bias effect would no longer be relevant?---It could be. I don't know.

*** MARK PETER WOODEN

XXN MR MCALPINE

PN9724

Okay?---I mean, My general principle here is that most of the better surveys, the well-funded surveys, the ABS, HILDA, et cetera all seek precise - but I can understand why you might want to use bands in a certain context.

PN9725

And, in fact, if, in a – and I acknowledge absolutely that HILDA does this better than this does, your survey does this better, but in terms of an online survey to be filled out, would you accept that one of the reasons the bands were used was that, in fact, we didn't want to go out to 65 or 70 for the reason of creating an upward bias given that some our members report that they work 65 or 70 hours?---That's right.

PN9726

And that, in fact, the bands that we've chosen are in fact to limit any upward bias?---Perhaps, though I was slightly perplexed. Then in the subsequent questions you're seeking precise hours.

PN9727

Yes?---Okay. So, I mean, one of the usual concerns is, with these questions, the reason you seek bands in a self-complete thing is because some people write things down in pen, you know, it's hard transcribing, you know, you need scanning technology and they make mistakes.

PN9728

Yes?---But in this case online, I presume, everything is being entered by a keyboard, so you don't have those errors. There was really no obstacle.

PN9729

Yes. Now, you would accept, as a general proposition, that certainly in relation to academic staff, this is an atypical survey target group, isn't it? In terms of their literacy and their general education?---That sounds like a fair claim. Yes.

PN9730

And their capacity to understand questions it's reasonable to assume it's probably higher than for the general population?---I agree.

PN9731

Now, at paragraph 19 of your statement, if you want to – now, you understand in the context of academic work, don't you, the difficulty, which I accept in a sense, your criticism of the normal working week, given that the year for most of academics is divided into teaching and non-teaching weeks, and you accept that it was legitimate with that audience, full-time academics or non-causal academics it was a legitimate thing to ask people about to consider separately teaching weeks and non-teaching weeks?---Yes, I agree.

PN9732

Now, if I could just ask you to have a look at a document. Now, do you recognise those two pages, the extract?---I certainly do.

*** MARK PETER WOODEN

XXN MR MCALPINE

PN9733

And can you identify it for the Commission, please?---Well, this is the paper representation of one of the survey instruments used in the HILDA survey from Wave 12, Continuing Person Questionnaire and then on the back page we have one of the series of questions. Bearing in mind that this survey is delivered with computer assisted technology so it does appear slightly differently.

PN9734

Yes. Thank you. Now, can I - - -

PN9735

VICE PRESIDENT CATANZARITI: Well, do you want that marked or tendered?

PN9736

MR MCALPINE: Yes. Thank you. I might as well have it tendered, I suppose.

PN9737

VICE PRESIDENT CATANZARITI: All right, AX.

**EXHIBIT #AX HILDA LIVING IN AUSTRALIA SURVEY
EXTRACT OF QUESTIONS**

PN9738

MR MCALPINE: Now, I just want to take you to the questions on the back of that document, C8b and C8c and just ask you a couple of questions about survey methodology. Is it fair to say the person is asked the question at C8b and then if they say that their hours vary they're then asked the question C8c; is that correct?---That is correct.

PN9739

Yes. So just so I can tease out some of the difficulties of these sorts of questions if I work in the finance department at a university let's just say, I work in a finance department in a university, and I work 38 hours every week but I have to work 70 hours in the last four weeks of the financial year, I would answer the question:

PN9740

Including any paid or unpaid overtime, how many hours per week do you usually work in your main job?

PN9741

That would be 38, wouldn't it?---I think so. I agree.

PN9742

And you may well not volunteer that it varies for that one month?---Correct.

PN9743

And then but if you do say it varies then it varies even that person, if they went to C8c:

*** MARK PETER WOODEN

XXN MR MCALPINE

PN9744

Including any paid or unpaid overtime, how many hours per week do you work on average over a usual four week period in your main job?

PN9745

That same person could well say 38 x four, 152?---That's correct.

PN9746

And I suppose I'm asking you these questions simply to make the point which I put to you that it's very hard to come up with questions that deal with all the circumstances and cross all the Ts and dot all the Is?---Entirely agree.

PN9747

And there is always that dilemma, is there not, between – and for the record I accept what you say about the difficulty of putting them in the one question, but there is always that difficulty between asking people normal and asking people average?---Well, you do understand in this particular HILDA example it's only about normal.

PN9748

Yes?---So when we average we're asking about a normal or a usual period.

PN9749

Yes. Yes?---And then we ask them to average out of that period. So I don't know – you might want to restate your question because I'm not sure I got it.

PN9750

No, no, that's fine. Now, you speak about, in your statement, at paragraph 21, you talk about the negative connotation of some of the questions and the concern you have that that might tend to bias the survey; is that a fair para-phrase of your position?---On a small number of items, yes.

PN9751

Yes. You do accept, if I take you to – first of all, you accept that some of these questions are about policy issues, about quality of education and things like that?---Sure.

PN9752

I just want to take you now to page 4 of the survey instrument if I may. And I'm going to put a proposition to you. In fact, early on in the survey right up front the participants are asked what are the three most important aspects of your job that contribute to a sense of satisfaction of work? And then there is a whole list of good things about working in a university. You'd accept that that's what that is. That's a whole list of good things about working at a university?---Sure, I agree.

PN9753

Yes. And, in fact, those are predominantly things about people's working conditions, aren't they?---Yes, it's a list of some of things that frame people's working conditions, that's correct.

*** MARK PETER WOODEN

XXN MR MCALPINE

PN9754

Now, can I take you to page 31 of the survey instrument? Now, there's three questions there. Now, these questions were directed at general staff, these questions. And I think it's fair to say returning to that controversy we tried to talk about at the beginning about whether an all-up salary can be seen as compensation for additional hours, leaving that aside, would you accept that the question at the top, and take the time if you need to, the question at the top of that page is in fact a reasonable attempt to elicit the circumstances about whether people receive direct compensation for working additional hours?---Yes, it does seem to suggest in this context people are either paid extra or get time in lieu seems to be the two main - - -

PN9755

Yes. Or they don't work any extra hours which is another logical possibility. This covers off the logical possibilities, doesn't it?---Not entirely does it?

PN9756

Yes?---I mean I'm not exactly sure who the target group this is. You say it's general staff.

PN9757

General staff?---But, for – I don't know quite what that means. Okay, for example, if it includes senior administrative staff in the university administration it may well be not covered by an award. I have no idea. Okay, if you were paid a salary, anyone who is paid a salary and they say, here's a hell of a lot of money, let's say, more than what an average administrative worker gets - - -

PN9758

Yes?--- - - -and I'm not sure what stream that comes under in terms of work. That doesn't seem to be here but maybe they're entirely out of scope.

PN9759

No, no?---I have no idea.

PN9760

No, no, and I did try to say, leaving aside that argument - - -?---Okay. Okay.

PN9761

Leaving aside that argument?---Sorry.

PN9762

And I apologise if I wasn't clear, but leaving that aside that sort of controversy about whether an all up salary, this covers off the other logical possibilities?---Yes, it does seem to. Yes. Yes.

PN9763

Okay. Thank you. No further questions. Thank you, your Honour.

PN9764

MR PILL: No re-examination, your Honour.

*** MARK PETER WOODEN

XXN MR MCALPINE

PN9765

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

<THE WITNESS WITHDREW

[11.08 AM]

PN9766

VICE PRESIDENT CATANZARITI: Just before the next witness comes, there are only two witnesses today, what's happening tomorrow? Are there any witnesses to come tomorrow?

PN9767

MR MCALPINE: Not from us.

PN9768

VICE PRESIDENT CATANZARITI: No.

PN9769

MR PILL: No, your Honour. And the next two witnesses are primarily or exclusively directed at the, I call it, Research Institute for questioning.

PN9770

VICE PRESIDENT CATANZARITI: That's right.

PN9771

MR PILL: And in that context, perhaps anticipating that you're maybe going to take a break, could we be excused from the Bar table for the remainder of the day?

PN9772

VICE PRESIDENT CATANZARITI: All right. Why don't we take the morning tea break so that can happen.

PN9773

MR RUSKIN: Before you do, your Honour.

PN9774

VICE PRESIDENT CATANZARITI: Yes.

PN9775

MR RUSKIN: Our next witness is Prof Brendan Crabb who is head of the Burnet Institute. It's the World Aids Day today.

PN9776

VICE PRESIDENT CATANZARITI: Yes.

PN9777

MR RUSKIN: And his institute is actively involved in matters, so he might not be turning up until 12. Is that - - -

*** MARK PETER WOODEN

XXN MR MCALPINE

PN9778

VICE PRESIDENT CATANZARITI: Well, we'll be here so we'll adjourn till 12 o'clock.

PN9779

MR RUSKIN: Thank you, your Honour.

SHORT ADJOURNMENT

[11.09 AM]

RESUMED

[12.07 PM]

PN9780

VICE PRESIDENT CATANZARITI: Thank you.

PN9781

MR RUSKIN: Thank you, your Honour. I'd like to call Prof Brendan Crabb, please.

PN9782

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

PN9783

PROF CRABB: Brendan Scott Crabb (address supplied).

<BRENDAN SCOTT CRABB, AFFIRMED

[12.07 PM]

EXAMINATION-IN-CHIEF BY MR RUSKIN

[12.08 PM]

PN9784

MR RUSKIN: Just for the record, professor, could you state your name and work address?---Brendan Scott Crabb is my name, and my work address is the Burnet Institute, 85 Commercial Road, Melbourne.

PN9785

Thank you. And have you prepared a witness statement for these proceedings?---Yes, I have.

PN9786

And do you have a copy with you?---I do. Not right in front of me, but I do.

PN9787

Perhaps we should get it?---Thank you. Thanks very much.

PN9788

Is that a copy of your witness statement that you prepared?---Yes, it is.

PN9789

And are there any changes to it since it was produced on 3 June that you wish to make to it or change anything?---Not of substance, no.

*** BRENDAN SCOTT CRABB

XN MR RUSKIN

PN9790

Do you adopt the witness statement?---Yes, I do.

PN9791

Thank you.

PN9792

VICE PRESIDENT CATANZARITI: AAMRI4.

**EXHIBIT #AAMRI4 WITNESS STATEMENT OF BRENDAN
SCOTT CRABB DATED 03/06/2016**

CROSS-EXAMINATION BY MS GALE

[12.09 PM]

PN9793

MS GALE: Professor Crabb, can I start by acknowledging that today is World Aids Day and acknowledging the work done by the Burnet Institute in relation to HIV, and that we do appreciate you being available today of all days?---Thank you.

PN9794

My name is Linda Gale, I'm with the National Tertiary Education Union, and I've got a few questions for you. Is it fair to say that education is central to the mission of the Burnet Institute?---Education is an important component and there's a definition around that I could give, but education is an important component of the work of the Burnet Institute, yes.

PN9795

And is it fair to say that that includes public education, the education of health professionals and the education of future researchers?---As a relatively small component of what we do in the education space, yes. The majority of what I'd classify as education for the Burnet is capacity building of our partners and communities through the State of Victoria. A little more nationally and especially internationally capacity building in areas of health strengthening.

PN9796

Now, Peter Higgs has given evidence in these proceedings that he was involved in the Burnet's delivery of units for Monash University's Master of Public Health program. And I understand there's the Master of Public Health program and the Master of International Health program that Burnet delivers units for; is that correct?---That is correct.

PN9797

And they're both programs that are offered by Monash University?---That's right.

PN9798

Now, the Burnet staff who are involved in that program and the delivery of units for those two programs are they employed by Burnet Institute while they do that work?---They are.

*** BRENDAN SCOTT CRABB

XXN MS GALE

PN9799

So they're not engaged by Monash University to do that?---Not to my knowledge. Some staff do have joint appointments; some staff have honorary appointments but they're most likely to be employed by Burnet in that function.

PN9800

So can I just ask you then about your evidence at paragraph 34. I'm sorry, paragraph 31. You say that Burnet staff members engage in lecturing or teaching. If they're paid to do so they're paid by the relevant university. You're not referring to those two masters programs?---No, we run – the masters program is a very exceptional case for our institute in the whole national spectrum in fact and there's a special reason for that. The teaching I'm referring to there is that from time to time people like myself will give a lecture or two at a university and if we are paid, we're often not paid, it will be from the University for that role. I myself am in that category.

PN9801

So that would be for guest lecturing or - - -?---That's right, that sort of role. But the masters course is a special case.

PN9802

And you did mention I think that some staff may have a part-time position at Burnet and a part-time position at a University where they may be engaged in teaching work?---That's right. And part-time in the hospital too, and in potentially other organisations.

PN9803

Okay. Now, you've referred to honorary appointments, and in relation to yourself, you say that you hold professorial appointments at the Melbourne and Monash University. Now, that's unpaid appointments; is that right?---That's unpaid appointments, yes.

PN9804

And so that's primarily for the purpose of supervising higher degree by research students?---Indeed. All medical research institutes without exception, as far as I'm aware nationally, have research in higher degree students. None of us can confer the degrees that come with those are post-graduate courses and so as part of the affiliations we have with partner universities, many of us, but particularly the directors, will hold affiliated positions and that sort of underscore that relationship that allows us to supervise those students who will end up with a degree, not from us, but from the partner University.

PN9805

Now, I just want to tease out a little bit the nature of PhD research in a field like the many fields that Burnet hosts?---Mm.

*** BRENDAN SCOTT CRABB

XXN MS GALE

PN9806

We've had some evidence in these proceedings in relation to University employment that's talked about sometimes PhD supervision is counted towards an academic's teaching load and sometimes it's counted towards their research load,

and partly that reflects the different approach to PhD supervision in different disciplines. And it's been suggested, for example, that in the humanities it may be common for a PhD student to devise their own question, to find a supervisor, to engage in their own research, and basically the supervision role is one of advising and overseeing?---Mm.

PN9807

Whereas in the sciences it's more common for the student to be part of a research project which their supervisor's engaged in as well as a researcher, and that there's actually a much more hands-on interaction in terms of the conduct of research between the supervisor and the student. Would you agree that that's a fair characterisation of how it occurs at Burnet?---I would agree that there's considerable truth to that. I think it can – you know, whether you can make a general rule, it was true for me in my own PhD. I devised my own project and went to somebody with that project. But it often is a bit more of a partnership with the research group having a particular mission and they're looking for people who fit that and have those interests, so it's not like students come to those groups without any idea of what they want to do. There's a little bit of a matching there in the same way as there is in the humanities. But I think it's still a fair statement to say there's more of a hands-on supervisor/student interaction in many of the sciences, whether it be in our institute, wider medical research institute, or the universities, than there is in the humanities. But I wouldn't say it's a strict line.

PN9808

But probably exceptions on both sides?---That's right.

PN9809

And it's often the case, isn't it, that the PhD student and their supervisor might end up with joint publications out of that research project that they're engaged in?---Very likely to be the case, yes.

PN9810

Now, you've said when you supervise a PhD student formally you're doing so on the basis of an honorary appointment with the university. It's the university that the student is enrolled with?---Yes.

PN9811

Does the university pay you or pay Burnet anything for doing that supervision?---It certainly doesn't pay me. And depending on the university they normally pay us nothing. They generate significant income from the Commonwealth for that purpose but they generally do not pass it on or pass on a very small component of it. It's a bone of significant contention.

PN9812

Indeed. And so Burnet would engage in the supervision of PhD students largely without an income stream to support that?---That's right.

PN9813

In relation to that student?---Yes.

*** BRENDAN SCOTT CRABB

XXN MS GALE

PN9814

Or their candidature. So why do you do that? Why bother?---Because research in higher degree students are very much like – I think they're at the most creative, active stage of their research lives to a fair degree. Maybe their post-doctoral period after that. So the most significant thing that anyone will actually achieve with their hands in science, in my view, happens in that time or shortly after that time. So we are very keen to have such creative active people at the institute contributing toward our mission, and we're very happy that they get training and their degrees during that process, but certainly we're there to – we have them to have our research a better quality.

PN9815

So a PhD candidate who's engaged in research as part of a team at the Burnet, do they get paid for the time they spend on their candidature?---They generally get a stipend from a Commonwealth scholarship either through the National Health and Medical Research Council or through the ARC or through another Commonwealth scheme. That would be the most common method. Sometimes there are schemes that are more university based and on occasions we might be eligible or students in our institution might be eligible for those. And on occasions we, as an institute, might pay them a stipend directly but that would be the exception rather than the rule.

PN9816

And when you talk about a stipend that's in the form really of a living allowance rather than wages for hours worked?---Pretty much, yes. Yes.

PN9817

So Burnet gets the benefit of the student's creativity and their research?---Yes.

PN9818

You often get publications from PhD students. You're able to count that as part of your own research output in your reports and publications. And presumably you also get the satisfaction of contributing to the future development of the research workforce?---We get all of those things indeed, yes, but none of them are the most important reason we have them, but, yes, we do get all of those things. And of course the university gets the benefit of the publications as well, which is why they want this circumstance.

PN9819

Now, again, just to clarify what you mean at paragraph 31 of your statement where you talk about lecturing and teaching you've said that was basically in relation to guest lecturing and teaching you were talking about there?---Yes.

PN9820

You put it under the sub-heading of Supervision of Research Higher Degree Students. Burnet staff members don't get paid generally to do the supervision of higher degree students, do they?---No, that's true.

*** BRENDAN SCOTT CRABB

XXN MS GALE

PN9821

So we've talked a bit about Burnet's engagement with education and with research training. Can I ask you about the publication of research? Burnet values and celebrates the high publication output of your staff, doesn't it?---Indeed.

PN9822

And that's - - -?---It's a very important measure.

PN9823

Yes?---You know, a surrogate measure of what our primary interest is.

PN9824

Yes. And that's evidenced through peer reviewed research publications?---Peer and non-peer in our case. Technical reports and so on that might be commissioned by Government and go through various processes that we would regard as, not peer reviewed, but still very important measures of our success; a very significant part of our interest in effecting policy and practice. And so publications of a wide sort but, yes, peer review being a part of that.

PN9825

Yes. And, in fact, in your annual report it's the peer review publications that you focus on as reporting your performance, isn't it?---The thing with peer review publications is they're easy to count. They're a broadly understood measure. We're often asked to compare ourselves to other organisations and it's the lowest hanging fruit as a sort of quantitative measure. So that's the reason we focus on that. It's a very blunt instrument though and there are certainly other measures that are more important to us but that are harder to compare ourselves to other organisations with.

PN9826

And that low hanging measure, that blunt instrument that's relatively widely understood and easily ascertainable. All of those factors are true in relation to the way that universities report their research output as well, aren't they?---universities have a greater interest in publications than us. Their core business depends on their publication output. It depends on a couple of other academic measures as well but there's nothing more important to what they are trying to achieve than their publication output. For us that's not how we measure ourselves. We don't get in any sort of direct way benefit from our publication output. It is a measure we use as to how we're succeeding but our primary interests as an organisation is very different to primary purposes, very different to universities. They are interested in – their business model depends on, to a reasonable degree, their research output which affects their ranking which affects their income, and that's just not the case for us. We don't have those as drivers of our business.

PN9827

That's a very broad generalisation about the university sector, isn't it? It would vary significantly from place to place within universities, wouldn't it?---I'm not entirely sure what you mean. The - - -

*** BRENDAN SCOTT CRABB

XXN MS GALE

PN9828

Well, for example, there are research centres within universities that have missions quite similar to yours in terms of a focus on - - -?---Well, those research centres within a university are part of a university contributing to the university's mission and purpose. They're not autonomous. They are for whatever reason set up by the university toward their goal and their mission which is tertiary education and the business model that feed that. That's their purpose.

PN9829

There are a significant number of medical research institutes and public health research institutes based at universities which have a strong mission towards achieving changes in public policy; towards achieving real world translational outcomes on the ground in their fields of research and their fields of activity, aren't there?---It can appear like that and in fact in some cases that's become so true that they've been heading toward becoming independent institutes themselves because their mission and purpose is distinct from the universities. The Hudson Institute at Monash is a case in point where two institutes merged; one a Monash Institute; one a non-Monash Institute or at least not owned by them, Prince Henry's. They formed the Hudson and the model that Monash decided on was an independent medical research institute model for the very reasons you mentioned. So as university departments evolve into that sharp health focus as opposed to a tertiary education focus, there is that pressure. We have them approach us at AAMRI, now with my hat on as the former president of the Association of Australian Medical Research Institutes, we have those organisations approach us for membership, and I'd regard those as in transition. Groups like the Peter Doherty Institute, the Translational Research Institute in Queensland, the Kirby Institute from the University of New South Wales. So they do exist. I would argue that they're either transitioning toward independent MRIs or they're serving the university's mission, but the university's primary purpose of fundamentally different to ours.

PN9830

Could the witness be shown this document, please? Professor Crabb, this is our printout from the Faculty of Medicine Dentistry and Health Sciences web page at the University of Melbourne. Are you familiar with that faculty?---I'm relatively familiar with it, yes. Not in any detail.

PN9831

Could that document be marked, your Honour?

PN9832

VICE PRESIDENT CATANZARITI: That will be MFI49.

**MFI #49 UNI OF MELB PAGE FOR FACULTY OF MEDICINE,
DENTISTRY AND HEALTH SERVICES**

PN9833

MS GALE: Can you see there the list of University of Melbourne Research Centres?---Yes, I do.

*** BRENDAN SCOTT CRABB

XXN MS GALE

PN9834

And then collaborative research centres, quite a long list there going over the page. And then thirdly incorporated research centres and institutes?---Yes.

PN9835

Can I suggest to you that this one faculty at the University of Melbourne supports a number of research centres whose focus is on the desire to transform health systems and healthcare delivery, reduce the costs of those systems, and improve the lives of individuals and communities locally and globally?---There are elements of these centres and elements of the university that would do that, yes, and that appears to be the case here. I would still point out that the governance of any of these institutions as a university academic governance that seeks to further the university's mission above and beyond anything else that's their purpose. But if you're asking whether there's overlap in some sections of the university to what institutes do, the answer is yes.

PN9836

Can the witness please be shown this document? Again, this is a printout from a University of Melbourne web page. I think Infection and Immunology is your old department; is that right?---It was my old department, yes.

PN9837

Could that be marked, please?

PN9838

VICE PRESIDENT CATANZARITI: MFI50.

MFI #50 PAGE HEADED "INFECTION AND IMMUNOLOGY"

PN9839

MS GALE: And you see the words at the top of that website which lists and it was a very, very long list. Impossible to fit on one page but it lists research projects and the research lead, the school involved, and the department or centre involved. Can you see at the top of that the heading applying to all of those research projects is:

PN9840

Immunology and infection including basic research, translational and public health informed by those diseases which have a global and significant burden.

BRENDAN SCOTT CRABB

XXN MS GALE

PN9841

Do you accept that the research effort of the Department of Infection and Immunology at the University of Melbourne is directed to basic research, translational research, public health and with an eye to diseases which have a global and significant burden?---Well, this department I know very, very well and no, I wouldn't accept that. They have a significant basic research focus on some of these diseases with a very high emphasis on academic output. It's perhaps one of the best academic output departments. I think it's the best in Australia, certainly in terms of NHMRC grant returns. Very little in the way of translational or public health is their focus. It may be their interest but for whatever reason

they've not gone down that path. But they're a, you know, academic institution to be admired; that there's a lot of training in this area; a lot of teaching of high quality students whom we would hope to recruit one day for more translational and public health activities.

PN9842

Can I ask you about a research project that you've been directly involved in that has received a fair amount of publicity recently and that is the malaria liver stage infection project reported by the University of Melbourne as a discovery that we contract parasite killing immune cells in the liver to stop the infection in its tracks?---Yes.

PN9843

Now, that project involved a large number of people from a range of institutions, didn't it?---It did indeed.

PN9844

Could the witness please be shown this document? Do you recognise this website?---Not so much the website but the publication I know well, yes.

PN9845

Yes. You know the publication being immunity?---I know the journal being immunity and the specific publication I'm referring to the manuscript itself that you're referring to, yes.

PN9846

Okay. And that's a manuscript that's been submitted to, and accepted for publication, in immunity?---That's published now, yes.

PN9847

Yes. I tender that, your Honour

PN9848

VICE PRESIDENT CATANZARITI: You tender that one. Have to look where we are. AY.

EXHIBIT #AY PAGE FROM IMMUNITY WEBSITE

PN9849

MS GALE: Now, that's quite a long list of authors there, and I understand they're from a number of institutions in Australia and overseas; is that correct?---I'm not sure about overseas, but certainly in Australia, yes.

PN9850

I think there's a couple from Germany?---That's quite likely.

*** BRENDAN SCOTT CRABB

XXN MS GALE

PN9851

Now, one of the joys of the immunity website is that if you pause the cursor over a name it gives you a little profile as to what institution that person is attached to, and engaging in that exercise with this list it's clear that a significant number of

the participants in the research project were from the Peter Doherty Institute at the University of Melbourne?---Yes.

PN9852

A significant number were from the Burnet. There were also people from the Department of Electrical and Electronic Engineering at the University of Melbourne? Sorry, you need to answer for the transcript?---Yes, indeed that would be correct.

PN9853

Yes?---Now, I just remind you, the Peter Doherty Institute is really an organisation of different departments. So the department you've just referred to in the previous statement of infection and immunity is really the department where those authors come from. The Peter Doherty is just a brand above that. It doesn't really exist in a legal sense like the departments underneath it.

PN9854

There's some authors from the School of Biosciences at the University of Melbourne. There's some from the University of Sydney, from the Centenary Institute; correct?---That is correct.

PN9855

So this project then is an example of extensive collaboration?---It is indeed.

PN9856

And that involves independent research institutes and Universities?---That's correct.

PN9857

Would you say that it is basic research or translational?---I would say that it is early stage research but with a very sharp eye on the development of a vaccine which is my involvement. The translational interest in how can this knowledge, and there's quite some 10 years of precursor work here from Prof Heath and his group, and he came to me to say I think – he's a basic immunologist, "With your knowledge of how to make products, vaccines for market I'd like you to get involved in this project", and we've had a long and fruitful collaboration. So my eyes are very much on how this knowledge can be, you know, translated and one day lead to a malaria vaccine and that's my involvement in this work.

PN9858

Can I take you to your curriculum vitae which is the first annexure to your witness statement?---Sure.

PN9859

I just want to clarify a couple of things. Firstly, at the bottom of the first page there where you've got previous appointments 2001 to 2008 you were a laboratory head at the Walter and Eliza Hall Institute?---That's correct.

*** BRENDAN SCOTT CRABB

XXN MS GALE

PN9860

Yes. Over the page there's a number of things listed for that period of 2001 to 2008. So for the full period you also held an honorary senior fellowship at the University of Melbourne?---That's right.

PN9861

The reference there to the three NH & MRC fellowships; senior research fellow; principal research fellow; and then senior principal research fellow, were they at WEHI?---They were at WEHI, yes. So that was the source of my salary while at WEHI, so not an unusual way to get funded from a Federal Government scheme while working at a research institute or in fact a university.

PN9862

Okay. So you were employed as a fellow under an NH & MRC grant and WEHI was the institution that administered the grant?---Indeed.

PN9863

Can I also take you to page 27 of your curriculum vitae where you list patents and patent applications. And the first three of those are related to equine viruses?---That's right.

PN9864

Does that arise out of your work at the University of Melbourne?---It largely arises out of my PhD, yes, at the University of Melbourne. Yes.

PN9865

And then there are a number of patents that you sought while you were employed at WEHI. You also held an honorary position at Melbourne. You also had a position at Howard Hughes?---I did a fellowship from them, yes.

PN9866

Those patent applications, the ones listed 4 to 6 were they primarily out of your work at WEHI or - - -?---Five and 6 would've been related to my work at WEHI, and possibly a little at the University of Melbourne in the five years before that. Four was a longstanding collaboration back to my PhD days with individuals at the veterinary school but in a slightly different field.

PN9867

And the last one there, number 7, I understand that, just from a quick web search there, you've got people from a number of different institutions are - - -?---Just the Walter and Eliza Hall institute and Burnet. Those four.

PN9868

Okay?---And I would imagine it's nine years later, you know, effectively all of that work would've been done either at Walter and Eliza Hall Institute or Burnet. It is possible that some of it predated the University of Melbourne.

*** BRENDAN SCOTT CRABB

XXN MS GALE

PN9869

Now, you've talked about the difference between academic staff and researchers at research institutes and you particularly point out the requirement for many academic staff to engage in teaching and under graduate teaching. Just focusing

on research only staff at Universities, isn't it fair to say that research only staff at Universities that the work that they do is more akin to the work done by researchers in the medical research institute than it is to the work done by teaching and research academics at Universities?---They're – it is definitely the case that some activities by some researchers would be almost indistinguishable between, you know, a research only university to a research institute. So that's the case. Of course, there are many others that would distinguish – be very, very different. But an individual especially at a middle rank to lower rank person in a team might be doing an activity that is similar in either institution. On occasions the actual primary purpose of the wider team might even be quite similar. So that's true too. So the answer is yes, they can be very similar in the activities that they undertake.

PN9870

And in fact a lot of staff – there's a fair degree of mobility, isn't there, in terms of a research career between working at a university and working at a medical research institute?---There is on a case in point.

PN9871

Can I ask you about the titles that are commonly used in research institutes, titles such as research fellows, senior research fellows? Those titles are also common for research only academics, aren't they?---They've evolved to be common largely for reasons that are independent of either institutions or university. Largely because of the National Health and Medical Research Council. And so I guess that's - - -

PN9872

So could you just elaborate on how you think that operates?---So the National Health and Medical Research Council is a significant funding body, of course, for medical research in Australia, Government funded medical research in Australia and they, through their fellowship scheme, have levels, and so for staff who exist, either in a university or in an Institution under an NH&MRC you of course have the very same designation. So what's evolved in both organisations, I can certainly speak for medical research institutes, is to use language along those lines for staff who are not employed by an NH&MRC award but, you know, sit in the same organisation and do research, in some way, shape or form, in the same organisation. So I'd say they've really taken the anchor point for those designations is probably the National Health and Medical Research Council rather than unis or institutions.

PN9873

And you yourself have the title professor. Do you have many professors at Burnet?---Four or five.

*** BRENDAN SCOTT CRABB

XXN MS GALE

PN9874

And how does that title fit with the NH&MRC scale?---Well, technically it's unrelated. You know we would consider somebody at level E and above as someone who may very well be at a professorial level but that – a professorial designation is well understood to be a university appointment level and relate to a university and not to us, so internally it's not something that we judge. As I think

we discussed earlier they exist at institutes because of this need to have affiliated positions at university for research and higher degree purposes mostly.

PN9875

So if you're employing a new person, as a researcher, how do you go about deciding what level you're going to employ them at and what title you're going to employ them? What's the process?---Well, they really do come – there are many influences on that. If they came with an NH&MRC funded background you have a good starting point, and you might consider other things. In our case, we heavily consider their background and capacity to progress our mission which is new products, policies or practices. And their academic performance prior to that is an important component of that but we look pretty hard at non-academic and at least non-straight academic achievements as well. But we take it as obviously a strong guide their previous position and rank and that would be, I guess, the anchor point around which we'd start to have a discussion.

PN9876

So if someone's status has been recognised as, say, as level B then that's your starting point. You assume that they're – if they've got the skill set you want that you'd be appointing them. You'd be recognising that they've made it to level B?---Yes, but not with any great sense of confidence as to that's where they belong. They can be wildly different. You can be a level B within the NH&MRC and we would end up employing that person at level D. In fact, that's common. You know, we think that that's particularly – or level D within our system, within our Burnet program and so you can - - -

PN9877

Would anyone go down?---Yes, it can happen, you know, because a university in, you know, Western Amsterdam, which is the case in point of Burnet, we don't consider of the same standard, and so in that particular case it wasn't the same. So it's a starting point, and I would have to say the general guide is very useful as to the level that they originally held, but you can be actually pretty wildly different in where you end up. I would say usually up in my NH&MRC. I think the NH&MRC is a very tough scale, an unfairly tough scale and so most of us would, and that's nationwide, employ well above that and pay the gap ourselves.

PN9878

And do you have a promotion system?---We do have a promotion system.

PN9879

So staff at your institute are entitled to apply for promotion?---Yes, they are.

*** BRENDAN SCOTT CRABB

XXN MS GALE

PN9880

According to what criteria is that done?---Well, there's – you know, we have detailed internal criteria. It depends on the level. At the very top level involves - the final arbitrary is our board research advisory committee. Independent Institutes have corporate boards and there's sub-committees to those boards and one of those sub-committees is a research advisory board in our institute or equivalent in others and so promotion to the very top level needs their approval.

And as you go down there's various levels, different internal committees. So for example the level below the top is our executive that would make that final decision following comments from referees being sought and so on and so forth.

PN9881

And is that based in a sort of traditional reclassification mode? Would people apply on the basis of, "Look at these duties I'm performing?" Or is it more akin to an academic promotion on the basis of personal merit and established record?---I would say a combination of both. You know, and mostly we pay people on the basis of the duties that they're performing. Of course a criteria – well, not of course, a criteria that would be taken into account was the evidence that they can perform at a certain level. But a typical example for promotion might involve someone who's taken on a leadership role for example above and beyond the role that they were already playing. And so they'd come with a case to say, "I am now the head of a wider program". You know, "I'm putting a case forward for promotion and by the way I've been publishing really well" and, you know, that would be taken – so I think both are important, potentially fairly equally weighted.

PN9882

Your Honour, I estimate that I probably have another half hour with this witness. Is it your preference to press on or take a break?

PN9883

VICE PRESIDENT CATANZARITI: What are your commitments this afternoon?---I have an appointment at 3 o'clock which is maybe jeopardised but if
- - -

PN9884

All right. Well, I think we'll press on. We'll press on?---Thank you.

PN9885

That might encourage you to be faster?---Thank you.

PN9886

MS GALE: Can I ask in relation to your non-research staff, what in a university might be called general or professional staff, how do they progress through a classification structure?---Well, there's a system largely run by our chief operating officer and our head of human resources that is open for people to apply for promotion there as well. And as part of an annual appraisal the issue of promotion gets considered, and, again, it's slightly different depending whether there are junior levels, or medium level or senior levels, but effectively on an annual basis their classification gets reconsidered according to that review process.

*** BRENDAN SCOTT CRABB

XXN MS GALE

PN9887

So is that for progression within an incremental scale?---A bit of both. So both would be considered within the increment which tends to happen relatively automatically. It isn't strictly speaking automatic, but of course the serious

discussion - that's the common practice to progress up the increments on an annual basis, but the serious discussion happens when it's between classification levels, as we have them, and that is there for discussion each year.

PN9888

What does your classification structure look like?---Well, for those it looks a little bit like a HEW scale. And so we would – we have descriptors around that sort of scale that might be akin to the administrative scale used in many other organisations including university.

PN9889

Have you read the descriptors for research academics that are found in the Higher Education Academic Award?---I have, yes. For research staff, yes.

PN9890

Can the witness be shown MFI43? Professor Crabb, this is bundle of documents that was presented earlier in the proceedings. If I can ask you to turn to page 2? This is an extract from the Academic Staff Award and it sets out the minimum standards for academic levels for research academic staff, section A2 of the award. Can I ask you do you support the contention of AAMRI in these proceedings that this set of classification standards is not appropriate for medical research institute research staff?---I support the fact that they're not optimal.

PN9891

Not optimal?---Yes.

PN9892

What about them do you say is not optimal?---I think they're – you know, the primary focus of the university is served by the scholarly activity and progress in the broader, you know, academic world as measured generally by your international standing through publications, and that's not our primary focus, so there is overlap there as we've discussed already with published papers. But independent institutes are very focused on admissions that are very focused on advancing knowledge in areas of health outcomes and in fact of translating that knowledge into health outcomes and so descriptors that more specifically refer to those I regard as more optimal than these. They're not useless to us by any means, and there is overlap especially in some sectors. I mean, at the Burnet we're perhaps a bit broader where many of my staff would say these don't apply at all, but I think in a general sense there's some use to them. But they're far from optimally describing our principal focus which isn't scholarly and academic achievement as it is at a university.

PN9893

Well, can I suggest to you that the references to scholarly achievement are expressed in terms of research or scholarly? They're broad enough to encompass research careers that do not have a scholarly focus?---Well, as I said, they're not entirely inappropriate but, in my opinion, and in that of my colleagues that I've discussed this a lot with and represented nationally that they can do with significant sharpening to better represent our sector.

*** BRENDAN SCOTT CRABB

XXN MS GALE

PN9894

But rather than going down the path of sharpening those classification standards your organisation has chosen to head for the Professionals Award?---Yes, we have.

PN9895

Why do you say that that is more appropriate?---Well, it's the award under which many of our members have existed under for some time. We think it's served us well with the specific aims we have and the nature of the work that we do, and, you know, through this process we think that the amendments suggested to those have improved that even further, so it's been a system that's worked for us. We think these amendments are likely to help that work even better. So it's really a matter of what we think is the best fit. It's not a matter of what's right or wrong, and that's why we've come down the side of the PEA.

PN9896

Well, when you say the best fit, what you've just described is a process of classification of your staff and of appointments and the determination of levels of appointment that is drawn largely from the NH&MRC standings and from the level A to E approach that is common across the higher education sector. How do you say that anything that you've just described in terms of the way that staff are classified at the Burnet, the way that research staff are classified, is drawn from the Professional Science Award?---Well, we have existed under that award, many of our members, for some time, and what we're being asked here is to determine what the best fit system is for us. And we've made the determination that it's worked well to have those descriptors; to have the amendments that have been proposed will work even better. They are tailored – I mean it's not as though - I've been very straight about the basis for which these things have evolved over the last decade in which research institutes have really significantly expanded, but they have been – the organisations have evolved very distinct natures and so an award that is more significantly tailored toward those distinct purposes we think is a better fit.

PN9897

Are you aware that the Burnet Institute is a party to the old Universities and Affiliated Academic Research Salaries Victoria and Western Australia Award?---I am.

PN9898

And what problems have arisen for you as the CEO as a result of that award applying?---To my knowledge there haven't been significant problems under any award structure that we've had.

*** BRENDAN SCOTT CRABB

XXN MS GALE

PN9899

Why do you think that the award safety net wages for researchers at Burnet should be lower than those in the existing award if you adjusted the existing award for minimum wages adjustments?---Well, I think that the – what matters is what work people are doing against certain criteria, and so I'm not suggesting people doing exactly the same job should be paid less in the university or an institution by any

means. But I think there is an issue of apples and oranges here. The tasks and performances can overlap and we've talked about some of those that can but they can be really quite distinct as well. And so each individual case needs to be looked at in that way. So I don't believe in unequal pay. I believe in pay against the tasks that people are performing and their track record in performing those.

PN9900

Are you aware that the award rates of pay being pursued by AAMRI in its application in these proceedings are lower at every level than the rates of pay for the Higher Education Award?---Well, that's only if you assume equivalence of levels.

PN9901

Well, are you aware that the award rates of pay from level 2 to level 5 that have been pursued for the Professional Employees Award are single point rates of pay without any incremental scale bringing each of them in significantly under the rates of pay for the Higher Education Award?---I can see that here and I am aware of that, yes.

PN9902

And you're aware that the top rate of pay proposed for the Professional Employees Award comes in at something like \$24,000 below the top rate of pay under the Higher Education Award?---As a minimum, yes, I am.

PN9903

So why do you think, if your view is that people doing the same value of work should be paid the same rate of pay, why do you think that the safety net should be so much lower for research institutes?---Well, it depends on what the descriptors say for a level 5 within a Professional Employees Award or a level E if that's what you're comparing it to at a university. Having held similar positions in both organisations the roles and responsibilities are really very, very different. So they need to be seen in that context. They're not the same jobs. At a university, at a very broad – even at a relatively junior academic level, as in level B, C and D, they had significant – obviously very strong teaching roles. I had very significant administrative roles and I ran a research laboratory about a third of my time. Those at a similar level at my institute would only be doing their research and research translation activities, so a very different set of activities and with a - - -

PN9904

But wouldn't be that true for a research only academic at a university, at level B or C? They would only be doing research and research translation activities?---The research only academics at universities are almost always NH&MRC funded as they are for us and so come under those same scales.

PN9905

VICE PRESIDENT CATANZARITI: Well, it may follow, of course, that they're overpaid under the award at the moment that you're covering, on the reverse argument. It does invite the Bench to consider that in this award review.

BRENDAN SCOTT CRABB

XXN MS GALE

PN9906

MS GALE: Certainly. Certainly. And the NTEU points to the difference between a historically properly fixed award rate and a new rate that seems to have been pulled out of a hat. Now, the Burnet Instituted is part of the Alfred Medical Research and Education Precinct; is that right?---Yes.

PN9907

And you have chaired the AMREP council?---I have.

PN9908

AMREP is a partnership between Alfred Health, which is a hospital, it's a medical - - -?---Tertiary hospital.

PN9909

Yes. Sorry, you said a tertiary hospital?---Yes.

PN9910

Yes. And what do you mean by that?---I just mean a high end public service hospital that is, you know, the biggest in - that we get to.

PN9911

Monash University is part of Baker IDI Heart and Diabetes Institute, that's another medical research institute?---Indeed, yes.

PN9912

And a member of AAMRI?---That's right.

PN9913

The Burnet Institute, Latrobe University and Deakin University. So that's the six bodies that make up the partnership?---It is, yes.

PN9914

And it's located on the campus of the Alfred Hospital; is that right?---Indeed, all of us.

PN9915

So that's a cooperative venture between two independent research institutes, three universities and a hospital?---Indeed.

PN9916

And all of those partners have research staff located at the campus?---All of them would have research staff located at the campus. I would not be terribly certain about Deakin and Latrobe. They are largely there through their allied health teaching roles, so it's possible, but I wouldn't swear by that. The others – the major partners are the hospital, Monash University, Baker and Burnet, and we certainly all have research staff on campus.

PN9917

And it's common, isn't it, for Medical and Health Science Faculties of universities to have staff located at hospital campuses?---It is common, yes.

*** BRENDAN SCOTT CRABB

XXN MS GALE

PN9918

Do you agree with the proposition that scientific medical researchers are scientists?---Yes, I do.

PN9919

Do you agree with the proposition that scientific medical researchers are researchers?---I agree with that. I mean, the only qualification I'd make is that not all medical researchers are scientists but the vast majority are.

PN9920

Well, just focusing on scientists at the moment?---Yes.

PN9921

So I'd suggest to you that doing scientific research is something more than merely applying scientific method, isn't it?---Starting to get into a very philosophical debate.

PN9922

There's plenty of areas of scientific work which don't involve research?---It depends on your classification of research. I have a very broad interpretation of what research is. It is possible, as an independent worker, that you could consider your activity in science to be a daily chore and not research, but generally the broader context of any scientific activity involves research in one way, shape or form in my view.

PN9923

Well, there's a difference, isn't there, for example, between developing a new drug, which involves research, and the manufacture of a drug that's been developed. According to the prescribed methodology you need to apply scientific method and scientific rigor in the manufacture of that drug, but you're not engaged in research in doing so?---Well, it's certainly a very different emphasis, and I take that point. I would suggest that there's no manufacturing process I know that is totally devoid of the scientific method in the research context in one way, shape or form. But, yes, I take your point that it would be different in a manufacturing purpose as your core job to that at the discovery end of developing that very same drug.

PN9924

Is it fair to say that research involves discovering new knowledge, not merely applying established methodology to new data?---It is – again, I have a very broad interpretation of research. Research is not just discovery. Research is imbedded into implementation at all levels, if it's done well. In other words the learnings from implementation can help implementation work better. The example I might give is when a drug gets released on to the market the most important element of that release is the post-release trial to understand if that's working well, so they're never totally separate issues, but there's a different emphasis.

PN9925

So there's new knowledge and then there's testing and verifying?---Yes.

*** BRENDAN SCOTT CRABB

XXN MS GALE

PN9926

And refining that new knowledge?---But what would you classify strictly as research and not, and in my view they're all research.

PN9927

Is it fair to say that research is subject to codes of conduct or institutional ethics requirements?---It is definitely true to say that. Not all research in the broad sense that I've just referred to it potentially would be, but definitely research in the strict sense is subject to that.

PN9928

Just going back to something you said a minute ago, it is true isn't it, that some independent research institutes employ researchers who aren't scientists; who have specialities in other fields?---It is true. It's not common. Our institute's probably a little bit of an exception wherein our public health and outreach related projects, or our projects have an outreach component, so we might have social scientists or community workers involved in those research projects and they don't necessarily have a science background, that's true.

PN9929

I just wanted to clarify your view, you've referred to the Burnet status as an NGO. I think you've told us that that's unique to Burnet; that's not common for MRI's?---Yes, we're the only one to my knowledge.

PN9930

Can I just take you to paragraph 43 of your statement where you refer to the fact that Burnet has the capacity to access grants from DFAT and the UK Department for International Development and the US Agency for International Development. Is that because you're an NGO that you have access to those sources?---It helps. It isn't actually strictly the case. The Nossal Institute for Global Health Melbourne, for example, has been able to achieve similar grants. Many of the schemes, some of the schemes that all those agencies have, are only accessible if you're an accredited NGO which is a DFAT accreditation, a process, but other funds are available more widely.

PN9931

At paragraph 16 where you set out the profile of employees at Burnett, 225 employees, 135 female researchers and then 32 of whom are international health and development professionals. Is it your understanding that those international health and development professionals would be caught by the classification structure in the Professional Employees Award?---Yes it is, in the main. It's been - our institution has had to evolve a mechanism to recognise technical experts as we would call them across the more traditional researcher type of the sort we've been talking about that might be similar to what's in the Department of Infection and Immunity at the Doherty Institute and so on, through to a perhaps similarly clinically trained but a person who has become a public health professional; an international development professional. We try to equate parity within our structures for those.

*** BRENDAN SCOTT CRABB

XXN MS GALE

PN9932

I realise that there'd be a lot of diversity within the roles performed by those 32 people, but could you help us by giving us an example of what sort of person, what sort of skill set and role that you'd include in that?---Well, a typical example might be Dr Chris Morgan who's a paediatrician by training and he's definitely one of our leading international health experts. He gets involved in research activities in developing countries. For example, he's heavily involved in one called Healthy Mothers Health Babies at the moment in Papua New Guinea, that is designed to address the reasons for very poor material and new born outcomes in that country. Now we don't just have straight researchers go in there; you need to do work in international context. You need to have many sort of compliance boxes ticked, relationships very solid, a capacity to work, actually physically work, hold bank accounts and so on in different countries. So Chris is a development expert that knows how to work in difficult settings in foreign countries. But his main aim is to do research around health system strengthening in various provinces in Papua New Guinea. So the skill set is diverse from what people, for example in my own laboratory might have; in fact a completely different skill set. Our ultimate aim though is - my own malaria group for example is still maternal and new born health, the same as Chris's. So there is a real speciality expertise that develops in really the partnerships and the rules and relationship involved in working in those setting that an international development expert has, while at the same time, developing a cohort study, the statistical methods, the research partners to do the piece of research to find the answer out that is very close to impacting the health system. That's what I would call a typical translational activity for us. Not translational activity in terms of a new drug, but a piece of research that's right at the border of a health impact. Information that will affect a policy to hopefully improve maternal and new born outcome in Papua New Guinea. So Chris would be a relatively typical example. We have projects throughout Papua New Guinea and Myanmar in particular. Many other countries, but those two of that nature.

PN9933

Leaving aside the 135 researchers and the 32 international health and development professionals, what award will end up covering the remainder of your staff?---At the moment the various occupational awards, I understand it covers those staff and that that's been an adequate award system for them.

PN9934

VICE PRESIDENT CATANZARITI: Any re-examination?

RE-EXAMINATION BY MR RUSKIN

[1.22 PM]

BRENDAN SCOTT CRABB

RXN MR RUSKIN

PN9935

MR RUSKIN: Thank you, your Honour. Professor Crabb you were asked a question by - sorry, you said that Ms Gayle's reasons that she gave for having PhD students at your institute were not the most important reasons. What are the most important reasons for having PhD students at the Burnet?---The most important reasons for doing high quality research at the Burnet is, as our mission indicates, our mission is sustainable health solutions through the development of new

products, policies and practices. So that's where our institutional focus is and everything we take on is toward that end. PhD students are functioning researchers who produce quality work in the broader context of the research teams that they operate. For us the principle reason to have PhD students is toward that translational health outcome goal. Of course we're there to fulfil the requirements for their candidature and we do that very willingly and we're very - we would never get those students if we didn't nurture them appropriately and have them graduate with strong degrees. But the institute's primary reason is to have high quality research and they are an important component of that.

PN9936

Do you know if organisations outside of MRI's and universities do this sort of student supervision?---Well hospitals do. It can happen within pharma.

PN9937

What's pharma?---So pharmaceutical industry of which the biggest in Australia, for example, is CSL Australia. They have a R&D budget in excess I believe, of \$400 million a year which is half of our whole National Health and Medical Research Council budget. So they're heavily involved in translational research and train many students and post docs. We would consider post-doctoral period, even though unofficial to also be training and groups like CSL, GSK, where some of my own staff have gone, are very involved in those sorts of activities as well; again, always in partnership with parent universities.

PN9938

And what's GSK?---Glaxosmithkline Australia was their old name. GSK is their current name and they continue to change. They have a significant activity here in Australia and in our region.

PN9939

There was discussion about the education and training that is undertaken at Burnet and which is mentioned in your report. What proportion of time does Burnet staff devote to supervision of students and the master's program in public health?---The master's program is sort of our institutional exception. A university teaching - didactic teaching course is very unusual for an institute to do. We do one, but that would be way less than one percent of our activity. Research and higher degree students might be closer to 10 or 20 percent of our activity for the purposes that I've mentioned before.

PN9940

Those purposes being?---To have high quality research, translational research outcomes as opposed to the principal purpose of scholarly publications that in my experience, quite extensive experience at university, is their primary motive there.

*** BRENDAN SCOTT CRABB

RXN MR RUSKIN

PN9941

There were questions about the education and training that is referred to in the Burnet Annual Report which is undertaken at Burnet. Are there any differences between what is described there as education and training compared to education and training at other institutions like university?---Yes I think a significant

different. Obviously there's areas of overlap and we've talked about those that the Master in Public Health course and the research higher degrees. Our principal role in education and training is what we would call capacity building. So my Chris Morgan example of the work he would do in PNG with a wider team, what is going on there apart from trying to find out answers to the questions that we think are going to make a difference to the health of Papua New Guineans, is to build the capacity of those in that country to run a better health system. So we would consider that education and training. They might be government, they might be non-government; they're our partners. In fact our funding often depends on building their capacity. So it's not reaching in a traditional sense, but it is raising up the skills of those partners. The idea with any of the international work we do - this is not directly relevant to much of the local work, but international work is to be there temporarily and once we leave, we leave with a much stronger capacity for them to do their own translational research and hopefully have a stronger health system as a result.

PN9942

Does education and training go on at institutions that you've mentioned, like CSL and pharmas?---Indeed it does. Indeed it does. Not of the sort of international capacity building as I mentioned, but education and training of their research staff is a very important part of it and Pharma is like hospitals, universities, independent institutes, a crucial part of that ecosystem of improving the human condition, all of us playing different roles in the ultimate aim, yet having some overlap and education and training is something we would all share whether you were in a hospital, pharmaceutical company, an institute or of course a university.

PN9943

I think you said that there wasn't any money given to you for this, but you thought that there were other benefits. Do you know if that's the case with these other institutions, organisations and private sector entities that supervise students?---Generally you would not be paid for research in higher degree teaching.

*** BRENDAN SCOTT CRABB

RXN MR RUSKIN

PN9944

There was a reference to the Alfred Medical Research and Education precinct. I don't think the report was handed up, but it was said that you were the or are or were the president or the chairman of that and that involved a number of institutions. Why do these institutions collaborate or come together? What's the purpose of doing so if they're doing medical research?---Because we consider we have collectively - we're geographically located; we're all on a similar campus. So there's various reasons why we collaborate on a very practical and pragmatic level. Back office efficiencies for example. But above and beyond that, philosophically we are doing something above all of our missions; as I've referred to a bit earlier, I guess I'd classify that as improving the human condition and we consider we play quite distinct roles in that. The tertiary hospital sector in treating patients, the universities in educating a wide array of people, those who are going to end up in medical research institutes, those who are going to end up in this court, is their role. And of course, medical research institutes fill a different niche, one where - with a sharp focus on generating knowledge for health

solutions that can be applied in hospitals or to prevention methods through generally government intervention. We felt that by getting together we could inform each other, help us focus our different missions around the wider community priority. So for two reasons; pragmatic co-existence and to make things more efficient and with a greater vision in mind that we can be better than the sum of our parts if we had this operation together.

PN9945

You mentioned you offer different skills; different practices and niches?---I think the fundamental difference is the principle in the area that I can offer the most expertise is the principle purpose of the organisations themselves. Surely that's a very important factor in determining the decisions that are made underneath that. The mission that we have isn't as an institute, better health for poor and vulnerable communities through research, education, public health, locally and internationally - that mission's just been refined, but it's more or along those same lines. That isn't a department mission, hand wavy department mission in a greater corporate entity; that is our corporate mission. We have a corporate board that holds me and my management accountable to our progress toward that mission. There's no university ranking tables; there's no numbers of publications that interest my or any other independent medical research institute corporate board. What they care about is the progress toward solutions to the particular health problems that are the focus of those institutes - diabetes, heart disease and in the case of our next door neighbours, Baker IDI, who are our AMREP partners. So we as independent institutes and at the Burnet specifically, the reason we are in existence is because we are filling a niche that wasn't there before. The reason why some university departments head that way, is because they are evolving into that and we often had our origins either in a hospital department or in a university and didn't fit. That's the 100 year history of the independent MRI sector. So very focussed - it's not that there isn't overlap, but those missions are really quite distinct and they fundamentally drive differences in how each of the three entities, the hospital of course, independent institutes and the universities do their business.

PN9946

When talking about overlap, you said there was just now, and I think you said in relation to questions from Ms Gayle, that there's an overlap between universities and MRIs. Is there overlap between MRIs and any other organisations?---All sorts of overlaps. Many of our staff would end up in pharmaceutical industry or back for example - end up in a hospital and back. There can be that sort of movement and when they are there, they would have a very different - operate under a different primary purpose. But the individual job of some of those people might be very similar in those different organisations, but the principle purpose of the team they're involved in and certainly of the wider organisation, is very different.

*** BRENDAN SCOTT CRABB

RXN MR RUSKIN

PN9947

You were asked a question about the work done by research only staff at universities and research universities at MRIs, as to whether they're similar. What do you say about that in relation to your research done at MRIs and research

staff at other organisations?---Well, a similar answer there. Research only staff at universities, MRIs or hospitals, generally have the same source of funding, that's the NHMRC and that's often a criteria for being research only staff. In our organisations we would find other sources of funds, because we're a research only organisation, and the university rarely would. So research only staff are usually under an a NHMRC type funding mechanism and they can exist in a wider array of organisations, certainly from a hospital, a by pharma as again my CSL example with their very strong R&D component, that immunity paper that we saw, there are many publications along those lines that would come out of CSL and at least have CSL collaborators or of course the other entities. Research only staff can exist across the spectrum of agencies that we've been referring to.

PN9948

You were shown the descriptors in the higher education academic award for research only staff. I think you said it wasn't optimal. What do you think about those descriptors - could they be of similar value to - do they describe the work of researchers at institutions other than let's say the MRI, the university?---The university descriptors, if that's what you're meaning, the typical level A, B, C and D obviously apply very well to university. My view is that for us at a MRI, those descriptors don't fully take into account the fact - perhaps take into account even half, as much as they should, the principle purpose we have around the development of new health solutions. So they are very scholarly and academic and that overlaps with our interests and how we would measure people, but isn't at the heart of how we would measure people. That's why I say they're not optimal.

PN9949

There was a discussion about promotion at Burnet and some of the criteria and I think you used the expression 'if they're publishing really well'. What do you mean by publishing? Are there different forms of publishing?---Yes, there are a range of publications. Our classification for publishing is whether those pieces of research have an impact - on a sharp track to an impact on a health solution. But we would have a wide definition of what publishing well might mean. I mentioned technical reports earlier because they're very important to our organisation and so we would consider a commissioned technical report from a government as an important publication if it led to the sorts of policy change that we're interested in. Sometimes a quality publication might be one like this immunity paper that we referred to earlier, rarely because it was published in a journal like Immunity, even though that's a very elite journal; more how well it was recognised, how many times other people had recognised it. For example, we might judge that to be well published. But from a criteria at the Burnet as to whether somebody is worthy of promotion or not, we're interested against our criteria of whether we're getting closer to our mission or the sub-aims under that mission which are health outcome orientated.

*** BRENDAN SCOTT CRABB

RXN MR RUSKIN

PN9950

Are there any other criteria that is used by Burnet in terms of promotion in respect of these sort of staff?---Other than publication, most definitely. They would be translational measures. We're really interested in anything that's tangible toward a new product. It might be a heavy negotiation with some potential commercial

partners. It might be as we've just done, I've just come back from China and we are setting up a biotech firm in China to manufacture a test based on technology that we produced and so I've got staff heavily involved in that; they're not publishing much as a result of that, but I'd see that as one of our greatest achievements in the last couple of years. The translational indicators whether they be product related but quite often, indicators of progress toward new practices, for example, the very expensive drugs to cure hepatitis C came onto the PBS this year and that was the result of very significant advocacy and the presentation of evidence over quite a period of time to government authorities that have ultimately convinced them to do that. So for me, that's a great success and those who have been involved in that work will get heavily recognised for that even though it's not a matter of publication.

PN9951

Thank you. There was a question about research ethics and I think you said there is ethics - don't apply to all research; I think you said something of that kind. Do you know what organisations, institutions, projects are the subject of research ethics?---Well, all of the ones I've been mentioning. If you're a hospital or a CSL, given we'll stick with that example of a big pharma in Australia or an institute or a university and you're doing a certain sort of study, a clinical study in a population or you're in any way shape or form involved in that, then there's an ethical framework and formal process that you much go through. The same goes for a piece of work in a laboratory and there are different forms that that might take. One's for human subjects; one's for genetic material, for example. So it depends on the nature of the work, but doesn't matter what the organisational background, if you're performing a piece of work like that, you need to go through that governance.

PN9952

You talked about the descriptors for staff at the Burnet in terms of the administrative, the general staff, are those descriptors the same across all MRIs or are they different?---I can't claim to be an absolute expert on the descriptors for general staff across all MRIs. I know my fellow directors and general managers and chief operating officers throughout the country and I'm not aware of any great differences on those general staff classifications that have come out. We meet annually together, not just the CEOs, but the business managers as well and my understanding is that they're very similar. We have a reasonable amount of movement of general staff between institutions and I've not heard anything to the contrary.

*** BRENDAN SCOTT CRABB

RXN MR RUSKIN

PN9953

Do MRIs differ, or are they similar in their missions and their organisation etcetera?---Missions are all highly specific generally and do differ. So the Baker Heart & Diabetes Institute, as I've mentioned earlier, focusses very obviously on those chronic diseases. The Florey Institute for Neurosciences obviously focusses very much on infections of the brain, on diseases of the brain. Murdoch Childrens, obviously focusses on children. So the missions around those specific health issues, but otherwise, as organisations we function very similarly. Underneath those missions we have corporate boards who often, mostly non-

expert I the area that hold us accountable to progress toward those health missions and so we're quite similar underneath the specific purpose for which we exist.

PN9954

No further questions.

PN9955

VICE PRESIDENT CATANZARITI: Yes, the Commission will adjourn until 2.30. Sorry to cut you off.

PN9956

MR BUTLER: I have some questions - just briefly, your Honour.

RE-EXAMINATION BY MR BUTLER

[1.45 PM]

PN9957

MR BUTLER: Professor Crabb, you were asked a series of questions on different types of research and the relationship between science and research. I'm interested in - if I could go back a step before that and ask you as a research scientist what you see as the building blocks to becoming a scientific researcher?---Well, fundamental training in the scientific method, but also the philosophy behind that scientific method and why it's widely accepted in society as the best way to generate new knowledge and advancement. So generally that takes the form of a science degree or a related clinical or agricultural degree that has a significant scientific component. That would be an absolute fundamental building block of a researcher. A science degree involves a lot of didactic teaching but also some training in the laboratory or in the field or in scientific method in some other way, depending on the nature of the research and then you go a step further, if you've got through that, usually to a hybrid year that for someone with a science background is an honours year; someone with a medical or vet science or an agricultural background is related to an honours year and that's where you start learning about whether you can apply the scientific method to a particular problem and we would call that research. So they're the sorts of building blocks that you would then take. Once you go to do a research and higher degree, which we've been talking about a fair bit today, you'd have both of those elements under your belt.

PN9958

Thank you.

PN9959

VICE PRESIDENT CATANZARITI: Thank you. The Commission will adjourn until 2.30pm.

<THE WITNESS WITHDREW

[1.47 PM]

LUNCHEON ADJOURNMENT

[1.47 PM]

RESUMED

[2.43 PM]

BRENDAN SCOTT CRABB

RXN MR BUTLER

PN9960

MR RUSKIN: I'd like to call Dr Ross Smith please.

PN9961

THE ASSOCIATE: Would you please state your full name and address?

PN9962

MR SMITH: Ross Edward William Smith, (address supplied).

<ROSS EDWARD WILLIAM SMITH, AFFIRMED [2.43 PM]

EXAMINATION-IN-CHIEF BY MR RUSKIN [2.43 PM]

PN9963

MR RUSKIN: Dr Smith, Mick Ruskin here from Melbourne. Could you state your name and address for the record please?---Okay, my name is Ross Edward William Smith and my address is (address supplied).

PN9964

What's your current position or occupation?---I am a Director of Hydrobiology in Queensland and other related companies.

PN9965

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

PN9966

Do you have that witness statement with you?---I do have that with me, yes.

PN9967

Is it dated 3 June 2016?---That's correct.

PN9968

It's two pages?---That is correct.

PN9969

VICE PRESIDENT CATANZARITI: AAMRI5.

EXHIBIT #AAMRI5 WITNESS STATEMENT OF ROSS EDWARD WILLIAM SMITH DATED 03/06/2016

PN9970

MR RUSKIN: Thank you. Are there any of the content of the statement that you wish to change or is it correct?---It is correct, other than I noticed the inevitable typographic error on paragraph 7 on the last line. There does not need to be an 'a' between still and critical.

PN9971

Thank you. Do you otherwise adopt the witness statement for these proceedings?---I do.

*** ROSS EDWARD WILLIAM SMITH

XN MR RUSKIN

PN9972

I just have one question, since the time that you produced this statement, have there been any changes in the appointments in the roles that you professionally perform? There are some listed in the first paragraph; are there any additions to those?---There is one addition and one change. In July of this year I became appointed an Adjunct Fellow Southern Cross University and in September of this year, I became the Past President of SEATAC Asia Pacific.

PN9973

What does it mean to be appointed an Adjunct Fellow at Southern Cross University?---It means that I work with the University and the academic staff there on a number of matters related to looking for joint research projects, some joint project work of a more commercial nature and also co-supervision of students and providing careers advice to students.

PN9974

No further questions.

PN9975

VICE PRESIDENT CATANZARITI: Thank you. Mr McAlpine.

CROSS-EXAMINATION BY MR MCALPINE

[2.46 PM]

PN9976

MR MCALPINE: Thank you Dr Smith. Can you hear me?---I can, yes, thank you.

PN9977

My name is Ken McAlpine, I'm appearing in these proceedings for the National Tertiary Education Union. You're the immediate Past President of Science and Technology Australia, that's correct?---That is correct, yes.

PN9978

But the opinions you've expressed in your statement are not those of Science and Technology Australia, are they?---No, they are not.

PN9979

Have you been an employee of a university?---Only whilst a PhD student myself. I had some roles with the university at that stage.

PN9980

When was that?---I ceased working for James Cook University in 1987.

PN9981

You've not worked for a medical research institute as an employee?---I have not worked for a medical research institute, no.

*** ROSS EDWARD WILLIAM SMITH

XXN MR MCALPINE

PN9982

At paragraph 3 of your statement, you say that in your experience, undertaking scientific duties requires the application of principles, techniques and methods

etcetera and then you say, "It makes no difference whether such work is carried out in a medical research institute or in other fields of research science such as working in other types of government or privately funded institutes at a university of working in the private sector". Is that a reference back to what you've said in paragraph 2? Presumably you're not suggesting it makes no difference at all what sort of work environment you're in? In what respect were you saying that it makes no difference? What point are you making there?---In the respect that the scientific method is the scientific method and science is science. It matters not so much where you do it; it matters that you do science correctly, according to the scientific method.

PN9983

In fact, research more generally, if it wants to properly carry the name research, research - although it's not the same as the scientific method exactly, research has to be built upon evidence, is that fair?---That's right yes, and I presume, sorry to ask a question, but I presume you're meaning scientific research and not other areas of research.

PN9984

No sorry, if I wasn't clear, I apologise. I was saying that research properly so called across all disciplines, has to be evidence based, doesn't it?---I would imagine so, yes.

PN9985

The fact that the job involves the application of scientific method, by itself, won't tell us terribly much about the seniority or complexity or value of the position done by the employee, will it?---It implies no, only that they are doing science and at a level commensurate with their abilities to do that.

PN9986

Yes, and of course, there are a large number of people employed in universities who do science. Is that fair?---That is true, yes.

PN9987

You made a number of remarks in paragraph 9 of your statement about the appropriateness of the Professional Employees Award. Would I be right in saying that whatever your opinion is about the Professional Employees Award, you're not in a position to compare the conditions, salary structure, career structure in that award with the award that applies to academic staff in universities, are you?---No, I've said I'm familiar with the Professional Employees Award, but I'm not familiar with the university award, no.

PN9988

So you wouldn't be in a position to give evidence about which of those two awards, was most appropriate to medical research institutes, would you?---I would not be able to make a comparison between those two awards in that regard, no.

PN9989

I have no further questions.

*** ROSS EDWARD WILLIAM SMITH

XXN MR MCALPINE

PN9990

VICE PRESIDENT CATANZARITI: Thank you. Re-examination?

PN9991

MR RUSKIN: No, your Honour.

PN9992

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

<THE WITNESS WITHDREW

[2.51 PM]

PN9993

VICE PRESIDENT CATANZARITI: Is there anything further today? Well the Commission will adjourn until Monday 12 December in Brisbane.

ADJOURNED UNTIL MONDAY, 12 DECEMBER 2016

[2.52 PM]

ROSS EDWARD WILLIAM SMITH

XXN MR MCALPINE

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