



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

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

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

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

**Melbourne**

**10.01 AM, THURSDAY, 28 JULY 2016**

**Continued from 27/07/2016**

PN1698

VICE PRESIDENT CATANZARITI: Ms Gale, how did we go in getting the document?

PN1699

MS GALE: Your Honour, we have the document to provide. I have it in two formats.

PN1700

VICE PRESIDENT CATANZARITI: Do you need to speak to this in the absence of the witness, Ms Gale, because the witness is in the room?

PN1701

MS GALE: Thank you, your Honour. The first, the stapled document, has tracked changes marked up simply to make it easier to see where the changes are from the previous version, and the second, which is the single double-sided page, is the document which I would tender or ask to be marked and that is the amended clause without tracked changes.

PN1702

VICE PRESIDENT CATANZARITI: Mr Pill, have you had an opportunity to look at this document?

PN1703

MR PILL: I have.

PN1704

VICE PRESIDENT CATANZARITI: You are ready to cross-examine in light of the new document?

PN1705

MR PILL: I am. I think both documents should be tendered, if there is an intention to tender them. Perhaps I can just reiterate my general comment from yesterday about the moving nature of the matter. Whilst I am in a position to and will proceed to cross-examine, the position of the NTEU has essentially been locked in since March. My clients filed significant material in response to a particular issue and consistent with the jurisdictional issue, the Bench has decided it is an application-based process, so whilst I am not suggesting that there can't be amendments or refinements, my clients would hope that there is not going to be further significant amendments or refinements, and when the time comes, obviously, to the extent I need to lead evidence from some of those who have commented on the previous clause, I will seek to do so.

PN1706

VICE PRESIDENT CATANZARITI: Yes. We will ensure you are not disadvantaged in any way. Both documents are tendered and I think I will mark them separately so that it is clear there are two documents. Exhibit J can be the marked-up version and exhibit K can be the clean version.

**EXHIBIT #J MARKED-UP VERSION OF CLAUSE 22, HOURS OF WORK**

**EXHIBIT #K CLEAN VERSION OF CLAUSE 22, HOURS OF WORK**

PN1707

MS GALE: Thank you, your Honour.

PN1708

VICE PRESIDENT CATANZARITI: Bring Mr McAlpine back in, please.

**<KEN MCALPINE, RECALLED ON FORMER OATH [10.05 AM]**

**CROSS-EXAMINATION BY MR PILL [10.05 AM]**

PN1709

MR PILL: Mr McAlpine, I just have a few more questions about your clause. Perhaps I can ask that the witness be provided with what is now exhibit J. Mr McAlpine, this is an amended clause that has been amended by your union overnight?---Yes.

PN1710

Can I take you to 22.1(b) first of all. Consistent with the evidence that you gave in the box yesterday, (b)(iii) no longer appears?---Yes.

PN1711

I just wish to clarify, your evidence yesterday was in part that was attributable to a specific circumstance at the University of Canberra, but I understood your evidence to also be that you also considered that it was covered by (b)(ii). Is that your position?---Yes.

PN1712

To the extent that a staff member was expected to seek promotion then required work would include any work necessary to achieve that promotion. Is that your position?---If it were a performance standard that they were required and directed to meet, yes.

PN1713

Do you accept that promotion criteria - you are familiar with promotion criteria?---Yes.

PN1714

You have attached at attachment A to your first statement various promotion documents. Promotion criteria are generally based around standing, contribution and so, for example, the difference between - I think I will get the levels right - a D and an E is I might have significant national standing at a D but I need significant international standing if I was to be promoted to a professor?---Yes, I won't quibble about the words, but the idea is it's the standing that represents the work value, yes.

\*\*\* KEN MCALPINE

XXN MR PILL

PN1715

You would accept that the promotion criteria don't themselves dictate the particular hours worked or particular work activities that are necessary to achieve promotion?---Sorry, the promotion criteria don't do that?

PN1716

Yes?---Well, the promotion criteria don't specify the particular activities in the sense that you have to do this research project or that research project. They will specify types of activities in which you have to make a contribution, yes, and they do that in general terms, not by reference - - -

PN1717

Perhaps I will just briefly take you to one of them?---Yes.

PN1718

Can I take you to your attachment A and I will take you to the ANU Academic Promotion Policy, which is the second in the series. I think it is now attachment A of 15?---Yes.

PN1719

Page 15, ANU Academic Promotion. You will see that there is a process that appears, or a procedure it is called, whereby an academic makes a submission?---Yes.

PN1720

Part of that is part 3, the applicant's case for promotion?---Yes.

PN1721

It is supported by various referees, certain numbers, depending upon the level at which they are seeking to be promoted to?---Yes.

PN1722

Once we get through the promotion process - can I take you to page number 3.

PN1723

VICE PRESIDENT CATANZARITI: Sorry, Mr Pill, I have got double pagination on some of these things and I am having difficulty reading it. Can you just precisely - - -

PN1724

MR PILL: Under attachment A, it is five pages in on my copy and I understand it is paginated 15, although it is very hard to see.

PN1725

VICE PRESIDENT CATANZARITI: It is hard to see, yes.

PN1726

THE WITNESS: It is page 19 at the top of mine.

\*\*\* KEN MCALPINE

XXN MR PILL

PN1727

VICE PRESIDENT CATANZARITI: We have a different page?---Sorry, that's no help.

PN1728

What is the page down the bottom? Down the bottom there are page numbers.

PN1729

MR PILL: On that document, which starts at page number 1, so perhaps, your Honour, if you start with the very front of attachment A. There is a blank cover page "Attachment A, Ken McAlpine".

PN1730

VICE PRESIDENT CATANZARITI: Yes.

PN1731

MR PILL: There is then five pages of ACU and then the next page is the first page of the Australian National University.

PN1732

VICE PRESIDENT CATANZARITI: Right.

PN1733

MR PILL: At the top right-hand side, almost illegible, it says "ANU" and then it has the number 15 stamped over the top of it.

PN1734

VICE PRESIDENT CATANZARITI: Right.

PN1735

MR PILL: At the bottom right-hand side, we have got pages 1 through to 18.

PN1736

VICE PRESIDENT CATANZARITI: Yes, I have that page.

PN1737

MR PILL: It is an 18-page document.

PN1738

If I can take you to page 3?---Yes.

PN1739

There is a heading "Determination of Promotion Level B to E1"?---Yes.

PN1740

You will see that it describes:

\*\*\* KEN MCALPINE

XXN MR PILL

PN1741

*Outcomes for promotion are determined on the basis of the holistic recognition of the quality, productivity and impact of staff achievements in research/creative activity, education and service, with reference to the*

*education, research and service indicators, as demonstrated through various forms of evidence.*

PN1742

?---Yes.

PN1743

Then, to the extent that there is more detailed academic standards, if you turn over to page numbered 8, you will see there are a number of factors and, on its face, they are factors that are taken into account in assessing performance for all academic levels?---Yes.

PN1744

"Research only staff should note they will be required to perform higher levels", and then there is a list of factors that are descriptive. They describe, for example, evidence of post-graduate supervision, evidence of consultancy or professional work?---Yes.

PN1745

When we look to things like the last two or three - they are not dot points - but the last two or three entries under "Research/Creative Activity":

PN1746

*Quality and impact of research and/or creative activity as evidenced by the extent and nature of citations of work.*

PN1747

?---Yes.

PN1748

I want to take you to pages 11 and 12. We then have "Academic Standards by Level"?---Yes.

PN1749

In the context of promotion, you will see that to be promoted to level B there is:

PN1750

*Recognition of a record of continuing development in research and/or creative activity as demonstrated by publications or other evidence of work completed and evidence of an ability to sustain and further develop research performance and/or creative activities and active and well-regarded scholar.*

PN1751

Do you accept that whilst these criteria are suggestive that you will be doing things like research, you will be publishing, you will be teaching and teaching well, they don't actually determine the activities or the extent of those, they don't compel or dictate a particular number or a particular amount of time?---They don't compel that, no. They indicate it but they don't compel it, yes.

\*\*\* KEN MCALPINE

XXN MR PILL

PN1752

Tasked with determining what is necessary for a particular staff member to meet an expectation that they be promoted say from B to C, do you accept that based on this document, you wouldn't be in a position to determine the number of hours that would be required?---Yes, based on this document by itself, yes.

PN1753

There are no other documents you have attached for ANU in relation to promotion?---No, not in relation to promotion, but more broadly to performance expectations or allocated work.

PN1754

In relation to your clause, so the amended clause now, under 22.6 there is a defence of good faith errors?---Yes.

PN1755

That defence is available where there is a fair and rigorous system?---Yes.

PN1756

For ascertaining hours?---Yes.

PN1757

The last sentence there, and just to be clear, it doesn't preclude the employee from being entitled to the overtime loading?---That's true.

PN1758

Just to understand how this works, an employee is not given an overtime loading, the employee down the track says, "I did these activities, they were all required work, the ascertained hours for that amount of work is 50 hours a week and therefore you owe me X thousand dollars, tens of thousand dollars in overtime"?---That's right.

PN1759

That is how the clause works?---Yes, I think, yes, in broad terms that's how it works.

PN1760

And the employer says, "Well, hang on, we had a fair and rigorous system", or indeed they might say, "Well, you didn't actually turn up to the annual allocation", but I will park that issue for the moment?---Yes.

PN1761

The employer says, "Well, we had a fair and rigorous system" and the employee says, "Well, that's fine, that will protect you against breach by the NTEU but you still owe me my \$40,000"?---In the circumstances you have described, yes, that would be true.

\*\*\* KEN MCALPINE

XXN MR PILL

PN1762

Can I take you to 22.8?---Sorry, can I just say for completeness, I mean, the idea - the overtime loading is in certain bands. I think it is much more probable that there might be an argument about whether one was in the band from 38 to 40,

which attracts no overtime loading, or in the band from 40 to 42, and an error made between those two, in our view, shouldn't give rise to a penalty if they had a system for doing that and, you know, the Federal Court had a different view in the end about whether it was 41 hours or 39. That's the situation it's generally trying to cover, not a situation where a person is given a workload equivalent to 50 hours a week and is only paid for 38, because I doubt very much whether you could have a fair and rigorous system for ascertaining those hours and come out with that result.

PN1763

Mr McAlpine, a result could arise where there is a difference of view about the required work, couldn't it?---Oh, yes, yes, that's true.

PN1764

I will take you to 22.7 first. There is an amendment that has been made following some questions that I asked you yesterday about days actually worked. Rather than being in the positive, it is now in the negative, that an employee is not entitled to an overtime loading in respect of periods of leave, and then it goes on:

PN1765

*Overtime loading may be averaged over the period of account and any periods of leave.*

PN1766

In terms of the prospective estimating exercise where we look at the activities of the employee, estimate a number of hours, decide that there's going to be an overtime loading paid, if the leave is not known at that point in time, as may commonly be the case, how does this clause operate? Does it operate to reduce the amount of the overtime loading?---Well, yes, it does and that's why the overtime loading can be paid at the end of the period of account with that very idea in mind, that if a person took six months' sick leave, at the end of the period of account, they would say, "I'm sorry, you had six months' sick leave, you don't get the overtime loading for that period."

PN1767

Can I take you to 22.8 and the last sentence of 22.8. I will give you a moment to read that?---Yes.

PN1768

Have you got that?---Yes.

PN1769

It is written:

PN1770

*Nor shall any employee be discriminated against or otherwise disadvantaged in their employment for the reason that they have not worked hours in excess of those necessary to perform the required work in a competent and professional manner.*

\*\*\* KEN MCALPINE

XXN MR PILL

PN1771

?---Yes.

PN1772

Does that mean that if the employee does not meet the required work and your clause translates performance expectation equals amount of required work in a competent and professional manner at discipline at level, does that mean the employee, for example, can't be managed for unsatisfactory performance?---I don't think it means that.

PN1773

What do you think it means?---What I think it means is if you have required work - certainly the intention, I think the effect, but that's not for me here to say.

PN1774

Mr McAlpine, you drafted the clause?---Yes, and I can tell you what the intention is. The intention is that if you have got a bundle of required work and let's say that bundle of required work includes publishing - I will just pick something - three publications in a year, then you shouldn't be discriminated against because you haven't done five, you haven't done work which was in excess of what was required work, you haven't worked hours or you haven't done work in excess of what was your required work. If it's your required work, that's what you are required to do and you shouldn't be discriminated against because you haven't done more work. I think that's - - -

PN1775

COMMISSIONER JOHNS: Sorry, just from my own perspective, is it not intended to be read such that you have got this bundle of required work, you get to 38 hours and so you are entitled to down tools and you can't be performance-managed - "otherwise disadvantaged in their employment" - so they can't be performance-managed for not doing the balance of their required work?---No, no, because it's not - - -

PN1776

That is not how I should read that clause?---No, no, because required work - for various calculations for the purpose of payment, required work has to be translated into an estimate of hours, but required work is just required work, required work is the work you are required to do. Nothing in the clause is intended to, or I would argue, has any effect of saying, "I've done my 38 hours over the year, I can stop now." It is really saying, "If I'm given a bundle of required work, they can't come back later and say, 'Oh, you didn't do more than your required work'", not your required hours, your required work. So if I am asked to publish three publications a year, they can't come back later and say, "Well, actually, you know, we really would have liked it if you'd done five and because you didn't do five, there's going to be some consequence of that."

\*\*\* KEN MCALPINE

XXN MR PILL

PN1777

So I don't read it as, "An employee can't be disadvantaged because they did not work hours in excess of those necessary to perform required work"? It might be

more plain English in the same sentence - - -?---Yes. Sorry, Commissioner, I just  
- - -

PN1778

It seems to be inconsistent with the notion of reasonable additional hours?---Yes, yes.

PN1779

Is that the intention?---No. The intention is that an employee should not be discriminated or otherwise disadvantaged in their employment because they haven't done work other than their required work.

PN1780

So we need to get the red pen out again, do we?---I think you probably do, Commissioner, yes.

PN1781

VICE PRESIDENT CATANZARITI: Ms Gale, if you are going to put the red pen through this, I want an amended document.

PN1782

MR PILL: Your Honour, notwithstanding your comment, with due respect, when is this going to end? The clause, in my submission, is irretrievable and my client should not be in a situation where every time I ask a question of Mr McAlpine that identifies an issue - and bearing in mind - I don't want to slip into submissions  
- - -

PN1783

VICE PRESIDENT CATANZARITI: Mr Pill, this is an award modernisation case, it is not adversarial in the strict sense and it is open to the Commission itself to start modifying things, on one view, if we get that far. It would assist the Bench, at least, if we find out what exactly is the precise claim. We don't want to go on a drafting exercise if the case is made good ourselves if there are these points that can be fixed up. It is not a satisfactory way, I will concede that, but we need to get progress in the matter. If you are disadvantaged at any point, we are not bound by the current timetable and we will give you ample opportunity.

PN1784

MR PILL: I understand, your Honour. It is partly a natural justice submission, but it is also partly an efficiency submission to assist the Bench in the conduct of the review.

\*\*\* KEN MCALPINE

XXN MR PILL

PN1785

VICE PRESIDENT CATANZARITI: I understand. It is very unsatisfactory that we have what is perhaps the critical witness for the union at the moment in relation to the clause itself and we are finding we need to amend. Ms Gale, we do perhaps have to reach a point where the redrafting of this is going to stop, before other witnesses are called, on one view, and it is clear that from the questions from Mr Pill and those from the Bench, we are having some difficulty

understanding the clauses. I am just wondering what is the most efficient way of dealing with that to make sure we have a final version.

PN1786

MS GALE: Your Honour, the union is attempting to engage with the questions and criticisms of the clause in a constructive way. Our view is that regulation of this sort is necessary and that it should be as clear and manageable as possible, for obvious reasons. Therefore, it is difficult to say that things will not emerge in the course of the proceedings which may lead to a further revision of the clause.

PN1787

VICE PRESIDENT CATANZARITI: I understand, Ms Gale, but you can understand the difficulty from Mr Pill's perspective that, as a matter of fairness, if there are changes that are made, it may mean witnesses will have to be brought back. We are going to have some efficiency problems if that is what happens, but I understand that you say that in the light of argument, the union may want to refine its position because, for whatever reason, something turns out to be unworkable, wasn't really planned or there is a better way of drafting and I follow that. I think that is probably going to be the reality of it, Mr Pill.

PN1788

MR PILL: Can I ask this question: 22.8, the discussion seems to me to obviously lead to just a striking of the last sentence based on the witness's responses. I don't know if Ms Gale needs a short adjournment.

PN1789

VICE PRESIDENT CATANZARITI: I think, on that basis, Ms Gale, we might take a short adjournment and you can speak to Mr McAlpine, even though he is in cross-examination, in relation to this point. It seems to me that if it is the case that your instructions are to delete or amend clause 22.8, we should do that now so that we are continuing the process. We will take a short adjournment.

**<THE WITNESS WITHDREW** [10.27 AM]

**SHORT ADJOURNMENT** [10.27 AM]

**RESUMED** [10.35 AM]

PN1790

VICE PRESIDENT CATANZARITI: Yes, Ms Gale?

PN1791

MS GALE: Thank you, your Honour. The NTEU's view is that a sentence of the nature of the final sentence in that subclause 22.8 is desirable. We don't think that it runs up against any problem with reasonable additional hours because it refers to the employee's required work, not to an ordinary hours' workload, therefore a person's required work may be above an ordinary hours' workload, but for the sake of assisting with the proceedings and because we believe that sentence is desirable but not absolutely necessary, we propose to delete the entire sentence.

\*\*\* KEN MCALPINE

XXN MR PILL

PN1792

VICE PRESIDENT CATANZARITI: I would like a fresh document prepared in due course.

PN1793

MS GALE: Yes, your Honour.

PN1794

VICE PRESIDENT CATANZARITI: Which will then become an exhibit. All right, Mr Pill, we will bring Mr McAlpine back in?

PN1795

MR PILL: Yes, please.

**<KEN MCALPINE, RECALLED ON FORMER OATH [10.36 AM]**

**CROSS-EXAMINATION BY MR PILL [10.36 AM]**

PN1796

MR PILL: Mr McAlpine, having looked at the clause and gone through it, is it fair to say there are effectively two paradigms in this one clause, there is a paradigm of setting and recording hours, and that is most directly reflected in 22.4, and there is a paradigm of a process of assessment of identification of required work, ascertaining hours to determine the calculation of an overtime loading? That is the consequential effect of clause 22.5. So they are the two ways in which the clause operates?---Yes, I think that's fair.

PN1797

In the first of those situations, do you accept that there is scope for argument as to whether the hours that are recorded by an employee are actually hours that are work required by the employer? Do you accept that there is scope for debate about that issue?---I think the terms for the clause are "set by the employer" and "recorded".

PN1798

The hours?---Yes, so the hours are set by the employer, so the employer says, "I want you to do 20 hours working on this." Then, presumably, in order to verify those hours were worked, the employee would record them.

PN1799

The employee or the employer?---The employee would record them.

PN1800

Right?---Or there would be a computerised system or something else, but the first thing is to say that, like much casual employment, if I have a cleaner come to my house, I say, "I want you to work for four hours", so if they work for six hours, they can't turn around and say, "Here's the bill for six hours", if I have said - depending on the terms of the award, if - - -

\*\*\* KEN MCALPINE

XXN MR PILL

PN1801

I am surprised you are comparing some of your academic members to cleaners, but if I take your analogy further and the cleaner is asked to come in and to exercise judgment as to what rooms should be cleaned and to what extent and whether they wish to redecorate some of the rooms, you would accept that the number of hours that cleaner might take and decide and submit may well exceed four?---Absolutely.

PN1802

Yes?---And that is not what is envisaged here.

PN1803

COMMISSIONER JOHNS: If they are asked to do a certain body of work, you say, "Look, I want you to do four hours' worth of work", but the body of work necessitates them doing six hours and they complete the body of work, you say they are not entitled to be paid for the other two?---Depending on what the instruction was from the employer.

PN1804

But the employer says, "I want you to do four hours"?---Yes, if the employer said  
- - -

PN1805

"I want you to do that body of work and I want you to work for four hours." What if the instructions are inconsistent and it takes the employee six hours to do it? They complete the body of work, but is there no sort of quantum merit in relation to actually doing the work?---Well, there might - yes, there might be, but, I mean, that is a common situation in casual employment all the time, that generally speaking, and to take the example for general staff, if general staff are employed casually, they are told, "Can you reshelve these books in the science section of the library", but it is quite clear they are employed for four hours, and at the end of four hours, they have to come back and say, "Do you want the job finished?" or whatever. The way the clause is envisaged is the hours are set by the employer, the hours are set by the employer.

PN1806

Sorry, Mr Pill.

PN1807

MR PILL: Under the second paradigm to calculate whether there is an overtime loading and the quantum of that overtime loading, there is the required work question?---Yes.

PN1808

There is then the ascertained hours, which has to be applied both to the actual activities that are allocated together with what you say flows from what is necessary to achieve performance expectations?---Yes.

PN1809

Some of which are quantified, some of which are qualitative?---Yes.

\*\*\* KEN MCALPINE

XXN MR PILL

PN1810

Having done that, there then might be some need to monitor whether there are any changes in the required work and then, lastly, my clients get to rely upon some defences against award breach but are still exposed to claims for overtime pay?---In those circumstances, yes.

PN1811

As I understand part of the NTEU's case, you are effectively equating performance expectations with time?---To the extent that they involve time. There are some types of performance expectations that don't involve time.

PN1812

Yes?---But to the extent that they require the performance of work.

PN1813

Do you accept that if I look at two teaching and research staff, same discipline, same level, one of my clients - we will take the University of Melbourne - do you accept that performance expectations that are set at the University of Melbourne are higher than the performance expectations that are set at, for example, Swinburne or Federation University?---No, not necessarily. I mean, it's possible that there are variable performance expectations between different universities, but I am not going to say anything about Swinburne or Melbourne.

PN1814

Mr McAlpine, this is attachment F?---Yes.

PN1815

This is a fair and representative sample of performance expectation documentation?---Yes.

PN1816

What it identifies, amongst other things, is that where there are other quantified performance expectations, and we took you to the University of Melbourne yesterday?---Yes.

PN1817

So at level B, expectation, publications over five years?---Yes.

PN1818

When we look to other universities, smaller universities, universities that don't have the same level of prestige and pull, with respect to those universities, we don't see that level of performance expectation, we see lower performance expectations?---In relation to publications, yes.

PN1819

COMMISSIONER JOHNS: I think I saw when I was flicking through it as well that there are different expectations in terms of hours, there are some with lesser hour expectations?---Commissioner, you mean total hours or do you mean - - -

\*\*\* KEN MCALPINE

XXN MR PILL

PN1820

Yes, total hours?---Yes, there are some small differences between the notional, I should say, notional hours expectations, but if your point - sorry, your point was couched in universal terms about performance expectations being lower. I would certainly say that, as a general rule, universities like Swinburne would have lower performance expectations in relation to publications, yes.

PN1821

MR PILL: Or in relation to research generally?---In relation to research generally.

PN1822

External grant income?---Yes.

PN1823

Similarly, Sydney University would be higher than RMIT, for example?---I haven't looked at it in the last couple of days, but I'm sure you are right.

PN1824

So if we assume same discipline, same level, similar teaching loads, if performance expectations do mandate workload, then we would expect to see significantly higher hours at my clients than at other universities with lower performance expectations?---Well, remembering what you said there, which was assuming the same teaching workloads, that might well be the case, that might well be the case.

PN1825

Yes?---I think the assumption about assuming the same teaching workloads would be one that we would need to examine, but my general understanding is that at places like Swinburne or RMIT, the teaching hours expectations are higher.

PN1826

If I take La Trobe and Monash, they have got an almost identical workload clause, 40/40/20?---Yes.

PN1827

Teaching research academic, you would accept that Monash's performance expectations are higher than La Trobe? Indeed, we are yet to see any from La Trobe and my understanding is that there aren't those specific expectations?---Yes. You should be aware, in terms of research expectations and research output, there is a spectrum and Swinburne and RMIT are in one part of that spectrum and Monash and Sydney are in another and La Trobe, for example, is somewhere in between, yes.

PN1828

Thank you. In terms of the BOOT - better off overall test - you are obviously an experienced industrial officer - you would accept that if the NTEU's position was adopted in the award, unless it was also adopted in the enterprise agreement in subsequent negotiations, the issue about how you would assess the BOOT in compliance could be very complex?---The extent of the complexity would depend upon the type of clause that was included in the enterprise agreement.

\*\*\* KEN MCALPINE

XXN MR PILL

PN1829

Yes?---It need not be complex.

PN1830

If we maintain the current clauses that are in the enterprise agreement, do you accept that there would be complexity?---If we maintained those current clauses unamended, yes.

PN1831

Do you accept that it would effectively require to look at an employee, work out whether they are going to be better off, or a class of employees, to work out whether they are going to be better off overall under the enterprise agreement versus the award, you would actually have to make some prospective assessment about their activities that are likely to occur during the coverage of the enterprise agreement so that you can attach a dollar figure to it, to ascertain whether, if they applied the paradigm under the award, they would be better off or not?---Yes, remembering what you're assessing - I think I am right in saying this - what you are assessing is the terms of the agreement. One isn't assessing what is happening on the ground, one is assessing the terms of the agreement with the terms of the award and what that means for employees.

PN1832

Yes?---In a particular factual matrix, I grant you that, but - - -

PN1833

The recent Coles decision, for example, where it looked specifically at night shift issues and so forth, coincidentally run - I won't go there. With respect, and I appreciate it is ultimately a question for the Commission to assess the BOOT, but on the authorities as they stand at the moment, it is necessary to actually look at not just the terms of the agreement but the effect of the application of those terms to the real employees in their real circumstances?---Yes, that's true.

PN1834

You would accept that relative to what the universities have at the moment, to enable them to do that, they would have to adopt a range of systems and processes even to assess the BOOT?---Well, they would to the extent that they didn't think that they could safely argue that the extent to which the agreement rates were higher than the award comprehended all those issues.

\*\*\* KEN MCALPINE

XXN MR PILL

PN1835

Your answer to the complexities to the BOOT is to say, "Well, you are already paid 30, 40, 50 per cent above the award rate and so you really don't need to worry about this provision"?---No, I wouldn't go that far, I wouldn't go that far. What I would be saying is that that is a relevant consideration in the extent to which some sort of forensic approach would need to be taken by the employer what the terms of the agreement were to be and what the Commission would have to consider. There will be many agreements that come before the Commission where penalty rates and other things have been replaced with all-up rates and it is

a question of overall judgment and impression, to quote from a Full Bench decision, you know, whether you think the BOOT test has been met.

PN1836

Thank you. In terms of the NES, National Employment Standards, in section 62, and I am sorry I don't have a copy to put in front of you, do you accept that the current award and the current enterprise agreement operate in conjunction with the NES, including clause 62?---They operate in conjunction with it, yes.

PN1837

Indeed, the BOOT test is assessed against the award and the NES. These are just statements of fact under the Act?---Well, I suppose it is a matter for submissions, but it has to not contradict the NES.

PN1838

I don't need to take you to it?---No, no.

PN1839

But the BOOT test is actually assessed against a combination of the award, in some states the legislation and the NES?---Yes.

PN1840

The point that I want to take you to is section 62 already provides a process for determining reasonable and unreasonable hours and the ability to require or to refuse those?---Yes.

PN1841

Under the section it includes, amongst other things, the usual patterns of work in an industry or part of an industry in which the employee works, the nature of the employee's role, the employee's level of responsibility, any other relevant matter. Do you accept that you could identify in an EBA that in applying the NES and ascertaining whether there's reasonable hours or unreasonable hours, the NES could simply be supplemented to identify that other relevant matters include a series of factors that have to be taken into account similar to those that you include in your EBs for the process of assessing requests for review of whether hours are reasonable or unreasonable?---If what you are asking me is if that is possible under the scheme of the Act, that is possible under the scheme of the Act.

PN1842

You would accept that if that were done, it would provide both guidance and a further regulation of hours for academic staff as to guide when they were being required to work unreasonable hours?---It would provide further guidance.

PN1843

It would also enable, rather than some homogenous academic that is being looked at under your clause, or it is a bit of a hybrid under your clause as I see it, it could look to the individual's research intents or teaching intents, it could look at their particular family circumstances, it could look at all of the circumstances of that particular employee. Do you accept that?---It could, yes.

\*\*\* KEN MCALPINE

XXN MR PILL

PN1844

Do you accept that it is much simpler than the proposal that you have put forward?---Well, it would depend upon its terms.

PN1845

Yes. Can I move to some other matters just briefly. In terms of the casuals' claims, I will call them, so there is essentially a claim for two allowances?---Yes.

PN1846

If I look to the policy claim first?---Yes.

PN1847

Sorry, I withdraw that. I will ask a general question first. You accept that in relation to casual academics, there is a spectrum of academics from those that perform very discrete, limited activities through to those that might be teaching for the whole semester and might do that in consecutive semesters over a period of time?---Yes, and to be fair as well, there is, if you like, a spectrum in, if you like, work value and complexity from, for example, demonstrating, probably through to tutoring, through to lecturing, through to being a subject coordinator.

PN1848

Yes, and so we do have a number of casual academics who just do demonstrating?---Yes.

PN1849

Some that just do marking?---Yes.

PN1850

And some that just do tutes?---Yes.

PN1851

Some that do tutes and lectures?---Yes.

PN1852

Some that just do lectures and, as you have mentioned, some do subject coordination?---Yes.

PN1853

Do you accept that that last group, those that do subject coordination, are not common?---Yes. Of the 75,000 or 80,000 casuals, not more than probably a couple of thousand do subject coordination, yes.

PN1854

Subject coordination is generally done by a continuing or a fixed term staff member?---Yes, that's true.

PN1855

You would also accept that in that spectrum there are a significant number of students, PhD students in particular?---Yes.

\*\*\* KEN MCALPINE

XXN MR PILL

PN1856

It is certainly common for a PhD student to be given a short-term casual gig to assist with some tutes or some marking?---Yes.

PN1857

Under your clause, as I understand it, there is a policy allowance. I can take you to the clause if necessary. I might need to take myself to the clause. This is in exhibit B at page 29. I apologise, I don't have a separate copy to give you. Have you got pages 29 and 30 there?---I have.

PN1858

If I take an example, and I accept it is perhaps a low watermark example, but if I take an example of a typical PhD student who was doing six hours of tutes?---Yes.

PN1859

And perhaps one tute and five repeat tutes - I just want to confirm how your clause operates - they would receive 10 hours' pay for policy?---That's right.

PN1860

At the other academic activity rate?---Yes.

PN1861

Which, under the award, is a bit over \$30?---Yes.

PN1862

Then, for actually doing the tutes, they receive a rate which is essentially for - if I assume a one-hour tute, they get one hour for the tute, two hours for the prep and associated work?---Yes.

PN1863

That's another three hours?---Yes.

PN1864

Then, for each of the repeat tutes, they get two hours, one hour for tute and one hour of prep?---Yes.

PN1865

On my calculation, they get three hours for the first tute, then another 10 hours for the next five tutes, plus the 10 hours, so they essentially receive - sorry - and lastly they get an extra hour for the discipline currency as well because they have delivered more than four tutes?---Yes.

PN1866

So they receive 24 hours' pay for the delivery of one tute and five repeat tutes?---Yes, they do.

PN1867

Okay?---And if they do five, they get nothing. So it's a necessarily arbitrary cut-off.

\*\*\* KEN MCALPINE

XXN MR PILL

PN1868

Is it the case that they actually have to read the policies to receive the money?---No, they don't have to read the policies, no. They may have already read them.

PN1869

Okay?---Just as it's not necessary that they have done any preparation to get paid for preparation.

PN1870

Is the NTEU position premised on the fact that all continuing staff have read all of the policies?---All of the continuing staff are required by the very nature of their work to have read a whole lot of policies.

PN1871

Is that a "Yes"?---Well, no, your question was, "Have they read all the policies?" They probably haven't read all the policies. It's an inherent requirement of their work, for example, to know the policy on student plagiarism.

PN1872

Yes, or to be familiar that there is a policy and they can go to it when they need to?---Well, I think they need to do more than that. They need to actually know what the policy is because there might be something in the policy that, for example, says what steps you have to take proactively to prevent plagiarism.

PN1873

Yes?---So it's not a question of plagiarism arising. It may be - the policy may well say something about what you have to do, for example, at the beginning of each course to talk about plagiarism, say, particularly with first year students. Now, you're not actually going to know what you're required to do under the policy without reading it. It's not there as a reference document. Many of the policies require things to be done in a proactive sense. Not all of them. That's a fair point, not all of them, but you don't know that until you've read the policy.

PN1874

You would accept that there are other resources available to all staff in the university that they can access and obtain information from, if necessary? If they've got a question about an HR issue, there are HR hotlines and the like?---Yes.

PN1875

There are advisers?---Yes.

PN1876

If I have got an issue with a student who is not coping, I don't go and read all the policies on how to assist students that aren't coping. There are experienced people in faculties and welfare areas within universities that are available to me to pick up the phone to and ring. Do you accept that?---Often there are, yes. You might need to know the policy to know who it is you're supposed to contact.

\*\*\* KEN MCALPINE

XXN MR PILL

PN1877

Yes, I can look it up on my computer screen and plug it into the Intranet site that's available to all staff?---Yes.

PN1878

Can I ask you a question about academic promotion?---Yes.

PN1879

The addition that is sought that is concerning - and this is part C of the NTEU claims on page 43. I don't think you need this in front of you, but let me know if you do?---Yes.

PN1880

This is the change to the award from where it says:

PN1881

*MSALs will not be used as the basis for claims for reclassification by an employee. To add a proviso -*

PN1882

and the proviso is that:

PN1883

*Provided the employer regularly operates a bona fide academic promotion system based on academic merit which is broadly consistent with the MSAL to which the employee has access and by which the employee's classification under this award can be advanced. Where an employee is entitled to make a claim for reclassification, the employee shall be classified with the classification for which the MSAL best describes the work of the employee.*

PN1884

?---Yes.

PN1885

Now, can I confirm the NTEU's position is that all the current universities have a bona fide academic promotions policy. Is that the position of the NTEU?---Put just like that, yes. Some of those policies exclude some employees from having access to that promotion system, but all of them, I think - you know, nothing in my 30 years indicates that there is any Australian university that doesn't have a bona fide academic promotion system, yes.

PN1886

In relation to what you have called exclusions, they could arise from eligibility, as well, as an exclusion? So to be eligible to apply for a promotion, you need to have been at university for three years, for example?---Yes.

PN1887

Can I just understand how you're intending the clause to operate?---Yes.

\*\*\* KEN MCALPINE

XXN MR PILL

PN1888

You've attached, as attachment A, a number of policies and you can reference those if you need to, but that's not an uncommon eligibility requirement?---No. That's right.

PN1889

There is a minimum period; first two years, first three years?---Yes.

PN1890

Is it intended that such an employee have access to reclassification under the award?---No. I think you can say that there is a bona fide promotion system applicable to the employee under which the employee can progress their classification under the award. So what I'm talking about, I think, is exclusions, which means that I could be excluded simply because I - although I've been employed for 10 years, I've always been employed on one-year contracts and therefore I might be excluded by a provision that says I have to be on a contract of more than two years. It's certainly not the intention that things like a qualifying period - so, for example, many universities say if you apply for a promotion and you're unsuccessful, you can't apply for a promotion for another two years.

PN1891

Yes?---It's certainly not our intention to exclude - to say that those people can stick their hand up and say, "Oh, my promotion application was unsuccessful. Therefore, I want to be reclassified."

PN1892

Yes. In terms of other exclusions - - -?---Yes.

PN1893

- - - there are exclusions for employees who are the subject of formal performance management?---Yes.

PN1894

One would assume that they don't have access to reclassification under the clause or - - -?---That's certainly our intention. That is a temporary ineligibility.

PN1895

Hopefully?---Well, hopefully you're not subject to - you're either - it's resolved one way or the other within a reasonable time.

PN1896

Can I go back to a research staff member?---Yes.

PN1897

Those that presumably are on a particular fellowship, so a DECRA - I mentioned DECRA's the other day, early career researchers. To get a DECRA you had to be an ALB, I think?---Yes.

\*\*\* KEN MCALPINE

XXN MR PILL

PN1898

You can't get it if you're more senior. Consistent with that, the fact that you can't apply for a promotion during the term of that fellowship, that would not be

something that would enable me to access reclassification?---I think that might depend on the circumstances, but I think I agree with your - I think I agree with you, yes. I would probably need to think a bit more about that, but I think you're probably right.

PN1899

If there is an exclusion for - - -?---Genuinely those people would be subject to some sort of qualifying period, anyway. They're going to be new employees of the institution.

PN1900

Can I just take you to one example and I'll just read it out for you. Griffith has an eligibility requirement to either be continuing - or to have a fixed term appointment of at least three years' duration and have been employed at the university for at least a year?---Yes.

PN1901

If I'm on that fixed term contract say for two years - - -?---Yes.

PN1902

If I'm not eligibility, do I have access under your - - -?---Yes, you might.

PN1903

VICE PRESIDENT CATANZARITI: Could I understand that more fully, please, Mr McAlpine. Do you say this clause could act as a conversion clause from fixed term to permanents by that nature?---No, absolutely not. It's about the classification level at which you're paid and classified, but not your status as fixed term or continuing, no.

PN1904

So you're on a fixed term and you've agreed to take a position as fixed term on a particular classification?---Yes.

PN1905

You then have access to this in the life of the fixed term to change your classification?---Depending on what your duties were. So if your duties changed significantly and you didn't have access to a promotion system - - -

PN1906

It ordinarily wouldn't if you were a fixed term?---Well, to be fair to the universities, many universities do allow fixed termers to apply for promotion provided their contract is of a specific length.

PN1907

Yes, but then they usually convert - - -?---No.

PN1908

- - - a number of times. Well, where they don't convert - let's just focus on the situation of the normal fixed term; a two-year fixed term contract?---Yes.

\*\*\* KEN MCALPINE

XXN MR PILL

PN1909

They came in on a particular basis and on the contract it said, "Your classification is X"?---Yes.

PN1910

You say one year into it, they could use this clause?---Yes, if they couldn't apply for promotion.

PN1911

I'm taking that as read, that they could not apply for promotion?---Yes, that's right.

PN1912

Notwithstanding they actually agreed at the inception point that they would accept the classification for two years when they started?---Yes, that's right. That would be like any other employee in any other industry. They may have been employed as a process worker rather than a trades assistant. If, six months into the employment, they discover in fact the work they're being required to do is that of a trades assistant, then they entitled to say, "Well, hang on. Under the award I'm entitled to this rate of pay. My letter of appointment might have said process worker, but I'm actually working at this level of work", so it's about the enforceability of the safety net.

PN1913

I suggest that is quite different. Having done those disputes - we won't go down there. Let's just focus on the academic, right?---Yes.

PN1914

Who has come in knowing that they are at a particular classification?---Yes.

PN1915

They are engaged in that classification?---Yes.

PN1916

You are saying that even though it's a two-year fixed term contract, they could apply under this clause to be reclassified?---Yes. They could apply, yes.

PN1917

Well, more than that. If they otherwise met the criteria, then they should get the money?---That's right. They should be classified in whichever of the classification standards most accurately describes the work they're performing.

PN1918

And that would be the case even if they accepted a fixed term classification which they knew they would not otherwise - they just accepted a position because they wanted a position?---Yes.

PN1919

And they could have been classified higher?---Yes.

\*\*\* KEN MCALPINE

XXN MR PILL

PN1920

But they didn't. They would now get the benefit of this clause and we do see that happen in industry, where people accept a position because they want a position?---Yes.

PN1921

You're allowing them to have access notwithstanding what they've actually agreed to, to change it?---Yes, that's right. Most people who accept an academic appointment aren't going to know much about the classification standards.

PN1922

DEPUTY PRESIDENT KOVACIC: To what extent is this a problem at the moment, Mr McAlpine?---Well, can I just say our primary purpose in seeking this clause is to protect academic promotion. We think academic promotion is the appropriate way by which people should progress through the career structure and what we don't want to see is a situation where an employee has access to neither the conventional award right to be classified according to the work that they do, nor academic promotion. So a person could be on their 10th one-year contract and in fact running a major research project, but they're classified at level A and they have access neither to saying, "Hang on, this is my job. I should be being paid at level B", nor, "Folks, it appears this is what I think I'm doing. I think I should be promoted." So it's actually - it's only to eliminate a small problem, but in the context of an award safety net - anyway, that's how we see it. An employee should have access to one or the other.

PN1923

VICE PRESIDENT CATANZARITI: I am familiar with some situations where people have had rolling fixed term contracts, but it's tied to funding?---Yes.

PN1924

That's why it's fixed term?---Yes.

PN1925

And that's why they're classified at a particular level?---Yes.

PN1926

You would say notwithstanding the funding and that's why they're paid that classification, if they're otherwise able to be reclassified, you forget the funding and suddenly find the funding from somewhere else?---That's right. An employee should be classified according to the work value level of the work that they're performing.

\*\*\* KEN MCALPINE

XXN MR PILL

PN1927

DEPUTY PRESIDENT KOVACIC: Going back to the question I asked a few moments ago, Mr McAlpine, we have characterised the issue as a small problem. Are you able to define, I suppose, the extent of what is a small problem? Is it, you know, an issue that raises occasionally or rarely or - - -?---All right. The origins of the idea for the claim is in - I think in 2008, I personally went to - I think we had 29 meetings at 17 universities with fixed term, particularly research-funded, grant-funded, staff. I think about 300 people attended those meetings and I was

asking them what they saw as, you know, the problems in their employment because we were always - we were wanting to make sure that the union's approach was taking account of those people because they're a big, growing group, doubled in size in about the last 10 years. One of the things that those people said to me in significant numbers was, "I'm employed as a research officer at level A and that's because the grant says it's a research officer at level A, but in my seventh year of employment, I can't apply for promotion but I'm now running - I now supervise five other people and I'm running this major investigation. The head of school tells me I can't apply for a promotion because I'm excluded." To be fair, it was an issue that came up at some places. At some places they said, "No, no, you can apply for a promotion. You're not excluded because you're on a fixed term contract", but at other places they said there were basically arbitrary rules relating to the length of your contract or the source of funding for your employment. That's essentially - it's not - it's a big problem for those people, but to say that they're - you know, they're a small group of people, but it's a big problem for them.

PN1928

I understand the point you're making. The other question I've got that sort of flows from that is in circumstances where the problem materialises, how is it dealt with, if at all, under the current award arrangements?---Under the current enterprise agreement arrangements that - - -

PN1929

Well, the issue is here we're talking about a safety net award?---Yes.

PN1930

So the agreement provisions may or may not deal with this issue?---Yes.

PN1931

But I'm more interested from the perspective of the award?---Well, the award simply says that you can't use the work you're doing to apply for a re-grading. That's all it says.

PN1932

So how is it dealt with in the agreement context?---In the agreement - most agreements are pretty close as a generalisation, but a fair generalisation, most agreements are either silent on the issue of promotion and generally academics are happy to leave - it's one area that academics are happy to leave to the sort of non-industrial side of the university and most academics support the existing promotion systems and, therefore, in the context of our overall priorities, we haven't seen a need to regulate promotion. It was in that context that people were coming to us and saying, "Well, hang on, why am I excluded?" So generally I think it's fair to say that either agreements are silent on promotion or they reproduce the award provision which simply says - well, what it says now. A few of the reproduce the award provision. I think that's a fair summary.

PN1933

Thank you, Mr McAlpine.

\*\*\* KEN MCALPINE

XXN MR PILL

PN1934

VICE PRESIDENT CATANZARITI: We will take an adjournment at this point.

<THE WITNESS WITHDREW [11.17 AM]

SHORT ADJOURNMENT [11.17 AM]

RESUMED [11.44 AM]

<KEN MCALPINE, RECALLED ON FORMER OATH [11.44 AM]

CROSS-EXAMINATION BY MR PILL [11.44 AM]

PN1935

VICE PRESIDENT CATANZARITI: Thank you, Mr Pill.

PN1936

MR PILL: Thank you, your Honour.

PN1937

Mr McAlpine, just a couple of follow-up questions from questions the Deputy President asked you about the existing provision to the award safety net and how it dealt with a situation of someone being appointed for a year and perhaps appointed for another year. Can I hand you a copy of the award. This is the Academic Staff Award. I will take you to a couple of provisions in a moment?---Yes.

PN1938

Your answer was to the effect that the award provides that irrespective of what an employee is doing, they can't be reclassified. That's as I understood your answer and - - -?---They can't be reclassified, yes.

PN1939

Yes?---Sorry, it doesn't say that. It says that you can't use the MSALs as a basis for reclassification.

PN1940

Yes, all right?---It doesn't prohibit somebody being appointed as a professor or whatever.

PN1941

All right. Can I take you to a couple of clauses?---Yes.

PN1942

I've tabbed them for you, to help, with the green tabs?---Yes.

PN1943

Can I start with clause 14?---Yes.

\*\*\* KEN MCALPINE

XXN MR PILL

PN1944

Under 14.1, there is a requirement upon engagement to provide a written instrument of appointment?---Yes.

PN1945

Sorry, an instrument of appointment - I think we can assume that's written - that, amongst other things, says:

PN1946

*For employees other than casual employees, the classification level.*

PN1947

?---Yes.

PN1948

If it was a fixed term employee, under (b):

PN1949

The circumstances by reference to which the use of fixed term contract for the type of employment has been decided for that employment.

PN1950

You see that?---Yes.

PN1951

Then can I take you to 18, which is the second of those green tabs, page 19?---Page 19. Certainly, yes.

PN1952

It describes the MSALs and then in the second paragraph there, "An academic appointed to a particular level" - so if I pause there, do you accept that under the existing award regulation, upon appointment or engagement it's necessary for the staff member to be appointed to the particular level that accords with the MSALs?---Yes. I think that's more probable than not. I don't think it has ever been tested, but I think that is a reasonable interpretation.

PN1953

Yes. If I simplify that, the clause requires appointment to the correct classification upon appointment, but it doesn't have a particular mechanism in the award to progress through the classifications?---Yes, that's right.

PN1954

That first obligation applies upon each engagement or appointment. Do you accept that?---Yes.

\*\*\* KEN MCALPINE

XXN MR PILL

PN1955

So in the scenario that you described, if I'm employed for a year - so I'm appointed. I get given my instrument: "You are a level A research assistant for 12 months working on X project in accordance with Y grant." My contract expires. I'm offered a new appointment or a new engagement and then the

engagement had to accord with clause 14 in clause 8?---If that original premise is correct, yes.

PN1956

Yes. Have there been any disputes brought by the NTEU to the Fair Work Commission or its predecessor Commissions based upon the issue that you've identified as being addressed by your proposed clause?---I would have to say not to my memory. In terms of disputes brought to the Fair Work Commission or its predecessors, no.

PN1957

Yes. Thank you. I have no further questions for the witness.

PN1958

VICE PRESIDENT CATANZARITI: Stay there, Mr McAlpine. I think the bench may have some questions. Are you happy for us to ask our questions first or would you prefer to respond? Yes, of course we have got to hear from Ms Pugsley before our questions.

PN1959

MS PUGSLEY: You won't be hearing from me for very long, given the extent of the cross-examination by Mr Pill and being mindful not to be repetitive in terms of questions asked. There was nothing further that I was going to ask of Mr McAlpine, but just to make one point. That is to the extent that his third statement - that is exhibit H - at paragraphs 7 and 8 respond to our application for a further fixed term category, we will deal with those in submissions.

PN1960

VICE PRESIDENT CATANZARITI: Thank you, Ms Pugsley.

PN1961

COMMISSIONER JOHNS: Mr McAlpine, do you have your witness statement there with you, your first one?---Yes.

PN1962

Just looking at paragraph 16 - particularly 16(a) - you refer there to the state of the uni survey?---Yes.

PN1963

There is attachments H and I. Who prepared those surveys?---They were prepared by a group of people which included elected officers, staff and - I didn't attend all the meetings where it was planned, but elected officers, staff and I think some academic staff members who had an interest in the area, as in they were both members and academic staff members.

PN1964

But you don't identify who the authors of the survey are?---No. You mean the people who designed the instrument? I think if I had to - no, I don't identify a person. I don't.

\*\*\* KEN MCALPINE

XXN MR PILL

PN1965

Well, do any of them have expertise, qualifications or skill in survey design?---I would say quite a lot of them have skill in survey design. I don't think the - I think the - and I simply - quite a lot of them have skill in survey design. Whether they have expertise or qualification would depend upon which of our academic staff members we sent the draft to in order to - you know, to check that the methodology was okay and the questions were appropriately framed so as not to dictate particular answers, et cetera.

PN1966

But, in any case, that expertise or qualification or skill isn't being advanced or put forward to the full bench?---No.

PN1967

I see at attachment J an analysis of that data by Dr Paul Kniest, is it?---Yes.

PN1968

When I had a look at attachment J, there didn't seem to be any indication there of Dr Kniest's expertise, qualification or skill?---No.

PN1969

Does he have those expertise, qualification or skill in data collection?---In data collection, no, I wouldn't have thought so.

PN1970

Well, does he have any expertise, qualification or skill in data analysis?---Yes. He is an economist with a PhD. He's a former lecturer in economics and social sciences at the University of Newcastle.

PN1971

But you have chosen not to put him forward as a witness in relation to what is said to be his analysis?---That's true, yes.

PN1972

So there is really no capacity for the employer groups to test that?---Except that we have provided them with not merely this, but I think as we said in our original submissions and I think we did subsequently, we provided them with an electronic version of all the data in order that if they question anything that - in terms of the results or the analysis of the results, they would have all the raw data on which they could test any of the assertions that are made. I think the employer groups requested that and were provided with that.

PN1973

It's probably ultimately a matter for submissions, Ms Gale, but is the survey material put forward in the form of some sort of expert evidence? I guess for my own part - and, as I said, it might be a matter for submissions - I'm not understanding what we as the full bench are meant to do with this data.

\*\*\* KEN MCALPINE

XXN MR PILL

PN1974

MS GALE: Commissioner, we're putting it forward as evidence of the state of various aspects of work in the industry. We say that it does evidence those factors. It has not been attested to by an expert witness. Nevertheless, it is a survey, the terms of which are - - -

PN1975

COMMISSIONER JOHNS: It might be a question of weight.

PN1976

MS GALE: Certainly it's a question of weight.

PN1977

DEPUTY PRESIDENT KOVACIC: Can I perhaps ask some questions, as well. Mr McAlpine, if I could perhaps take you to an appendix to Mr Kniest's analysis at attachment J of your witness statement, but in particular page 2625, I think it's numbered, in terms of the folders that have been provided. It's the section that deals with the survey methodology?---I'm sorry, your Honour, I'm just trying to find that.

PN1978

It's in folder 4, I think, of those that were provided to the bench yesterday?---Yes, and it's in - - -

PN1979

Page 2625?---Yes, I have that.

PN1980

Clearly the survey methodology was largely done by email and there are a number of comments there. The questions I've got is what I'll characterise as what integrity measures are you aware of that accompanied the survey to ensure that respondents were actually persons working in the higher education sector who might be covered by the particular issues that are before the bench - that's the first question I've got?---Yes. Your Honour, we have a - we collect data of - we obviously have the data of email addresses of our own members and that would be, I think, now in excess of 99 per cent of our members we have an email address for.

\*\*\* KEN MCALPINE

XXN MR PILL

PN1981

Yes?---So it was sent to all of them. We also have some data which relates to non-members which we send to email addresses that overwhelmingly finish ".edu.au". If a person, for example, had ceased to be an employee of a university - and that's what happens when we send these things out. We will get 500 bounce messages saying, you know, "This person no longer at this address", so we can be reasonably confident, I think, that, you know, all or virtually all the people who receive the email inviting them to fill out the survey were employees of universities. I'm not a super expert on the way in which the data comes back, but I understand that there is a system to make sure that you can't get more than one result from a particular computer. There is a system that stops. Now, in theory someone could fill it out at home and at work. That's a possibility, but those are

the measures that we took. It was only - it was specifically sent to people who had a university email address. It wasn't one of those ones where you go to a web site - anyone could go to the web site and fill it out. The only people who had access to it were people who worked in a university who were sent the email. Yes, it wasn't one of those general public ones.

PN1982

I think you have kind of touched on this in your answer, but I'll ask the question nonetheless?---Yes.

PN1983

In terms of ensuring that persons couldn't repeat respond, if I could put it that way - - -?---Yes.

PN1984

- - - what sort of protections are you aware of that were being built into - - - ?---Well, the only - one practical protection is - and I don't mean this flippantly - it takes 20 minutes to fill out the survey, so you would need to be pretty keen to - it's not like voting yes or no 10 times in an online poll. The second one was the unique address thing that comes - I'm not an expert, but there's a unique address thing that comes back that means that, I think, if you try - as I said, if you try and do it from the same computer twice, it won't let you do that.

PN1985

The other question I've got is again sort of a question around survey design. Clearly the analysis at attachment J focuses on the hours that people are working. In terms of the design of the questionnaire, to what extent do you delineate between using the language that has been used in your evidence thus far where it is hours that someone might be required to work as opposed to hours that an employee voluntarily works?---Yes. Let me just say at the outset that is always a difficult question with these things and we acknowledge that. I think the answers are in the - not wanting to be flippant - questions and the questions were how many hours - I mean, I think the answers are in the questions and I know Dr Kenny's survey, which is a separate one - I'm pretty sure that one said in order to - so question 43 says:

PN1986

*As best you can, please estimate how many hours you spend on each of the following activities in an average non-teaching week to meet the work and performance requirements expected of you of your employer.*

PN1987

So those words were, I think at my insistence, put in to try to distinguish it from - -

PN1988

Have you got a page reference for that one, Mr McAlpine?---Yes. It is 2184.

\*\*\* KEN MCALPINE

XXN MR PILL

PN1989

2184?---And there will be another one about teaching weeks. We asked people about how many hours they spend on various activities in teaching weeks and how many hours they spent in non-teaching weeks. I think that both of those questions were deliberately framed in that way.

PN1990

Thank you.

PN1991

VICE PRESIDENT CATANZARITI: Mr Pill, in the penalty rates case, which a decision is pending, there was a lot of discussion about surveys and if it is going to be put - I'm just giving you the opportunity to - whether you're going to cross-examine this witness in relation to surveys or you're leading other evidence, because we have received obviously from the union the survey material and the bench needs to understand what is the employer position in relation to this survey material.

PN1992

MR PILL: Yes, well, the first observation was Mr McAlpine attached a huge volume of material that, on the face of his witness statements, he was the author of none. On that basis, I wasn't intending to cross-examine him about those matters because it would be a matter of supposition from Mr McAlpine. There is one witness, Dr Kenny, from the University of Tasmania, that the NTEU have called who does some work in relation to a survey. That's the first general point about the weight that should be given to the information that's contained in these surveys.

PN1993

We also intended to obviously address on the face of the documentation in submissions some of the sorts of issues that have been touched on already about questions being framed as being suggestive of the answers. Now, I can put those to Mr McAlpine, but it seems to me to be a fairly unproductive exercise. We intended to deal with it by way of - - -

PN1994

VICE PRESIDENT CATANZARITI: Except that arising from his answer to one of the questions, he's saying he was instrumental in the design of some of the questions and the relevant question of course that he has just drawn attention to is what does question 43 actually mean.

PN1995

MR PILL: Yes, I accept the witness has now given evidence that wasn't in his statements about being involved in designing the - or one of a cohort, it appears, of unnamed people who were involved in developing the survey.

PN1996

VICE PRESIDENT CATANZARITI: Ms Gale, are you going to call any other evidence apart from - in relation to the surveys and the survey design - who is it, Mr Kenny? Is that the only person you call?

\*\*\* KEN MCALPINE

XXN MR PILL

PN1997

MS GALE: Mr Kenny will be giving evidence in relation to the survey that he designed.

PN1998

VICE PRESIDENT CATANZARITI: That's not the only survey, of course.

PN1999

MS GALE: No.

PN2000

VICE PRESIDENT CATANZARITI: Is that extent of the - I mean, at the moment these are put as annexures to Mr McAlpine's statement, right?

PN2001

MS GALE: Yes.

PN2002

VICE PRESIDENT CATANZARITI: And there has been no objection as such in that sense to putting it there, but from my part at least it's quite unsatisfactory, particularly having sat on the penalty rates case - which I draw your attention to read the transcript relevantly in relation to the use of surveys and how that was run in the survey evidence, right? It's not simply a question of you've attached a survey and therefore the bench accepts the survey.

PN2003

In the penalty rates case the union challenged the survey evidence of the employer specifically on the issues of things such as the design of the questions, who are the people who wrote the questions, were the questions leading to a particular answer and there was no opportunity to cross-examine. It was simply, "Here is a document." That's also consistent with survey material previously in this Commission in the national wage case, et cetera. There's a whole protocol in relation to how you deal with surveys. It's not simply just annexing a document and assuming the bench can accept it.

PN2004

MS GALE: Your Honour, we have not provided any other evidence in relation to this survey. We could provide Dr Kniest if that is appropriate and permissible at this stage in the proceedings. He would be able to give direct evidence in relation to those questions.

PN2005

DEPUTY PRESIDENT KOVACIC: Was Dr Kniest involved in the survey design at all, Ms Gale?

PN2006

MS GALE: Yes.

PN2007

DEPUTY PRESIDENT KOVACIC: He was?

\*\*\* KEN MCALPINE

XXN MR PILL

PN2008

MS GALE: Yes. Dr Kniest had oversight of it within the NTEU, subject to the direction of electorate officers.

PN2009

VICE PRESIDENT CATANZARITI: We will take a short adjournment.

<THE WITNESS WITHDREW [12.07 PM]

SHORT ADJOURNMENT [12.07 PM]

RESUMED [12.12 PM]

<KEN MCALPINE, RECALLED ON FORMER OATH [12.12 PM]

CROSS-EXAMINATION BY MR PILL [12.12 PM]

PN2010

VICE PRESIDENT CATANZARITI: Ms Gale, on the present state of the evidence, what we have before us is survey material without the survey authors or the survey design persons available. If that remains the position of the NTEU, then we should foreshadow that our preliminary view is we would place little weight in relation to that material. So we invite the NTEU to consider whether it is going to lead any further evidence in relation to the survey material which would then enable the employers an opportunity to cross-examine.

PN2011

MS GALE: Thank you, your Honour.

PN2012

VICE PRESIDENT CATANZARITI: Re-examination, Ms Gale.

RE-EXAMINATION BY MS GALE [12.13 PM]

\*\*\* KEN MCALPINE XXN MR PILL

\*\*\* KEN MCALPINE RXN MS GALE

PN2013

MS GALE: Mr McAlpine, you were asked yesterday whether the NTEU had sought the claims that are now being made during these proceedings, in the proceedings leading to the making of the modern awards. You agreed that by and large no such claims had been pursued at that time. Why was that?---There were probably two main reasons. The first was although there was a lot of indicative evidence and complaint from members about academic workloads, the evidentiary base for that proposition was weaker in 2010 than it is now. There have been a number of things done in addition to the survey that we have just been discussing that indicate hours of work for academic staff, so that is probably a first reason. The second reason is probably because the union hadn't clearly worked out the form of regulation that it wanted. The third, which is probably related to the first in fact, was rightly or wrongly the proceedings for the making of the modern award were compressed and it seemed to us that the type of evidentiary case we

would needed to have run was not really going to be possible in the relatively short time that the Commission had to consider the making of those modern awards, so those are the reasons.

PN2014

You were taken to your third witness statement, which I think is exhibit I. Do you have your third witness statement there? It will be the statement of 11 July?---Yes.

PN2015

In that statement, you were taken to paragraph 5(g)?---Yes.

PN2016

Which deals with time spent preparing grant applications?---Yes.

PN2017

You were asked a number of questions about that part. Why do you say that there is a relationship between the employer requirements for grant income and the time spent preparing grant applications?---I think the main reason that might be relevant to the Commission is that the success rate of grant applications - the last time I looked at the figures, the success rate of grant applications was about 20 per cent, so, by the law of averages, an academic employee has to make five grant applications in order to get one grant and therefore what might be considered research time - and this is something which is widely said within the industry, that people are having to spend a great deal of time chasing grants which, although it's part of their research output or their research expectations, is actually not doing research. So in the sense that I think it was put to me by Mr Pill, that research is about the creation and dissemination of new knowledge, well, much research time and an increase in proportion, I think it's fair to say, is spent in simply applying for grants.

PN2018

You agreed that no one tells an academic what they're allowed to research or not allowed to research?---Yes.

PN2019

But there was then discussion about the ways in which people's research directions are constrained by the availability of journals, et cetera, and there was discussion about whether those constraints are externalities or employer imposed. Do you recall that discussion?---Yes.

\*\*\* KEN MCALPINE

RXN MS GALE

PN2020

What do you say is the relationship between externally imposed constraints such as those and the performance expectations set by the employer?---Well, in general and by contrast, I would say, with a couple of decades ago, largely speaking the employers have imported those, if you want to call them, externalities into the directions and requirements they give to the staff. So they are both external constraints on research and up to a point adopted by the employers - for

understandable reasons, but adopted by the employers as part of the employment relationship.

PN2021

In relation to a number of questions about academic autonomy and research, you answered, "If you are the chief investigator." Can you explain a bit about how research teams work and the different roles within them?---I should probably preface my answer to that by saying perhaps my answer of saying "if you're the chief investigator" was probably a little bit flippant, but I can't remember the exact question that was put to me. Secondly, to say that the position in the humanities would be quite different to the position in medicine or the sciences. Generally speaking you have a chief investigator, if you like, who is the grant holder, to use that term, and they essentially get to determine the direction of the research. In, for example, the humanities or in some areas of science, the chief investigator is the only researcher, so it's not a big deal. In medicine definitely and the sciences generally, the chief investigator gets to determine what is to be researched, how it's to be researched and by implication how long that is likely to take. Having said that - and that's because of the nature of the grant they've received, but, having said that, I wouldn't want to overstate and suggest that there's not some room for autonomy for people underneath that. For example, a post-doctoral fellow might be working on a research project and pursuing their own research, but to a large extent the area and ambit of that research is dictated by what it is the chief investigator has received a grant to study. Sorry, the last point is perhaps it should be pointed out and when one - I think when people are generally thinking about the researcher, they're thinking about the chief investigator. I only put this forward as a fairly educated guess, but I suspect at any particular time in a particular university, three-quarters of the researchers are not chief investigators.

\*\*\* KEN MCALPINE

RXN MS GALE

PN2022

You were taken to the Monash University provisions in relation to workload regulation in the EBA. I'm not asking you to turn to those provisions now, but you were asked whether there had been a lot of requests for - or whether you knew how many requests for workload review there had been under that agreement and you said you would not be surprised if it were very few people having sought workload review under the terms of the agreement. Why do you say that?---Well, based on my experience in dealing with academics at Monash and at other universities, there are several reasons for that. The first is that often an academic's objection is to, for example, a calculus within an overall workload model that has been determined, so in order to run a grievance, they would actually have to upset the whole workload model. It's not that some discretionary decision has been made at their expense, but, for example, an academic might supervise eight PhD students and be told that PhD supervision is worth 40 hours, and they think, "Well, that's not right. PhD supervision takes 60 or 80 hours a year." So their grievance would require them, in effect, to overturn a whole policy, not just saying, "Oh, I didn't get my leave approved", which is a discretionary thing; but the whole structure, the whole edifice of the workload model is wrong in relation to this area. I think as individuals, people feel, well, that's a pretty tall order to take on that sort of case. The second thing which I think it would be natural and known to people like lawyers and others, is twofold.

The first is if you were to succeed, if you said, "Given my research requirements, this teaching allocation is excessive", the reality is all that would mean is that teaching allocation would be allocated to one of your colleagues and because universities are fairly collegial places, people are not going to say, "Well, actually I shouldn't have to do this", because they know that that just means someone else will have to do it, so there is always that concern. I suppose the third thing is - and this is what people say - they don't want to be seen as - they don't want to be putting their hand up essentially, saying, "I can't cope with this workload." That's not a very good career move, I suspect. Whether it's in the law or in academia, people at that level as it has been described, self-responsibility, do not want to stick their hands up and say, "I can't cope with this workload." So I think that - and that's consistent with - well, that's based upon interactions that I've had with some members and with staff who, for example, ring me up and say, you know, "The allocations for PhD supervision is totally inadequate. We've got two members in engineering", or wherever, "who have got all these PhD students and say they can't cope with the workload", and then I'll say, well, we have to be able to run a whole case - not about their workload, but in effect about what the appropriate allocation was for that purpose. Usually those people will consider it's beyond their - the staff certainly consider that's beyond their capacity to do.

PN2023

You were asked some questions this morning about the relationship between the award claim and enterprise agreements. You said you didn't expect the NTEU to try and flow the academic workloads clause into agreements. I think you said that yesterday. If that's the case, how would you expect such an award clause to impact on real world conditions?---Well, I suppose the first thing to say is I'm not in a position to speak in that policy sense about what the union might do in the future. I'm not here to make promises in that sense about what the union's policy position is or would be in the future, but looking at it as a practical question, there is a significant level of - and I think certainly I would be the first to acknowledge that the significant level of payment in enterprise agreements that is above the award rate is partly made in recognition of the work requirements of the job. I think that's - I don't think anybody would deny that. Therefore, on that base to simply say that we would like this overtime regime to apply to those higher rates, I think is both industrially unrealistic and also not necessary, so - look, partly that's speculative, but I would - I have seen other agreements which say things like, "The employer shall ensure that nobody employed under this agreement is receiving less than they would receive under the award." That would be a provision - I'm not doing the drafting now, but at the end of an extensive workload management clause there might be a provision that said something like that, which I would hope would - or another alternative might be to say that the employer in allocating workloads will ensure that their workload is not so high that they would be receiving more under the award than under the agreement. I think from the union's perspective we would rather see the workloads pulled back than people being paid extra money. I don't know whether that answers your question, but I think it would be completely industrially unrealistic to think that we would be taking the award provision and trying to translate it into the agreement stream.

\*\*\* KEN MCALPINE

RXN MS GALE

PN2024

No further questions.

PN2025

VICE PRESIDENT CATANZARITI: Thank you, Mr McAlpine. You're excused?---Thank you.

**<THE WITNESS WITHDREW**

**[12.30 PM]**

PN2026

VICE PRESIDENT CATANZARITI: Ms Gale, in relation to the survey question I put to you a minute ago - - -

PN2027

MS GALE: Yes.

PN2028

VICE PRESIDENT CATANZARITI: - - - could you let us know prior to resuming on the next occasion, which is the August dates, whether you are going to have any further witnesses in relation to that material?

PN2029

MS GALE: Yes, your Honour.

PN2030

VICE PRESIDENT CATANZARITI: What we'll do, rather than start the next witness, we'll adjourn now and resume at 1.30.

**LUNCHEON ADJOURNMENT**

**[12.30 PM]**

**RESUMED**

**[1.33 PM]**

PN2031

VICE PRESIDENT CATANZARITI: Thank you, Ms Gale.

PN2032

MS GALE: Thank you, your Honour. The NTEU calls Dr Robyn May.

PN2033

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

PN2034

DR MAY: Robyn Lee May, (address supplied).

**<ROBYN LEE MAY, AFFIRMED**

**[1.34 PM]**

**EXAMINATION-IN-CHIEF BY MS GALE**

**[1.34 PM]**

PN2035

MS GALE: You are Dr Robyn May?---I am.

\*\*\* ROBYN LEE MAY

XN MS GALE

PN2036

Could you state your address, please?---(Address supplied)

PN2037

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

PN2038

Do you have a copy of that with you?---I do have it in front of me.

PN2039

Do you have any corrections to make to that statement?---I did notice on page 11, I've made a typographical error there just at the bottom of the fourth paragraph. The last sentence really should say, "To examine the experience of casual academic work and explore motivations for undertaking the work." My apologies for that typo.

PN2040

So that is the second last paragraph on the page?---Page 11 that was, yes.

PN2041

COMMISSIONER JOHNS: I'm sorry, you're going to need to repeat that for me?---Sorry?

PN2042

MS GALE: Could you repeat the correction.

PN2043

COMMISSIONER JOHNS: I'm looking at page 11?---Page 11.

PN2044

Yes. It says "explore motivations for undertaking the work"?---Just before, it should be "and explore motivations for undertaking the work", full stop, not comma.

PN2045

Yes, I understand?---I failed to complete the sentence. My apologies.

PN2046

Thank you.

PN2047

MS GALE: I understand you wish to update the statement in relation to your current employment?---Yes. I simply wish to note that I appear today in my personal capacity. Since I have completed my PhD, I no longer work as an academic, so my appearance today is in a personal capacity with no connection to my current employment.

PN2048

VICE PRESIDENT CATANZARITI: Does that require any change or is it just noted, Ms Gale?

\*\*\* ROBYN LEE MAY

XN MS GALE

PN2049

MS GALE: I don't believe it requires a change?---My current employment is noted on the front page. I'm just making it clear that I'm not speaking on behalf of my employer.

PN2050

VICE PRESIDENT CATANZARITI: You're still employed with the University of Melbourne - - -?---Yes, I am.

PN2051

- - - in chancellery?---That's correct.

PN2052

MS GALE: So with that correction you have noted on page 11, is the statement true and correct?---Yes, it is.

PN2053

Do you adopt it as your evidence in these proceedings?---Yes, I do.

PN2054

I would like to tender the statement of Dr Robyn May.

PN2055

VICE PRESIDENT CATANZARITI: Exhibit L. Any objections, Mr Pill?

PN2056

MR PILL: No, not at this stage.

**EXHIBIT #L WITNESS STATEMENT OF DR ROBYN MAY**

PN2057

MS GALE: No further questions.

**CROSS-EXAMINATION BY MR PILL**

**[1.37 PM]**

PN2058

MR PILL: Thank you, Dr May. I'm representing a number of universities in this proceeding, including the University of Melbourne. Your document, it has a number of sections: section 1, there is no longer a section 2 and the next section, section 3, "The claim for a discipline currency payment"?---Mm'hm.

PN2059

Then section 4, which appears on page 11, entitled "My own research", and then section 5, which appears on page 24, refers to "My personal experience"?---Yes.

PN2060

Do you understand that in relation to section 5, you're being put forward not as an expert but just giving lay evidence about your personal experience?---Yes, correct.

\*\*\* ROBYN LEE MAY

XXN MR PILL

PN2061

Do you understand that in relation to the remainder of your statement, you're being put forward as an expert?---Yes.

PN2062

On that basis, your statement is based upon your academic research and reflects your personal view as a former academic?---Aside from section 3, which were a series of statements put to me by the union which I attested to, the remainder is my research, section 4 in particular. Section 1 and section 2 obviously goes to my personal details and my publications.

PN2063

VICE PRESIDENT CATANZARITI: Sorry, Mr Pill, I don't want to interrupt your cross-examination, but I just didn't follow that last answer. Can we have that  
- - -

PN2064

MR PILL: I'll explore the answer and there is good reason for doing so.

PN2065

Section 3, you indicated, were a number of propositions put to you by the union which you attested to. Is that right?---Yes.

PN2066

Otherwise, the statement is prepared by you?---By myself, yes.

PN2067

Including, for example, on page 1 where you refer to yourself in the third person?---I do.

PN2068

Yes?---I simply lifted a bio that I had for other purposes, yes.

PN2069

You have worked with Dr Strachan at Griffith University , who is also giving evidence in these proceedings?---Yes. She was my PhD supervisor, yes.

PN2070

PhD supervisor. She was also the principal investigator on the research project - -  
-?---That's correct.

PN2071

- - - that you predominantly refer to in section 4?---Yes, that's correct.

PN2072

Have you also worked with Dr Anne Junor?---I have never worked with Anne Junor, no. I know her, but I have not worked with her.

\*\*\* ROBYN LEE MAY

XXN MR PILL

PN2073

Can I ask have you discussed your evidence or your report with either Dr Strachan or Dr Junor?---No, with neither. I'm sure Prof Strachan is aware that I'm here, but I've not talked to her about it at all.

PN2074

Can I ask you to turn to section 3?---Mm'hm.

PN2075

This starts:

PN2076

*Based on my PhD research and my own experience of working in casual academic teaching roles since 2006 -*

PN2077

you attest to certain matters?---Yes.

PN2078

Have you read the statement of Anne Junor in this proceeding?---No, I have not.

PN2079

Could I hand up a document to you?---Thanks.

PN2080

Now, Dr May, what this is is a document that my office has prepared that compares a statement filed by Dr Junor as her expert report - - -?---Sure.

PN2081

- - - with the statement that you have attested to. You'll see that with some minor modifications, the introduction of some headings, that it is effectively identical?---Yes.

PN2082

Have you been an expert witness before, Dr May?---No, I have not.

PN2083

Did the NTEU explain to you the obligations of being an expert witness and the overarching obligation to the Commission or a Court?---Yes, they did.

PN2084

You understand that under those obligations the expert report is to be prepared by the expert?---Yes.

PN2085

You accept that at least in relation to section 3, that's not what has occurred here?---No. As I explained, they were matters put to me which I attested to and adjusted in some cases.

\*\*\* ROBYN LEE MAY

XXN MR PILL

PN2086

Are the adjustments reflected essentially in the mark-up that appears in the document that I just handed to you? Are they the sorts of adjustments - - -?---No, there are a number of adjustments I made myself, as well.

PN2087

To the extent that they're not reflected in here and they also appear in Dr Junor's - perhaps I'll ask Dr Junor about that. Are there any other parts of the report that were written for you?---No.

PN2088

Do you accept that nowhere in your report have you attributed the content to the NTEU?---No, but I say, "I attest to the following", so I guess I attested to those statements.

PN2089

Yes. You would accept that if you were doing an academic report or submitting a document for publication - with respect, Dr May, you've presented this and Dr Junor presented a similar document - there would be words being used like "plagiarism"?---I didn't consider this an academic document and to the extent that the words are there, they are verified either by my research or my understanding of the literature, so - - -

PN2090

Yes, all right. I'll come back to that. I can I take you to section 4?---Yes.

PN2091

I would like to hand you another document.

PN2092

VICE PRESIDENT CATANZARITI: Are you marking that - - -

PN2093

MR PILL: Sorry. Thank you, your Honour.

PN2094

VICE PRESIDENT CATANZARITI: Do you want it marked for identification, Mr Pill?

PN2095

MR PILL: Marked for identification.

PN2096

VICE PRESIDENT CATANZARITI: MFI 1, being the witness statement of Anne Junor/Robyn May.

**MFI #1 WITNESS STATEMENT OF ANNE JUNOR/ROBYN MAY**

\*\*\* ROBYN LEE MAY

XXN MR PILL

PN2097

MR PILL: The document I have just handed you is the report submitted by Dr Strachan. I have taken out section 2, for reasons that are known to this Commission. Can I take you to section 3 of hers, which is on page 6?---Yes.

PN2098

You would accept that the first paragraph of your section 4 is identical to the first paragraph of her section 3?---Yes. There was a fairly standard set of words that were used every time we refer to this survey, for the purposes of clarity more than anything else.

PN2099

The second paragraph, the same?---Of the chief investigators. Yes, that's a matter of fact.

PN2100

My question just is to confirm at the moment that they're identical?---Yes.

PN2101

You see on Dr Strachan's under "Methodology" at the bottom of the page, the first paragraph there is the same as the first paragraph you have under "WCAU Methodology"?---Yes.

PN2102

That continues down to and includes every one of your paragraphs - down to, but not including the last one, on page 12. So all of what appears in the top half of 12 and the first two paragraphs after "Data collection procedure"?---Yes.

PN2103

Could I take you back to page 9 of the document - - -

PN2104

COMMISSIONER JOHNS: Before you do that, Mr Pill, Dr May, can you just explain for me then - because in your witness statement you say, "This section provides details of my PhD research", and then Mr Pill has drawn attention to Prof Strachan's witness statement where it talks about, in section 3, "My own research"?---Certainly, Commissioner. My PhD was part of the wider ARC linkage project and part of that project was a major survey that was undertaken at 19 universities that involved general staff, professional staff and casual staff, so the casual staff survey was specifically used for my PhD research, but it was part of, developed with and administered as part of the broader ARC linkage project. So to the extent that there is significant overlap, I worked with the team on that survey and they worked with me on my survey, and it was all kind of done together, but I was the one who analysed the results specifically for casual academic staff and that formed part of my PhD.

PN2105

So is it your research or is it Strachan's research?---The analysis of the survey in relation to casual academic staff is my research.

\*\*\* ROBYN LEE MAY

XXN MR PILL

PN2106

Then what was Strachan's research?---Specifically the analysis and development of the survey for general staff and for academic staff.

PN2107

Thank you, Mr Pill.

PN2108

MR PILL: Perhaps just whilst the Commissioner has directed you there - - - ?---Yes.

PN2109

At the end of the first paragraph of section 4 at 11, you state what the overall aim was. You see that sentence?---The overall aim of the linkage project, yes, was to - yes.

PN2110

Is it fair to say that the focus of that research that was undertaken partly by you, partly by Dr Strachan - that the focus of that was around gender inequalities?---The focus of the wider project, certainly, but my PhD did take a slightly different path.

PN2111

If we go back to page 11 - - -

PN2112

VICE PRESIDENT CATANZARITI: Do you want this marked for identification, as well?

PN2113

MR PILL: Is that Dr Strachan's statement?

PN2114

VICE PRESIDENT CATANZARITI: Yes.

PN2115

MR PILL: Yes, please.

PN2116

VICE PRESIDENT CATANZARITI: MFI 2.

## **MFI #2 WITNESS STATEMENT OF DR STRACHAN**

PN2117

MR PILL: Do you understand, Dr May, that your statement has been submitted by the NTEU in support of a couple of claims concerning casuals?---Yes.

PN2118

One of those is to provide for an allowance for policy familiarisation and one is to provide an allowance for discipline currency?---Yes.

\*\*\* ROBYN LEE MAY

XXN MR PILL

PN2119

You understand that. There is also a claim that's not limited to casuals which relates to a ICT allowance?---Mm'hm.

PN2120

In terms of page 9, you say:

PN2121

*The amount of time which might realistically be required to establish a knowledge of and familiarisation with university policies upon initial appointment varies from workplace to workplace but would rarely be less than 10 hours.*

PN2122

You see that there?---That's correct, yes.

PN2123

That is one of the propositions that the NTEU put to you?---Yes.

PN2124

Is it the subject of empirical research in the study that you undertook?---No.

PN2125

In the study that you undertook, was there any empirical research done on the amount of time that casual academic staff spend reading policies?---I certainly investigated in my two case study pieces of research the policies around casual employment of both those universities and I investigated, by interviewing academic staff who supervised casual staff, their awareness of policies, how they explained those policies to the casuals that were under their supervision and I did talk with the casuals and asked them about their awareness of the policies. So, to that extent - and I also, in the survey data, asked questions around induction, professional development and, you know, those aspects around the employment in relation to that.

PN2126

Can I just confirm, when you reference the case studies on page 11, one of your paragraphs - the second last one - they're the two case studies you're referring to?---Yes, that's correct, that formed part of my PhD research.

PN2127

Is this correct, if I've understood what's written there, that it includes staff from two universities?---Yes.

PN2128

Totalling in the aggregate 22?---Casual academic staff.

PN2129

Casual academic staff?---Yes.

\*\*\* ROBYN LEE MAY

XXN MR PILL

PN2130

Of whom nine were actual casuals?---No. 22 casual academic staff were interviewed across two universities, 14 academic supervisors or academic staff and nine senior managers, so that's a total of - what is that, 36, 43 - - -

PN2131

45?---Sorry, I can't count. 45 interviews I total across the two universities. Approximately 22 interviews at each university.

PN2132

So 22 actual casual academic staff?---Yes.

PN2133

And then 14 who supervise casual academic staff?---That's right, academic - yes.

PN2134

And some senior managers?---Yes, that's correct.

PN2135

These were case studies by interview rather than any measuring or monitoring of time that staff were actually spending reading policies?---Yes. I didn't do any monitoring as such.

PN2136

Are you aware of any study that has undertaken that exercise?---Certainly not, no.

PN2137

Can I take you to page 12 where you refer to the data collection in relation to the broader - have I got this right - study that was done by Dr Strachan?---Yes.

PN2138

Prof Strachan, my apologies. My question is it references that there were 29 per cent of casual academic employees, so that's 29 per cent of the total that responded?---Of the total surveyed, yes.

PN2139

Yes. Do you know what percentage that is of casual employees at those 19 universities?---My understanding was that that 23,000 comprises the total number of casual academics employed at the point in time that the survey was administered.

PN2140

So it's a point in time - - -?---At the point in time which - - -

PN2141

- - - on a particular date?---Yes. As I understand it, the survey was administered through ISSR, but they asked for email details for casual academic staff who were employed during the second week of semester 2011. The first semester 2011.

PN2142

Would you accept, given that timing - - -?---Yes.

\*\*\* ROBYN LEE MAY

XXN MR PILL

PN2143

- - - that casual academic staff that are employed, for example, specifically to do marking would generally not have been caught unless they were also doing something else?---Yes. The intention was to capture casual academic staff employed for the semester or the teaching period, not to capture people who might have been coming in to deliver one lecture. We wanted to capture what are commonly called in the sector sessional staff.

PN2144

Yes, because they're engaged for a session?---Yes.

PN2145

Given your previous answer though that it was every casual employed at that point in time - - -?---Yes.

PN2146

- - - you would accept that that would include people who are engaged for the semester, but would also include anyone who was engaged for part of that semester?---Potentially, yes. If they happened to be working that particular day to deliver their one-off lecture, potentially, yes.

PN2147

Or delivering six tutes and that happened to be part of what they were delivering perhaps in conjunction with another staff member who was doing tutes in the second half of the semester?---Potentially, yes.

PN2148

When you say potentially, that's because the survey didn't go to analyse that particular issue, is it?---Yes. We asked about hours of work, yes. How many hours that they worked in an average week, so we could get a sense of what their hours of work were like, yes.

PN2149

But, with respect, Dr May, that doesn't tell us whether they were there for that week or whether they were there for 13 weeks?---No, but we also have an indication - we asked them about their length of employment overall as a casual, too.

PN2150

Just on that, do you accept that the question you actually asked is, "How long have you worked at this university"?---Yes.

PN2151

Do you accept that that is a different question to, "How long have you been continuously employed or engaged at this university"?---Well, it's a very difficult question to ask a casual, because their employment is necessarily often broken; but, yes, there are many complications in surveying casual staff.

\*\*\* ROBYN LEE MAY

XXN MR PILL

PN2152

So can I ask then when at page 16 there is reference to the length of employment - - -?---"At this university", which is the one that they're being surveyed at, yes.

PN2153

And that is generated from the question, "How long have you worked at this university"?---Yes, that's correct.

PN2154

You accept that that could just be the period from their first engagement to the date that they do the survey?---Yes.

PN2155

Irrespective of whether there were breaks where they didn't work - that would just be December, January, February?---Yes.

PN2156

Or indeed a more significant break?---Potentially, that's right.

PN2157

Yes?---Yes.

PN2158

Can I take you to page 18. There is reference here to main sources of income?---Yes.

PN2159

As I understand the table - and perhaps you can confirm for me - if I look to the far right-hand side of the sample that were in the survey, 36.4 per cent had their casual employment -

PN2160

Now, that's their casual employment just with that university or is it their casual employment - - -?---"My casual employment." Well, we found that 20 per cent of those sampled worked at multiple universities.

PN2161

Yes?---So potentially for those 20 per cent, "My casual employment" would be, "My casual employment at other universities", but it's a minority.

PN2162

So it didn't distinguish those?---Yes, "My casual employment."

PN2163

Then we have 26.9 or 27 per cent having their primary source of income as some form of scholarship?---Yes.

PN2164

Is that predominantly because they're PhD students, as well as being casual academics?---Yes. That's right, yes.

\*\*\* ROBYN LEE MAY

XXN MR PILL

PN2165

Are you able to tell the Commission about the number of such casual academics?---Who are?

PN2166

Who are also PhD students or recently completed PhDs?---That's certainly a considerable minority. My findings were around a quarter of those who responded to the survey were PhD students and teaching casually at the same time.

PN2167

According to this table, at least 26.9 per cent were not only - well, had their primary source of income as being from the university in scholarship?---Yes.

PN2168

Do you accept that even in the first row, "My casual employment" being their main source of income, that may also include some PhD students? It's just that they don't have a scholarship that exceeds the amount of casual employment income they're receiving?---It could do, but the overall - it was just a little over half of the sample either held a PhD or were studying for a PhD.

PN2169

They held a PhD or were studying - - -?---Or were studying for a PhD, so - - -

PN2170

In the literature there are various references to typology of casual academic staff?---Yes.

PN2171

They can be broken up in this way: postgraduate students?---Mm'hm.

PN2172

They can be broken up again into those who are motivated by income and those who are motivated by a desire to secure a future academic position?---Yes.

PN2173

Then we have industry experts?---Yes.

PN2174

Dare I say it describes middle-aged males, main income from an industry position, so in theory I could be such a person who might front and deliver a class?---Yes.

PN2175

There are academic aspirants, casuals by choice and retirees supplementing other forms of income?---That was the typology that I developed from my survey, yes. There are other typologies out there, as well.

\*\*\* ROBYN LEE MAY

XXN MR PILL

PN2176

Can I take you to page 20. Dr May, I'm not going to ask you any questions about gender differences, notwithstanding the focus of the survey that was done or the

tables, so the references to percentages are the total references. On the basis of the information that is here - well, can I ask as the first question in terms of those who were only engaged to do marking, I don't see marking in the table. Is that because they were given essentially a forced choice between those things that were listed there?---Yes. They would have, I guess, been included in another combination.

PN2177

Well, if we go back to page 19, your evidence here is that - and this is on the last two lines of page 19?---Mm'hm.

PN2178

Well, I'll start with the whole sentence. It says:

PN2179

*The largest proportion of respondents was undertaking tutoring only; this group formed 43 per cent of the sample, followed by 18.9 per cent who did both tutoring and lecturing. A further 14 per cent of respondents said they undertook another combination, such as tutoring and demonstrating. Statistically significant differences are revealed -*

PN2180

and then you have the academic analysis to support that?---Yes.

PN2181

Is it your evidence that you think they would fit under "Another combination"?---They would, but again at the time we undertook the survey, which was early in the semester, I don't believe that we contemplated that people would have been employed purely for the purposes of marking. My personal experience when I've been employed to mark, it's usually at the end of semester when there is lots of essays, exams or whatever and the particular lecturer needs that additional support.

PN2182

Yes. In terms of the number of such casuals at the 19 universities, are you able to give the Commission any indication as to how many they are?---The number where, sorry?

PN2183

The number of casuals who were engaged just to do marking who would not have been caught in week 2?---I think it would be just about impossible to speculate. It varies by university, whether the academics are permitted to hire additional staff to do purely marking. Again, my personal experience was that I was hired to do only marking, a little bit of RMIT and then the budget rules changed and there was no longer that work available, so it varies considerably by university, but my guess - and it would only be a guess - is that it's a small proportion overall who are hired only to do marking. They would usually do it in the context of other work.

\*\*\* ROBYN LEE MAY

XXN MR PILL

PN2184

All right. But you're guessing?---Yes, it's a guess. I haven't specifically - I wasn't trying to look at marking. I was really trying to look at people who are employed for a semester to deliver teaching.

PN2185

Yes. Thank you. Based upon the sample group that you did have - - -?---Yes.

PN2186

- - - which doesn't include discretely engaged casuals for marking, I just want to go through the figures?---Yes.

PN2187

There is a minority that are lecturing?---Yes.

PN2188

And the majority - well, there is no single task, according to this typology, that is a majority, but the largest is tutoring only?---Tutoring, yes.

PN2189

So if I've done the sums correctly, if I add up tutoring, demonstrating and clinical demonstration, we have a total of 63 per cent of our casual cohort doing that?---Yes.

PN2190

In terms of the difference between clinical demonstrating and demonstrating only - - -?---Clinical is in the clinical setting, so typically it would be nursing in a nursing-type setting, which is sometimes in a classroom that is specifically designed to replicate what might take place in a hospital, so they might have a hospital bed and be demonstrating how to, I don't know, inject a patient or whatever. It's that specific clinical demonstrating. It's often a bit of an overlap with tutoring how that's particularly interpreted at the university.

PN2191

Yes, and in contradiction the demonstrating only might be a demonstrator in a physics lab?---In a lab. Yes, that's correct.

PN2192

That sort of environment?---Yes.

PN2193

The sorts of knowledge and skills that the academics bring into that demonstration, they're basically specific to the particular piece of equipment in a lab setting or the particular clinical event that they're demonstrating?---Yes, and the things around that. I mean, obviously it's not just about how you jab the patient, but the whole setting of how you might do that.

PN2194

Yes?---For example, if you're instructing someone how to, you know, calm a patient or whatever.

\*\*\* ROBYN LEE MAY

XXN MR PILL

PN2195

You would accept though that that is a narrower skillset?---Yes, it is. It's paid accordingly at a lower rate.

PN2196

Yes?---Yes.

PN2197

The amount of background reading, breadth of discipline, knowledge that I need to undertake that activity as a discrete activity, is less than if I'm going to lecture in nursing and healthcare in Australia?---I suspect there would still be an expectation that the person delivering that activity brought a significant body of knowledge to the extent that the students may ask a question in the context of that clinical demonstration.

PN2198

Yes. They're not going to let me in there even if I've jabbed a few people. They're going to have a qualified nurse who has a current registration?---That's right, yes.

PN2199

The same as casual employees in the nursing industry?---Yes.

PN2200

Can I take you to page 22. There is a table there about "Access to job and career supports". Did you look at any of the EBA clauses in determining the existence or non-existence of these benefits?---For the two case study universities, I certainly did, yes.

PN2201

For the two?---Case study universities. This is the survey data, yes.

PN2202

So these reports here are based on the WCAU survey?---Yes, the survey data of the 19 universities. That's right.

PN2203

This table here - I'll take them in turn - did you look at the EBA clauses to determine the existence of such a benefit?---No, they were general questions to undertake the support broadly around the casual staff in relation to those things and with my own experience and knowledge that even in the existence of clauses in collective agreements, that doesn't necessarily mean that they apply at the workplace.

PN2204

Do I take it from that answer that you accept that in some instances there may be existing entitlements under enterprise agreements?---There may be.

PN2205

It's a question of application of those?---Yes, that's right.

\*\*\* ROBYN LEE MAY

XXN MR PILL

PN2206

At the text paragraph under the table, you identify "in the interviews with casual academic staff"?---Yes.

PN2207

Now, whilst it follows the table which is about the survey, does that now come back to the case studies, does it?---Yes. Similarly, in the interviews with casual academic staff, what I found was both differences across the universities and differences within the universities despite the existence of policy setting for one thing or another.

PN2208

Yes. Now, can I take you to 24, where you talk about your own personal experience. You have taught in comparative industrial relations, employment relations and OHS management at RMIT University?---Mm'hm.

PN2209

Were they each discrete subjects?---Yes, they were.

PN2210

Do you accept that to deliver a lecture in occupational health and safety management, that your breadth of knowledge about comparative industrial relations is not necessary?---It's not necessarily linked, no. That's right. They are completely separately subjects. I never lectured in OH and S. I tutored in OH and S. I lectured in comparative industrial relations.

PN2211

You would accept perhaps even more so that to tutor in OH and S in respect of - let me go back a step. In respect to that tutoring, did you set the curriculum?---No.

PN2212

The reading guides?---No.

PN2213

The subject areas to be covered in the tute?---I certainly had some involvement with the lecturer as to what material was covered, based on how the tutorials went with the students and their understanding. I certainly had some involvement with the exercises and the assessment that was set for the students. I did tutor in that subject, I think at least three or four times, so I developed, you know, some expertise in terms of the way the students handled the material which I worked with the particular lecturer to develop and expand, yes.

PN2214

In terms of the assessment for the subject, were you involved in establishing that?---Not the structure of it, because that is typically set at a very senior level. It goes through academic board and so on, but I often had input into the nature of questions in exams and essays.

\*\*\* ROBYN LEE MAY

XXN MR PILL

PN2215

In that capacity doing your tutes in OH and S, it wasn't necessary that you had a knowledge of comparative industrial relations. You accept that?---To the extent that we talked early on in the tutorials about how Australia's OH and S had flowed from what happened in the UK, I mean, there's always - - -

PN2216

Do you accept that there is a difference between industrial relations and occupational health and safety?---Occupational health and safety sits very much in the industrial relations context. Very much so. Yes, it has its own - you know, it's very much about the law and aspects around that, but there is certainly significant overlap. I mean, that's why I was asked to tutor in the subject.

PN2217

You say at the third paragraph:

PN2218

*On each occasion that I have been engaged to either tutor or lecture in the area, it is on the explicit basis that I bring a broad expertise and depth of discipline understanding.*

PN2219

?---Yes.

PN2220

When you refer to it being on an explicit basis, is that in writing?---An explicit basis? What I mean by that is that it's accepted and understood that the basis on which you're asked to teach is that you have an understanding - a broad understanding - of the discipline. You're not just someone off the street who looks like he could read, you know, one piece of literature and manage a tutorial.

PN2221

Yes. You have certain knowledge and skills?---Yes.

PN2222

Like other skilled casual employees in employment?---Yes.

PN2223

In the last paragraph on that page you say:

PN2224

*On each occasion that I have taught on a casual basis, it has been in conjunction with either another research contract position, a PhD stipend and/or an ongoing position.*

PN2225

?---That's correct.

PN2226

Are they at the relevant university or at another university?---When I was teaching at RMIT, I also had a fractional research position.

\*\*\* ROBYN LEE MAY

XXN MR PILL

PN2227

Yes?---And the online teaching I did recently at Griffith's was in the context of my current position, and during my PhD, I taught - I mean, the scholarships restrict the amount of hours you're allowed to teach. You're allowed to teach up to nine hours.

PN2228

Yes?---I don't think I ever reached that, so it was in the context of a PhD stipend. I guess the point I was trying to make there is that I've never solely relied on casual work as my source of income.

PN2229

Are there other casuals that have a similar experience; so casuals who have other roles?---That's certainly not an uncommon situation that people - - -

PN2230

I'm sorry, I didn't quite hear you?---I was going to say - - -

PN2231

It is uncommon or not uncommon?---No, it's not uncommon.

PN2232

Not uncommon?---People would either juggle casual work at another university, sometimes outside work. Well, as the data shows, sometimes a PhD, but again there are a significant minority who depend solely on their casual earnings for their livelihood.

PN2233

But it's not uncommon to have people who have other positions?---Yes, that's correct.

PN2234

Research contract positions, ongoing positions?---That's correct, yes. That's the only way you can manage the intermittent and very insecure nature of the work, yes.

PN2235

Yes. I have no further questions.

PN2236

VICE PRESIDENT CATANZARITI: Ms Pugsley?

PN2237

MS PUGSLEY: No, your Honour. I have no questions of Dr May.

**RE-EXAMINATION BY MS GALE**

**[2.19 PM]**

PN2238

MS GALE: Dr May, you spoke briefly at the end there about restrictions on a PhD stipend. You had a PhD scholarship?---I did, yes.

\*\*\* ROBYN LEE MAY

RXN MS GALE

PN2239

What level of income do you get from a PhD scholarship? How much is it?---It's tax-free. In my case, I had what's called an APA; Australian Postgraduate Award Industry scholarship. It was then \$26,000 a year. I had a top-up of \$10,000 a year, so I effectively had \$36,000 a year tax-free and then I was able to earn a little above that.

PN2240

Where did the top-up come from?---It came from Griffith Business School, the university where I did my PhD.

PN2241

What are the restrictions on paid employment?---That you should work no more than nine hours a week during the PhD period.

PN2242

Is that specifically in relation to university employment or what about working in - - -?---Anywhere, is my understanding. It was anywhere there was a restriction, because primarily you're paid to be doing your PhD and I did treat it as a full-time job, yes.

PN2243

No further questions.

PN2244

VICE PRESIDENT CATANZARITI: Thank you, Dr May. You're excused.

**<THE WITNESS WITHDREW**

**[2.20 PM]**

PN2245

MS GALE: The NTEU's next witness is Dr Jochen Schroeder.

PN2246

THE ASSOCIATE: If you could state your full name and address for the record.

PN2247

DR SCHROEDER: Jochen Schroeder, (address supplied).

**<JOCHEN SCHROEDER, AFFIRMED**

**[2.21 PM]**

**EXAMINATION-IN-CHIEF BY MS GALE**

**[2.21 PM]**

PN2248

MS GALE: Thank you, Dr Schroeder. Could you state your name and address for the record, please?---Jochen Schroeder. The address is (address supplied).

PN2249

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

\*\*\* JOCHEN SCHROEDER

XN MS GALE

PN2250

Do you have a copy with you?---Yes.

PN2251

Do you have any corrections or updates you need to make to that statement?---Yes, I'd like to update. So in the statement, I say that I work at RMIT University. I have since then, some weeks ago, put in my resignation and am leaving RMIT at the beginning of next month, August - 9 August, I think this my last day at work - to take on a position in Sweden at Chalmers University. The main reason was essentially my workload, which I felt was killing my research career and was affecting my mental and social wellbeing.

PN2252

With that update, do you say that your statement is true and correct?---Yes.

PN2253

Do you adopt it as your evidence in these proceedings?---Yes.

PN2254

Thank you. No further questions.

PN2255

VICE PRESIDENT CATANZARITI: That will be exhibit M. Any objection, Mr Pill?

PN2256

MR PILL: No.

#### **EXHIBIT #M WITNESS STATEMENT OF JOCHEN SCHROEDER**

PN2257

VICE PRESIDENT CATANZARITI: Do you have - - -

PN2258

MS PUGSLEY: I have some questions for Dr Schroeder, your Honour.

#### **CROSS-EXAMINATION BY MS PUGSLEY**

**[2.23 PM]**

PN2259

MS PUGSLEY: Dr Schroeder, my name is Cathy Pugsley. I'm with the Australian Higher Education Industrial Association. RMIT University is a member of our association and I've got a few questions for you arising out of your witness statement in relation to your work at RMIT?---Sure.

PN2260

In paragraph 7 of your statement - you have a copy of your statement with you. I will wait until you've found the paragraph?---Sorry, yes.

PN2261

When you moved to RMIT from the University of Sydney - - -?---Yes.

\*\*\* JOCHEN SCHROEDER

XXN MS PUGSLEY

PN2262

- - - this was the first time you had held the role of a so-called standard teaching and research academic as opposed to research only. That's right, isn't it?---Yes, that's correct.

PN2263

Then at paragraph 19 of the statement, you say that in the first semester 2015 you were working particularly long hours at that time?---Yes.

PN2264

You refer to yourself and some other new staff presenting material for the first time. Would you agree that part of the reason you and these staff were working long hours was that you were new to the role at that time of a teaching and research academic?---Yes, sure.

PN2265

I'm going to hand you a copy of the RMIT Enterprise Agreement?---Yes.

PN2266

I'll ask you to turn to page 15. Can you see on page 15, that is the beginning of clause 16 which is headed "Workloads"?---Yes.

PN2267

Can you see at 16.1.4:

PN2268

*Work allocation for a staff member -*

PN2269

so an individual staff member -

PN2270

*will be determined by the supervisor in consultation with the staff member in accordance with the provisions of this clause.*

PN2271

Then at 16.5, which appears on page 17, the agreement refers to individual work plans for academic and general staff. Your actual allocation is determined by a workload plan for yourself, isn't it?---Well, I didn't have particular strong influence on this workload plan. Essentially teaching duties are allocated within the school by a workload committee which consists of the school executive, plus one member of staff, as far as I know, and there is a spreadsheet being released with the courses to teach in November typically. In fact for myself, I joined RMIT just after the start of semester - the August semester in 2014 - so I didn't have a teaching duty during that time. There was a staff member moving into an executive position for the project coordination - course coordination - and so I was asked in February if I would take over the coordination. At the time I had no idea what sort of workload that would involve and I wasn't told either.

\*\*\* JOCHEN SCHROEDER

XXN MS PUGSLEY

PN2272

We'll come back to that later about what happened this year?---Yes.

PN2273

But your individual workload plan was allocated in accordance with the enterprise agreement and the way workloads were allocated to other staff.

PN2274

MS GALE: Excuse me, your Honour?---That is - - -

PN2275

VICE PRESIDENT CATANZARITI: Just one moment, Dr Schroeder.

PN2276

MS GALE: Can I object to the question. The witness is not qualified to give an opinion as to the compliance or otherwise with the enterprise agreement.

PN2277

VICE PRESIDENT CATANZARITI: I'm not sure that was the question that was actually put, but I can't - - -

PN2278

MS PUGSLEY: I'm happy to move on.

PN2279

VICE PRESIDENT CATANZARITI: Perhaps if you rephrase the question.

PN2280

MS PUGSLEY: I'm happy to move on to another question.

PN2281

At paragraph 23, Dr Schroeder, of your statement - at the time of writing this statement, you say that because of your teaching workload, your research output was fairly limited at that time. If I take you back to page 15 of the enterprise agreement under 16.2, "Academic workload framework", at 16.2.2(b)(i) - - - ?---Sorry?

PN2282

It's 16.2.2(b)(i)?---Okay, (b)(i). Sorry, yes.

PN2283

It says:

PN2284

*Academic staff members will normally not be required to: (i) teach in more than 24 weeks over a 12-month period.*

PN2285

You weren't allocated teaching in more than two 12-week blocks over the year, were you?---No.

\*\*\* JOCHEN SCHROEDER

XXN MS PUGSLEY

PN2286

Do you have a sense of why that is; why teaching is allocated only in two 12-week blocks rather than across the whole year?---Well, this is the semester, so those two 24-week blocks are the two 12-week semesters. As far as I know, like any preparation work outside that, it is expected also to be outside the semester, so  
- - -

PN2287

When you are engaged in those semesters teaching, what are you principally doing in terms of your work?---Well, in my case I actually highlighted that in one of the points. For example, in the semester break between semester 1 and 2 in 2015, I was - 80 hours of my time which I accounted for, because I actually thought I'm working too much. I was simply doing administrative work related to the course coordination of the projects. Additionally on that, I was doing the marking for the other course that I was coordinating in the first semester, and I could not really prepare the course I was supposed to teach in the second semester, which I should have probably been doing at the time as well.

PN2288

You weren't required to do any teaching in more than two semesters though, that's correct, isn't it?---No. This is preparation and administration.

PN2289

Ad hoc, and - - -?---Essentially it's collecting the marks and bringing them together. There's our, what we call CAC meetings, where - I can't remember the acronyms and so on and so forth - essentially it's publishing the marks to the students.

PN2290

Would you agree that in the semesters when you're not allocated teaching, that's when you've got time to get on with your research?---Sorry, there is only two semesters and I'm allocated teaching in both semesters, so there's not more than two semesters in the year.

PN2291

I'm sorry, perhaps I haven't been clear enough - that it's 24 weeks, so there are 48 weeks, aren't there, in the working year?---Yes.

PN2292

If you take the four weeks annual leave into account, so you're not required to teach for the 48 weeks of the year, are you?---Well that is I'm not facing students; I'm still doing teaching work.

PN2293

But you're not required to teach?---What do you consider teaching?

\*\*\* JOCHEN SCHROEDER

XXN MS PUGSLEY

PN2294

Having teaching duties allocated to you so that you're actually standing up in front of the class and presenting and responsible for the - - -?---No, there is no student-facing duties.

PN2295

Thank you. So to go back to the time when you were particularly busy in 2015, you said that you were teaching and also that made it hard to focus on your research, but you're not expected - when you're allocated the teaching in those two lots of 12 weeks, you're not expected to focus on the research at that time, are you?---Well I think in the workload agreement in some part it says specifically also that we are, like, research cannot only be put to the non-semester parts of the year; however, by not being able to focus, clearly I essentially didn't do any research work - zero, and that applies not only to the teaching period but also during the periods outside of the teaching periods.

PN2296

In paragraph 29 of your statement you refer to a meeting that you had with the new dean of engineering shortly before you finalised your statement?---Yes.

PN2297

I'm going to hand you a document which is an email that you sent to the new dean; that was Adrian Mouritz?---Yes.

PN2298

An email that you sent to him on 30 January 2016.

PN2299

VICE PRESIDENT CATANZARITI: Ms Pugsley, do you want the agreement as an MFI or as an exhibit?

PN2300

MS PUGSLEY: I think as an MFI, your Honour.

PN2301

VICE PRESIDENT CATANZARITI: I'll just mark that MFI3.

**MFI #3 EMAIL FROM JOCHEN SCHROEDER TO THE DEAN,  
ADRIAN MOURITZ, DATED 30/01/2016**

PN2302

MS PUGSLEY: So Dr Schroeder, you now have that in front of you?---Yes.

PN2303

And 30 January, you write to Professor Mouritz?---Yes.

PN2304

As you say in your statement you asked him for a meeting to discuss workloads, and that meeting did take place, didn't it?---It did take place.

PN2305

I'm sorry, you said it did take place?---Yes, it did take place. I should state that email's from the 31st, the meeting took place just before the start of the semester, which is I think end of September. I think it was in the week before the semester started - the teaching period started, so it was significantly after this email.

\*\*\* JOCHEN SCHROEDER

XXN MS PUGSLEY

PN2306

VICE PRESIDENT CATANZARITI: Sorry, I can't follow that. This letter's dated January 2016 and you just said the meeting September?---No, sorry did I say September?

PN2307

You said September, yes?---Sorry, February.

PN2308

Yes, thank you?---Sorry.

PN2309

MS PUGSLEY: I'll hand you another document, Dr Schroeder, which is also an email from you to Professor Mouritz?---Yes.

PN2310

VICE PRESIDENT CATANZARITI: So the first document, is that going to be tendered now, the first email?

PN2311

MS PUGSLEY: Yes, I'd like to tender both of those emails, thank you, your Honour.

PN2312

VICE PRESIDENT CATANZARITI: So the first document, "Request for meeting regarding workload for new academics", will be AHEAI6.

**EXHIBIT #AHEAI6 DOCUMENT HEADED REQUEST FOR MEETING REGARDING WORKLOAD FOR NEW ACADEMICS**

PN2313

VICE PRESIDENT CATANZARITI: And the second document headed Workload Support 26 February 2016, AHEIA7.

**EXHIBIT #AHEIA7 SECOND DOCUMENT HEADED WORKLOAD SUPPORT 26/02/2016**

PN2314

MS PUGSLEY: Dr Schroeder, in your email you actually identify the date that the meeting was held: "Dear Adrian, as discussed on Wednesday", so it was sometime shortly before 26 February 2016?---Yes, just as I stated.

PN2315

And you've outlined some additional support that you requested from him?---Mm-hm.

\*\*\* JOCHEN SCHROEDER

XXN MS PUGSLEY

PN2316

You didn't need any support for one particular small fourth year course; you wanted a PhD student for 60 hours for another course, 60 hours for marking, and

two lots of 20 hours' assistance for another course. And Professor Mouritz's response is at the top of the email:

PN2317

*Hi Jochen*

PN2318

*As discussed, looks fine. Please ensure SECE finance are aware of the cost. All work should be charged at the basic marking rate which is about \$40 per hour.*

PN2319

Would you agree that your requests were agreed to by Professor Mouritz?---Yes.

PN2320

Would you agree with me that you managed to resolve your issues in a relatively informal way in discussions with the dean, and you didn't need to access the dispute resolution procedure under the enterprise agreement?---I actually - I was willing to give this a try. This didn't alleviate my workload significantly enough that I even wanted to stay RMIT.

PN2321

DEPUTY PRESIDENT KOVACIC: I'm not quite sure that's the question that Ms Pugsley asked you?---Okay, sorry.

PN2322

You might repeat the question again, Ms Pugsley.

PN2323

MS PUGSLEY: Would you agree that you managed to resolve the questions that you asked Professor Mouritz informally through this email process, and you didn't have to access a formal process under the enterprise agreement?---So there is two questions you're asking me. Shall I answer them separately?

PN2324

Thank you?---So the first question is you're asking me - sorry, if I understand this correctly - if I resolved my workload issues with Professor Mouritz, and the second question is did I access the workload dispute. The first question is I didn't know at the time if it would resolve my workload problems. The second question is no, I didn't access the dispute agreement because I resigned.

PN2325

Just to go back to the first part of your answer, you'd agree, wouldn't you, that Dr Mouritz agreed to everything that you had asked for in relation to support as set out in that email?---In fact, during the meeting I asked one of the courses to be taken away from me, which he didn't agree to - well, actually two courses, both semester - they are courses which are not the project coordination.

\*\*\* JOCHEN SCHROEDER

XXN MS PUGSLEY

PN2326

If I can take you back to the enterprise agreement, and this is page 18 at 16.6?---Yes.

PN2327

Can you see that 16.6 is headed: Workload Dispute Resolution Process, and it provides for the mechanism for staff to raise issues in relation to their workload, (a) by raising the issue with the relevant manager, or with the executive director or pro vice-chancellor, and where the issue remains unresolved you can refer the matter to an agreement implementation monitoring committee, and if that doesn't resolve the issue you can come to this Commission. So if you hadn't been able to resolve the matters with Professor Mouritz you would have had access under the enterprise agreement to have the matter dealt with externally, wouldn't you?---You're telling me, but yes, I'm not an expert on the bargaining agreement, yes.

PN2328

I have no further questions.

PN2329

VICE PRESIDENT CATANZARITI: Yes, Mr Pill.

#### **CROSS-EXAMINATION BY MR PILL**

**[2.40 PM]**

PN2330

MR PILL: Thank you. Dr Schroeder, I'm representing a number of universities including the University of Sydney, who was your former employer before RMIT, and I just wanted to ask you a couple of questions predominantly about that time?---Okay.

PN2331

As I understand your statement and your evidence, you started as a level A at the University of Sydney and actually progressed through promotion to a level C position, is that right?---Yes.

PN2332

Were you required by the university to seek promotion, or is that something that you chose to pursue?---No, that is something I chose to pursue. It was recommended by my manager that I should try it.

PN2333

And you were successful?---Yes.

PN2334

At one time in that process, I think whilst you were a level B, you applied for a DECRA, an ARC Discovery Early Career Researcher Award, in 2012?---Yes. The application was in 2011 and I got it in 2012.

\*\*\* JOCHEN SCHROEDER

XXN MR PILL

PN2335

Can you just tell the Commission in terms of having won that what that meant for the work that you were required to undertake?---So there's two things. As the first

thing, I have my own sort of research funding. My position is essentially funded by the ARC. However, once me and some other colleagues won this award we also were told by the head of school at the time that due to the budget problems at the university we need to participate in the teaching as well, which is usually not part of the DECRA's, however, there's a provision that you are allowed to teach a certain percentage.

PN2336

Yes, the DECRA has and the ARC guidelines have provisions that entitle you to teach up to a certain level, but your predominant focus is on some form of research that you're conducting?---Exactly.

PN2337

And part of the reason why you teach - are you aware that the funding that's provided by the ARC to fund your salary fell significantly short of what the university actually needs to pay you?---Yes. That was given to us as the reason, however, interestingly enough, that was only applied to the junior DECRA winners and not to the professors like the laureate fellowship professors.

PN2338

Yes. Are you aware of the laureate conditions - the particular conditions that attach to a laureate fellowship?---No.

PN2339

The amount of teaching, as I understand - at paragraph 6 you say your teaching load of 48, and you say:

PN2340

*The average teaching load for regular teaching and research staff in the department in 2012 was 228.*

PN2341

Are they points or are they hours? What's that a reference to?---It is some sort of point system. I have, like, not quite understood that system while I was there, to be honest.

PN2342

But if I do the maths it's about a fifth of a full load, is that - -?---Yes, except for the fact that for research only positions, HDR supervision, so - what does it stand for?

PN2343

Higher degree research?---Higher degree research student supervision wasn't counted for us but was counted for normal teaching and research academics.

PN2344

Can I just park that last issue for the moment?---Yes.

PN2345

In terms of 48 points - let's assume it's points for the moment?---Yes.

\*\*\* JOCHEN SCHROEDER

XXN MR PILL

PN2346

How many contact hours was that when you were teaching back then?---I can't recall. It's significantly less than 48 hours, and the workload model was different in Sydney than at RMIT.

PN2347

Is it fair to say your workload experience at Sydney was markedly different to the 70-80 hour experience that you've had at RMIT?---Yes, although my position was also different, but yes, it is fair to say.

PN2348

Yes, I understand that. You've given evidence that the average teaching load in your department in 2012 was 228. Do you know how many contact hours that was?---No, I have no idea. That was the number that was given to us when we were given this - our teaching role essentially, they'd told us this is the average teaching load for a normal and research academic, and there was a span - I was a bit at the lower end of the span, but in the middle of what the fellows were given.

PN2349

At 7, 8 and 9 you refer to some work you did on flagship projects?---Yes.

PN2350

And you won some awards for that. My question is at paragraph 9, there were certain aspects of these roles that you volunteered for - yes, paragraph 9:

PN2351

*During my time at (indistinct) I've volunteered for two positions within the centre.*

PN2352

?---Yes.

PN2353

Can you just tell the Commission what was involved in those two positions that you volunteered for?---So that was the centre director for training and education and I volunteered for that with strong encouragement from my supervisor, and it sounded like an interesting experience as well. I worked as part of what's called an ARC centre of excellence. Inside the centre there was always a KPI for strong early career researcher and HDR sort of education and training aspects, and so in that work I would, like, I pushed again with discussions with the executive of the centre very strong entrepreneurial aspect of this education and training, so I organised a seminar series with external entrepreneurs in photonics. We had an entrepreneurship scholarship and some, like, students taking part in sort of additional entrepreneurship education and some other things.

\*\*\* JOCHEN SCHROEDER

XXN MR PILL

PN2354

Those initiatives that you've just described, they were your ideas?---Partly yes, partly no. The seminar series was - the centre director had previously discussed with one of the centre advisory board members who is an industry person, a well-known photonics entrepreneur; they had discussions on this and then he sort

of encouraged me this is something that we should be doing, and I essentially was the one implementing it.

PN2355

And the other role was as a project leader for one of the centre's flagship projects?---Yes.

PN2356

And you say:

PN2357

*In that position I was responsible for setting and tracking of milestones within the project.*

PN2358

?---Yes.

PN2359

Just talk a little bit about the work that you did in that capacity?---So the centre, sort of research is divided up into different flagship projects. I was responsible or was the project leader for the terabit per second project, which is research into optical communications. These flagship projects are essentially the research directions of the centre and they do interlink with each other. So in yearly milestone meetings - well there's usually a number of meetings for discussing the milestones for the next year where there's the centre CIs, so the chief investigators, plus the project leaders and what's called the science leaders, which are sort of more senior academics working in that area who oversee these projects, discuss what will be done in the next year and who should approximately be doing this - and that includes PhD students, for example, projects working on this. And then throughout the year this progress is essentially tracked by the project leader; so I'm also very actively involved in the setting of the milestones but then I'm responsible as the project leader for tracking the milestones, what happens, liaising with - possibly this is in collaboration with different universities, so the flagship projects span more than one university - so I would discuss with the groups at the other universities how they're tracking with respect to the milestones and other KPIs that we have for the projects - so that's usually a publication number KPI that we have in the projects as well as some other projects - and so I am responsible for tracking this. And then we had a workshop once a year where this is presented usually by the project leader to the overall centre as well.

PN2360

So if I've understood all that, and I appreciate your answer, there was roles in some of the setting, some of the management, some of the coordination of the project, both within the University of Sydney and other organisations that were involved in the flagship project?---Yes.

\*\*\* JOCHEN SCHROEDER

XXN MR PILL

PN2361

Are you able to estimate how many hours you spent on average in undertaking that project leader role?---It's difficult to say because I at the time didn't keep track

of it. It's highly variable, so it could vary from as little as one or two hours a week to, like, especially when the workshop was coming up or the milestone discussion meetings are coming up, to sort of a couple of days a week in the preparation for these. So typically it wouldn't be a couple of days a week; it would be somewhere between one to three hours a week, possibly to a day a week in the typical week.

PN2362

Somewhere in between one, two, three and seven, eight hours?---Yes, seven, eight would probably be in the normal weeks on the high side, but then again in the preparation there would be possibly one or two weeks where there would be two or three days for the meetings.

PN2363

In terms of the director of training and education role, are you able to estimate how much time you spent on that?---Even less able, to be honest, because it's so long ago, so it would be very much guess work. Over the year - sorry, I - - -

PN2364

Okay. Would it generally involve you undertaking activities each week, or is it a bit like you've described previously with the other role?---It's not as highly variable as the other role. One regular thing was always, as part of that role I was part of the centre executive meetings, so that's one hour a week so there was always this one hour a week at least, but otherwise in the sort of initial preparation for the seminar series there was probably more work involved than later. It was overall less work than the project leader role.

PN2365

Right, so somewhere less than - although you gave me quite a span on the other role - - -?---Yes, sorry.

PN2366

- - - but one to eight, somewhere in there but lower overall. In terms of the project leader role for the centre flagship project, were you directed to undertake that role?---Again, strong encouragement - like, my supervisor was very good at highlighting how this is good for my career. It was also good himself.

PN2367

Those activities, the two positions that you undertook as centre director and project leader for one of the flagship projects in respect of which various awards were made, did you undertake those when you were doing the DECRA?---Yes, partly. The project leader role actually was during my time as a DECRA.

PN2368

Did some of that work contribute to the work that you were doing under your DECRA?---Yes, related - the research I was doing as part like of the centre, or like as the project leader of the centre, was also aligning with my DECRA research.

\*\*\* JOCHEN SCHROEDER

XXN MR PILL

PN2369

I started at the outset by asking about your promotion from level A to level B and level C, and you were successful on the first occasion of each of those?---Yes.

PN2370

You'd accept that in part that was because you were doing more than was necessary to meet the requirements of the previous level that you were performing?---Well the advice I was given for promotion is that essentially you should be able to show that you're already performing at the higher level.

PN2371

Yes, so to be promoted to a B, I need to be able to demonstrate that I've got the capacity to deliver what's required of a B?---Yes.

PN2372

And if you hadn't done that, you accept you would have just continued in your role, whether it be a level A before you were promoted to level B, or as a level B before you were promoted to level C?---Sorry?

PN2373

I'll break it down. I'll just take one of them?---Yes.

PN2374

Before you were promoted to being a level C, you were a level B research fellow?---Yes.

PN2375

And if you had not sought or undertaken activities at the higher level of level C, you could have continued to just be employed and do your role as a level B research fellow, do you accept that?---Yes.

PN2376

Turn to research publications: at paragraph 10 you say that in addition to that - and that, sorry, follows the two roles that we were talking about before:

PN2377

*The content of my work and time consisted primarily of certain things -*

PN2378

(b) is:

PN2379

*(b) The preparation, submission and revision of articles for publication in academic journals.*

PN2380

In terms of the amount of time that you spent doing that, how was that determined?---How is the preparation and submission of articles for publication determined?

\*\*\* JOCHEN SCHROEDER

XXN MR PILL

PN2381

No, my question is - - -?---The overall - - -

PN2382

No, sorry, my question relates solely to (b) at the moment?---Yes.

PN2383

Sorry, Dr Schroeder, solely to (b), and my question was in terms of the amount of time that you spent doing preparation, submission and revision of articles for publication, how is it determined how much time you spend?---If it's a publication for a journal article, it's until it's ready.

PN2384

Yes?---For submission, so usually that's the discussion between the co-authors so it's the co-authors - like, usually a first draft is prepared by the first author, which could have been me, but it could also be a PhD student working on a specific project. And then there's the revision. For example, if it's by a PhD student, that's usually a revision process first by the sort of most intimate supervisor, which could have been me, then it will be sent out to the other co-authors. Possibly the first one would be the centre director, who was always a co-author as my supervisor on these papers; more discussion, then it will - if there's collaborators involved it will be sent out to the collaborators, and there will be more refinement until everyone is happy with submission. If it's a conference submission it's somewhat different. There it's very strongly driven by the deadline for the conference submission and so the process often is less back and forth, less discussion, and very much getting it done before the deadline, and so that could mean long hours working.

PN2385

Just going back to your research publications and putting aside conference publications for the moment, where you're a co-author with a number of other authors, does the amount of time significantly vary across those publications depending on the nature of your role on that particular research?---Yes.

PN2386

Is it the case that, if I've understood you correctly, the first author is essentially the primary writer of the publication?---In our field that is usually the case, yes.

PN2387

And is there also a protocol as to who's the last author?---That tends to be, or it's regarded as, the person who's directing the research programme, so for a lot of the work I did it was the centre director, which was assumed that he was like the last author on this. For the later part doing my work I negotiated with him for a linkage project where I was the CI/co-CI with him, so chief investigator, and that, I would be last author, because I was really directing that part of the project.

PN2388

Yes?---And that is essentially to show that I have leadership skills of directing a programme.

\*\*\* JOCHEN SCHROEDER

XXN MR PILL

PN2389

Do you recall how many publications you were author or co-author of in your time in, I think this part of the statement reference is 2011 and 2012?---I can't tell you for the specific timeframes over - I think from the time that I started in Sydney until I left, I think I have around 25 to 30 journal publications. I guess that could be correct. I think I have about 50 now and I had about 10 before I joined, and a couple of them have been in the last two years, which was usually for the following work actually of my centre work.

PN2390

So about 10 before you joined Sydney, about 25 to 30 in your total time at Sydney, and now you have a total of - - -?---And then another - last year it was five, and that was all follow-on work essentially from the work I did during my time in Sydney.

PN2391

Yes, thank you. In terms of the identification of what research publications you would do, were you involved in determining that?---Into determining what to work on, what projects?

PN2392

Yes?---So initially when I was employed on a linkage project and then later by the centre directly my input was more limited, although we did have input and we brought our ideas forward onto what things should be worked on, but as our supervisor could essentially veto this and say no, you should be working on this - like, generally there was an alignment between things, so once I got started on my project my ideas were essentially sort of welcomed by the director.

PN2393

A collaborative effort, is that - - -?---Sorry?

PN2394

It's a collegiate, collaborative process?---Yes, and it does happen though that also, like in this process, somebody says - or the supervisor says no, you really should be focusing on this; as you're employed by the centre you need to work on the milestones that we need to get that done as the centre. During my DECRA, that obviously becomes more - like, I get a stronger role in the outcome. Technically I could obviously say no, I don't really want to work exactly at this and I don't care about anybody else, but that's usually not how collaborative research works, and so there is still the discussion with the centre director and the other core workers in the project work that one works on.

PN2395

The other question I had about paragraph 10 is at 10(a), you talk about:

PN2396

*...conducting experiments reflecting relevant data and information necessary for new theoretical understandings or practical applications.*

\*\*\* JOCHEN SCHROEDER

XXN MR PILL

PN2397

In terms of what you did across the course of a year, was it known upfront what you would be doing in terms of the experiments and the data and what you were going to be doing later in the year, or did it evolve and develop?---Usually it evolves. Sometimes there's a publication comes out that we, for example, saw or we can do much better using our facilities. Sometimes it's out of a different project, there's results coming which very clearly give us a follow-up path. Some other projects are longer term plans. So as I said we had the milestones within the centre and so that's usually sort of stepping stones to get somewhere, so it's a combination of both, I would argue.

PN2398

Thank you. In terms of the performance standards of the University of Sydney - and you've used that term in your statement at paragraph 12 - what are you referring to when you use the term "performance standards?"---I was referring to my performance reviews with my supervisor, essentially, and I think at the time, like initially and while I was there, there was a changeover in the performance review system at Sydney while I was there, although I don't think I actually ever undertook the performance review under the new system, but essentially there was a grading system between - I forgot what the lower score was, but then the higher score was "outstanding" I think, so for different aspects, essentially there was for teaching, leadership and research, and so in the review meetings my supervisor would essentially mark the different sections according to what he thought.

PN2399

And the mark that you're referring to there was a reference to whether you're exceptional or outstanding, satisfactory, with that sort of remark an exercise. At the risk of embarrassing you, your performance was generally on the higher side?---It was on the higher side, but I don't think I ever got the highest one. That was very difficult to get from my supervisor. Essentially the supervisor changed what meant outstanding in terms of, for example, publications. He liked to draw this word: you need to publish in the first year, this is what you publish in the second and third year; and that shifted with whichever he was talking to, just that everyone was just underneath, which we found out between discussions amongst us.

PN2400

Notwithstanding you were just underneath, you were still rated as above satisfactory?---Yes, so I think there's outstanding and excellent, or excellent, outstanding, like, there's two above higher rated ones, or I don't know, maybe the - how this - they always all sound positive, I think, so I don't remember the exact ones. But yes, I wasn't in the highest but I was underneath, and sometimes there was a plus there as well, things like that.

PN2401

Yes, thank you. Just bear with me, Dr Schroeder. One last question, you mentioned conference papers and deadlines and there may also be deadlines for submissions to journals. Are they matters that the university determines?---No.

\*\*\* JOCHEN SCHROEDER

XXN MR PILL

PN2402

No further questions.

PN2403

VICE PRESIDENT CATANZARITI: Thank you. Ms Gale?

**RE-EXAMINATION BY MS GALE**

**[3.07 PM]**

PN2404

MS GALE: If I can take you back to the questions that related to your time with RMIT?---Yes.

PN2405

Ms Pugsley took you to paragraph 19 of your statement where you report that in the first semester of 2015 you worked very long hours?---Yes.

PN2406

And she asked you whether part of the reason for that was because you were new to the role and you agreed that that was part of the reason. What were the other parts of the reason?---Well that it's exceptionally high. I think having to course coordinate, especially the final year projects, is a huge amount of work. In addition to that, the optical fibre technology course was somewhat dated, and I was being hired as an expert in the field of optical communications and so I undertook some re-vamping of the material before I realised what the role of the course coordination of the projects, the CAPCOM project, actually meant, so I started re-vamping lecture material and then was hit by the workload that was involved in course coordinating the design course is what we called them. Actually, sorry, I should just add to that, and by that time it was too late to pull out of revising the course material, because I restructured part of the course as part of that, and so I had to essentially do both.

PN2407

At paragraph 21 you referred to that and you said that there was also marking and other duties. Can I just clarify, in that fortnight where you report working 80 hours were the marking of other duties included within that 80 hours?---No, the 80 hours is the coordination work on the design projects, so on top of this the design projects - so what we call them design projects, the final year projects of the engineering students - every academic is supervising some of these projects. So in our school we allocated around eight students for each academic per semester or in each semester, so their reports need to be marked; we have presentations which run for two days where all academics are required to mark. Then I have the course that I'm coordinating, so not the projects, but I need to mark the exams of this optical fibre technology course which had 40 students - that needs to be marked, and then there's the administrative duties, like specific meetings where the marks on the courses are being discussed, if they essentially fall within the bell curve, if there's like strong outliers or not, and so on and so forth as well.

\*\*\* JOCHEN SCHROEDER

RXN MS GALE

PN2408

You were shown a couple of emails about an exchange you had with, is it Professor Mouritz?---Yes.

PN2409

In relation to your workload concerns. In the course of those discussions with Professor Mouritz, did he advise you of the workloads dispute resolutions process under the agreement?--No, he didn't, or at least I don't recall him doing it.

PN2410

And just one last question in relation to your time at Sydney University, you were asked about the 48 points measure of your teaching load and you said that supervision of higher degree students was on top of that?---Yes, for research-only academics there wasn't accounting of HDR student supervision.

PN2411

Do you recall how many higher degree students you would have been supervising at that time?---Based on sort of the policies within the centre I was never the first supervisor. That was usually a senior academic, which in my case was always the centre director. I was co-supervising three PhD students during my time in Sydney, and I supervised one Masters but coursework project, so that's a one-semester project if I recall, and one Honours project.

PN2412

Thank you. No further questions.

PN2413

VICE PRESIDENT CATANZARITI: Thank you, Dr Schroeder. You're excused?---Thank you.

<THE WITNESS WITHDREW

[3.13 PM]

PN2414

VICE PRESIDENT CATANZARITI: Ms Gale, I'm happy to start the next witness, but I do have a dispute on at 4 o'clock, so I'm in your hands if you want to start.

PN2415

MS GALE: Commissioner, given the speed with which we're getting through witnesses we think it's probably wise to start. Mr Adams is available.

PN2416

VICE PRESIDENT CATANZARITI: Yes.

PN2417

MR PILL: Can I just have one altercation with respect to my friend. I was advised it was a different witness. I was advised it was Mr Giles. I'm in a position to cross-examine Mr Adams but I might just need five minutes. I'd been advised by Ms Gale that he wasn't coming today, so I might just need to find the relevant papers with respect to my friend.

\*\*\* JOCHEN SCHROEDER

RXN MS GALE

PN2418

VICE PRESIDENT CATANZARITI: Right. Well either way, Mr Pill, I have to adjourn at 4 o'clock today for another matter.

PN2419

MR PILL: I understand.

PN2420

VICE PRESIDENT CATANZARITI: What do you want to do, Ms Gale?

PN2421

MS GALE: Your Honour, we would wish to proceed if that's - - -

PN2422

VICE PRESIDENT CATANZARITI: Yes, if we don't finish he'll have to come back tomorrow. If we do not finish he will still have to come back tomorrow.

PN2423

MS GALE: We understand that.

PN2424

VICE PRESIDENT CATANZARITI: We will take a five minute adjournment to allow Mr Pill to get ready.

**SHORT ADJOURNMENT**

**[3.14 PM]**

**RESUMED**

**[3.20 PM]**

PN2425

VICE PRESIDENT CATANZARITI: Yes, who are we calling, Ms Gale?

PN2426

MS GALE: Your Honour, the NTEU calls Mr Steve Adams.

PN2427

VICE PRESIDENT CATANZARITI: So this was a witness originally going to be called - so just for a start - originally going to be called 4 August is now being interposed now?

PN2428

MS GALE: I'm sorry, your Honour, there has been considerable rearrangement of the schedule.

PN2429

VICE PRESIDENT CATANZARITI: I know. I'm happy to call him, but can we get a new list?

PN2430

MS GALE: In the most recent list provided Mr Adams was for today.

PN2431

VICE PRESIDENT CATANZARITI: Yes, but because of the way times moved could we get another list?

PN2432

MS GALE: We will yet again revise the schedule, yes.

PN2433

VICE PRESIDENT CATANZARITI: So that Mr Pill doesn't have an argument either. This witness wasn't expected next.

**<STEPHEN CRAIG ADAMS, AFFIRMED [3.21 PM]**

**EXAMINATION-IN-CHIEF BY MS GALE [3.21 PM]**

PN2434

MS GALE: Thank you, Mr Adams. Can you state your name and address again for the record, thanks?---Stephen Craig Adams, (address supplied).

PN2435

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

PN2436

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

PN2437

Are there any corrections you wish to make to that statement?---Yes, I would like to make a couple. The first is at paragraph 21. There is some substance that has been removed from that paragraph which I believe changes my intended meaning of that one.

PN2438

So you seek to delete the - - -?---Delete the entire, yes, please. And at 47 and 48 there are a couple of small errors in the back and forth when I released my statement. There's some sort of questions that are attached to the end of my sentence, so I'd like to delete in 47 the "after increased", so the question there is, "Can you recall how much?" I'd like that deleted, please. And in 48, so, "the peak workloads during semester", and then the after "quieter periods they take note of", I'd like that deleted. That was more of a question that I was asked.

PN2439

VICE PRESIDENT CATANZARITI: Just so I'm clear, you're deleting from paragraph 48 "quieter periods they take note of?"---That's correct, yes. Thank you.

PN2440

MS GALE: Thank you, Mr Adam.

\*\*\*

STEPHEN CRAIG ADAMS

XN MS GALE

PN2441

VICE PRESIDENT CATANZARITI: Can I perhaps ask a question again about - paragraph 48 then just reads: "Peak workloads during semester." Without having

seen the rest of it, I mean, of itself that doesn't appear to make a hell of a lot of sense?---I thought it was implicit that my peak workloads are during semester.

PN2442

Your peak workloads are during semester?---That's correct, yes.

PN2443

That's a statement, okay.

PN2444

MS GALE: Thank you, Mr Adams. With those changes, do you say this is a true and correct statement?---I do, yes.

PN2445

And do you adopt it as your evidence in these proceedings?---Yes, I do.

PN2446

Thank you.

PN2447

VICE PRESIDENT CATANZARITI: That will be exhibit N.

**EXHIBIT #N WITNESS STATEMENT OF STEPHEN CRAIG ADAMS**

PN2448

VICE PRESIDENT CATANZARITI: Any objection, Mr Pill, Ms Pugsley?

PN2449

MR PILL: No, your Honour.

PN2450

VICE PRESIDENT CATANZARITI: Thank you.

**CROSS-EXAMINATION BY MR PILL**

**[3.24 PM]**

PN2451

MR PILL: Mr Adams, I represent a number of universities in this proceeding, including the University of Melbourne. You're, amongst other things, the current NTEU branch president of the University of Melbourne?---Yes, that's correct.

PN2452

And you describe yourself as an NTEU activist?---Yes.

PN2453

Well you have in your statement?---Yes.

PN2454

In that capacity at least you have knowledge of the University of Melbourne enterprise agreement?---I do.

\*\*\* STEPHEN CRAIG ADAMS

XXN MR PILL

PN2455

And you're involved in the negotiations for the current agreement?---I was in the second half. I became a member of the bargaining team in the second half of the last round of negotiations.

PN2456

You're aware that your employment terms and conditions are regulated under that enterprise agreement?---Yes, I do.

PN2457

And they're not regulated under the award that's being reviewed here by the Commission?---That's correct.

PN2458

You're also aware that that award was never applied to your terms and conditions?---Yes.

PN2459

The changes that you made to start of paragraph 47 and 48, do I take it from that that in putting together this statement you've had a number of questions proposed to you by the NTEU and your answer to those questions, and there's been back and forth about that to produce the statement?---I think it was probably a lack of substance around those questions, so I was asked to provide more detail because it would be more helpful.

PN2460

Can I take you to page - sorry, they're not page-numbered on my version and I'm not sure if that's - - -?---The paragraphs?

PN2461

- - - the case on each of them, but I'll take you to paragraph 14. You refer to working back after 4 pm, you refer to coming in early before 8.45 to set up the lab or work through lunch, and you talk about timetabling, and you say:

PN2462

*This is in contrast to, say, 20 years ago when lab classes were scheduled between 2 and 5.*

PN2463

As I understand it your work is more intense during the teaching periods at the University of Melbourne?---It is, during the semesters - the teaching semesters, yes.

PN2464

And at the University of Melbourne that's 22 weeks of the year?---It's probably a little more, but yes. Because these days we have - there is summer school and other - which are now sort of pseudo a third semester really.

PN2465

How long does summer school run for?---Normally probably about four weeks.

\*\*\* STEPHEN CRAIG ADAMS

XXN MR PILL

PN2466

And you have two 11-week semesters at the University of Melbourne?---No, first semester's a 12-week semester.

PN2467

And the pracs, your role is predominantly associated with the prac and lab classes?---Yes, I supervise what are known as the wet labs, so we teach to the cohorts of mechanical infrastructure, which is civil engineering and chemical engineering. So it's the main undergraduate teaching laboratories for those students, and I supervise them and have a team of three staff that I work closely with.

PN2468

When do prac classes generally commence within the semesters?---Look, usually it could be around week 2 they will start, so we usually don't have experiments in the first week. The thought behind that, if I can elaborate, is just the students can get a little bit of theory behind them before they enter the practical, which is sort of ideal - not always the case though these days with the increased student numbers.

PN2469

So you say week 2, put to me by - - ?---It can change. It's not always week 2, so can be week 3, it can be even week 4. It will depend how it's timetabled, how academics have requested, where they've requested. It can change from year to year. It's a moving feast, if you like. First semester this year may look entirely different first semester next year, it just depends.

PN2470

Would you accept that it's generally common for it to commence in week 3?---No, I wouldn't. No.

PN2471

When do you say it's most common then that it commences?---It's probably around week 2 it would start.

PN2472

So Michelle Mackay - - ?---That's my unit manager.

PN2473

While she's not been called to give evidence in these proceedings, she's indicated that you have a particular intense period, or to the extent that there is an intense period it's effectively a four to six-week block within a semester where there's - - - ?---That would be correct, yes.

\*\*\* STEPHEN CRAIG ADAMS

XXN MR PILL

PN2474

And there's more labs running in those particular blocks?---They seem to be the most intense period. Again, back to my original statement where the academics in question liked them to experience some theory before they get into the lab, so sometimes it can delay, and then there's quite a large rush in that middle period. Again, it's quieter towards the end because the students have to be allowed some

time to submit their lab reports before they enter the exam period, so yes, most of those classes are scheduled in that middle period of the semester.

PN2475

Yes, thank you. The technical officers - and you're a senior technical officer, is that right?---That's correct, yes.

PN2476

There's also demonstrators in the labs?---That's correct.

PN2477

And again put to me that typically, having set up the lab, having commenced the lab, a technical officer should generally be in a position to leave that particular lab in the order of 20 to 30 minutes after the class started?---Yes, that would be a necessity because we have a number of things running at once, so that is why it is structured that way so we can spread ourselves around.

PN2478

Yes, and you'd then go off to another lab?---And set up another lab, yes. I also point out that we do do some demonstration as well. It's not always solely the demonstrators. It depends on the aspects of the laboratory. We do do some that require a bit more sort of specialist expertise, and also there are health and safety concerns of some aspects of what they do in there that we feel it's more prudent that we look after that. So we'd have much more hands-on with some of the experiments we do.

PN2479

Yes, and at 21 you've now deleted:

PN2480

*The university records, quantifies and measures every aspect of our work life.*

PN2481

Which appeared in your submitted statement. Do you accept that as a senior technical officer in terms of how you go about your work that you have a reasonable degree of discretion and control over that?---Well you'd have to narrow that down. There are some things that I do have considerable control, and some I have very little control.

\*\*\* STEPHEN CRAIG ADAMS

XXN MR PILL

PN2482

So the lab times are set?---Yes. We do try to influence it as much as we can. As I said, we are a small team so we do work closely where we can with central timetabling to spread things around so it's doable for us. Otherwise if we just sat back and let the timetable come to us, it just wouldn't work, so we do try to shuffle things around. And also the timetablers are not aware of certain aspects of the labs we set up. Some have quite a long lead-in time; for instance, if you're using furnaces they have to be turned on early to heat up, samples have to go in so they're ready when the students come in at, say, 10 o'clock. That furnace would have had to be on, say, at half past 7 or 8 o'clock. So there's those sorts of aspects to it.

PN2483

And so whilst the laboratory sessions are timetabled centrally, as I understand your evidence, it is with input from your area?---The way timetabling works is we have coordinators within each of those cohorts that approach the academics to work out what they're doing in terms of laboratory work for the semester. It's funnelled to one person; they collage it all, and then it goes to central. And once they've worked it out, because they're more in charge of the space, it will come back and they will show it to us to say, you know, what does this look like, and we will try to have input where we can. Often we can't because the constriction of the timetable itself; it's difficult to alter things.

PN2484

And the timetabling obviously is part an exercise of intersecting subjects and courses to enable students to attend across the various subjects?---Yes, that's correct, and also it's a multi-cohort space, so we're teaching to three different groups at once.

PN2485

Thank you. The university has a system that enables a submission of paid overtime?---That's correct.

PN2486

Is that part of Themis, which you refer to in your - - -?---Yes. Themis is the online staff system where you apply for leave. It has everything on there. It has my personal development, my reviews, my training, leave paid - you name it, it's on there. It goes to what I said at 21, that first part, which I've removed.

PN2487

Yes. We won't dwell too much on what you've removed?---No.

PN2488

But you accept that as a literal statement the university doesn't record, quantify and measure every aspect of your work life? Perhaps I'll ask you a more precise question?---Yes, that'll be - - -

PN2489

Your supervisor doesn't sit there and determine exactly when you turn up to work and exactly when you go home at the end of the day?---That is correct.

PN2490

And to the extent that you were to record your hours, you would record those as the staff member?---It is more of an understanding than recording them. If I was for instance to be late I would inform my line manager, not Michelle directly as the unit manager; I'd inform my line manager.

PN2491

Can I hand you a copy of the University of Melbourne enterprise agreement?---Thank you.

\*\*\* STEPHEN CRAIG ADAMS

XXN MR PILL

PN2492

So this was the agreement that you were involved in negotiating as part of the bargaining team?---Yes.

PN2493

Can I take you to clause number 57 which appears on page 52?---Have I got the right document here? I don't have 52 pages - oh yes, I'm sorry. Which clause? 57?

PN2494

Clause 57 entitled "Overtime." Have you got that clause?---Yes.

PN2495

And you'll see at 57.1 that:

PN2496

*The university may require a staff member to work reasonable hours in excess of the ordinary hours, and on reasonable notice will work such overtime in accordance with the instructions of an authorised officer.*

PN2497

And then, if I skip past 57.2 to clause 57.5, the clause provides that:

PN2498

*The staff member must document the hours worked, provide these details to their supervisor within five working days, and discuss with their supervisor the arrangements for taking time off in lieu.*

PN2499

Do you see that obligation there?---Yes.

PN2500

And so to the extent that at various points in your statement you talk about the working of extra hours without accessing TOIL, do you accept that that's a question of clause 57.5 being properly applied and the staff member documenting their hours worked?---Yes, that would be correct.

PN2501

At 24 of your statement you talk about - - -

PN2502

VICE PRESIDENT CATANZARITI: Do you want that marked for identification, Mr Pill?

PN2503

MR PILL: Yes - sorry - thank you, your Honour - yes, please.

PN2504

VICE PRESIDENT CATANZARITI: MFI4.

\*\*\* STEPHEN CRAIG ADAMS

XXN MR PILL

**MFI #4 UNIVERSITY OF MELBOURNE ENTERPRISE  
AGREEMENT**

PN2505

MR PILL: You mentioned:

PN2506

*It's long been entrenched that we do what needs to be done to have the required work completed, despite the fact that ordinary hours do not align with the school timetable.*

PN2507

And there again you're referring to during the semester period?---Yes.

PN2508

And during that peak period in particular?---In particular, but yes, not just that period, it can be elsewhere; but yes.

PN2509

And you say:

PN2510

*In my experience the (indistinct) very much work in management's behaviour, though I may take an hour or two every now and then to attend a private matter. I never apply for a whole day off as time in lieu and nor do the three staff working under me. We would all have many hours owed to us in uncompensated overtime.*

PN2511

Can I just ask, first of all, in terms of you taking an hour or two off how does that work? Do you seek approval, or is it more an understanding that you self-manage those sorts of issues?---We're not going to disappear without some sort of approval, so yes, I would talk to my direct line manager and speak to him and just say, you know, I might be coming in late because I have a matter, or leaving early, and naturally it wouldn't be happening during that peak period, of course, because we don't have the time to do that sort of thing.

PN2512

In terms of the next part of the sentence: "I never apply for a whole day off as time in lieu and nor do the three staff working under me", do you accept that you could seek that?--No, I don't actually. One of the issues that I have with a small team and a lot going on, it's very difficult to just use my leave. I'm forever being contacted by HR with reminders that I need to take leave or I will be deemed to be on leave from a certain date. It's a constant juggle for myself, so it's one of the things that time in lieu, it's just something we do, and we don't really - as I've said in my statement - we don't really access; we don't use, because we have enough trouble using our leave as it is.

\*\*\* STEPHEN CRAIG ADAMS

XXN MR PILL

PN2513

You'd accept that outside of the semester times you have greater capacity to take time?---We do, and that's when I try to reduce my leave balances.

PN2514

Are you recording your hours?---My normal hours of work?

PN2515

No, the additional hours?---No, I don't, but I've always considered it to be fairly obvious. I'm required to put my timetable on my Outlook calendar, so my supervisor can see plainly that I have lab classes from say 8 to 5.30, so it's patently obvious that they're my - well that's the minimum of my hours for that day.

PN2516

All right, but if you come back to my question, you're not recording your additional hours?---On a bit of paper or something? No.

PN2517

So to the extent that your statement goes to some suggestion that you're being denied TOIL - or let me break it down. Are you making a point in your statement that you're being denied TOIL?---I think my statement is more that we just don't access it. We don't use it.

PN2518

But you'd accept that under 57.5 that (indistinct) expressed as an obligation, but -

PN2519

*The staff member must document the hours worked, provide these details to their supervisor within five working days -*

PN2520

but to the extent that you wanted to claim TOIL you could do that in compliance with clause 57.5?---In my view, by my supervisors giving me a timetable which outlines when I'm going to be running labs, there's an implicit - they know what I'm doing during that period, that week, so I don't record it or feel the need to record those excess hours, because it's there in writing in my timetable.

PN2521

Mr Adams, the timetable - and you've attached an example of it - it blocks the whole lab time, and we've already established that whilst you might do some demonstrating you're not necessarily, and generally not, in the lab for the whole lab time for each of those?---I'm in the lab for the whole time. The lab consists of, say, it'd be close to 10 separate spaces within that laboratory and also there's the engineering workshop, so we prepare a lot of the samples and specimens that are required - because I'm involved in a lot of materials testing, so whilst I might not be in that space, I'd be in another space, either preparing or doing something or in the engineering workshop preparing samples of specimens. So in a sense I'm constantly in the lab.

\*\*\* STEPHEN CRAIG ADAMS

XXN MR PILL

PN2522

Just to be clear, you refer to the whole box and dice as the lab?---Well I'm the supervisor of the activity within that lab, yes.

PN2523

Can I take you for example though - just to be clear about this - can I take you to your attachment 2 which is from 4 May 2015, the first page, and as I understand it from your evidence it's a printout of your diary, all of these list particular prac labs within the broader laboratory. Is that how we understand it?---The ones that are highlighted, so the darker ones, they are my responsibility, and then there's crossover with members of my team with the others. But those darker ones, that's my activity.

PN2524

Yes, and so if I just look at the one on the far left, BMEN90024, it overlaps with the third one along that's in dark, MCEN90014?---That's correct, yes.

PN2525

And so, with respect to your comment, your supervisor looking at this, at - well you've cut off the times, but during that period of overlap, this doesn't equate to where you are at any particular point in time, do you accept that? Your supervisor can't look at that and go, I know exactly how many hours - - -?---That he will be in that room?

PN2526

- - - is worked and when he's taking his lunch break, or he hasn't taken his lunch break? Do you accept that this doesn't tell us that information?---When I take a break or anything like that, no, it probably wouldn't, no.

PN2527

You say at 27 "with my own staff", and I understand you supervise three TOs - - - ?---Sorry, what - - -

PN2528

So 27?---Yes.

PN2529

You're flexible with their TOIL and you remind them to take it, however, they tend to be worried about being visible at work as this is entrenched in the culture. Do you record their hours?---What I have done recently is one of my colleagues, I advised them because they were racking up TOIL to take overtime, and they were eligible for overtime, so they've taken overtime instead of TOIL.

PN2530

And you approved that?---Yes - well overtime is in the Themis system, so I - - -

\*\*\* STEPHEN CRAIG ADAMS

XXN MR PILL

PN2531

COMMISSIONER JOHNS: How is it recorded? How do you know that?---How do I know? Look, a lot of the time I'm probably there myself so I do know, but also it's timetabling; so if there are lab's say going past 6 o'clock I would, whilst I say I might not be there for the laboratory I would soon know if my staff weren't

there because the academics would raise hell, so I would soon know, and students as well; there's fairly direct feedback if something doesn't work.

PN2532

But then how do you add it up?---Well that's just a - I ask them, especially with the overtime, to sort of log it as overtime and fill it in. With the overtime in Themis it's quite precise. There's the hours worked, dates and all the rest of it, and electronically it bounces to myself for supervision approval, and it goes I think also to my line manager as well.

PN2533

MR PILL: Have you ever refused their overtime when it's bounced to you through the system?---No, I have not.

PN2534

Can I take you to paragraph 40? You talk about a restructure in 2014 and it was a university-wide restructure?---Yes, that's correct, with the professional staff only, so the academic staff weren't affected with that.

PN2535

You're aware that part of that restructure involved a greater shift towards a more centralised support model and less faculty-based resources?---That's correct, yes, broadly.

PN2536

But in relation to MSE and the technical - your part of MSE?---Yes.

PN2537

And the technical and workshop fabrication staff - I hope I've got that terminology right - is that how you describe yourselves?---Yes, that's close enough.

PN2538

Your complement pre and post the business improvement programme was 12 full-time equivalent staff? There wasn't a reduction in staff as part of - - -?---No, we were corralled, but we were not alone. I think there was a general - the technical staff across the university for some reason were deemed to be out of scope of that change.

PN2539

And so the three full-time equivalent workshop/fabrication staff and the 9 FTE tech staff were unchanged?---Yes. I think the idea behind that is because this was - we directly support - the idea of the business improvement programme was to streamline, as you've pointed out, but also to put more emphasis around teaching and research, and as technical staff predominantly are teaching and research support staff, so it was deemed we'd be out of scope for that.

\*\*\* STEPHEN CRAIG ADAMS

XXN MR PILL

PN2540

Yes, thank you. At 41 and 42 you talk about an earlier restructure in engineering and that's nine years ago, is that right?---Yes, that was, I think, the responsible division of management - that was the name of that restructure.

PN2541

That was RDM?---Yes.

PN2542

At 46 you say:

PN2543

*After many discussions and responses from management that we could only employ casuals and at a low, unskilled level, management finally agreed that we could employ an extra casual in our wet labs.*

PN2544

Do you accept that where it's been suggested that a casual employee could come in and do essentially your role or the role of technical officers that there has been some resistance to that because there's a perceived dumbing down of the role?---I'd probably be in furious agreement with you on that, yes.

PN2545

At 49 you say:

PN2546

*In the six years since 2010 the student numbers have risen by between 15 to 20 per cent in the school of engineering. This growth is certainly reflecting an increase of scheduled laboratory sessions.*

PN2547

On what basis do you say 15 to 20 per cent?---Just going through my own records, looking at previous timetables - that's one of the things with Outlook calendar, you can go back and look at previous years. So you could look at that, and just - how can I put it best? - you just notice you're constantly busy, and larger sizes. We're getting more push to have more students in our classes, which we're attempting to resist, but it's just a noticeable - look, I think I put that as a conservative estimate, to be quite honest, because I don't have any figures - - -

PN2548

But if I've understood your answer, it's not actually based on knowledge of particular student numbers; it's an estimate you've made based on change in laboratory sessions?---No, I have spoken - when I was preparing my statement I did speak to someone in enrolment and engineering to get a bit of an idea, and I think they said something a bit higher, but I was more conservative in my estimates.

PN2549

In terms of the student numbers, putting aside the additional laboratory sessions, does the work that you do in preparing the lab, is it significantly impacted by the number of students?---Yes, well for instance as I said before, I spend a lot of time in the workshop preparing samples. If I've got more students and more classes, that means more samples, and just - yes.

\*\*\* STEPHEN CRAIG ADAMS

XXN MR PILL

PN2550

In terms of material that appears under the heading, "My work with NTEU members" - - -?---Yes.

PN2551

- - - and your 30 years with the university, and you talk about a 51 bit, and you make some observations, and then you identify various scenarios?---Yes.

PN2552

Is it fair to say that these are based on assumptions that you've made about how overtime or TOIL has been treated across the university?---No, not assumptions. It's dealing with members, colleagues and actual friends that were affected by that. Whilst members of my direct team weren't affected, I've been there 30 years so I know a lot of people; I have many friends within the school of engineering and in other faculties as well, so it was their own experiences. As the president I'm contacted regularly by members and non-members with their concerns about various things and tell me their stories.

PN2553

How many of your colleagues and members amongst the 550 have specifically told you that they, on leaving the university, received any compensation or didn't receive compensation for TOIL?---I couldn't give you any direct numbers to be honest. I had a number of discussions with a number of people around it. I should say most people were not overly concerned about that law, because I think they have very low expectations around that area.

PN2554

It's fair to say you've got a pretty dim view of the University of Melbourne in relation to the management of that issue?---No. I mean, I think by working there for 30 years it makes a statement in itself. I enjoy working at the university. It's a stimulating, exciting place and I get to work with some very smart people. I think there are some aspects that could be improved, and, I think further in my statement, I have directly made attempts with university management to try to, you know, change these things but have not met with any success as yet.

PN2555

Well perhaps if I can ask you one last question about that, which is you attach in attachment 1 an email from a Sean Hogan of 2 September 2015, and I understand the relevant paragraph's numbered 5?---Yes.

PN2556

Where Sean has drawn to your attention the 57.5:

PN2557

*has indicated that a staff document, there are additional hours contemplated, they would not be adversely affected by the exit of a particular manager/supervisor as suggested by the union -*

\*\*\* STEPHEN CRAIG ADAMS

XXN MR PILL

PN2558

and this was in response to a concern that you raised that where a manager had left as part of the business improvement programme that some of that knowledge

in their head about extra hours having been worked by that staff might be lost?---Yes, that's correct. A lot of the TOIL arrangements between individuals and the whole knowledge of those hours and activities are just held with those direct supervisors, so there was a large change with the staffing arrangements - people leaving, people moving, shifting, so yes, so a lot of that was turned upside down.

PN2559

But you'd accept that if 57.5 was applied that that issue would not arise?---No, not really, because I think Sean's - I did put this attachment - I think it was an interesting answer because it looks as if we just asked one question. There were a large variety of questions we posed to him, and scenarios around our concerns and what's happened with TOIL and especially during BIP, and he's chosen only to answer one, which is probably which he's got his strongest footing on, but he chose to ignore all the other scenarios we put to him.

PN2560

Yes. You're aware that in addition to the enterprise agreement there's also a policy regarding overtime?---Yes.

PN2561

And that it reinforces essentially the provisions of the overtime clause including process requirements, are you aware of that?---Yes.

PN2562

And that university policies are available on the university intranet?---Yes.

PN2563

As a staff member you have access to that?---Yes, well I've been instructing my staff to use the overtime clause and they've been doing that.

PN2564

Thank you. I have no further questions.

PN2565

VICE PRESIDENT CATANZARITI: Ms Pugsley?

PN2566

MS PUGSLEY: I have no questions, thank you.

PN2567

VICE PRESIDENT CATANZARITI: Any re-examination?

**RE-EXAMINATION BY MS GALE**

**[3.57 PM]**

PN2568

MS GALE: Mr Adams, has any of your managers or supervisors ever issued a direction to you to record your TOIL?---No, they haven't.

\*\*\* STEPHEN CRAIG ADAMS

RXN MS GALE

PN2569

In your role as a union activist and branch president, are you aware of any such direction being issued to other staff?---I think this whole subject has led me to talk to a number of colleagues across the university and just out of interest I was trying to find out how people managed it in other areas, and I think it's fair to say that it's a very mixed beast. Some just have a verbal agreement with their supervisors, some record it on Excel spreadsheets, some record it in notebooks and bits of paper, so it's quite varied, and some don't at all.

PN2570

You were asked questions about whether the lab classes start in week 2 or week 3, and you said it varies. Does it actually vary between subjects or do they all start at once?---No, no, no, if everything started at once we would just come to a grinding halt. No, things are spaced out, because the timetable wouldn't allow everything to start at once. We don't have the room.

PN2571

Thank you. No further questions.

PN2572

VICE PRESIDENT CATANZARITI: Thank you. The Commission's adjourned until 10 o'clock tomorrow.

**<THE WITNESS WITHDREW**

**[3.58 PM]**

**ADJOURNED UNTIL FRIDAY, 29 JULY 2016**

**[3.58 PM]**

\*\*\*

STEPHEN CRAIG ADAMS

RXN MS GALE

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<b>EXHIBIT #AHEIA6 DOCUMENT HEADED REQUEST FOR MEETING REGARDING WORKLOAD FOR NEW ACADEMICS .....</b>	<b>PN2312</b>
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