



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

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

C2013/6333

s.302 - Application for an equal remuneration order

**Application by Independent Education Union of Australia
C2013/6333**

Sydney

10.01 AM, MONDAY, 30 JULY 2018

Continued from 27/07/2018

PN979

VICE PRESIDENT HATCHER: Yes, Mr Taylor.

PN980

MR TAYLOR: Thank you, your Honour, Deputy President, Commissioner. My client just wants to indicate it's grateful to the Bench for the indication given to the parties by way of the statement that the Bench both read into transcript and then published on the website. It's given some careful thought to that and there's somethings I'd like to say about that but we have an expert witness, Ms Issko, who has travelled from Melbourne to give evidence and our preference is to have her evidence dealt with first. We hope that that can be dealt with readily during the course of this morning and then we can return to the subject matter that was raised by that statement. So if it's not inconvenient to the Commission I'd ask if Ms Issko can now give her evidence, she's available.

PN981

VICE PRESIDENT HATCHER: Thank you.

PN982

THE ASSOCIATE: Please state your full name and your address.

PN983

MS ISSKO: My name's Leanne Issko and my work address is 727 Collins Street, Melbourne.

<LEANNE ISSKO, AFFIRMED [10.03 AM]

EXAMINATION-IN-CHIEF BY MR TAYLOR [10.03 AM]

PN984

MR TAYLOR: Ms Issko, is your name Leanne Issko?---Yes.

PN985

Are you employed by Mercer Consulting Australia Pty Ltd in the position of principal?---Yes, I am.

PN986

Is your work address Collins Square, 727 Collins Street in Melbourne, Victoria?---It is.

PN987

For the purpose of these proceedings have you prepared two statements which each attach reports?---Correct, yes.

PN988

The first of those statements was filed on 20 December 2017, if it please the Commission. Do you have that first statement with you, Ms Issko, which annexes a report as attachment 1?---Yes.

*** LEANNE ISSKO

XN MR TAYLOR

PN989

Does that include at page 37 some details of your employment and experience?---Yes, it does.

PN990

Just to add to that, is it the case that prior to preparing this report you had had some experience working with clients in respect of the early childhood sector?---Yes.

PN991

Also had you had experience dealing with clients who engage professional engineers?---Yes.

PN992

Can you identify broadly the nature of the tasks that you've done in respect of each industry groups that you've had exposure to?---Yes, the work has been similar across both industry groups being predominantly work value assessment work but sometimes that's been linked to developing classification frameworks and also undertaking market bench marketing.

PN993

Do you have with you also a second statement that was dated and signed by you 19 July 2018?---Yes.

PN994

Is that second statement one that you prepared having read reports that had been prepared by firstly Ms Nida Khoury - K-h-o-u-r-y, filed on behalf of the Australian Childcare Alliance and secondly a statement of John Egan filed on behalf of AFEI and others?---Yes.

PN995

Did you having read those reports prepare effectively a reply report to those reports?---Yes.

PN996

Is that what we find attached to your reply statement?---Yes.

PN997

Yes, I tender the two statements and their attachments, in both cases being reports of Ms Issko.

PN998

VICE PRESIDENT HATCHER: The statement of Leanne Issko, undated, will be marked exhibit 5. The statement in reply of Leanne Issko dated 19 July 2018 will be marked exhibit 6.

**EXHIBIT #5 WITNESS STATEMENT OF LEANNE ISSKO,
UNDATED**

*** LEANNE ISSKO

XN MR TAYLOR

**EXHIBIT #6 WITNESS STATEMENT OF LEANNE ISSKO DATED
19/07/2018**

PN999

MR TAYLOR: Thank you, they're the questions for this witness.

PN1000

VICE PRESIDENT HATCHER: Mr Fagir?

CROSS-EXAMINATION BY MR FAGIR

[10.06 AM]

PN1001

MR FAGIR: Ms Issko, you're a psychologist by training are you?---I studied psychology, I was registered for many years but I have let that lapse now.

PN1002

Before working for Mercer, your experience was in HR roles in the finance industry?---Correct, yes.

PN1003

Now Ms Issko, you tell us in your reply report that, and I'll quote:

PN1004

A key component of determining work value outcomes is the understanding of the role that is obtained during the job analysis process.

PN1005

?---Yes.

PN1006

Is that right?---That is one of the components, yes.

PN1007

Are you sure that's right? It's a key component of determining work value?---You need to understand the job in order to be able to apply the methodology.

PN1008

What do you mean by understand the job?---So that can come through a range of sources. It can come through reading documentation, it can come through discussion interviews. It can come through - sometimes we ask clients to prepare a particular statement of questions called a job analysis questionnaire, so it can come from a range of different sources.

*** LEANNE ISSKO

XXN MR FAGIR

PN1009

You've mentioned a job analysis questionnaire just now and in your statement, what sort of questions appear in a typical questionnaire?---So the questions covered in the questionnaire would be where there isn't enough information. Some clients like the individual to fill out – they're contributing to the process. So you might ask them to fill in questions so they're part of that process, and that

would cover often similar things to a job description but may make sure that any questions we have from an evaluation perspective are also covered off.

PN1010

How long is this questionnaire typically?---When the questionnaire is used it can vary from up to 10 pages.

PN1011

And would there be any difficulty in providing to the Commission on a confidential basis an example of one of these questionnaires?---No.

PN1012

You've also, in your evidence today and in your statement, referred to interviews with incumbent and managers?---Yes.

PN1013

As being part of this job analysis process?---Mm-hm.

PN1014

What's the purpose of the interviews?---It's to gather additional information to help, give you a more comprehensive understanding of jobs.

PN1015

Additional to what?---To what might be provided in documentation.

PN1016

In this case you had, well, the five interviews with ECTs?---Yes.

PN1017

Can you just state – when I say ECT I mean early childhood teacher?---Yes.

PN1018

Was it really necessary to have an interview with each of these people?---It helped – you know, often the more information you can have it can help your understanding, so it was useful information to get a range of inputs into the process.

PN1019

I see. Incidentally there was an IEU organiser present during these interviews, was there?---Yes.

PN1020

The idea behind that was that the organiser would help validate the responses of the ECTs?---Correct.

PN1021

What does that mean, help validate the responses?---So if something wasn't clear in what they were saying just to help put it in context for me.

*** LEANNE ISSKO

XXN MR FAGIR

PN1022

I'm sorry, could you say the last bit again? If something wasn't clear?---If something wasn't clear, I didn't understand something, just to help put it in context and to ensure that there was a consistent approach as well.

PN1023

What do you mean, help ensure it was a consistent approach?---That we weren't getting necessarily – so when we're looking at a job so we're looking at you, the person, and how well you're doing the job. So to make sure we were focusing on the role as well.

PN1024

I see. Did the IEU ask you to comply with the expert witness code of conduct when you were preparing this report?---Yes, they did.

PN1025

Did you?---I believe so, yes.

PN1026

Can I just take you to a couple of provisions of this document?---Thank you.

PN1027

Was this the document that was provided to you at some point by the IEU?---Yes.

PN1028

If you turn to the second page there, you see paragraph 2.4 reads as follows:

PN1029

An expert witness's opinion evidence may have little or no value unless the assumptions adopted by the expert, i.e., the facts or grounds relied upon and his or her reasoning are expressly stated in any written report or oral evidence given.

PN1030

Do you see that?---Yes.

PN1031

Did you read that when you were provided with this note?---Yes.

PN1032

Did you take that on board when you were preparing your report?---Yes.

PN1033

Do you mind turning forward to the actual code of conduct which follows on from the practice note?---Sorry, what page are you on?

PN1034

I'm afraid the pages aren't numbered, but if you flick through the practice note you'll eventually get to paragraph 9, Further Practice Information and Resources?---Mm-hm.

*** LEANNE ISSKO

XXN MR FAGIR

PN1035

And if you turn over the page you'll have, I hope, something headed Harmonised Expert Witness Code of Conduct?---Yes.

PN1036

Do you have a heading Content of Report?---Yes.

PN1037

Do you see the broad instruction? It said:

PN1038

Every report prepared by an expert witness for use in court shall clearly state the opinion or opinions of the expert and shall state, specify or provide –

PN1039

And do you see there are a list of matters which are required to be stated, specified or provided?---Yes.

PN1040

Do you see at (d), the requirement is:

PN1041

A statement of the assumptions and material facts on which each opinion expressed in the report is based.

PN1042

?---Mm-hm.

PN1043

Then at (e):

PN1044

The reasons for and any literature or other materials utilised in support of such opinion.

PN1045

?---Mm-hm.

PN1046

Then at (h):

PN1047

The extent to which any opinion which is expressed involves the acceptance of another person's opinion the requirement is to identify that person and the opinion expressed by them.

PN1048

Do you see all that?---Yes.

*** LEANNE ISSKO

XXN MR FAGIR

PN1049

No doubt you saw that before you prepared your report?---Yes.

PN1050

Do you say you complied with that instruction at paragraph 3?---I believe so.

PN1051

Can we take it then that the matters upon which you have relied are in fact identified in your report?---Yes.

PN1052

Yes. There's not some other extraneous source of information that you relied upon which is not mentioned in your report?---No.

PN1053

No doubt the organiser who was present during the interviews expressed opinions about various things during the course of those interviews?---At times, I believe, yes.

PN1054

Do we find in your report any record of those opinions?---No.

PN1055

No doubt the ECTs that you spoke to had a variety of opinions about relevant matters and expressed them during the interviews?---Yes.

PN1056

Do we find a record of those in your report?---No.

PN1057

Were you sent a letter of instruction by the IEU?---Yes.

PN1058

Where do we find that?---You'll have to talk to the – I don't have it with me, but there was a letter sent at the time.

PN1059

You don't know if it's attached to your report?---I don't think it is, from memory.

PN1060

If it assists your memory you've referred to a letter of instruction in the context of your reply?---Yes.

PN1061

And you've annexed that to your reply report, but I can't seem to find an equivalent reference in your primary report?---Yes.

PN1062

There was nonetheless a letter of instruction?---Yes.

*** LEANNE ISSKO

XXN MR FAGIR

PN1063

Is there any difficulty with producing that to the Commission at fairly short notice?---No. That's okay.

PN1064

You also explain in your report that you had a telephone conversation with the IEU after the interviews?---Mm-hm.

PN1065

I'm reading page 4 of the report. You held a phone discussion with IEUA to confirm appropriate level requirements for the roles under this engagement. This is in the - - -?---Yes.

PN1066

- - -top right-hand box on page 4?---Yes. Yes.

PN1067

What does it mean to say you held a phone discussion to confirm appropriate level requirements for the roles under this engagement?---Yes. So when we're looking at the roles, we were looking at two levels; one was the graduate or entry level, and the next level was the experienced level. So we did have a range of different inputs that were from the different – we gathered from the documentation as well as the discussions and so we wanted to confirm our understanding of the roles and agree where that experience level began.

PN1068

Agree with who?---With the IEU and confirming our feedback that we'd had from all the inputs.

PN1069

So, what, you had some information that you'd obtained from your interviews - - -?---Yes.

PN1070

- - -and you spoke to the IEU, what, to make sure that everyone was on the same page in terms of the appropriate level of requirements?---To make an understanding of where we talked about that experience level, being in the report, we state the five years, that there was a difference in the roles from a graduate and where was that, almost tipping point, of where it became an experienced person. So what was the – confirming what we understood to be the nature of the change in the role from graduate to experienced.

PN1071

That was a matter that you ultimately agreed upon with the union?---Yes.

*** LEANNE ISSKO

XXN MR FAGIR

PN1072

Is there anywhere in your report that we can learn what input the union had and what matters you took into account in coming to a view about the appropriate level requirements for the roles under this engagement?---Yes. So in the report where we describe the difference under the key points, on page 12, from the discussions that we held with the individuals, we understood those – that was the

key difference between a graduate and teacher that was experienced, and so it was determining that was a significant difference in that work for those - - -

PN1073

What was the IEU's role in this?---It was more as a bit of a sounding board and to confirm our understanding of the roles, that from all the discussions it was verified.

PN1074

I'm sorry if I'm repeating myself but is there anywhere in the report that I can learn what the IEU's views about this were as opposed to the opinions of the ECTs?---No. We didn't provide any individual feedback from any of our discussions.

PN1075

All right, now at page 14 you indicate - and I'm reading from the second dot point. In respect of the education roles, you were able to draw on additional documentation provided by the RUA plus the discussions with the incumbents. Do you see that?---Yes.

PN1076

Where do we find that documentation?---Well, we didn't provide any of the documentation that we used in our understanding, so we didn't provide the documentation from the interviews or from the IEU, it's not provided in this report to you. That's what our summary of the written report reflects.

PN1077

What was the additional documentation?---There was a number of documents provided to us. Off the top of my head I cannot remember all of them, but it included the award. It included documentation that they provided to us. I cannot remember all of it off the top of my head, or positions description - there was a range of different information provided to us.

PN1078

Is there any difficult in producing that information to the Commissioner at fairly short notice?---I don't think so.

PN1079

I went to the process of job evaluation. Am I right in thinking that ordinarily the task or the brief is to evaluate the job size of a particular position?---That's the more common brief.

PN1080

You ordinarily obtain a whole variety of information about a particular position and make a job size assessment on the basis of that information?---The variety? What do you mean by variety?

*** LEANNE ISSKO

XXN MR FAGIR

PN1081

That's a fair question. The notion of grading a whole industry worth of ECTs or professional engineers is unusual to say the least, isn't it?---It has been applied in enterprise agreements before it happens.

PN1082

Which enterprise agreements are they?---Well, they're listed in - if you look in Victoria Gray and Powell, we're listed in their agreement as having evaluated the roles in their agreement. We've done a number of enterprise agreements where we have evaluated the levels in their agreements.

PN1083

Now the list case you spoke to the five ECTs altogether, is that right?---Correct.

PN1084

Have any of them worked in community preschools?---Mm-hm.

PN1085

That's community as opposed to full profit preschools?---Mm-hm.

PN1086

Two of them worked in long day care centres, is that right?---Yes, we didn't select the people, they were selected by the IEU.

PN1087

You really think you could offer a meaningful job size assessment for the position of ECT grade and ECT experience on that basis?---Yes.

PN1088

A number of the ECTs that you spoke to were directors, is that right?---Yes.

PN1089

How did you disaggregate the director duties from the ECT duties?---They were talking not just about their own role, but also the roles in their centres and that's not an unusual practice that you would talk to the manager about the role they're representing.

PN1090

Were you comfortable that these ECTs were in fact able to readily distinguish the duties of an ECT from the duties of a director?---Yes.

PN1091

When it comes to engineers, you really had next to no information about these positions that you were asked to evaluate?---It was limited information, yes.

PN1092

You'd never ordinarily conduct a job size evaluation on the basis of the information that you were given here?---I wouldn't say never.

*** LEANNE ISSKO

XXN MR FAGIR

PN1093

Can you think of a case where you have?---I've done that for clients with very little information, yes.

PN1094

Do you seriously suggest that you can meaningfully conduct a job size evaluation on the basis of the information that appears at page 13 of your report?---Yes. I think with graduates across all disciplines, there is not a huge difference, when they come out from a degree, so the evaluation process can be applied quite comfortably. You wouldn't necessarily see a major difference across graduate salaries - a graduate evaluation salary. In terms of the experience engineer, we are looking at it from a work value perspective, so there are some quite clear boundaries that you would see in the work value process.

PN1095

What does that mean? There are quite clear boundaries you would see in the work value process?---If we are taking what's in here, there is guidance in the process from how we would see the jobs and how we would see the difference between someone new and the step-up to someone with five years' experience.

PN1096

You give some description of the evaluation process in your report and particularly, you identify the three primary factors and eight sub-factors on page 9 of your report?---Yes.

PN1097

Can I just see if I've understood this correctly. There are eight sub-factors which are listed there on that page?---Yes.

PN1098

When you evaluate a job, you compare the positions requirement with detailed standard definitions in respect of each sub-factor?---Mm-hm.

PN1099

On the basis of the comparison of the position requirements to the standard definitions, you get a number, a score?---Yes, so there's levels within each of the sub-factors.

PN1100

Right?---So you determine the appropriate level for the role and those sub-factors come together under each factor to give you a score for each factor. They're added together to give you the total point score.

PN1101

Where would we find in your report a description of the detailed standard definitions that operate in respect of each sub-factor?---So, you wouldn't normally provide that - it's a whole manual. So the detailed definitions are quite detailed.

PN1102

You're holding your hands up about two inches apart?---Yes.

*** LEANNE ISSKO

XXN MR FAGIR

PN1103

It's a manual that is that thick, is it?---Not that thick, but it's reasonably thick.

PN1104

Hundreds of pages?---Not hundreds of pages.

PN1105

What about the position requirements for the jobs that you're sizing here. Where do I find the requirements which were compared to the standard definition of each sub-factor?---There was information about our understanding of the role which was provided in that previous page we referred to. Page 12 and 13 is a summary of the outcomes. Our actual notes are not provided.

PN1106

If, for example, I wanted to know what position requirement was assumed to apply to a graduate engineer in respect of interpersonal skills, that's not something I can glean from this report?---No, and also you're not trained in the methodology, so we do expect people that apply the methodology to go through a two day training course.

PN1107

There's no way to glean from your report what score was allocated to the graduate engineer as against interpersonal skills, for example?---I can tell you where it is in the report. On page 14.

PN1108

Yes?---Those alpha-numeric characters is the actual outcome of the work value assessment and if you look under the expertise column, the small c. at the end of that reflects the interpersonal skills.

PN1109

What does the small c. mean?---There's five levels within interpersonal skills and so, it works on a bit of a continuum, so it starts off at level a. being receive instructions, very little interpersonal contact, b. is more about providing information which may be within or outside of the organisation, but it's really for factual. Once you're getting into c. it's about influencing and convincing. At d. you're talking about leading major negotiations in a highly volatile communication environment and at e. you would be leading on behalf of a major conglomerate, or dealing at high levels of government.

PN1110

That explanation you've just given, where does that come from?---That comes straight out of the manual.

PN1111

If one had the manual here no and sat here and compared it against these figures that appear on page 14, it would be possible to deduce what scores have been allocated?---You could read the definitions, but you may not be trained to understand the intent of the definitions.

*** LEANNE ISSKO

XXN MR FAGIR

PN1112

Needless to say, there's nowhere in this report that we can glean how you actually decided to place each position in terms of a score for each sub-factor?---No.

PN1113

It's just an exercise that you conducted and we have the result on page 14, but there's no way for us to know why you decided, for example, interpersonal skills to have a grade for experienced engineer roles, small (c)?---Correct.

PN1114

Ms Issko, on page 14, in the second dot point, you say, "We were able" – and in the third dot point, "Our understanding". Who are the "we" being referred to?---So whenever we undertake a review of any role, we always have a peer review process. So it would have been myself – and I had another person who accompanied me to the interviews, and also someone else, who peer-reviewed the outcomes. So it's a Mercer (indistinct).

PN1115

So there are two other people in Mercer who were involved in the judgments that appear in the results on page 14?---Correct.

PN1116

Thank you. A peer review conducted in writing, or was it a discussion?---It varies from project to project.

PN1117

What happens?---This one was a verbal discussion.

PN1118

Now, if you don't mind turning to page 9. Could you tell me which of these sub-factors deals with supervision, or lack thereof?---All right, so it's not picked up in just one sub-factor. So a judgment will talk more about the framework within which someone operates on. So if we're looking at the job environment, it depends how structured it is, how much it's framed, and how much they operate within an existing framework, and how much movement they have. The reasoning, under judgment, also refers to the thinking requirements of the role, so whether it's a very procedure-oriented role; "This is the task, these are my answers. I can't deviate from that", or whether you're allowed to actually apply some reasoning and problem-solving to the approach. And also, in accountability; so the actual impact of the role, how independent and influential the role is in that decision making, and also whether it's a shared accountability or they're held fully accountable for it.

PN1119

What about technical complexity, or technical skill that is required in the discharge of duties? What heading does that fall under?---So part of that would be under knowledge and experience, so that would be the technical requirements to do the role. And then that would again come into that judgment and accountability, for similar reasons, so, how complex is that environment.

*** LEANNE ISSKO

XXN MR FAGIR

PN1120

What about the variety of tasks and problems required to be solved?---Some of that could be picked up in the (indistinct), so the diversity of the role. Some of it will once again be picked up in that judgment as well.

PN1121

Now, adverse working conditions?---What do you mean by adverse working conditions?

PN1122

For example, the difference between a person working in an office and a person working on an offshore oil rig. How is that reflected in these sub-factors?---It depends what impact that has on the actual work they're doing. So if it's more about, "I work in an office, you work in a worse office", that's not picked up in here."

PN1123

What about the example I just gave you?---I'm not sure what that means, for the actual role itself.

PN1124

And what about a person who has to work in a hot, dusty environment, as opposed to an office environment? How would that differential be reflected in these sub-factors?---That wouldn't be reflected in a work value score.

PN1125

So adversity of working environment, physical working environment is not reflected in job size valuations?---No, we're looking at the role itself.

PN1126

I see. And would remoteness of work be treated in the same way, that is, whether a person works in Sydney CBD or in the Pilbara?---If the job is the same, same work value score. So it might be that other things would impact on that.

PN1127

When you say, "work value" - - - ?---Yes, that is the actual point size, so the actual points – total points we allocate to the role.

PN1128

Do you know that the concept of work value has a meaning in industrial law?---No, I don't.

PN1129

When you say, "work value", you're talking about your Mercer understanding?---The Mercer methodology and the point score, yes.

PN1130

All right, and that is simply the point score as generated by this exercise that we're discussing, is it?---By the methodology, yes.

*** LEANNE ISSKO

XXN MR FAGIR

PN1131

Which sub-factor would deal with budget?---So if we looked at a role – so in the Mercer methodology, you look at roles from an impact perspective, both qualitatively and quantitatively. So we first determine whether the role is qualitative or quantitative. If it's a quantitative role, that's determined in the impact, so it's an accountability. And then, you actually have different definitions in our narrative standards, whether it is looked at on budget or revenue, compared to if it's looked at as an advice or a service role.

PN1132

And those are matters that you would explore normally in the job analysis phase?---Yes, correct.

PN1133

So it's not simply, "What budget is this person responsible for?" You actually need to dig deeper to understand a bit more about what that means, in the context of the particular job?---Correct, and whether that is the primary impact of the role. So some roles might manage a budget, but we wouldn't actually assess them on their budget. We might actually say the main purpose of that role is actually the advice that they're there to provide.

PN1134

So if someone provided you information and asked you to assess a job size, and the information was something like, "This person has a budget of \$2m a year", you would need to go back to them and say, "Can you tell me a bit more about this, because if I'm going to do this properly, I need to understand more than simply, the budget is \$2m a year"?---Correct. It depends what their accountability is for, and why the role is there.

PN1135

It's the type of thing that explains why the questionnaire might be ten pages long, instead of one page long?---Yes.

PN1136

Now, staff management responsibilities?---So that would come in a number of areas as well. In knowledge and experience, we can look at roles, once we're getting into the more experienced roles, as whether the primary focus of their role is managerial, whether it's technical, or whether it's there for other reasons, so that could be picked up in there. Also, interpersonal skills will pick up management of staff, so it would need to be a considerable number of staff to have an impact on that. And then, in accountability as well.

PN1137

Which sub-factor of accountability?---Accountability is – you sort of look at it as a total factor. So once you've determined if it is on budget, then it changes the way you look at the role, compared to if you look at it as an advice or service role. So, qualitative versus quantitative as a difference in there.

*** LEANNE ISSKO

XXN MR FAGIR

PN1138

Now, dealing with the knowledge and experience factor?---Yes.

PN1139

For the purposes of allocating a score to this sub-factor, do you treat the engineering degree as being relevantly identical to the early childhood teaching degree?---Yes.

PN1140

And is that always the case, that a bachelor degree is a bachelor degree, and receives the same score?---It doesn't always receive exactly the same score, but it would receive a very similar score.

PN1141

On what basis might a distinction be drawn between two bachelor degrees?---Only if it's not necessary for the role. So if it was a bachelor degree, the starting point would be often similar, if they're applying the knowledge they've learnt through the degree. If they're not applying the knowledge they've learnt through the degree, we may not consider it to the same extent.

PN1142

You said, "often similar"?---Yes. Often, they're similar.

PN1143

Maybe I'm not expressing myself very clearly. If a job requires a bachelor's degree as a requirement - - - ?---And it's being applied in the role.

PN1144

How do you determine whether the education learnt in a bachelor's degree is being applied in the role?---So some roles, some organisations may have a prerequisite for a degree, but it may not be utilised in that specific role that we're looking at.

PN1145

And how do you find that out?---Via the job analysis process.

PN1146

If someone asks you to size a job and gives you a position description which has a prerequisite for an engineering degree, you need to go back and say, "I need to know more"; is this just to determine the type of person you get, or that they actually require the skills of an engineer in carrying out their job?---Correct.

PN1147

Again, that's another part of the explanation as to why the questionnaire might be ten pages, instead of one page?---Yes.

PN1148

Now, in terms of the sub-factor breadth, that's an aspect of expertise that measures the diversity of functions performed by a position (indistinct) on page 9. Is that a fair summary?---Yes, that's a definition.

*** LEANNE ISSKO

XXN MR FAGIR

PN1149

Now, of course, an engineer might do a variety of things. Let me give you some examples, and you can just tell me if this is consistent with your experience. An engineer might just carry out research in a lab; they might design, on a small scale or a large scale; they might carry out technical analysis of requirements for a project or an installation, or some sort of construction. They might supervise work being carried out, and they might and often do, project management. Are they all the types of functions that an engineer might carry out in your experience?---In the NESAs world, functions is one of the aspects that we look at in breadth, and function would be a total discipline. What you've described is a series of activities and tasks which would be under a discipline. For instance, if you look at finance as a discipline, that would be a function often for an organisation. In a large organisation you would expect the role to do all the aspects of finance. In a smaller organisation, they may not have everything. But under that you would have the different accounting aspects would be activities and then under that you would have a series of tasks.

PN1150

Let me see if I've understanding this properly. If a job simply requires a person to carry out the function of an engineer, that's one function?---No, that's what I'm saying. The word, the way you're using function is different to the way we use function from a methodology perspective. Function would not be an engineer who is part of a team or reports into a more senior role. That would not be a function, that would be considered potentially as a series of activities or tasks in the methodology.

PN1151

What heading would that fall under?---It's under breadth.

PN1152

Yes, I'm not expressing myself very well, but the proposition that I'm putting to you is that an engineer in the course of carrying out engineering work might perform any one of the various tasks that I've just listed to you, research, design, technical analysis, supervision and project management?---Yes.

PN1153

In any particular position, and particular job, an engineer might just do one of those things or might do a variety of those things?---Correct.

PN1154

Some jobs might be very specialised where you're carrying out very niche research on a particular component of an engine. In another job, construction or a project management type job, there'd be a much greater variety of tasks being carried out?---Yes.

*** LEANNE ISSKO

XXN MR FAGIR

PN1155

For the purposes of job sizing the job of professional engineer, what assumption did you make on that topic? Where on the spectrum, between niche topic and diverse tasks, did you place your hypothetical graduate engineer?---Graduate

engineer we saw as undertaking a series of tasks and there was some diversity within those tasks. We saw the experienced one as being much more focussed on an activity. So, it goes, task, activity, function in terms of hierarchy for breadth.

PN1156

I'm sorry, I'm still not understanding. What assumption you made about the breadth of tasks that the graduate engineer is carrying out?---Yes, so the actual sub-factor we've used being a two, is saying that they're undertaking a series of tasks and there can be some diversity within those tasks, so not just doing one task repeatedly. They're undertaking quite a spread of tasks that fall within, which is the next level under the experienced engineer, the activity of the role.

PN1157

On what basis did you make that assumption, or proceed on that premise?---It's based on our knowledge of engineering roles, what you would typically expect to achieve at five years and what was in that brief definition.

PN1158

You said 'our knowledge'?---Sorry, knowledge of working with a range of organisations that employ engineers.

PN1159

Whose knowledge?---The evaluator's knowledge, so I was the main evaluator and obviously it was peer reviewed as well.

PN1160

All right, just taking the same example for interpersonal skills, did you assume that this hypothetical engineer was sitting alone in a lab coat looking at a test tube or were they a project manager who might deal with internal stakeholders, external suppliers, tradespersons, customers, work health safety inspectors and 20 other participants?---Correct. They would have a reasonable level of interaction with a range of internal and external stakeholders with the aim to be influencing and convincing.

PN1161

Where on that spectrum that I've just proposed to you, did you place your hypothetical graduate engineer?---On that same place. They would be dealing with a range of people both internal and external.

PN1162

They got the maximum score for interpersonal skills, did they?---No, they didn't. Maximum skills for interpersonal is people who are buying and selling businesses, dealing at high levels within government, involved in major merger and acquisition type work; they're not on that spectrum.

*** LEANNE ISSKO

XXN MR FAGIR

PN1163

But what I'm trying to understand is where on the scale between minimum score and maximum score would you place a graduate engineer and why?---We place them under what we would call - see, so interpersonal skill only has five levels, so we saw it as more than just receiving instructions. We saw it as more than just

providing factual information. That there would be some level of discussion about the information they needed and they would have to work with others to influence and convince and be on the same page where we saw them, that they would be dealing with other parties who may be coming from a different perspective.

PN1164

In that respect, they got the same score as graduate ECT?---Correct.

PN1165

All right now, in terms of job environment, needless to say an engineer's processes and methods might vary a great deal. Sorry to keep repeating myself. An engineer might be in a lab refining a very small component of some engine or they might be out installing gas tanks in different locations from day to day?---Mm-hm.

PN1166

Would you accept that as being an accurate description of the possibilities of processes and methods that an engineer might be involved in?---There's a broad range of activities an engineer could be involved with.

PN1167

You have to make some assessment of where your hypothetical graduate and experienced engineer fell on that scale?---Yes.

PN1168

Is there any way from your report that I can understand the reasoning which led you from whatever facts you assumed to the result that appears on page 14?---I can explain it to you but there's nothing in the report which would give you that answer.

PN1169

Whatever factual assumptions and reasoning process applied that led you to a conclusion that the job environment of a graduate engineer and the job environment of a graduate teacher receive exactly the same score?---Yes.

PN1170

How on earth could that be right?---We're talking about a graduate new to the role. They're both working in a very pre-defined environment which is highly regulative in both cases.

PN1171

I'm sorry to interrupt you, Ms Issko, but on what basis did you assume that the graduate engineer is working in a highly regulated environment and so on and so forth?---Well, there's a lot of engineering standards out there and also most organisations, particular because of health and safety issues work in a very highly regulated environment.

*** LEANNE ISSKO

XXN MR FAGIR

PN1172

If we wanted to interrogate that assumption, how would we do that. Would we just take it on faith that's your view, or is there some way that this proposition can actually be tested?---I understand there's a number of witnesses who will be better suited and better experienced to talk that through when it's their turn.

PN1173

Better experienced than who?---Than me, because they're actual engineers.

PN1174

Ms Issko, you're the person making these judgment calls on engineers?---Correct, but from applying the methodology, very comfortable that the environments are both equally as structured as each other for a graduate.

PN1175

You've concluded that the graduate engineer and the graduate ECT have the same job size score in circumstances where your assumption is that the graduate ECT tends to follow the routine of the centre and the room they're working in?---Yes.

PN1176

Tell me if your understanding is different, but as I understand it, that means 8 o'clock meet the kids, 9 o'clock go to class, 11 o'clock you're in the yard, 12 o'clock you're having lunch, 1 o'clock is nap time, so on and so forth. That's routine of the centre and a room. Would you agree with that, or do you have a different understanding of that?---Well, that's what you're seeing between those hours, but there is preparation and there are a framework that you need to make sure that things are compliant as well.

PN1177

What do you mean framework? What are you talking about?---So, you need to ensure that the kids are safe. You need to ensure that you're following a lesson plan and a learning program and you need to be identifying any issues that might be causing you concerns within that environment as well. There's also interaction with the parents at various points in the day or outside of those hours and it's not just a babysitting service we're following this program. Programs need to be modified to suit that environment.

PN1178

They're the reasons why you think that the graduate ECT and the graduate engineer in terms of job environment are identical?---No, you asked me to focus on the graduate ELC at that point and you asked me a specific question is that the routine of the day.

PN1179

Yes?---And I said there's more to it than just turning up and looking after these hours.

*** LEANNE ISSKO

XXN MR FAGIR

PN1180

So graduate engineer and graduate ECT identical job size score and then teacher five years and experienced engineer are different insofar as the engineer's four points (indistinct). A five year engineer who's doing what?---Well, it depends

which area they're working in at the time but they could be - I would expect them to be, you know, leading projects on their own, we'd be expecting them to be writing reports, dealing with a range of complex issues and they would have started to specialise in whatever field they're going into.

PN1181

That's marginally four points ahead of a five year ECT in terms of job environment?---Correct. No, in terms of job size.

PN1182

In terms of - sorry, you're quite right?---Yes.

PN1183

In terms of job size. Job size score for job environment, they're four points different to a five year ECT?---Yes.

PN1184

Does that pass the common sense test to you, Ms Issko?---Yes.

PN1185

Now judgment sub-factor reasoning, now this focuses on the reasoning analysis and creativity and its emphasis is on the need for analysing and solving problems. Is that right?---Correct.

PN1186

This is what engineering's all about?---Yes. It's not looked at in isolation that sub-factor, so it is looked as - it's called a natural partner with the job environment, so you do look at the two of them together. So you wouldn't have someone working in a simple environment without complex reasoning and vice versa.

PN1187

Sorry, could you just - - -?---Yes, there is a relationship - - -

PN1188

- - - dumb that down a bit for me?---Yes, you're not going to have someone working in a very simple environment and then they're going to have very complex reasoning. So there is a natural relationship between the two. Complex environment, complex reasoning, simple environment, simpler reasoning.

PN1189

What's the significance of that for the discussion?---Well, you asked me about it in isolation and I said you don't look at it in isolation, you look at them together.

PN1190

What assumptions did you make about each of the graduate and the experienced engineer's need for reasoning analysis and creativity?---Yes, so at the five years with the teachers, they have got a lot more independence in their thinking and their - - -

*** LEANNE ISSKO

XXN MR FAGIR

PN1191

I'm sorry, can we just deal with engineers first and then we'll come to teachers?---Okay.

PN1192

What assumptions did you make about the engineers job demands in terms of reasoning analysis and creativity?---Yes, so within the five year period they'll be working in a constantly changing environment, so they'll be influenced by a range of factors that they need to think through their outcome. So it would include - could be legislative, it could be organisational, it could be people, it could be the work they're doing, so that's a constantly changing and fluid environment that they're working in. And so therefore they need to apply their expertise and they need to be making adaptation and changes to that environment. So what they did yesterday they have to go through that thought process to check that what they're doing for another project, they need to look at all the factors that can influence that to make their decisions.

PN1193

VICE PRESIDENT HATCHER: So Ms Issko, one thing I'm unclear about is what's the information about engineers that this report is based on?---So it's based on both what was in the award and our knowledge of engineers from the work we do across the sector.

PN1194

So is this something that, without being disrespectful, that knowledge is something that's in your head, it's not referable to some document or something?---No.

PN1195

MR FAGIR: On that topic, Ms Issko, the award information that you've just mentioned is what appears on page 13 is it?---Yes, our page 13. Yes.

PN1196

In terms of graduate engineer, graduate engineer means a person who's the holder of a university degree recognised by Engineers Australia or effectively a different qualification to a similar standard. That's the award information about a graduate engineer?---Yes.

PN1197

The experienced engineer is what's in the right-hand column which is a professional engineer with the mentioned qualifications, employment with the adequate discharge of any portion of the duties requires the qualifications for the member of Engineers Australia?---Yes.

PN1198

The information that provided the basis for the scores on page 14 is a combination of that information and the information that is in your head as the Vice President put it?---Yes, based on the experienced working with a range of organisations.

*** LEANNE ISSKO

XXN MR FAGIR

PN1199

Experience working with a range of organisations. You haven't identified in your report but you said something about it this morning in answer to a fairly blatantly leading question from Mr Taylor?---Yes.

PN1200

I see. Now the upshot of all of this in terms of your analysis under the reasoning heading was that the graduate engineering or graduate ECT had the same score. Same job size score?---Yes, but as I said we look at it as the overall judgment score in this case.

PN1201

In terms of the experienced ECT versus experienced engineer, are they the same or was some part of that four point difference referable to this reasoning analysis and creativity criteria?---It's predominantly based on the complexity of the work environment that they work in. So it's a linkage between the two.

PN1202

In your view, how much of a gap was there between the complexity of the work environment of an experienced engineer compared to an experienced ECT, if any?---Well, we saw - with the ECT we saw more that their thinking has increased over that time, their environment hasn't changed. They might be more - they might understand the environment better but it doesn't change as much as it does for the engineering roles.

PN1203

I thought you said a few moment ago that the assumption about the engineering environment was that it was constantly changing and fluid?---Correct, that's why it's got a C plus on judgment. That's why - that's what's reflected in there.

PN1204

What I'm trying to understand is what contributed to the four point difference between the 72 for five year ECT and the 76 for experienced engineer. You've spoken about reasoning and job environment?---Yes.

PN1205

Which factor led to the difference or was it both?---Job environment has gone from a C to a C plus, that's called a fine tuning difference, and the judgment - sorry, the reasoning has gone from a 3 to a 3 plus.

PN1206

Is that right? 3 plus - - -?---So it's gone from - - -

PN1207

A teacher five plus years and a three plus - - -?---No, I'm comparing the engineering as a graduate to the experienced engineer. So we've seen an increase in both the job environment and the reasoning for that role.

*** LEANNE ISSKO

XXN MR FAGIR

PN1208

I'm asking you to think about the difference between the experienced teacher and the experienced engineer?---Mm-hm.

PN1209

What sub-factor produced the four point difference between the two?---The job environment.

PN1210

So on your analysis there was no difference in terms of the need for reasoning analysis and creativity in job size terms between the five year ECT and the five year engineer?---Okay, so with that we don't look at it in isolation, we look at the two together. So you don't look at one without the other.

PN1211

Ms Issko, if I understand - - -

PN1212

MR TAYLOR: I think the witness hadn't finished that answer if it please.

PN1213

MR FAGIR: I'm sorry, continue Ms Issko?---So the overall score is a four point difference. When you look at the individual sub-factors it appears that the three plus is the same but you don't look at it in isolation, you do look at them together. So we're saying that - so the interpretation of that is, is that the judgment for the teacher with five years is smaller than the engineer.

PN1214

VICE PRESIDENT HATCHER: Ms Issko, with the teacher for five years plus, are there ECT positions where that level of experience is required, that is an ECT position where you can't put in a graduate, you need someone with five plus years experience?---In the ideal world yes, but a number of them said to us sometimes the centre will require them to put in what they have available as well.

PN1215

When you say an ideal world, I'm not interested in the ideal world?---Yes.

PN1216

In the real world are there positions which require a teacher with five years plus experience?---As in it's written on their job description, is that your question?

PN1217

Well, in any sense, that is there exists a position where you could not put in a graduate, you need a teacher with five plus years experience?---I couldn't talk about every single role but the cumulative experience to be operating at that experienced level was felt that you needed and that we had from all our discussions was that it would take about five years of experience to get to that point.

*** LEANNE ISSKO

XXN MR FAGIR

PN1218

Get to what point?---To get to that point of being an experienced teacher where you could achieve independent discussions with parents, where you could independently develop the lesson plans, where you could be mentoring and leading other teachers in that environment as well.

PN1219

Those criteria just mentioned, where do they come from?---So that came from our discussions and they were – are described on page – I'll find that page again – page 12. So we talk about the key points and the difference between a graduate teacher and a teacher with five years' experience.

PN1220

Sorry, just – you're on the right-hand side?---I'm on both sides. So on page 12
- - -

PN1221

Yes?--- - - -under the key points – so the award description was straight out of the award.

PN1222

Yes?---And then the key points were based on our analysis for all the information we had, and so that was what – that was seen as the key difference between a graduate and an experienced teacher, and it would take around – that's five years to get to that point.

PN1223

But, I mean, it's one thing to say that an individual will acquire qualities after a number of years of experience - - -?---Yes.

PN1224

- - -but we're not measuring individuals, we're measuring roles, aren't we?---Correct. So the role would require that.

PN1225

But what role are we talking about that requires that, that a graduate couldn't do that a five year person could do? What's the difference in the role?---So the role as in how they operate and the level of supervision and expectation of the role. So that you might have two people teaching the same classroom, one could be the graduate, one could be the experienced person, but what you're expecting from them in terms of preparation, intervention, a whole range of other factors, is quite different in terms of the outcomes.

PN1226

Again, going back to where we started, I understand that conceptually - - -?---Yes.

PN1227

- - -but are there real differences, that is, people say, "I've got this role for graduate" and "this role for a five year teacher"?---I can't answer that question.

PN1228

Thank you.

PN1229

MR FAGIR: Yes. This concept of the five year ETC - - -?---Yes.

*** LEANNE ISSKO

XXN MR FAGIR

PN1230

--the construct that was suggested to you by the IEU, if you just assume
---?---No.

PN1231

--this is such a job what size would it be?---Hang on, let's go – if we go backwards, it wasn't suggested by the IEU. When we did our job analysis we discussed with them where is there a significant change in the way the role is operated, or the expectation of the role and that came out of our discussions and then we fed back and said, "This is the feedback we're hearing, is that consistent with your understanding of the role?"

PN1232

Have you ever, for example, seen a job advertisement that said, "experienced ECT required five years' experience mandatory"?---I'm not sure I've ever seen any job advertisement for any ECT teacher.

PN1233

If we can just come back to this judgment criterion?---Yes.

PN1234

Comparing our notional experienced teacher and the notional experienced engineer?---Mm-hm.

PN1235

The result for job environment is C for the teacher and C plus for the engineer; is that right? Or am I misunderstanding?---The experienced one – no, that's correct.

PN1236

Then the score for reasoning is 3 plus in both cases?---Correct.

PN1237

I must be missing something but I thought, Ms Issko, that you'd explained that the job environment for an engineer is changing and fluid as opposed to the job environment for an experienced ECT, which is static?---Correct. That's the C. This is the C plus.

PN1238

So I thought we'd spoken about reasoning?---Correct. But you just said their job environment.

PN1239

I think I really am missing something, but I will try again. I'm certain that it's me. Can we think about the reasoning criteria?---Sure.

PN1240

This is the need for reasoning, analysis and creativity in the discharge of the job's duties; is that right?---Yes.

*** LEANNE ISSKO

XXN MR FAGIR

PN1241

In respect of this criterion the experienced ECT got the same job size score as the experienced engineer, 3 plus?---Correct.

PN1242

Does that seem right to you?---If you look at the nature of the reasoning required they're both working in constantly changing environments, but their job environment is where the difference is. So they have to keep – you can't apply the – you're not doing the same thing day in/day out in either job. They're both applying what's happening in their environment to it, but the environment for the teaching role we didn't see as complex as the environment for the engineer.

PN1243

How did they both come to score 3 plus then?---Because the actual reasoning required for both of them is they're both working in a constant and changing environment. For the children – how they apply their thinking to the role.

PN1244

An engineer from day to day could be working in different physical environments, working under different regulatory requirements, could be working in remote locations, near locations. The - - -?---Not – a person - - -

PN1245

- - -variety of problems an engineer could confront are almost unlimited, aren't they?---And dealing with people is also complex and unlimited, if you want to take it in that context. But an engineer would not be shifting that much day to day from one environment to another.

PN1246

Can I ask you about accountability sub-factor impact?---Yes.

PN1247

It says:

PN1248

The resources for which the position is primarily held accountable or the impact made by the advice.

PN1249

?---Yes.

PN1250

This might include budget, although significance of that factor might vary depending on the real - - -?---So for these roles they've all been done as qualitative, so they've all been done on the professional advice they provide. The budget hasn't influenced the scores in this. We've taken them all as qualitative roles.

*** LEANNE ISSKO

XXN MR FAGIR

PN1251

What does that mean?---When you look at the impact of the role you first determined is it qualitative or quantitative. So when you're looking at a

quantitative role you would look at a role and say the primary purpose of that role is the budget it's managing or the sales revenue target it's got. For a qualitative role you'd look at it and say it's either a professional advisory role or it's a service or providing a service to an end user.

PN1252

So the fact that an engineer might spend two-and-a-half million dollars a year and an ECT might spend two-and-a-half thousand dollars a year - - -?---Yes.

PN1253

- - -has no bearing on the job size on this approach?---On this approach, although it has been proven over time that whether you do it qualitatively or quantitatively you still come up with the same score. It's just the configuration of the sub-factors will be different.

PN1254

Is there some other sub-factor that would reflect a difference of the kind that I've just suggested to you?---Yes. So if you had done it on quantitative then you would have a different combination of sub-factors in the accountability.

PN1255

I'm asking you about this particular exercise?---This particular one, no, the budgets were not taken into account.

PN1256

What about staff management responsibility?---It wasn't seen as the primary focus for either of these two roles, and it's also rarely used. So we wouldn't actually look at the staff budget. We would tend to look at operating budgets, so their total budget, which staff would be a component of it.

PN1257

So if an engineer had responsibility for hundred workers, and an ECT had none, in terms of this particular job evaluation exercise there would be no impact?---It wasn't a factor taken into account in this one, no. It was really about the professional advice they're providing.

PN1258

I'm sorry, are you agreeing with what I've put to you, or is there a complication?---No, I'm saying that we saw the primary impact of this role, the one we've assessed, as being not on a budget but as the – they're there to utilise that professional knowledge they've got and provide opinion or provide policy advice and direction, so it's the application of that.

PN1259

I'm just - - -?---If we had chosen to do it on dollars, the actual configuration would've been different, but I don't know what dollars we would've done because it can vary significantly across roles.

*** LEANNE ISSKO

XXN MR FAGIR

PN1260

So do I understand from that, this particular configuration of sub-factors
- - -?---Yes.

PN1261

- - -was a choice or an election you made among a variety of other possibilities?---When we looked at the role and typically what we would see for five years and also what was in the acknowledged brief statement in there, it was about the professional expertise of the role which was then considered that advice was the most appropriate sub-factor.

PN1262

Was there some exercise of your judgment as a job evaluator that led to this configuration of sub-factors that we've just been discussing, that is, they could have been configured differently, could they? Do you mind turning to page 9?---Yes.

PN1263

I'm, probably, again expressing myself poorly. There are eight job factors set out at page 9?---Correct.

PN1264

Was there another set of sub-factors that could have been used?---No. There wasn't another set of sub-factors that was developed for these roles, no.

PN1265

Could you have used or developed a different set of sub-factors for evaluating these roles?---Not based on the information that was used for these, no.

PN1266

Are these sub-factors used for every job evaluation task?---These – as in, knowledge and experience, impact, independence and influence; is that what you mean?

PN1267

The eight sub-factors?---Yes.

PN1268

They are?---Used in this methodology, yes.

PN1269

Do you mean Mercer CED?---Yes.

PN1270

Again, I must be misunderstanding something, but I thought you said, "On the approach we took here, budgets were not taken into account, and the sub-factors would have been organised differently if we had"?---If we had said the primary purpose of the five-year engineering role or the five-year teacher was to deliver their role through the budgets they manage, then we would have said it was a quantitative role. But we didn't see that as a role.

*** LEANNE ISSKO

XXN MR FAGIR

PN1271

What would be the significance of that, in terms of the actual exercise?---There would have been no difference in terms of the total points. It may have meant a different combination in sub-factors, but we wouldn't have evaluated them on that.

PN1272

What do you mean, "different combination in sub-factors"?---So for accountability, because with the CED methodology, you actually have to decide the impact of the role, whether it's qualitative or quantitative, we've determined, for these roles, they're there for applying their professional advice and expertise. That is the primary purpose of those roles, into the task they're designated to do. So that's why we have used advice in this case.

PN1273

What did that actually mean, in terms of the process?---It doesn't mean anything. It's just the way we've evaluated and seen the roles. So, from applying our professional expertise to these roles, we've seen these roles as advisory roles.

PN1274

Well, it must mean something, because, on one approach, budget is irrelevant, and on a different approach, budget is relevant?---No, it is about understanding the primary purpose of the role, and why the role exists. So all methodologies start at that point.

PN1275

So you made a particular decision on that point?---As I would for every other role I do.

PN1276

Based on what?---Based on the information we had, to evaluate the roles.

PN1277

Is there anywhere in this report that will help explain how you chose to go down that path, as opposed to a different path?---Same as every other sub-factor. We haven't given you detailed descriptions of the sub-factors in the report.

PN1278

"Accountability, sub-factor independence and influence, focusses on the position's level of accountability and independence in the commitment of resources, provision of advice, or delivery of services"?---Yes.

PN1279

What information did you draw on in assessing that sub-factor in the case of engineers?---When we read the definitions of them, it talks about the different levels of advice and the expert nature of that advice. So we understood them to be operating where they're providing sound advice and recommendation.

*** LEANNE ISSKO

XXN MR FAGIR

PN1280

Does supervision play some part in the assessment of this sub-factor?---Not in this one. It's more in the involvement one that has come out.

PN1281

More in the - - - ?---Involvement, which is the last one.

PN1282

I see, accountability, sub-factor, "Involvement"?---Yes.

PN1283

It's concerned with the nature of the position's accountability for management of, or influence over, organisation resources?---Yes.

PN1284

So the question of whether a person is supervised or unsupervised?---Or the advice is considered to be – the advice, on the way it's interpreted, is more about whether it's collaborative, or whether the person is held fully accountable for the advice they're providing.

PN1285

What assumptions were made about the – I'm sorry, the scores, in this respect, were identical for both sets of positions, is that right?---No, not quite. So the bit to understand in this is that they're not in the same order as they're written under the three sub-factors. So the D refers to independence and influence. The 1 refers to impact, and the small letter at the end refers to involvement. So the impact is measured by that one in the middle. That's not measuring independence and influence.

PN1286

All right, so the experienced engineer and experienced teacher had an identical score in respect of impact, independence and influence, and involvement?---Sorry, which one?

PN1287

Well, in respect of each of the three sub-factors, they scored identically, the experienced engineer and experienced teacher?---Correct.

PN1288

Then, the graduate engineer scored significantly lower; 13 points lower than the graduate ECT?---We wouldn't call that significantly lower. It's one level lower, in the way the scoring works.

PN1289

And that was on what basis?---That was on the involvement, and it was reflecting that graduate engineers would work in a highly supervised environment, where their work would be checked before it is submitted or sent out.

PN1290

On what basis did you make that assumption?---Based on the knowledge of graduate engineer roles.

*** LEANNE ISSKO

XXN MR FAGIR

PN1291

I think the terminology you've used is, "Operate under close supervision, with all outputs subject to review"?---Yes.

PN1292

And that was 13 points smaller than the graduate ECT?---Correct.

PN1293

Even though, on your assumption, the graduate ECT role is supervised and mentored, and lesson plans are reviewed?---Correct, but when they're in the actual classroom, delivering the lesson plans, they're not directly supervised.

PN1294

Now, of course, the level of supervision that applies to a position will typically reflect the complexity of the task, won't it? The more complex the task, the larger the need for supervision?---I think that would depend on the environment you work in as well.

PN1295

Let me give you a very obvious example. An entry-level shop assistant might operate without any supervision at all, on the one hand. On the other hand, a medical registrar ten years into his or her training might operate under supervision of a consultant or specialist. Would that mean that this job size factor for the shop assistant would be higher than this job size factor for the medical registrar?---No, it doesn't mean that, because it's not just about physical supervision. It's also about the whole framework you operate in as well.

PN1296

Where do we find the assumptions or the facts that were taken into account in assessing that whole framework that you operate in?---As I've said earlier, we haven't given you a detailed description of each of the sub-factors. We provided you with a summary of our understanding of the roles, which is on page 12.

PN1297

Now, the upshot of all of this analysis is that, in terms of comparing the two five-year positions, you concluded that they were identical, save that the engineer's job size was four points higher, in terms of job environment?---They were close, in terms of job score.

PN1298

Every other score was identical, wasn't it? That's the only difference between the two?---No, the interpersonal skills were slightly different, and the job environment was slightly different – sorry, the reasoning and job environment. It didn't necessarily reflect a change in the score.

PN1299

The experienced ECT actually got a higher score on interpersonal skills?---Yes.

PN1300

C+, as opposed to C?---Yes.

*** LEANNE ISSKO

XXN MR FAGIR

PN1301

Based on what?---A C+ reflects a high level of diplomacy required for the role. So the difficult nature of some of the conversations they would be having, the fact that they are dealing with people all day in their role.

PN1302

Sorry, why did you let it affect the score for expertise?---It's just the way the weightings of the sub-factors work. Out of those three, the knowledge and experience has the highest weighting. Then, the middle one has the next weighting; then the last one. So it does come into a combination of those minuses and pluses, plus the actual different level. So sometimes, it doesn't actually change the score, even though there's a difference in what we call the fine-tuning.

PN1303

So the scores are the same for the other two sub-factors?---Yes, correct. So if one of the others had a slightly different fine-tuning, it might have affected it, but it has the least weighting of the three.

PN1304

Well, unless it has a zero weighting, it must make a difference, mustn't it?---No. It depends on the three – it's the combination, together, of them. So it's what we call that for the teacher of five years, is an equals minus plus, because it has no fine-tuning on it, and that would give you a mid-point which would be the same as the experienced engineer which has an equals minus equals. They're both mid-points, but if it was equals minus minus that would've had a different outcome. I didn't design the methodology, that's the way the fine tuning works.

PN1305

The upshot of it all is that the experienced engineer and experienced teacher got the same score, 134 for expertise?---Yes.

PN1306

And the same score for accountability, 116?---Yes.

PN1307

Then there was a four point difference in terms of judgment?---Mm-hm.

PN1308

Which reflected a difference in job environment?---Correct.

PN1309

Does that seem right to you?---Yes. I'm okay with that.

PN1310

It's not just that the overall score was very similar - - -?---Yes.

PN1311

- - -virtually each sub-factor was either identical or very close?---Correct.

*** LEANNE ISSKO

XXN MR FAGIR

PN1312

Does that seem right to you, just thinking about it on a common sense level applying your extensive experience and job sizing?---Yes.

PN1313

Didn't give you cause for thought that maybe we need to have another look at this?---Based on the information we had, and that's what you use, I was comfortable with those outcomes.

PN1314

On your assumptions did the ECTs do the same thing every day, or did they do different things each day?---They – I would hope it's different, not doing the same lesson plan every day. These working plans are changing every day, and children change and develop.

PN1315

The hypothetical engineer could literally be designing a space craft or working on an offshore oil rig or designing a driveway in a suburban house?---Yes, but the hypothetical engineer wouldn't be doing all of those things at one time.

PN1316

Yes, that's my point?---Mm.

PN1317

They could be doing anything within a whole spectrum of possibilities. A universe of possibilities?---Unlikely that they would be having such a breadth of variety at one time in their role.

PN1318

The comparison between the graduate ECT and the graduate engineer concluded that their scores in each respect were identical save that the graduate ECT was 13 points higher in terms of accountability?---Yes.

PN1319

Did that seem right to you?---It did actually because on day one they're put straight into the classroom whereas a graduate engineer is not given a lot of scope on day one in their job, and they're really in a learning - - -

PN1320

VICE PRESIDENT HATCHER: Can we just go back a step. I think the point that was being made to you is that, leaving aside ECTs - - -?---Yes.

*** LEANNE ISSKO

XXN MR FAGIR

PN1321

- - -even for engineers, given the variety of career paths they can follow, it would be unrealistic to think that at five years they would have a common score? The assumption to be that all engineers have a common score at five years, but I think it was being put to you that, given the diversity of career paths in engineering that that's unrealistic. What's your response to that?---So my response is that we're not talking about individuals and how they progress in their careers. If we look at what the role would typically be after five years, the 326 points reflects a highly experienced professional operating in a specialist environment.

PN1322

So, again, a five year engineer is the same, even if they're overseeing a construction project in the Pilbara - - -?---There'll be variation if you look at - - -

PN1323

- - - or working in production planning at a manufacturing plant or something else?---Yes. If you looked at a specific role there would be variation. This is a representative score of what we would expect to see from five years, and this reflects what we would call a highly experienced professional that specialised – specialist in that discipline.

PN1324

Sorry, what do you mean a representative score?---So this is – I'm mean, we're not looking at a specific role in the Pilbara. We're not looking at a specific role. It's representative of what we would expect to see after five years working as an engineer. So there will be nuances and there will be some people that will get there in two years. Some people will get there in 10 years. But this is the overall consistent profile that we would expect to see from a professional with five years' experience. You know, who has got specialist experience in working in a complex environment.

PN1325

Thank you.

PN1326

MR FAGIR: Ms Issko, just to be clear about this, you were asked to identify two professions that had similar job sizes?---Mm.

PN1327

You were asked to job size ECT and engineer?---Correct.

PN1328

Even down to the level of the various sub-factors?---Correct.

PN1329

In terms of the conclusions about the two teaching roles it turned out that there was a substantial job size difference between the experienced ECT and graduate; is that right?---Mm-hm.

PN1330

268 versus 322?---I mean, you're only looking at a very small points range so it might appear to be substantial, but that would be one career path step apart.

PN1331

If an ECT were to give evidence this afternoon to the effect that there's not a great deal of difference in terms of responsibilities between a graduate teacher and a teacher with five years' experience, how would that gel with the assumptions that underpin this analysis?---That's a matter of personal and their professional opinion compared to how we had understood the roles based on all the inputs we've had.

*** LEANNE ISSKO

XXN MR FAGIR

PN1332

Of course, if that were true, you would expect the job sizes to be very close together, if not, identical?---I mean, from a perspective of job size these are not miles apart. They're fine-tuning differences from one to another. We're not saying one is at a C and one is at an F. They're not miles apart in terms of the scoring.

PN1333

You spoke to Ms Gabrielle Connell by the way. She was one of the five ECTs that you interviewed?---Mm-hm.

PN1334

Did she tell you there's not a great deal difference in terms of responsibilities, or did she tell you something different?---I actually don't remember each of the individual conversations. They that took place well over a year ago.

PN1335

I see. You must have been surprised by this 268 versus 322 difference, were you?---When I look at the differences across the sub-factors they're not huge from a work value perspective.

PN1336

Again, just to confirm, one of the assumptions that underpin this analysis was that a graduate ECT will lead a class independently, just like an experienced ECT?---When they're in the classroom, correct. But their plans are reviewed before they would go into the classroom.

PN1337

The difference is that their lessons plans are reviewed and they operate under some degree of supervision albeit not within the classroom?---Correct. They wouldn't, for instance, go and have a conversation with a parent about a child independently as a graduate, whereas you would expect them to do that after five years.

PN1338

The biggest difference between the graduate and the experienced ECT seems to be in terms of expertise. There's a 30 point difference there?---Mm-hm.

PN1339

Does that reflect a difference in the training and experience requirement?---So it's the knowledge that's required. So the knowledge and experience has gone up by a sub-factor, which is talking about the requirement that you need to be experienced to operate at that experienced level, and also the breadth of the role has increased, so they're undertaking more activities, so they would be leading lesson planning. They would be undertaking a range of broader tasks, and also the interpersonal skills reflecting the fact they would have independent discussions with the parents and be able to operate at a higher level of intervention.

*** LEANNE ISSKO

XXN MR FAGIR

PN1340

All of this proceeds on an assumption that there is such a thing as a five year ECT job that might be advertised or recruited for?---It's not about a job that might be advertised. It's saying where is the point where a teacher changes from being a graduate to being experienced? And the basis of our discussions was it takes about five years' of experience before you would be classified at that next level.

PN1341

See, I thought this was a job size evaluation, that is, you take a job that exists - - -?---Correct.

PN1342

- - -and you work out its job size?---Yes.

PN1343

Is that not what's happened in the case of the experienced ECT?---We've differentiated there are two different levels that operate in that environment. So one is the graduate, and then one when they've got a level of experience.

PN1344

You haven't looked at some position description that says, "You need to have a more advanced understanding of legislation and your interpersonal skills need to be at such and such level". There is no requirement that exists, is there? There's no such position description - - -?---Not that I'm aware.

PN1345

- - -or job advertisement or anything else?---I didn't look at any job advertisements, so I can't answer that part of it.

PN1346

Ms Issko, the bottom line is that the information that you had was quite inadequate to job size the ECT roles?---That's not true.

PN1347

And it was just utterly inadequate to job size the engineer roles, wasn't it?---No, that's not true.

PN1348

I have one other topic that will take perhaps 15 minutes, and this might be a suitable time, if it's convenient to the Commission.

PN1349

VICE PRESIDENT HATCHER: I assume you're going to cross-examine this witness, Mr Warren?

PN1350

MR WARREN: Shortly.

PN1351

VICE PRESIDENT HATCHER: We'll take a short morning tea adjournment. Can I just indicate that we'll need to adjourn for lunch at 12.45.

*** LEANNE ISSKO

XXN MR FAGIR

PN1352

MR FAGIR: If the Commission pleases.

<THE WITNESS WITHDREW [11.27 PM]

SHORT ADJOURNMENT [11.27 AM]

RESUMED [11.46 AM]

<LEANNE ISSKO, RECALLED [11.46 AM]

CROSS-EXAMINATION BY MR FAGIR, CONTINUING [11.46 AM]

PN1353

MR FAGIR: Ms Issko, just perhaps lastly on this, on the job sizing topic, you tell us at page 8 that:

PN1354

Mercer points indicate the intrinsic work value of the job.

PN1355

?---Yes.

PN1356

If we were to go to the Mercer job evaluation manual, would we find that phrase that "intrinsic work value" somewhere in it?---Potentially, yes, I haven't read the manual from cover to cover recently. We'd certainly find most of these words have come from the manual.

PN1357

Can I ask you some questions about the position match exercise. Again, I might be missing something but having gone to the trouble of job sizing these various positions, you then could have benchmarked salaries against those job sizing?---Correct.

PN1358

But instead you went down a different path, took a different option which was this position matching exercise that's actually been conducted in your report?---Correct.

PN1359

Why is that?---So we were responding to a brief in a task and so we also present the options to the client and it was felt to demonstrate the differences that position matches were more identifiable. We could actually pick specific engineering positions.

PN1360

In fact this position matching approach - - -?---Yes.

*** LEANNE ISSKO

XXN MR FAGIR

PN1361

- - - suffers from the very problem that's sought to be avoided by job sizing, which is you have trouble understanding whether you're really comparing apples with apples?---I don't agree with that.

PN1362

Now was this the exercise? Find all the engineers who have no work experience and do not have staff management responsibilities and work out what their average pay or the various percentiles of their pay are?---So it was using the roles from our survey database that were engineering - in the engineering job family that met the pre-determined criteria set by the IEU. In this case it was for the graduates, no work experience, so the entry level type roles, no staff management responsibility and also in our database were represented by predominantly males as well.

PN1363

Right, so then you did a similar exercise but dealing with engineers with four to seven years working experience?---Which is how in our survey database we define the levels in terms of the entry level versus the next level.

PN1364

That's where the four to seven year bracket comes from?---Correct, yes.

PN1365

VICE PRESIDENT HATCHER: Where do you get the salary data from?---It's the Mercer survey database, so clients submit data into that database, based on matching their roles with the job descriptions in there and there's a checking process that we go through.

PN1366

Thank you.

PN1367

MR FAGIR: What's the rationale for excluding engineers with staff management responsibilities from this exercise?---So we were - so, as I said the criteria was identified by IEU and because the teachers that we were looking at for the comparisons didn't have staff management responsibility, therefore they were led to try and align the characteristics as much as possible.

PN1368

Of course the problem with that is you end up with a weird little niche of engineers who have been around for four to seven years but don't have any staff management responsibilities?---You end up with a - you could end up with every single role in our database, there are some limitations on that.

PN1369

That includes roles that work across different industries and different locations?---Correct. So the database is a national database and it reflects all industries and all sectors.

*** LEANNE ISSKO

XXN MR FAGIR

PN1370

Of course, you know from your experience in the sector that things like the industry within which the engineer operates can have a significant bearing on the engineer's pay?---There's a range of factors that influence pay, correct.

PN1371

Another factor is location, so if you're working in the Pilbara that attracts a premium that might not apply if you were working in Wollongong?---Correct.

PN1372

This exercise draws all of those people potentially in all of those categories into the net?---Correct. If they're represented in the database.

PN1373

Now position matching ordinarily is done on the basis of comparison of the main responsibilities and key attributes of a role?---Yes.

PN1374

That's not what's happened here is it?---No, we've looked at identifying criteria.

PN1375

Now having taken the approach that you did, you ended up with was it three roles that matched the entry level criteria and - - -?---No, four for the entry level and three for the - - -

PN1376

Four for the entry and three for the experience?---Yes.

PN1377

There were something like 500 in the first category and maybe a few less in the second category. Is that right?---I think so.

PN1378

Actual database entries?---That's right, that reflects actual people in the database.

PN1379

Did you conduct any sort of analysis to determine whether that was a statistically robust sample size?---So we - and I think there was one or two that were very small samples and so they were deleted from the sample. If they had less than 10 records we would normally say that's not sufficient enough.

PN1380

I see, so the entries that appear on page 41, they're not all the positions that were captured based on the criteria, you'd excluded some?---I think it was one or two only.

PN1381

Were there any other positions excluded?---Anywhere the underpinning - so all roles in the survey have a job evaluation sitting behind them, so any that were considered too far apart from a reasonableness as well.

*** LEANNE ISSKO

XXN MR FAGIR

PN1382

Considered too far apart on - - -?---In terms of the underpinning work value.

PN1383

Is there any way of knowing what was excluded and what made it through this process from your report?---There's obviously been earlier drafts of this report. I'm not sure it's relevant to provide those.

PN1384

Just dealing with the cohort that made it into the report, did you ask yourself whether 500 or 550 or whatever it was entries was statistically robust?---I think the representative is - it's a good number. The data obviously is contingent on clients in the survey and that can change from survey output to survey output, how many examples there are for each role.

PN1385

When you say a good number, you know their actual scientific - - -?---Yes.

PN1386

- - - formula, you've probably confronted a few of them in your psychology training?---Yes.

PN1387

That actually allow you to determine whether a particular sample size in fact is statistically robust. That is it's large enough to exclude the possibility that the results are random?---Yes, and so in Mercer we talk about having at least 10 records for it to be reasonable.

PN1388

That's just the company policy is it?---Company practice - our practice not policy.

PN1389

When you looked at your results, for example, for the entry level tranche, and you saw that the 25th percentile for the graduate trainee was 65,000. The 75th percentile for the entry level electrical engineer was almost double, 180 per cent (indistinct), did that cause you any concerns that your group wasn't really homogenous?---So we provided information on entry level roles which are graduate entry level roles with limited experience, and that's what the data tells us. We didn't want to tailor it to make sure it met any pre-determined data fields.

PN1390

But it certainly suggest that your sample includes a very broad range of graduate level engineers?---Yes.

PN1391

VICE PRESIDENT HATCHER: Now just so that I understand this, if you look at electrical engineer entry?---Yes.

*** LEANNE ISSKO

XXN MR FAGIR

PN1392

So 25 per cent of those who have just graduated can get a salary of above 110,000?---It's saying that of the group when you look at the 75th percentile, 75 per cent of people are paid less and 25 per cent are paid more. So that's at the top end, so the top ends tend to be a bit more volatile as well.

PN1393

Those are entry level people?---Yes. So that could reflect a range of factors.

PN1394

Is one possible factor that there's simply work value differences between the different streams of engineer?---Could be.

PN1395

MR FAGIR: Ms Issko, if we just compare page 41 to page 25. Page 25 is a kind of summary table which identifies the 25th percentile position matches, \$65,700, and the 75th at \$110,869?---Yes.

PN1396

That's not right, is it?---(No audible reply)

PN1397

You've got 380 entries in the graduate trainee and something like 200 for the rest?---Yes, it's showing the spread there from the 25th percentile to the 75th percentile.

PN1398

In fact if you treated 1 through 4 as a group the results wouldn't be what's set out at 25 there?---So we're talking here about the range of data that was provided.

PN1399

VICE PRESIDENT HATCHER: So the 65,700 figure on page 25 is not the actual?---No, it's representing the range from the 25th percentile - - -

PN1400

It's not the actual 25 percentile figure for the whole group of engineers?---Correct.

PN1401

MR FAGIR: Why is that?---You could see we've presented the range of data that's paid. It's highlighting here where the minimum to the maximum based on that data is.

PN1402

You suggested the median is \$83,863?---Mm-hm.

PN1403

If you look at page 41, you could readily understand that that can't be right. It's certainly not the median for this whole group, is it?---I'd have to go back to the workings behind it, but my understand is that it is the median point of data.

*** LEANNE ISSKO

XXN MR FAGIR

PN1404

You can actually just work it out from looking at the table, can't you? I mean, 75 per cent of the 380 are earning less than \$70,550. From that alone, we can tell that the median couldn't possibly be \$83,863?---No, but the median of the data range. So, from \$6,0008 to \$96,000. I'd have to go back and look at the actual workings to see where that specific point came from.

PN1405

VICE PRESIDENT HATCHER: So, how was it calculated?---I would have to just go back and look at that.

PN1406

MR FAGIR: If we turn to page 26 and conduct the same exercise for the more experienced cohort, the same is true, that is, 25th and 75th percentile, they're not the percentiles for that cohort, they're the - - -?---The range spread of paid from 25th to the 75th.

PN1407

Is this range spread a technical term that's used in job evaluation?---Range spread?

PN1408

Yes?---Yes. Range or evaluation sorry, and market data.

PN1409

Again, the median can't be right, because we can see 50 per cent of the two smaller groups earn less than \$140,000 and 75 per cent of the larger group earn less than \$136,000, so the median couldn't possibly be \$140,000?---I'll go back and check exactly the calculations behind that.

PN1410

Looking at the seven categories, you must have noticed that two of the seven were electrical engineers, did you?---Yes.

PN1411

You'd know that electrical engineers as a group are the highest paid group of engineers in terms of average wage?---Did I know that going into this, or did I know that from looking at the data?

PN1412

You would have known that from your background knowledge of the sector?---Not necessarily, but I'm aware of that looking at the data here that they are representing the highest paid group.

PN1413

You've ended two sevenths of the group in electrical engineering. That's likely to skew the median, whatever is, higher than engineers as a complete group?---Is that a question or a statement?

*** LEANNE ISSKO

XXN MR FAGIR

PN1414

Do you agree with that, or do you have a different view?---I think we've presented the data to show each of the points so it's showing the range that's available for the engineers.

PN1415

I'm not putting the point very well, but the fact is that electrical engineers are over represented in this cohort. Is that fair?---I don't want to say they're over represented but they are represented at both levels in this cohort.

PN1416

Two sevenths of all engineers are not electrical engineers?---Mm-hm.

PN1417

You'd know that from your background experience?---Yes.

PN1418

If you would mind just turning back to page 39. I'll just ask you a question about - just take as an example the largest experienced group. Technical service engineer field - senior. See that and there's against it a position description?---Mm-hm.

PN1419

This is the description of the position as it appears in the Mercer database, is it?---Correct.

PN1420

I'll just read it out:

PN1421

Install, configure, modify and repair products, equipment and systems that have been purchased by the organisation's customers, identify and correct more complex problems associated with start-up, provide presales and/or post-sales technical support to customers, including commissioning, installing, testing and maintaining products, equipment and systems. Develop innovative solutions to more complex technical problems that arise from start-up. Research, evaluate and recommend new products or equipment updates that will meet customer needs. Monitor and resolve recurring more complex problems to ensure ongoing customer satisfaction. Coach and mentor less experienced engineers, check the quality of their work and help them diagnose and solve problems.

PN1422

Just looking at that, does that look to you like a job that is identical to the job of a five year ECT, save that the job environment is slightly more complex?---We're looking at the work values score and here we're looking at the position matching. So, from the criteria that we were asked to match against, that met the definition.

*** LEANNE ISSKO

XXN MR FAGIR

PN1423

I'm asking a different question, which is just as a kind of common sense or sanity check. Does that look to you like a job in which each sub-factor would be

identical to a five year ECT save for one?---So they're underpinned by work value - but we didn't use work value as the starting point to match the jobs.

PN1424

I understand. I'm just asking you, this is a job description for a four to seven year engineer?---Mm-hm.

PN1425

Just as a matter of common sense, does that look to you like a job that should correspond in seven of eight sub-factors to the job of an experienced ECT?---But we're not comparing the same things when we're doing this. So you're asking me to compare something that's not part of the exercise that we were asked to do.

PN1426

Now finally, the wage comparisons that you conducted were on the basis of something called employment cost, is that right?---Yes.

PN1427

Employment cost as opposed to base salary can include a variety of things including, for example, reimbursement type allowances?---What do you mean by reimbursement type allowances?

PN1428

Meal allowance, car allowance?---Typically we wouldn't - it's more the standard ongoing allowances. So, in a corporate world, a car allowance, it wouldn't be allowances that go up and down.

PN1429

Where do I find that definition of employment costs? Is it in the report? I may have overlooked it?---Employment cost is - they're all the definition were provided in (indistinct) and then in the reply as well, it was provided in more detail.

PN1430

The reply report. And you're quite right. Of course, you would accept that there's a component of the employment cost which deals with factors that are irrelevant to ECTs for example, car allowance. There's no ECTs required to drive around from centre to centre and be paid an amount in recognition of that fact?---When we look at employment costs, the reason we use it as the standard measure, is because when you're looking at careers and roles, you are comparing what your package is worth. So if, for instance an ECT wanted to move to the corporate world, they would take into account all the components of their package. Just like if internally people want to be promoted, they take into account what they're fully worth in terms of the dollars. Just because one profession doesn't have that, it doesn't mean they shouldn't be comparing the total value of the package.

PN1431

The problem in the comparison is that one part of employment costs may be compensating for disabilities or costs that simply don't apply to ECTs?---Such as?

*** LEANNE ISSKO

XXN MR FAGIR

PN1432

I just gave you one example. Hardship allowances for example. An extra payment for living in the dusty Pilbara instead of the comfortable south east corner of Australia. Those type of things?---There are ECTs in the Pilbara as well.

PN1433

VICE PRESIDENT HATCHER: Just to stay with the car allowance example. I mean it's one thing to have a BMW as part of your package. It's another thing to be a construction engineer and you're given a ute to drive to a site and you're expected to load some tools in the back as well?---We wouldn't count the tools of trade, no, as part of that. It's really saying if you're got these elements in your package, when you're looking to move somewhere else, you are going to value that you've got the BMW in your package. You're going to make sure your new salary you've got, compensates you for that full package. Equally, if you get additional leave or other things like that, you might get compensated for that.

PN1434

You can tell the difference, can you?---We don't - yes we have a series of questions and so we wouldn't value in the tool of trade if it's purely for the role. It's really about where you're getting personal benefit, use and choice of vehicle or a range of other factors as well.

PN1435

If you're in a remote location, you get a living away from home allowance, how do you deal with that?---If it's a regular ongoing allowance, we would factor it in, but it's for instance, I think in Victoria, the firemen have a spoilt meal allowance where if they get called out while they're eating their meal, they can claim that. That's not a regular ongoing allowance, so we wouldn't count that in.

PN1436

Thank you.

PN1437

MR FAGIR: Ms Issko, who makes that judgment about whether an allowance falls into the category of ongoing regular allowance or something else?---There's a series of questions when clients submit their data that they need to go through and those questions would be asked specifically at that point.

PN1438

Thank you, Ms Issko. Thank you, your Honour. No more questions.

PN1439

VICE PRESIDENT HATCHER: Just before Mr Warren starts, Ms Issko, could you have done a market rate survey of ECTs, that is - or don't you have the data for that?---We don't have that in our database. We don't collect that data, and that's predominantly - a lot of roles like that are paid on the award, or they're not big enough organisations, they would submit data into that database.

*** LEANNE ISSKO

XXN MR FAGIR

PN1440

All right, and in relation to what's on page 41 - - - ?---Of the original report?

PN1441

Yes, of the original report. The graduate trainee: where does that person end up in the four-to-seven-year category?---Sorry?

PN1442

You've got the graduate trainee as one of the four entry-level roles?---Yes.

PN1443

Where would that person end up after four to seven years?---They could end up in any stream, as a professional.

PN1444

Thank you. Mr Warren.

PN1445

MR WARREN: Yes, thank you, your Honour.

CROSS-EXAMINATION BY MR WARREN

[12.08 PM]

PN1446

Ms Issko, I'm looking at your report, page 7, which is entitled Mercer CED Job Evaluation System Overview. You set out there the overview of your evaluation system. Then, on page 8, you identify there some eight factors which are taken into account?---Correct. So the overview picks up what we call the factors, and then the eight are called sub-factors, so they sit under the actual factors.

PN1447

And it is necessary to make an assessment on each one of those factors - - - ?---The sub-factors which

PN1448

The sub-factors, the eight sub-factors, to come up with an answer?---Correct.

PN1449

Over the page, on page 9, just to clarify, to have an accurate assessment or job evaluation, you need to address each one of those eight factors?---Sub-factors, yes.

PN1450

Sub-factors?---Yes.

*** LEANNE ISSKO

XXN MR WARREN

PN1451

Now, no doubt I'll be corrected if I'm wrong, but I understood, in answer to my learned friend Mr Fagir's questions, you indicated that such things as budgetary considerations, or moneys that a person is held accountable for, were not taken into account?---I said that when we use the Mercer CED job evaluation system, we determine the primary impact of the role, and we make a decision at that point whether we're seeing the role as more a qualitative or – which covers both advice

roles, which are typically professional advice roles, or service roles, which provide a service to an end user, or we see the primary impact being quantitative, so on the dollars they're managing, or on a revenue target.

PN1452

So, for example, where – on page 9, under the heading Impact, the right-hand column, "This sub-factor is measured in terms of resources for which the person's position is primarily held responsible, or (indistinct) impact made by policy advice"?---Yes.

PN1453

So you didn't take into account the first section there, which the position is primarily held accountable for (indistinct) the resources - - - ?---So you make a decision at the beginning, so you do take it into account when you make the decision about the primary impact of the role. And then, you either go down the qualitative or quantitative pathway. But you are considering it, and then a decision is made.

PN1454

So is it true, then, that what you did, when comparing an ECT with an engineer, you looked at the ECT factors, and you eliminated from your assessment of engineers factors that weren't found within the ECT factors?---No.

PN1455

You see, you earlier explained that you didn't take into account budgetary considerations?---We didn't measure the role on budget.

PN1456

Because ECTs weren't?---No, because we didn't see that as the primary purpose of the role at five years or as graduate.

PN1457

And this is on information given to you by the Union?---Not on engineers.

PN1458

No, but on teachers?---Well, the information we gathered from the documentation and the discussions, correct.

PN1459

So the result of that is, isn't it, that factors which were not present on your instruction with respect to ECTs were not taken into account with respect to engineers?---No, that's not true. If I had looked at the engineering role and actually said, "The primary purpose of the role is to manage the budget", we would have done them on different impacts. So we would have done it on dollars.

PN1460

But you were told that that wasn't the primary purpose of the engineer's role?---I wasn't told. That was based on the documentation in the award, and our understanding of roles that operate in that environment.

*** LEANNE ISSKO

XXN MR WARREN

PN1461

Well, the documentation in the award makes no mention of budgetary - - - ?---No, it doesn't.

PN1462

In fact, the documentation in the award that you've referred to in your report purely speaks of qualifications?---Correct.

PN1463

It deals with no other factors, other than qualifications?---Correct.

PN1464

So you're saying, because, in the award, it doesn't deal with budgetary issues, for example, you didn't take that into account?---No. I'm saying that also based on my knowledge of working with roles in the sector. I've taken that into account as well. And typically, at that level, they would be there for their professional advice.

PN1465

So your experience of working with engineers, you have no experience with the work of engineers who have budgetary considerations?---I do, but the majority of the one that I've worked with, with that level of experience, that meet that definition, don't. It is not the primary reason they're there.

PN1466

So you are working on your experience with engineers?---Part of my experience and part of what – going from what was in the award.

PN1467

And also, of course, within this job evaluation and the factors taken into account, you see job environment there: that really isn't – you take no account of the actual working environment; whether it's hot, cold, dusty - - - ?---No, so - - -

PN1468

MR TAYLOR: Can I object? I think all of this has already been asked.

PN1469

MR WARREN: I'll move on. If I could take you to page 17, please, of your report. You say here, "Mercer has compared ELC teacher remuneration under the Educational Services (Teachers) Award"; is that right?---Correct.

PN1470

"With the engineering stream under the Professional Employees Award"?---Correct.

PN1471

And you there, on the third dot point, say, "Award pay level is generally aligned at the graduate level across both awards"; do you see that?---Yes.

*** LEANNE ISSKO

XXN MR WARREN

PN1472

Is there a reason, when you come down to your table, where you've got a graduate ELC teacher, Educational Services (Teachers) Award Level 1, is there a reason why you're comparing a three-year-trained teacher with a four-year-trained engineer, in rates of pay?---We were given instruction by the IEU which was the appropriate level in the award to represent in here.

PN1473

Were you advised by the IEU what was the appropriate level in the award?---Whenever we use client information, in terms of remuneration, we rely on what the client gives us.

PN1474

Are you aware that Level 1 of the Educational Services Award is actually a three-year-trained teacher?---Yes, I am.

PN1475

And indeed, under the award, a four-year-trained teacher would commence on Level 3. Are you aware of that?---I'm not aware of those specifics.

PN1476

I suggest to you that is the case?---Yes.

PN1477

And indeed, therefore, if the four-year-trained teacher commenced on Level 3, on progression for five years, they would move to Level 8. Do you understand that?---Yes.

PN1478

So can I suggest to you that what you are comparing in rates of pay there is clearly – you are comparing a three-year-trained teacher at Level 1 with a four-year-trained professional engineer at Level 1, and you're comparing a three-year-trained teacher at Level 5 with a four-year-trained experienced engineer at Level 2. Do you see that?---I can see what's written in the table.

PN1479

Yes, and I'm suggesting to you that you're comparing, to use the vernacular, apples with oranges, because you're comparing three-year-trained teachers with four-year-trained engineers?---I would have to refer to the IEU.

PN1480

I see. And in addition to that, are you aware also that teachers in long day care centres, for example, get additional four per cent?---I am aware of that.

PN1481

And that's not reflected in your figures?---No, because the feedback we had was that it only applies to a portion of the overall teachers. It doesn't apply to every teacher in early learning.

*** LEANNE ISSKO

XXN MR WARREN

PN1482

So your assessments only apply to a certain - - - ?---No, it was - it is reflective of the actual salaries people receive, and not everyone receive that actual salary on the award, so we're representing the awards here.

PN1483

So would it surprise you to know that indeed a four year trained teacher, when compared with a four year trained engineer, at their first year - - -?---Mm-hm.

PN1484

- - - the teacher is in excess of \$1000 per annum in front and at the fifth year they're in excess of two and-a-half thousand dollars in front award to award?---Yes.

PN1485

VICE PRESIDENT HATCHER: So, Mr Warren, does that mean under the Professional Employees Award at 1.1.1 they're all four year trained, are they?

PN1486

MR WARREN: Yes. If one goes back to the report of Ms Issko, and goes to page 13 in the award description:

PN1487

Graduate engineer means a person who is the holder of a university degree of four or five year course recognised by Engineers Australia.

PN1488

So the witness has put in an award description that deals with four year trained engineers and yet - - -

PN1489

VICE PRESIDENT HATCHER: I can't – I might be missing something but I can't see anything in the Professional Employees Award which - - -

PN1490

MR WARREN: I'm sorry, your Honour. I can't - - -

PN1491

VICE PRESIDENT HATCHER: I can't see anything in the Professional Employees Award which distinguishes between three and four graduates at 1.1.

PN1492

MR WARREN: They are, your Honour.

PN1493

VICE PRESIDENT HATCHER: Because it covers engineers, scientists and IT people.

*** LEANNE ISSKO

XXN MR WARREN

PN1494

MR WARREN: As I understand it a three year degree, at 1.1, their current rate of pay indeed would be \$49,998 and a four year trained would be \$51,279, would be the current rates of pay.

PN1495

VICE PRESIDENT HATCHER: I see, the separate rates. I see.

PN1496

MR WARREN: So if we're comparing four year trained engineers, and it's my understanding that the whole thrust or one of the thrusts of this case is that teachers are four year trained - - -

PN1497

VICE PRESIDENT HATCHER: Yes, all right. Thank you.

PN1498

MR WARREN: - - -it comes up with those figures.

PN1499

VICE PRESIDENT HATCHER: Thank you.

PN1500

THE WITNESS: So for the purposes of this component of our report this has now moved away from the work value, it's the next section. We have compared here the minimum salaries set by both awards.

PN1501

MR WARREN: I - - -?---I hear what you're saying, but I'm just saying what's - - -

PN1502

Can I suggest to you - - -?---Yes.

PN1503

- - -you haven't in terms of the case that's put, but that's an argument I'll no doubt be having at the other end of the Bar table at the appropriate time?---Yes.

PN1504

Thank you, your Honour.

PN1505

VICE PRESIDENT HATCHER: That's it, is it?

PN1506

MR WARREN: I did thank your Honour for your Honour's attention, and I then moved to my seat.

PN1507

VICE PRESIDENT HATCHER: All right.

*** LEANNE ISSKO

XXN MR WARREN

PN1508

MR WARREN: Thank you, your Honour.

PN1509

VICE PRESIDENT HATCHER: You don't want to ask anything, Ms Eastman?

PN1510

MS EASTMAN: No. Thank you, your Honour.

PN1511

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

RE-EXAMINATION BY MR TAYLOR

[12.21 PM]

PN1512

MR TAYLOR: Yes, just a couple of points. Ms Issko, at an early-ish point this morning Mr Fagir was asking you some questions about graduates across all disciplines, and your answer was something to this effect, "Graduates across all disciplines there's not a huge difference"?---Mm-hm.

PN1513

And Mr Fagir questioned whether that can actually be right, and you expressed some comfort in that view. Firstly, when you use the word "graduate" in that context, what are you talking about?---So someone who has got a tertiary degree.

PN1514

I see?---And would typically be their first job, so a raw graduate.

PN1515

And if one is comparing graduates across all disciplines what's the reason why, from your perspective when you're looking at jobs evaluation, one doesn't find a huge difference?---Because typically they've come in with their professional experience and then they're often in a highly supervised environment because they have no relevant work experience, if we're taking a raw graduate. They may enter a graduate program, or they may be put in a role that they're highly supervised.

PN1516

A particular sub-set of the graduate comparison that Mr Fagir asked you about under the factor of judgment was the job environment sub-factor, and he asked you whether you were comfortable with the notion that a graduate ECT and a graduate professional engineer would have the same score in respect of job environment. You said you were very comfortable with that. What is it that led you to that level of comfort?---So it's to do with the actual structure they operate in. They're both operating in highly defined environments where there are rules and regulations. There's process involved and they're operating within an existing environment. They're not actually developing that framework or that environment.

PN1517

Finally, when one goes to the four positions Mr Fagir asked you about that were position matched against graduate teacher - - -?---Mm-hm.

*** LEANNE ISSKO

RXN MR TAYLOR

PN1518

- - - starting with graduate trainee and then moving to three positions with the word "entry" at the end?---Yes.

PN1519

Is there some difference in the nature of the job size in respect of a generic graduate trainee as against an entry position? Is there some difference in the level of experience that falls into the second category of entry versus graduate?---No, it's more around the fact that we've looked at entry level, so the database looks at generic graduate trainees and then we look at the specific disciplines, and so a lot of clients like to match the specific disciplined, but there wouldn't be a significant difference, if any, in job size.

PN1520

Yes. Thank you. They're my questions. If this witness could be excused?

PN1521

VICE PRESIDENT HATCHER: Thank you for your evidence, Ms Issko. You're excused and you're free to go?---Thank you.

<THE WITNESS WITHDREW

[12.25 PM]

PN1522

VICE PRESIDENT HATCHER: Mr Taylor, what's next?

PN1523

MR TAYLOR: Thank you.

PN1524

VICE PRESIDENT HATCHER: Are we going to move to another witness before lunch?

PN1525

MR TAYLOR: No, I was going to deal with the issue of the Full Bench's statement and our approach to that, and I anticipate that that would be the only thing we deal with before lunch.

PN1526

As I indicated, my client is grateful to the Commission for identifying the issue that emerges from the statement.

PN1527

VICE PRESIDENT HATCHER: Potential issue.

PN1528

MR TAYLOR: The preliminary view that the rates of pay in the Educational Services Teachers Award 2010 may need to be considered, and, secondly, that the Commission is mindful of its power to undertake such a review of its own motion.

*** LEANNE ISSKO

RXN MR TAYLOR

PN1529

It's my client's view that, as this case proceeds further, the Commission will only be fortified in any preliminary view that the Modern Award rates are indeed inadequate and necessitate alteration, and it's against that background that my client has given consideration to this question of the potential for that question to be considered pursuant to section 157.

PN1530

It seems, having given it consideration, inevitable that the issue of the rates in that award will need to be considered. That in turn raised a question of when and how that would be done. Certainly two immediate possibilities were apparent to our client: one is that it be done on the basis that this proceeding gets heard to its conclusion, the Commission expresses any preliminary views it might have on the subject of the Modern Award rates, and that there be some second proceeding which would then examine that question, which may be at the Commission's own initiative, or at some party's initiative, and that there is a second option and that is that the question of whether the modern award rates necessitate some change, be considered at the same time as the matters in these proceedings.

PN1531

There is a number of things I want to say about that but can I cut to the chase and then come back to those issues. My client has come to the rapid view that it is at least for my client, not sensible to have to deal with the two questions in two separate proceedings, and that is primarily because of the fact that there is going to be - both proceedings are extensive and both proceedings give rise to a need for witnesses to give evidence about matters which are relevant to both types of proceedings.

PN1532

That is apparent from understanding firstly the nature of what matters are relevant to our application before the Commission but also if one gives some consideration to what matters will be relevant to a proceeding that would be initiated either by the Commission on its own motion or otherwise under section 157. Both of course require consideration of work value matters. They both require consideration of the nature of the work, the level or skill or responsibility involved in doing the work and the conditions under which the work is done.

PN1533

They are of course quite different applications, there's no suggestion that they are the same in any sense that they are achieving or aimed at achieving the same thing. An application under section 157(2) or a proceeding under that section is not one to ensure equal remuneration for work of equal or comparable value. It is of course a proceeding to determine whether the modern award meets the modern award objective and also the minimum wage objective. But both of those - - -

PN1534

VICE PRESIDENT HATCHER: But conceivably they could have the same practical outcome. It could have the same practical outcome.

PN1535

MR TAYLOR: No, they would not conceivably have - it's difficult if not impossible to imagine that they would have the same practical outcome for two

reasons. One, the nature of the modern award is one that covers all teachers and if we're talking about early childhood teachers, covers all early childhood teachers regardless of whether they are being paid at or above any particular level, and it doesn't by its approach lead to a view that they will get a rate of pay which is equal or comparable to any other particular rate of pay. The modern award would if varied mean that all primary school, high school and ECT teachers would have a minimum entitlement to a common rate of pay, but that doesn't mean that they all end up as a matter of practicality getting the same actual rate of pay.

PN1536

That's a quite different question, whereas this application that's currently before the Commission seeks to lift particular groups of teachers that are caught by this application up to a particular rate of pay that's found in New South Wales in respect of male primary school teachers. It may well be that both have the effect of increasing, if both were granted, both would have the effect of increasing rates of pay for ECT teachers, but they wouldn't have the same effect.

PN1537

One of the factors that the Commission under the modern award objective would have to take into account is the need to encourage collective bargaining, and we already know from the employer's submissions in this matter quite apart from any other employers that would be interested inevitably in a wider proceeding, that the submissions would be made that a modern award rates of pay are not rates that should just simply reflect any particular bargaining outcome at a particular point in time, but allow for some they would say difference between the appropriate minimum rate and rates that might be set by bargaining.

PN1538

So we don't think that they would have the same outcome, they certainly have quite different objectives and - but it is the case, and this is where the crossover arises, it is the case that under both the modern award objective and the minimum wage objective, there are factors which the Commission has to take into account and therefore in effect evidence that the parties will need to bring before the Commission, which deal with the same subject matter as is apparently on the material being filed relied upon by the parties in this proceeding, the need to promote social inclusion through increased workforce participation.

PN1539

The likely impact of any exercise of modern award powers on business, including productivity and employment costs. The likely impact of any exercise of modern award powers on sustainability and performance are all factors under the modern award objective, and the minimum wage objective set out in section 284 similarly, in a way that crosses over with the modern award objective, requires the Commission to take into account things like the performance and competitiveness of the national economy. We've talked about the social benefit in this case and the importance of early childhood education as being a key factor when it comes to questions of discretion. Of course both of the objectives amongst other things require the Commission to take into account the principle of equal remuneration for work of equal or comparable value.

PN1540

This, as I said, led our client to consider if, as it would appear to our client inevitable that there's going to be consideration as to the necessity to vary the modern award, when and how that's to occur, and it is - our client's very conscious of the fact that it would not be its preference to have to call in effect the same evidence, not all of the same evidence but in many cases similar evidence, at least in respect to early childhood teachers twice, the same witnesses come twice. It seems both from a cost and time perspective more efficient that if as it now seems to us inevitable that the two are going to be considered, that they be considered together. We appreciate though, as the Bench would immediately appreciate, the consequence though of any decision made either by the Commission of its own motion or a party such as us to formally move to consider the modern award rate of pay, and that is this.

PN1541

The implications are in effect twofold; the first is that there are other interested persons who would potentially wish to be heard on that. We as a - are here focusing on early childhood teachers but the award classification just applies to teachers, and so there may well be employers of teachers in primary and high schools who are national system employers who may want to be heard. Whether they would in fact want to be heard is less clear, given that the actual rates of pay in those cases outside of early childhood teaching is at levels which would mean that the variation of the modern award wouldn't have a practical impact on them is a different question. But we accept that that opportunity would need to be given.

PN1542

VICE PRESIDENT HATCHER: One possibility is that you could deal with ECTs discreetly within the ambit of the Children's Services Award.

PN1543

MR TAYLOR: Yes, that is not a possibility that we have given careful thought to but certainly speaking without detailed instructions, consistent with my client's general view that a teacher is a teacher, it would be a different approach than it has taken at all times up to now to seek to have teachers dealt with in any award other than the teaching award. There's also obvious potential questions that arise as to teachers in different awards having different minimum rates of pay which would also arise if such an approach were taken, but it's something that we would need to give consideration to.

PN1544

The second aspect that - the implication that I was identifying, apart from the fact that there would be potentially different parties albeit perhaps not in light of - if your Honour's consideration were raised, is the fact that there would inevitably be a need for both - for all parties to give consideration to evidence that is not currently being led before in this proceeding, which is relevant to determining minimum wages under a modern award, in circumstances where to date this case is focused on the actual comparison between two groups, there are aspects of the evidence which we haven't yet had to explore that would need to be explored.

PN1545

It is a matter which we haven't had an opportunity to discuss with the parties or for that matter has the Bench necessarily given any consideration to either. But

certainly for our part to summarise, we think it's inevitable that the rates of pay in the educational teachers Services Teachers Award 2010 are going to be considered. It is certainly our client's view that they are neither fair, nor relevant. Assuming that the Commission is going to consider that, then questions really arise as to how that's going to be most effectively done, and our client's preference is not to have to run effectively the same evidence twice.

PN1546

We do accept that that would lead if that were right to an adjournment of these proceedings to allow the various steps to be taken to in turn allow the two sets of proceedings to come together. A question - a threshold question does arise if it's going to be considered by the Commission as to whether this is being done of the Commission's own motion, or whether it would only be done if a party makes an application. That needs to be considered and we for our part are content to proceed on the basis and think it's appropriate that this be done on the basis that the Commission determines that this is going to need to be considered. I wanted to make clear that on that basis my client would not be objecting to and indeed would be urging the Commission to deal with them both at the same time, both questions at the same time. That is, the proper rates that should be fixed for teachers under the modern award and the separate question of whether early childhood teachers should as a matter of a part 2.7 application have an order made in respect of at least those that we can identify are people who are paid less than a male comparator to be lifted to the level of a male comparator.

PN1547

Now there are various things that flow, matters of procedure, matters of timetabling, all sorts of matters but - and we are content to deal with those matters in any way that is seen as convenient by way of - to the extent to which timetabling, there might be some need at the very least to have some discussions that wouldn't necessarily have to take on the - have to occur on the record, but we anticipate that it might require some though being given by the parties and the need to come back before the Commission for some timetabling discussions including by way of a directions hearing.

PN1548

VICE PRESIDENT HATCHER: Well, Mr Taylor, the statement has identified from a perspective a potential issue.

PN1549

MR TAYLOR: Yes.

PN1550

VICE PRESIDENT HATCHER: But given that you have now just said quite clearly that your client's perspective is that the award rates are neither fair nor relevant, that is they don't meet the modern award's objective and presumably the minimum rate's objective.

PN1551

MR TAYLOR: Yes.

PN1552

VICE PRESIDENT HATCHER: It could actually speed it up becoming an actual issue if you simply made some sort of application, whether it's a new application or an amended application.

PN1553

MR TAYLOR: Yes.

PN1554

VICE PRESIDENT HATCHER: That would bring this to a head perhaps sooner than our evolving consideration might cause to occur. You don't have to answer that right away obviously but that's one possibility.

PN1555

MR TAYLOR: Yes. I hear that possibility and I'll confirm some instructions about that over lunch.

PN1556

VICE PRESIDENT HATCHER: We will now adjourn. We'll resume at approximately 2 pm. If any other respondent party wishes to address this issue then, they can or if they want to give it still more thought and do it at a later stage they can do so. We'll now adjourn.

LUNCHEON ADJOURNMENT [12.43 PM]

RESUMED [2.13 PM]

PN1557

VICE PRESIDENT HATCHER: Mr Taylor.

PN1558

MR TAYLOR: Thank you, your Honour, Deputy President, Commissioner. Your Honour, the presiding member, asked me a couple of questions before we broke for lunch in respect of the matters which I had identified were addressed immediately before lunch, arising out of our client's consideration of the matters that the Full Bench had set out in its statement on Friday afternoon. As I indicated, we think it's inevitable that the question of the - whether the modern award rates of pay meant the modern award objective needs to be considered. It's my instructions that if the Commission is not minded to take that step of its own initiative that my client does and will make the application to vary.

PN1559

I have to say and I'll just be frank, we would much prefer the Commission to do it of its own initiative. We are mindful that whilst we have no doubt that this is not a problem that if we make the application of our own initiative, someone may wish to try and contend that we can't due to section 724, which is there to prevent two applications both of which are intended to achieve equal pay for work of equal or comparable value. In particular, 724(3).

PN1560

Now that subsection on its face, it would appear, is only directed at an application which is one in which a person is seeking as relief equal remuneration of work of

equal or comparable value, or alternatively seeking to prevent unequal remuneration for work of equal or comparable value. Any application to vary a modern award is neither of those things but certainly if we're not making the application then we don't need to be troubled by what might be said to be some preliminary - might be said to a preliminary question. Because there's a practical question that arises as to how far we proceed now, we just want to be clear that if the Commission were not minded to do it of its own initiative, we do and will, and if the Commission were we would be content to in effect provide as a starting point, in any event, a draft of our position or the way in which we say it ought to be dealt with.

PN1561

The second question that the Bench raised is a question of consideration as to whether there's some other way of examining this, perhaps by reference to the Children's Services Modern Award. As I anticipated, it's my client's strong view that early childhood teachers are and should be treated the same as other teachers and so the question really arises, on the material, as to whether the rates set for teachers is a rate that meets the modern award objective and as I indicated we think it's neither - the rates are neither fair nor relevant at the moment.

PN1562

It is our strong view and we'd like to think the Bench would share this view, that given that there is to be in effect two cases both of which raise very similar - both of which will involve taking evidence as to matters going to work value and to matters going to issues such as the social benefit of early childhood education, going to issues such as shortage of early childhood teachers and the like, that it makes sense from both the benefit - the point of view of efficiency and efficient justice, as well as just from the plain issue of costs and convenience to parties and witnesses, that they be dealt with at the same time. Now, that is certainly my client's strong preference.

PN1563

That is notwithstanding what we see as the inevitable consequence of that position. We say we have not been able to identify how that could be done without these proceedings adjourning, and effectively adjourning at this stage. Now, that is obviously not our preference, but we can't see how it could be done without doing that, because of the fact that, inevitably, the witnesses who prepared evidence to date, the parties who are here, prepared to cross-examine those witnesses to date, have done so on a particular basis.

PN1564

And if we are, as we say should occur, to have the evidence in one be the evidence in the other, then, inevitably, that becomes a problem if we're not prepared yet to fully understand the nature of the second case and the further evidence that witnesses as to that. If we keep proceeding, we just end up duplicating costs and duplicating time. We don't think these are costs that, to date, they've been done, which are in any way anything other than deferred, so the work that was being done is going to be entirely useful for both applications, but we do accept it means that we need to adjourn at this stage. And we accept that that would not be an attractive option to anyone, including us, but we don't see another option.

PN1565

So we, for our part – effectively, the position that we are – in light of the alternative application that we are foreshadowing if the Commission doesn't determine (indistinct) own motion, seeking to adjourn these proceedings, with a view to us – and this is my suggestion – coming back before the Commission for the purpose of setting directions, at which point the parties can have had some communications about appropriate directions, with a view to us making the application that the cases should proceed together.

PN1566

As I said, we presume that's an application that the Bench would favour, and, indeed, an application that all other parties would favour. But that is something that we don't know, because not only have we not heard from parties here, but there are, no doubt, other parties who may have an interest as well. So that, in light of the position that has developed, is the position that we now come before this Commission and request. And we do regret it, but we say that we think, in light of what is going to happen, it is the most efficient of using resources going forward.

PN1567

VICE PRESIDENT HATCHER: So this – whether we call a further application, or amended application, or a statement of your position on the work value issue, how long would it take for you to put that together?

PN1568

MR TAYLOR: I did seek some instructions as to that. I anticipate that that might necessarily involve some discussion with other parties, such that - we can't be definitive about it, but we thought it probably would take something in the order of a couple of weeks. We note that the matter has got a hearing date on 10 August, but we certainly think that we could have the matter come before the Commission for directions on that day.

PN1569

Currently, the Commission has hearing dates set down for this matter on 10-11 September, on 24-25-26 September. Being realistic, we think that the most likely potential is that we reserve at least one of those days for any preliminary questions that actually need to be determined before the matter can proceed. But it is unlikely that – although we haven't ruled out the possibility – that we would be able to have substantive evidentiary matters dealt with on those days, but my client's preference is, at least until the matter comes on for directions on 10 August, those dates are not released.

PN1570

VICE PRESIDENT HATCHER: Mr Fagir.

PN1571

MR FAGIR: I think my learned friend Mr Warren wants to say something, and then I might something briefly.

PN1572

VICE PRESIDENT HATCHER: All right.

PN1573

MR WARREN: Your Honours, Commissioner, this isn't the first time this issue of section 257 has been raised in these proceedings. We note, indeed, paragraph 292 of the decision of the Commission in 2015 dealt with the very issue of section 157, and I just paraphrase it by saying – and I read from it:

PN1574

Our conclusion that part 2.27 requires a comparative group of the opposite gender does not exclude the capacity (indistinct) evaluation case under the Fair Work Act. We see no reason, in principle, why a claim that the minimum rates of pay in the modern award under value of the work to which they apply for gender-related reasons could not have been advanced for consideration under 156(3) or 157(2).

PN1575

We note, of course, that this Commission reiterated that paragraph in paragraph 4 of the 2017 decision, and again, earlier this year, in – I suppose what could be termed the United Voice decision of 6 February 2018, where, at paragraph 28, the Commission said:

PN1576

Additionally, contentions in the third further amended application concerning changes to the work value of employees under the Children's Services Award, to which we have referred earlier in this decision, could equally have been advanced as a convention of a work value case under 156(3) or 157(2). However, for reasons which they have not explained, the applicant unions have chosen not to progress these aspects of their application in the current proceedings.

PN1577

We note, of course, Mr Taylor's application for adjournment. I'm not quite sure where that sits with his earlier submission that these proceedings, these section 302 proceedings, ought be considered and continued if a 157 is commenced. We see that, quite frankly, as an inherently unfair situation for the respondents. They are, as he has noted, two quite very different cases, very different principles to be applied, and very different cases as seen by the Act.

PN1578

We acknowledge, of course, that issues of work value are clearly common, but there are far more issues in section 302 than in 157 with respect of work value, work value being just one of the three barriers that have to be overcome, with respect to jurisdiction - and the Commission has heard our attitude with respect to our position with respect to jurisdiction - and the AFEI's firm submission that jurisdiction is seriously wanting in the 302, and we will proceed that further if that needs to be put.

PN1579

If these proceedings are to be adjourned, they are to be adjourned. There should be a discontinuance with respect of these proceedings. And if a 157 is then proceeded with, then a 157 is proceeded with.

PN1580

VICE PRESIDENT HATCHER: So why should there be discontinuance?

PN1581

MR WARREN: Well, the employers should not have to face two proceedings at the same time, the 157 and the 302; nor, indeed, should there be, then, some suggestion that the 157 would run its course, then the 302 will kick off.

PN1582

VICE PRESIDENT HATCHER: I think what Mr Taylor was proposing was, given there would be an overlap of issues, that cases would run simultaneously.

PN1583

MR WARREN: And that is what we see as inherently unfair. At any one stage, what evidence are we considering? Are we considering the evidence in terms of 157, or are we considering the evidence in terms of 302? Where is that evidence sitting, and which part of it has to be addressed by the parties? We note, of course, the provisions of section 724, and we note, of course, that this Commission has dealt with those provisions in the earlier case, which I'm just attempting to find at this stage. Just bear with me. Excuse me one moment, please. It was in the 2015 case.

PN1584

The Commission had given consideration to the issues of section 724 in the 2015 case. I have just got to find the reference to it.

PN1585

MR TAYLOR: It might be paragraph 315.

PN1586

MR WARREN: We're getting close to 315. Thank you. I thank my friend, Mr Taylor. Yes, 724 was set out in detail therein, and then at 318, as the Commission said, there are two important distinctions for each section 721 and 724. First the jurisdictional bar in- - -

PN1587

VICE PRESIDENT HATCHER: Just slow down, Mr Warren, while I find it.

PN1588

MR WARREN: Sorry, your Honour.

PN1589

VICE PRESIDENT HATCHER: Yes, 318. Yes.

PN1590

MR WARREN: Paragraph 318, your Honour. Two important distinctions between 721 and 724, first, the jurisdictional bar in 721(1) is predicated on the availability or an adequate alternate remedy whereas 724 speaks simply of an alternative remedy. Hence under section 724 the test is not whether the other remedy is an adequate alternative remedy but merely whether it is an alternative.

PN1591

And it goes on to speak of the use of the different expressions. We note of course that section 724(3) is in the following terms:

PN1592

If an application has been made to the Fair Work Commission for an equal remuneration order in relation to an employee, a person is not entitled to commence proceedings for an alternative remedy under a law of the Commonwealth -

PN1593

Et cetera. And then in 724(2):

PN1594

Subsection (1) does not prevent the Fair Work Commission from dealing with the application if the proceedings for the alternative remedy: (a) have been discontinued by the party who commenced the proceedings; or (b) have failed for want of jurisdiction.

PN1595

The position quite simply put is this, AFEI strongly puts to this Commission that it should not be put in the position of answering two cases in the same proceedings.

PN1596

VICE PRESIDENT HATCHER: So are you saying it is that a case about whether the rates in a Modern Award are correctly set having to regard to work value is an alternative remedy to a section 302 application? Otherwise section 724 is just irrelevant, isn't it?

PN1597

MR WARREN: But, your Honour, we haven't seen the application yet. And I'm not saying that as a moot point. It would certainly depend on the grounds and reasons in the application, but it seems to us, certainly in the way the Commission was reminding the parties of availabilities of other provisions of the Act, on at least three occasions, and indeed the suggestion that there is some parts of the evidence in this case which are relevant to a case under section 157(2), which certainly seemed to us to be that there is going to be two cases run, both of which are considering the issue of work value, both of which with a certain respect was 301, uses the work value matter as one of the barriers, if I could put it that way, jurisdictional barriers or indeed gates that have to be opened, with respect to that case.

PN1598

So the work value matter of – and then one looks at, what is the work value consideration? It is a work value consideration in terms of the current application, male primary school teachers, or indeed as well, engineers. Do we still have to meet that case, when the union are proceeding with an application under section 157(2)? That much is very unclear at this stage, your Honour, I must say.

PN1599

VICE PRESIDENT HATCHER: I think that's essentially what's being proposed, that is, there would be two applications on foot, or an application brought on multiple bases and the evidence might satisfy one, both or neither.

PN1600

MR WARREN: So we are, in those joint proceedings, having to determine which evidence is applying to which case, and how you cross-examine one person with respect to this case, or cross-examine the same person with respect to a different case. With respect, your Honour, it's inherently unfair on the respondent to proceed in that way.

PN1601

VICE PRESIDENT HATCHER: The application that's been made is to adjourn until 10 August for a directions hearing.

PN1602

MR WARREN: There is no objection at this end of the table to the adjournment, can I say, but what flows from that could certainly result in a further position being put by my clients.

PN1603

VICE PRESIDENT HATCHER: But, Mr Warren, the matters that you raise are all matters that are capable of being dealt with procedurally, aren't they? That is, for example, the concern you raised about what use might be made of particular evidence is answered by a direction that the parties file a document which sets out which evidence is to be used for which purposes? As long as you have notice of that, why is that some incurable procedural defect?

PN1604

MR WARREN: Your Honour, I merely say this, section 302 has very different tests to be applied to it, to a section 157.

PN1605

VICE PRESIDENT HATCHER: Obviously.

PN1606

MR WARREN: Clearly. And so this Commission is being asked to determine a matter at the same time as determining the 302, is to determine the 157. It's a real cart before the horse, with respect, your Honour.

PN1607

VICE PRESIDENT HATCHER: What's the cart and the horse? I'm sorry, I'm not - - -

PN1608

MR WARREN: The cart is the 302 and the horse is the 157. To even establish that there has been, or that there needs to be - - -

PN1609

VICE PRESIDENT HATCHER: See, the horse and the cart usually move together.

PN1610

MR WARREN: They – yes, one behind the other, not one in front of the other. Although carts have been known to stand idle, your Honour and self-emulate, but that's another issue.

PN1611

Your Honour, that is the position of AFEI. We are opposed to that course that these two matters be heard together, and that we say that section 302 would be discontinued and the 157 proceeded with, if that's the indication from the union they wish to go down that path.

PN1612

VICE PRESIDENT HATCHER: Mr Fagir?

PN1613

MR FAGIR: I'm not in a position to express really a view about any of this now. It's partly because I need more time to obtain instructions, and partly because, for my own part, there are some difficult issues thrown up that we'll need to consider, technical or legal issues. Everyone else in the room seems to be fairly clear on what's involved in the 157(2) proceeding, and it's not at all clear to me, and until we really reach a landing on what's involved it may be difficult to say anything useful about whether evidence in that proceeding would overlap largely, entirely, or not at all with the evidence in this proceeding. For that reason I need more time before I could say anything really clear or conclusive.

PN1614

But I could just make one - - -

PN1615

VICE PRESIDENT HATCHER: But how much more time? I'm not trying to hurry you, just an indication.

PN1616

MR FAGIR: Yes, later in the week. Perhaps Thursday, but could I just make one observation, that on our view of things there have been no new developments in this proceeding in the last two or three days. In fact, nothing has really changed in the last three years, and the writing has been on the wall for that long. The Full Bench has dropped a series of fairly unobvious hints about an alternative or another way forward that was available to the applicant. Despite the clarity of those hints that course hasn't been taken up, and the result of that is that now three years down the track a huge amount of money, time and energy has been expended to bring us to this point, and, from my client's point of view, my estimate is that 90 plus per cent of the cost of this proceeding has already been expended. So the idea that efficiency is some prime consideration or that any way forward would involve anything other than gross inefficiency is a bit difficult to embrace on the face of it. That can be taken as a comment or a whinge or something in between that's really – it's the fact that my client – bearing in mind that it's not the Coal Miner's Industrial Employment Group, these are small businesses and the money to fund this proceedings has come directly out of the pockets of people like my client's witnesses in this case, is a factor, that's entitled to consideration. It's not irrelevant.

PN1617

VICE PRESIDENT HATCHER: So, Mr Fagir, is an adjournment till 10 August consistent with your position that you need more time to assess the position and get instructions?

PN1618

MR FAGIR: No. No, we're all here. We should press ahead, at least for now, and if some alternative course is to be taken, then - I'm sorry, I should have said, that until an application has actually been made, or at least there's some clarity about what's being proposed, it's difficult to say, for example, whether section 724 would stand in the way of this other proceeding. If the increase sought is what's sought in this proceeding then there might be a real question. If it's not then that might cast a different light on the issue. So in the meantime, let's forge ahead. There's no reason to stop now. There's no real efficiency to be obtained from adjourning now.

PN1619

VICE PRESIDENT HATCHER: I think the point Mr Taylor's making is that if in due course an application was made under 157 or the Commission expressed a provisional view that there was something justifying a variation under 157, and there was reliance wished to be placed on witnesses that had already been called, then no doubt the complaint would be that you were denied the opportunity to cross-examine them, and they would have to come back again. Which would be in the circumstances entirely reasonable.

PN1620

MR FAGIR: That's a possibility. If that doesn't happen then we'll have waste these days. That's why I say there's no way forward that involves anything other than a gross wastage of time and money, so that being the case the status quo should prevail and we forge ahead until there's some clarity about it. If the Commission please.

PN1621

VICE PRESIDENT HATCHER: Right, thank you. Ms Eastman.

PN1622

MS EASTMAN: Your Honour, members of the Commission, I need some instructions from the Commonwealth as to the Commonwealth's position. We say nothing about the application for an adjournment, that's a matter for the Commission. Having had the benefit of listening to the parties, I think everybody would be assisted by seeing a form of application for the purposes of 157, so that any points that anybody wishes to raise are not aired in a hypothetical way but with the benefit of an application. It may well be that the issues can be streamlined and narrowed and the real issues between the parties could be clearly identified by a new application. I think the Commonwealth's concern would be to understand the form of order sought with respect to a new application and the extent to which that may have a bearing on the way in which the matter proceeds. I can't assist the Commission any further than that.

PN1623

VICE PRESIDENT HATCHER: How long will it take for you to get instructions?

PN1624

MS EASTMAN: I suspect my instructions are likely to be that we would like to see an application before the Commonwealth can express a position on the course that the Commission might take, with respect to the application that's presently before you and any fresh or new application. So I'm not asking the Commission to hold up that process but I think we would like to see an application before 10 August.

PN1625

VICE PRESIDENT HATCHER: Right, thank you.

PN1626

MR TAYLOR: I'm sorry, your Honour, just getting instructions as to the timing of an application. Can I reiterate in response to Mr Fagir that there is in our view no doubt the Commission will be considering two applications. The question of whether questions of how it does so, any legal or technical questions that Mr Fagir has identified, we think can be addressed at a preliminary stage such as on 10 or 11 September. I was just getting instructions as to how long it would take - - -

PN1627

VICE PRESIDENT HATCHER: Sorry, Mr Taylor, you said September - - -

PN1628

MR TAYLOR: The preliminary question not the directions hearing but if there was to be any preliminary questions, we don't necessarily think there will be but issues as to - of the nature that were being raised that the Bench shouldn't deal with them both at the same time or should do so but in a particular manner may well be things that can be dealt with at a directions hearing. But the concern that Ms Eastman identifies is, we respectfully say, a valid one, that is it would be helpful to see the form of the way in which the matter will proceed under 157 so that any further directions or preliminary issues can be considered against that background.

PN1629

As a result I was getting instructions as to how quickly we could put forward a position whether we are the applicant or simply putting forward what we say is the appropriate approach that the Commission will take of its own motion. I think realistically that could take as long as two weeks, which means it wouldn't be done prior to 10 August, which would mean an adjournment to a date after that. I presume that parties, including the Commonwealth, would want at least a week and so we're possibly looking at a directions hearing something in the order of three weeks hence, and that is what we think is the appropriate way forward and we do think that whilst there's no doubt that all parties have been already put to considerable cost, none of those costs are wasted, they're just being deferred. They will all continue to be relevant to the proceedings as they continue.

PN1630

Certainly where costs will be thrown away is if we continue to bring forward witnesses and evidence in circumstances where those witnesses are likely to give relevant evidence in respect of the 157 matter, and there's a real potential for there to be other parties who would wish to say something about the evidence of those witnesses. At least we can't rule that potential out.

PN1631

VICE PRESIDENT HATCHER: So in short, two weeks for I'll just conveniently call it the amended application noting you've given it different guises. Then at least a week after that for a further directions hearing. Is that - - -

PN1632

MR TAYLOR: I think that's sensible, unless there's a view that there needs to be a longer period. I know that the Commonwealth can move very quickly at times but there are nevertheless various layers that they must go through, so I'd like to think that would be sufficient time but Ms Eastman might be able to clarify that.

PN1633

VICE PRESIDENT HATCHER: Did you want to add anything, Ms Eastman?

PN1634

MS EASTMAN: I'm sorry, your Honour, we're just trying to sort of work out - look, I think that should be sufficient. If we do have a significant difficulty we can let the parties know.

PN1635

VICE PRESIDENT HATCHER: Well, the Full Bench will now adjourn to consider what's been put.

SHORT ADJOURNMENT

[2.45 PM]

RESUMED

[3.42 PM]

PN1636

VICE PRESIDENT HATCHER: On 27 July 2018, we issued a statement in this matter in which we indicated that the proceeding might give rise to an issue as to whether the minimum rates of pay applicable to early childhood teachers in the Educational Services Teachers Award 2010 were properly set having regard to the value of the work performed by such teachers. We noted in that respect that the Commission had the power under section 152(2) and (3) of the Fair Work Act 2009 to make a determination varying the minimum wages in a modern award for work value reasons on its own initiative as well as upon application, and we invited the parties to give consideration to this potential issue in the future conduct of the proceedings.

PN1637

The applicant organisation in this matter, the IEU, has today in response to our statement made an application that the matter be adjourned so that it may file a further application, an amended application or a document stating its position, which addresses the potential work value issue identified in our statement, and then that the matter be listed for a directions hearing for further programming of

the matter. It contended that this would be the most efficient course since if the matter was not adjourned there would be a real possibility that witnesses would have to be called twice, both in relation to its extant section 302 application and then in relation to its new application.

PN1638

The adjournment of the matter was opposed by Australian Business Industrial and the Australian Childcare Alliance. They submitted that it would cause costs to be thrown away if the hearing did not proceed as programmed, pending the IEU filing its new application. The AFEI did not oppose the adjournment but made submissions concerning the procedural unfairness which might flow if the IEU's section 302 application was heard together with any new work value application, made pursuant to section 157. Also foreshadowed a potential issue with respect to section 724 of the Fair Work Act. The Australian Government sought an opportunity to seek instructions once any new application was filed by the IEU.

PN1639

We consider that there will necessarily be a substantial overlap in the evidence currently filed on the submissions made with respect to the IEU's section 302 application, and any future work value application. Indeed, it was the evidence and submissions in relation to the section 302 application which caused us to identify that there was a potential work value issue arising under section 157. It means that it is likely that if we continue to hear witnesses in relation to the section 302 application, they will need to be recalled in relation to any future work value application. Accordingly, although we recognise that it will cause inconvenience, we do not consider that there is any alternative to granting the IEU's adjournment application.

PN1640

Therefore, we will adjourn the hearing as sought by the IEU and we make the following directions:

PN1641

1) The hearing dates listed for 31 July, 1-2 August and 6-10 August 2018 are vacated.

PN1642

2) The IEU is directed to file its amended application, further application or position document by 13 August 2018.

PN1643

3) The matter is listed for a directions hearing on 30 August 2018 at 9 am.

PN1644

4) The remaining hearing dates on 10, 11 and 24-26 September are retained at this stage; and

PN1645

5) All parties rights are reserved pending any further directions that we make.

PN1646

That statement will be published on the website as soon as practicable. Are there any issues that anybody wishes to raise immediately out of that statement? Is there any reason why we now shouldn't adjourn?

PN1647

MR TAYLOR: I think there's no reason why we shouldn't now adjourn and I thank the Commission. If it please.

PN1648

VICE PRESIDENT HATCHER: Right, we will now adjourn.

ADJOURNED UNTIL THURSDAY, 30 AUGUST 2018

[3.47 PM]

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