



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

1056937

**JUSTICE ROSS, PRESIDENT
DEPUTY PRESIDENT CLANCY
COMMISSIONER LEE**

**AM2018/18
AM2018/20**

s.156 - 4 yearly review of modern awards

**Four yearly review of modern awards
(AM2018/18 & AM2018/20)
Children's Services Award 2010 & Educational Services (Teachers) Award 2010**

Sydney

9.42 AM, MONDAY, 6 MAY 2019

PN1

DEPUTY PRESIDENT CLANCY: Thank you, could I take appearances here, please.

PN2

MS L SAUNDERS: May it please, Saunders, initial L. I appear for the Independent Education Union.

PN3

DEPUTY PRESIDENT CLANCY: Thank you.

PN4

MS SAUNDERS: I have with me, Mr Dowdie and Ms Matthews, at the second Bar table.

PN5

DEPUTY PRESIDENT CLANCY: Thank you.

PN6

MR S BULL: If the Commission pleases, my name is Bull, initial S. I appear with my colleague, Natalie Dabarera, for United Voice.

PN7

DEPUTY PRESIDENT CLANCY: Thank you.

PN8

MR J ARNDT: If the Commission please, Arndt, initial J, seeking permission to appear. I appear on behalf of five entities, the Australian Childcare Alliance, Australian Business Industrial, the New South Wales Business Chamber, the National Outside of School Hours Services Alliance, and Junior Adventure Group. Perhaps for efficiency, I might just refer to those entities as the ECEC employers, from now on.

PN9

DEPUTY PRESIDENT CLANCY: Yes.

PN10

MR ARNDT: And I appear with Ms Whish, who also seeks permission.

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DEPUTY PRESIDENT CLANCY: Thank you. Yes.

PN12

MS SAUNDERS: Thank you, your Honour. The parties had intended to make a request - - -

PN13

DEPUTY PRESIDENT CLANCY: We've just got a couple more.

PN14

MS SAUNDERS: Sorry, Deputy President.

PN15

MS N SHAW: Shaw, initial N, for AFEI.

PN16

DEPUTY PRESIDENT CLANCY: Thank you.

PN17

MS SHAW: I've just got Ms Bahas who is also from AFEI.

PN18

DEPUTY PRESIDENT CLANCY: Thank you. I think that's everyone. I don't think there's anyone interstate. Yes, Ms Saunders.

PN19

MS E ARRABALDE: I'm sorry, I'm the last one.

PN20

DEPUTY PRESIDENT CLANCY: Sorry.

PN21

MS ARRABALDE: My name is Arrabalde, initial E, and I'm appearing with my sister, Arrabalde, initial I, as individuals in this matter.

PN22

DEPUTY PRESIDENT CLANCY: Thank you, Ms Arrabalde.

PN23

MS ARRABALDE: Thank you.

PN24

DEPUTY PRESIDENT CLANCY: Yes.

PN25

MS SAUNDERS: Thank you. If I can start with a comment on the evidence. There's been a discussion between the parties as to how to deal with the question of objections. In the interests of time we're all agreed that no one will be taking specific objections to each statement, line by line, are content for the matter to go in subject to submissions on weight. So it should allow us to complete the proceedings within the four day schedule.

PN26

DEPUTY PRESIDENT CLANCY: All right, thank you. We'll rely on the parties to address any issues. Often it's said but it's never addressed subsequently in submissions, but we'll rely on the parties to, if they've got objections that they'll flow through in the submissions. We're quite happy if at any stage during the proceedings, each morning if the parties do want to deal with anything specific that occurs. We can do it that way. But we'll take that as the approach, thanks, Ms Saunders.

PN27

MS SAUNDERS: Yes, and there's also been an updated timetable for the witness order. I think it was provided to your Honour's Commissioner, this morning by Ms Whish.

PN28

DEPUTY PRESIDENT CLANCY: All right. So just so I know what we're referring to, which - - -

PN29

MS SAUNDERS: It looks like that.

PN30

DEPUTY PRESIDENT CLANCY: It's that one, okay. So that's now got Elizabeth Arrabalde appearing in 4?

PN31

MS SAUNDERS: Yes.

PN32

DEPUTY PRESIDENT CLANCY: That's the one?

PN33

MS SAUNDERS: Yes.

PN34

DEPUTY PRESIDENT CLANCY: Yes.

PN35

MR ARNDT: And, Commissioner, I perhaps should speak to that. Since that had been sent the position has updated again. Ms Arrabalde is no longer required from the ECEC employees for the purposes of cross-examination. I understand Mr Bull may be proposing to take her through if she – the documents as filed as submissions and I believe that the course proposed is that it would be filed as evidence. Mr Bull maybe could speak to what he proposes to do with that.

PN36

MR BULL: If the Commission pleases, all we were supposed to do, and they're not our witnesses, is do the interrogatory material and then allow them to swear to the veracity of the submissions they've filed. And that's all we were going to do to assist the Commission. But it appears no party participant is going to ask questions. It may be that the Commission will ask questions, but it will be brief then.

PN37

DEPUTY PRESIDENT CLANCY: My eyes keep irresistibly being drawn to Thursday.

PN38

MS SAUNDERS: Yes.

PN39

DEPUTY PRESIDENT CLANCY: What's the proposal for Thursday?

PN40

MS SAUNDERS: Currently one witness is listed, which could not be described as an efficient use of anyone's time. However there is some concern about Wednesday, which your Honours (indistinct) will notice is quite packed, particularly with ACA witnesses and particularly with witnesses appearing remotely which has its attendant delays. There are two ACA witnesses that can be made available on Thursday in case we don't get through them. So it's really an overflow though.

PN41

DEPUTY PRESIDENT CLANCY: So we should assume that we'll still require Thursday?

PN42

MS SAUNDERS: Yes, I think that's safe, your Honour.

PN43

DEPUTY PRESIDENT CLANCY: All right, thank you.

PN44

MS SAUNDERS: The IEU has two claims in these proceedings, both in respect of the Teachers Award. Neither are substantive claims. They're by way of clarification. Although they're opposed there's no real serious engagement with the terms of the current award. The first relates to teachers who are appointed as directors. It's generally uncontroversial that a teacher working in an early childhood education care service is a professional, paid under the Professional Teachers Award. There is some reported anomaly where a teacher is appointed to the position of director, which is a senior role in the service. Some employers interpret the Children's Services Award as coming into play, which for award reliant employees results in a pay cut, which is traditionally an unusual side effect of being promoted. We say the Teachers Award currently extends to those teachers who are employed as directors and propose some wording to clarify that. There is some resistance to that but it seems to be based on a misunderstanding of the claim and what a teacher has to be doing, and whether there's this delineation between delivery an education program or supervising the delivery of an educational program. But it will emerge through the evidence that that's quite illusory.

PN45

The second claim is again a clarification that relates to the engagement of casual teachers in early childhood education and care services. The ACA's evidence makes it very clear that this is not a particularly common feature of the industry. There's a preference for permanent full- time teachers, or part-time. The current award clause, ACA's submissions to the contrary notwithstanding, is very poorly drafted. It has been, as the IEU's organiser, Ms James, gives evidence, interpreted to, in circumstances where teachers are engaged for a quarter of a day but less than half a day, will mean that they're only required to be paid a quarter of a day. In other words, work for free for a short proportion. Again, we propose some wording to – we say that's wrong under the current clause but we propose some wording to make that clearer and easier for services to understand. The ACA essentially appears to agree with this. Their opposition is that the clause is

currently clear. Well, views differ and we'll put evidence forward that there are disputes that occasionally arise.

PN46

AFEI does oppose it, wholesale. They're a new entrant to the proceedings. It's not entirely clear who they represent. This sector is not within AFEI's traditional coverage. Nevertheless the opposition is based on a proposition that employees should be able to work for free, contrary to how casual engagement periods operate in every other industry, so there's very little force. As to the ACA claims to lengthen the standard hours, and to remove notice requirements for rostering in certain circumstances, i.e., when other employees fall ill, we oppose both of those.

PN47

There are a range of claims raised by United Voice. The IEU supports those but does not otherwise be heard. They are principally, in fact, almost entirely relevancy educators who are outside our (indistinct) sphere of influence. I should say we are calling four witnesses, Ms James, Ms Farrant, Ms Frennd, and Ms (indistinct), who are set out in that timetable.

PN48

DEPUTY PRESIDENT CLANCY: Thank you.

PN49

MS SAUNDERS: Thank you.

PN50

DEPUTY PRESIDENT CLANCY: Yes, Mr Bull?

PN51

MR BULL: If the Commission please, we have a number of substantive claims in relation to both awards. We've filed up to date draft determinations in relation to the claims we're progressing and those are accurate. Just in relation to our claims under the Children's Services Award, we have a claim which is marked S14 that's in the most recent summary document, concerning the training clause. That will insert a new clause, 15.9, which essentially will compel employers where they direct the employee to participate in training, to reimburse associated expenses, and also clarify that time spent in training will count as time worked.

PN52

We have a claim under the clothing and equipment allowance clause concerning onsite laundry facilities. Essentially there isn't a site specific laundry facility made available to the employees and a laundry allowance should be provided to those employees.

PN53

We have a claim which is S20, which concerns hats and sun protection including sunscreen lotions. That may be the least controversial of the matters that we're suggesting that the variation be made to the award. That basically requires employees to wear – the employees who spend most of the day outdoors who require sun protection.

PN54

The fourth claim is S23, which concerns a deletion of the current higher duties clause. And the substance of that claim is simply the deletion of the current clause, 18.1(e). I understand that may have been misdescribed in the current summary document.

PN55

We have a claim which also essentially involves deletion of substantive clauses of the current award which will involve deleting – this is the claim involving leave. The substance of this claim is the removal of what we say is the relatively extraordinary capacity of employers covered by this award to stand down or direct employees to take, oftentimes, unpaid leave over Christmas and other holiday periods. The substance of our claim is that the capacity of the employer to direct employees to take annual leave should be limited to a two week period over the Christmas period. That's the fifth claim which is S30 in the summary document.

PN56

We then have probably what are the most substantive claims, and which are common to the Educational Services Teachers Award. I'm going to call it the Teachers Award, from here on. And these concern what we say are the consequences of the increased regulatory burden occasioned by the national quality framework. And that's a term, NQF – you're going to unfortunately have to learn acronyms in relation to this hearing. What we say is the significant and substantive change in the dynamic of the work caused by this regulatory change with award modernisation occasions merit in the inclusion of two specific awards which deals with increased duties that legislation, which is national legislation, has imposed upon the sector covered by the award.

PN57

And perhaps just a general submission which should be made at the onset. This is not an argument about a change of funding, it's about the application of national laws, uniformly across a sector. So I know that this Commission in these types of awards has had arguments pressed concerning dynamics occasioned by the vagaries of a change in funding. The NQF is not a funding model. It's a regulatory model which is supported by commonwealth, state and territory legislation which provides a fairly fixed goalpost and is an appropriate matter for this Commission to take into account in determining what is a fair and relevant safety net of terms and conditions.

PN58

And the two substantive matters that we are pressing upon the Commission in relation to both awards are a weekly allowance for employees appointed as an educational leader, and an hourly allowance for the responsible person who's demanded to be physically present and known at an early childhood education and care centre. And both of those are requirements that are intrinsic to the changes that were occasioned by the introduction of the National Quality Framework, supported by legislation and regulation in 2012 and thereafter. And it now is a uniform requirement across the entire sector.

PN59

Lastly, in relation to the Children's Services Award, we have a claim concerning non contact time, which is essentially the time that the award allows for educators to prepare their program of instruction and so forth, and we seek an increase of the minimum that has to be provided to four hours per week. And in relation to education leave, we seek a stay of a series of increases concerning the size of the centre, and that's apparent from our most recent draft determination.

PN60

We have withdrawn a claim concerning the programming and an administrative – an allowance for programming and administrative tasks. That was S16. I understand it still appears in the most recent summary issued by the Commission this morning. We are not pursuing that claim.

PN61

In relation to the Educational Service or Teachers Award, we are essentially pursuing three claims. That is, the two allowances that I've earlier spoken to, and also a claim which mirrors the non contact claim in the Children's Services Award.

PN62

We have five witnesses. Four of the witnesses are workers or educators in the sector, and we have one expert witness. We have sought not to overburden these proceedings with multiple witnesses saying the same thing and we hope that it can be appreciated that the evidence we present is to point and of use to the Commission in the determination of the review of this award.

PN63

My colleague, Ms Dabarera, will be assisting in terms of dealing with some of the witnesses, herself and we'll be essentially playing a tag team, so you won't just be hearing from me.

PN64

I can agree with what my friend, Ms Saunders, said in relation to objections to statement evidence and so forth. We don't intend to, at the tender of each of the witness statements of ADL, to make voluminous, paragraph by paragraph objections. There is material in many of the statements that could be called a submission. Some are unsupported or unqualified opinions. And there's material that isn't relevant to facts in issue. We don't have time to basically go through the process of dissecting statements and it's not of particular use. I agree with what my friend has said.

PN65

We're going to make submissions concerning weight that should be attributed in the written document, which I'm assuming we're going to generate after these proceedings. We'll indicate what we say are the parts of the statements that you should not have regard to, and other matters. But we don't propose to make voluminous objections. So we're not going to object. The statements will be tendered. We'll cross-examine the witnesses. But that's not an indication that there isn't material that isn't objectionable, but it's simply not an efficient use of time.

PN66

There's some general documents that probably should be tendered fairly early in these proceedings and I'll get to that in a minute. I was just going to say, we were going to assist Ms Arrabalde, just assist her swear to her statements. And that's the extent of our relationship. We do oppose the roster claims by the ABL in relation to both awards, and also the claim in relation to span of hours. In relation to the claims by the IEU, we broadly support their claims bar one matter which we've raised in our written submission. But beyond that we don't wish to press any matter in relation to the claims of the other union.

PN67

In terms of general exhibits there's some material which probably we should tender at the commencement of these proceedings. This is an area which is full of voluminous handbooks and regulation. I can do that now or I can wait till the other parties have made their openings, but these were general documents. Many of these documents are also produced by other witnesses and it may be useful just to have them as exhibits so they're known.

PN68

One brief matter I was going to say something about is, we don't have any witnesses giving evidence to our allowance claims, you're covered by the Teachers Award. The common claims are the claims for allowances and non contact time. It covers essentially work done in the same sector, covered by the witnesses in the Children's Award but for the fact that it will apply to employees who are degree qualified.

PN69

We say that the absence of award specific evidence concerning the Teachers Award would not be an impediment to the Commission seeing merit in similar allowances being inserted into the Teacher's Award, as what we are dealing with is essentially the same work and there's no practical sense in which the merit considerations vary across the two awards, because you're dealing with essentially the same work. But for the fact of coverage, the employees covered by the Teachers Award will be those that are the directors and early childhood teachers with degrees. But the same regulatory burden and increased duties apply to them. So we say the absence of evidence concerning those claims in relation to that award is not an impediment in relation to finding that the claims are an appropriate part of the safety net in relation to the Teachers Award.

PN70

That's all I wish to say in terms of opening. And as I said, there's some general documents that it might be useful to tender at the onset because they're matters that all participants refer to at some stage.

PN71

DEPUTY PRESIDENT CLANCY: How many of those are there?

PN72

MR BULL: There's five documents.

PN73

DEPUTY PRESIDENT CLANCY: Five. And have you raised them or discussed them with the other parties?

PN74

MR BULL: Not explicitly but I can't imagine that there's going to be huge issues. They're documents like the guide for the National Quality Framework. They're the general, I suppose, if you like - - -

PN75

DEPUTY PRESIDENT CLANCY: What we'll do is, once we've heard everyone in opening, and we're not due to hear from Ms Hennessy till half past ten, if there's some time there, if the parties can just settle upon those so there's an agreed position, we'll do it then.

PN76

MR BULL: I can't imagine it will be controversial.

PN77

DEPUTY PRESIDENT CLANCY: I don't imagine it will be from what you're saying, but we'll do it that way. All right, thank you.

PN78

MR ARNDT: If the Commission pleases, consistent with the guidance from the President last week and the format just given of submissions, I'll be brief. The ECEC employers have filed three written submissions in some length in these proceedings, our primary submission on 15 March, a submission in response to the union claims on 16 April, and a submission in reply on 29 April. We rely on those submissions and we also rely on eleven statements, Karthika Viknarasah, J Fraser, and that's Mr J Fraser, Katy Paton, Cam Plane(?), Kristen McPhail, Ann Marie Chemello, Kylie Brannelly, Sarah Tullberg, Kerry Mahony, Nicole Llewellyn, and Alexandra Hands. All of those statements, save for Ms Brannelly, are from operators within the industry. Ms Brannelly is from an association.

PN79

It is probably quite important to note that a number of other statements have been filed in the course of the proceedings which are no longer relied upon and should not go into evidence. I identify them now so they don't go into evidence. We do not rely on the statements of Carroll, Gibbs, Smylie, White, and Ackerman. The submissions as filed and the evidence, the eleven statements - - -

PN80

DEPUTY PRESIDENT CLANCY: Mr Arndt, did you mention Rosina Smith was a witness?

PN81

MR ARNDT: You're quite right, Deputy President. Rosina Smith is also part of that group.

PN82

DEPUTY PRESIDENT CLANCY: All right, thank you.

PN83

MR ARNDT: Thank you for that. The twelve statements and the submissions as filed support two claims of the ECEC employers, and they also resist the numerous claims of both unions. The two claims of the ECEC employers have been referred to in the submissions as the ordinary hours claim and the rostering claim. And those names are suitable and we will continue to use them. Those two claims address two different difficulties arising from the current operation of the awards. The ordinary hours claim seeks to extend the span of ordinary hours under the awards by one hour. Currently the span of ordinary hours for day workers in the awards end at 6.30 p.m. and the ordinary hours claim seeks to extend that to 7.30 p.m.

PN84

The ordinary hours claim has a relatively modest name of aligning the span of ordinary hours in the awards to a range which is consistent with the role of ECEC within the wider economy and society. In short, commencement of overtime at 6.30 p.m. is too early, having regard to a number of factors, including that the work and commuting patterns of parents who utilise ECEC services. It's the view of the ECEC employees that a coherent minimum safety net would have regard to the fact that working parents need to complete their hours of work and then travel to ECEC centres to collect their children, and we say that 6.30 is too earlier a time to finish ordinary hours within the sectors.

PN85

The second claim is the rostering claim. Currently the awards contain minimum notice periods for the variation of rosters and when those notice periods aren't complied with, it results in the entitlement to be paid overtime. The rostering claim seeks to amend the awards to address one particular scenario. As Mr Bull has said, there is an overarching framework of regulation in this industry. The claim seeks to amend the award to address one particular scenario where an employee does not provide sufficient notice to an employer that they will be absent and the employee is required to replace the employee in a roster to satisfy their statutory obligations as to staff ratios. That's the scenario it seeks to address. It would remove the obligation of the employer to provide the minimum notice period that is currently in the award.

PN86

It's made in a very particular context, in being the regulated industry which I've mentioned and which compels ECEC operators to roster in a very specific way. Where those rosters are disturbed by last minute unavailability in the awards in their current state do not provide a workable framework for operators to operate. And we say the award should therefore be varied. Those are the opening submissions.

PN87

DEPUTY PRESIDENT CLANCY: Thank you. Ms Shaw?

PN88

MS SHAW: I have no need to add anything, at this stage, thank you.

PN89

DEPUTY PRESIDENT CLANCY: Thank you. Ms Arrabalde?

PN90

MS ARRABALDE: If the Commission pleases, our claims are essentially identical to those provided by United Voice. They relate to both the Children's Services Award and the Teachers Award. The first claim is in regards to the responsible person, and we're proposing the introduction of an allowance. And we're also proposing an allowance for people who are employed as educational leaders. Where our claims differ is that while United Voice are proposing for the educational leaders a weekly allowance, we have proposed an hourly allowance. But fundamentally the claims are pretty much the same.

PN91

We have proposed these claims just so that it aligns the changes to the legislation that were made in 2012 in the sector with the awards, as well. So that's basically where we're coming from.

PN92

DEPUTY PRESIDENT CLANCY: Thank you.

PN93

MS ARRABALDE: Thank you.

PN94

DEPUTY PRESIDENT CLANCY: Now, the parties may have anticipated some further directions of the Full Bench. I have what is proposed here and I'll distribute copies now.

PN95

MS SAUNDERS: There is a minor difficulty, I think, with - - -

PN96

DEPUTY PRESIDENT CLANCY: Let's just get everyone to have a look first, before we get into the minor difficulties.

PN97

MS SAUNDERS: Yes.

PN98

DEPUTY PRESIDENT CLANCY: Yes, Ms Saunders?

PN99

MS SAUNDERS: The minor difficulty is with the date for the submissions. The hearing date is, from our view, fine. The problem is we're running very close to the start of the equal remuneration hearing, the work value case, which is a major matter not unrelated to these proceedings for the IEU and for the ACA. It may be that we need an additional week to file those written submissions.

PN100

DEPUTY PRESIDENT CLANCY: So you'd be seeking until Monday the 27th, is that - - -

PN101

MS SAUNDERS: Yes.

PN102

DEPUTY PRESIDENT CLANCY: All right, thank you. Does anyone else have any comments about either of those two dates?

PN103

MR BULL: We have no comment and would be grateful for an additional week.

PN104

DEPUTY PRESIDENT CLANCY: Yes.

PN105

MR ARNDT: No comments from the ECEC employers.

PN106

DEPUTY PRESIDENT CLANCY: Thank you.

PN107

MS SHAW: No comments from us.

PN108

MS ARRABALDE: No comments from us.

PN109

DEPUTY PRESIDENT CLANCY: Thank you. We'll have a discussion, the members of the Full Bench will have a discussion about the first step there, the filing of the submissions. Obviously the parties, having addressed the Bench on the treatment of evidence, well, that's where any evidentiary objections are to be dealt with in those written submissions. What we might do now is, we'll adjourn till 10.30. If in that time those five or so documents you mentioned, Mr Bull, the parties could just confirm that they're to go in as evidence and there's no controversy about them, we'll deal with that straight away when we come back in at 10.30. Thank you.

SHORT ADJOURNMENT

[10.14 AM]

RESUMED

[10.36 AM]

PN110

MR BULL: I'll do my tenders, which are basically documents that all participants are to refer to, at some stage.

PN111

DEPUTY PRESIDENT CLANCY: Yes.

PN112

MR BULL: You're going to hear the acronym, ACECQA, quite often in these proceedings. That stands for the Australian Children Education Care Quality Authority. So the first tender is the ACECQA guide to the National Quality

Framework, which was last updated in October 2018. We filed a copy on 15 March.

PN113

DEPUTY PRESIDENT CLANCY: All right, so is it in your material?

PN114

MR BULL: It should be.

PN115

DEPUTY PRESIDENT CLANCY: All right. Let's go to the document.

PN116

MR BULL: So we filed a copy, by itself.

PN117

DEPUTY PRESIDENT CLANCY: By itself, right.

PN118

MR BULL: There's also been witnesses that have produced it, and so forth.

PN119

DEPUTY PRESIDENT CLANCY: And it's the October 2018 version?

PN120

MR BULL: Yes.

PN121

DEPUTY PRESIDENT CLANCY: Right.

PN122

MR BULL: So if that could be marked exhibit 1.

PN123

DEPUTY PRESIDENT CLANCY: Yes.

**EXHIBIT #1 ACECQA GUIDE TO NATIONAL QUALITY
FRAMEWORK UPDATED OCTOBER 2018**

PN124

MR BULL: Exhibit 2 is another ACECQA document and it's a shorter one. It should be three pages. It was also filed on 15 March this year, and it's the "National Quality Standard: Information Sheet, The Role of Educational Leader." And that's essentially a summary, we say, of - - -

PN125

DEPUTY PRESIDENT CLANCY: Just go back, the "National Quality Standard"
- - -

PN126

MR BULL: "Information Sheet, the Role of Educational Leader." That's dated April 2018.

PN127

DEPUTY PRESIDENT CLANCY: All right, just let me get to it. Was it filed as a single document or was it attached to someone's - - -

PN128

MR BULL: I understand it was filed as a single document. And that's probably quite a useful document because it's a summary, an accurate summary of the regulations and the law concerning that particular role. I can provide copies of it.

PN129

DEPUTY PRESIDENT CLANCY: It may do, to do that.

PN130

MR BULL: It should be there. But it's a brief one and it's a useful document. Why don't we mark that 2. And I'll move onto the next general tender which is the similar document for the responsible person requirements, also by ACECQA, and it was filed on 15 March this year by us. Could that be marked exhibit 3.

PN131

DEPUTY PRESIDENT CLANCY: Just a minute. What's the title of the third one?

PN132

MR BULL: It's the ACECQA National Quality Standard Information Sheet – Responsible Person Requirements for Approved Providers from 1 October 2017. I believe there was an update then on 30 August that year. We filed it in March this year with our materials.

PN133

DEPUTY PRESIDENT CLANCY: All right.

PN134

MR BULL: Could that be marked exhibit 3. Then the - - -

PN135

DEPUTY PRESIDENT CLANCY: Just a minute. Just a minute.

PN136

MR BULL: Sorry.

PN137

DEPUTY PRESIDENT CLANCY: So in your submission and attachments on 15 March, is this where we're going to find some of these?

PN138

MR BULL: That's correct. And the documents that we're seeking to tender are ones which I understand that were separately filed that form part of the general materials which we supplied on that date.

PN139

DEPUTY PRESIDENT CLANCY: So exhibit 3 again, which is?

PN140

MR BULL: It's the ACECQA National Quality Standard Information Sheet – Responsible Person Requirements for Approved Providers, and it's from 1 October and 30 August 2017.

PN141

DEPUTY PRESIDENT CLANCY: 1 October 2017?

PN142

MR BULL: Yes.

PN143

DEPUTY PRESIDENT CLANCY: So that's attached to your - - -

PN144

MR BULL: It should be, the principal materials that we filed on 15 March. And it's a three page document. It's one which I will ask the witnesses to look at.

PN145

DEPUTY PRESIDENT CLANCY: Right. And exhibit 2 is the role of the educational leader, is that right?

PN146

MR BULL: Correct. It's the equivalent document for an educational leader.

PN147

DEPUTY PRESIDENT CLANCY: Yes. All right, thank you. Yes?

PN148

MR BULL: Number 4 is the – it's a Commonwealth Department of Education and Training for COAG, and it's a document titled, "A Belonging, Being and Becoming, the Early Years Learning Framework."

PN149

DEPUTY PRESIDENT CLANCY: Yes.

PN150

MR BULL: And that's another document which a number of the witnesses refer to.

PN151

DEPUTY PRESIDENT CLANCY: Is it the 51 page document?

PN152

MR BULL: Correct.

PN153

DEPUTY PRESIDENT CLANCY: Yes.

PN154

MR BULL: And that was filed with our materials on 15 March.

PN155

DEPUTY PRESIDENT CLANCY: Yes.

PN156

MR BULL: And the final document is an ACECQA document and that was filed by us on 29 April this year.

PN157

DEPUTY PRESIDENT CLANCY: Just a moment.

PN158

MR BULL: And it's the Educational Leader Resource.

PN159

DEPUTY PRESIDENT CLANCY: Yes. It's quite a long document.

PN160

MR BULL: It's another long document, I'm afraid.

PN161

DEPUTY PRESIDENT CLANCY: Yes.

PN162

MR BULL: I'd like to have that tendered as an exhibit.

PN163

DEPUTY PRESIDENT CLANCY: Yes.

PN164

MR BULL: It's going to be referred to by witnesses.

PN165

DEPUTY PRESIDENT CLANCY: Thank you.

PN166

MR BULL: So those are the documents that I spoke to earlier. My friend, Ms Dabarera, is going to deal with some of our witnesses, so I'm going to hand over to her.

PN167

DEPUTY PRESIDENT CLANCY: Thank you. So just before we do that, so we're – just to recap, they'll be joint exhibits. The first, the guide of the National Quality Framework and the ACECQA document, they're joint exhibit 2.

**EXHIBIT #2 DOCUMENT, GUIDE OF NATIONAL QUALITY
FRAMEWORK AND ACECQA DOCUMENT**

PN168

Also an ACECQA document, the National Quality Standards Information Sheet
Role of Quality Leader - - -

PN169

MR BULL: "Educational Leader", is the term of art.

PN170

DEPUTY PRESIDENT CLANCY: Educational leader. Joint exhibit 3, ACECQA National Quality Standards Information Sheet for Responsible Person for Approved Providers.

PN171

MR BULL: Correct.

**EXHIBIT #3 ACECQA NATIONAL QUALITY STANDARDS
INFORMATION SHEET FOR RESPONSIBLE PERSON FOR
APPROVED PROVIDERS**

PN172

DEPUTY PRESIDENT CLANCY: Yes. Joint exhibit 4, Commonwealth Department, "Belonging, Being", and I missed the last bit of that - - -

PN173

MR BULL: "Becoming", sir.

PN174

DEPUTY PRESIDENT CLANCY: "Belonging, Being and Becoming, Early Years Learning Framework.

PN175

MR BULL: Correct.

**EXHIBIT #4 COMMONWEALTH DEPARTMENT, "BELONGING,
BEING AND BECOMING, EARLY YEARS LEARNING
FRAMEWORK"**

PN176

DEPUTY PRESIDENT CLANCY: And joint exhibit 5, also, ACECQA Educational Leader Resource.

PN177

MR BULL: Correct, and that's at March this year, is when it was released.

PN178

DEPUTY PRESIDENT CLANCY: Okay, thank you.

EXHIBIT #5 ACECQA EDUCATIONAL LEADER RESOURCE

PN179

MS DABARERA: Ms Hennessy, can you hear me? It's Ms Dabarera.

PN180

MS HENNESSY: Yes, I can.

PN181

MS DABARERA: Great.

PN182

DEPUTY PRESIDENT CLANCY: Sorry, we haven't got any other witnesses in the hearing room here?

PN183

MS SAUNDERS: Only the individuals, if they be permitted.

PN184

DEPUTY PRESIDENT CLANCY: Yes. All right, thank you. Yes.

PN185

MS DABARERA: Ms Hennessy, the Associate will take you through the affirmation and then I'll ask you a few questions about your statement.

PN186

MS HENNESSY: Okay.

<BRONWEN FAYE HENNESSY, AFFIRMED [10.45 AM]

EXAMINATION-IN-CHIEF BY MS DABARERA [10.45 AM]

PN187

MS DABARERA: Ms Hennessy, could you please repeat your full name?---Bronwen Faye Hennessy.

PN188

Your address?---(Address supplied)

PN189

Your occupation?---Early Childhood Educator, and Educational Leader.

PN190

Thank you. You have prepared two statements for the purposes of these proceedings?---Yes.

PN191

With your first statement can I get you to confirm that that is a statement of 45 paragraphs?---Yes.

PN192

With four annexures, A to B?---Yes.

PN193

Signed by you and dated 11 March 2019?---Yes.

PN194

Are the contents of that statement true and correct?---Yes.

*** BRONWEN FAYE HENNESSY

XN MS DABARERA

PN195

Thank you, Ms Hennessy. With your second statement, is that a statement of 12 paragraphs and no annexures?---Just a moment. Yes.

PN196

Signed by you on 10 April 2019?---Yes.

PN197

Are the contents of that statement true and correct?---Yes.

PN198

Thank you, Ms Hennessy. Your Honours, I seek to tender those statements.

PN199

DEPUTY PRESIDENT CLANCY: Thank you. I'll mark the first statement of Ms Hennessy, Bronwen Hennessy, dated 11 March 2019 as exhibit 6. And the supplementary statement of 10 April 2019 as exhibit 7.

EXHIBIT #6 FIRST STATEMENT OF BRONWEN FAYE HENNESSY DATED 11/03/2019

EXHIBIT #7 SUPPLEMENTARY STATEMENT OF BRONWEN FAYE HENNESSY DATED 10/04/2019

PN200

MS DABARERA: Thank you, your Honours. Ms Hennessy, you will now be asked some questions by the employer parties?---Okay.

CROSS-EXAMINATION BY MR ARNDT

[10.48 AM]

PN201

MR ARNDT: Good morning, Ms Hennessy, can you hear me?---Yes, I can. Good morning.

PN202

My name's Julian Arndt. I'm a solicitor who's representing some employers in this case. I have some questions to ask you about your statements?---Yes.

PN203

It may be that someone else has some questions after me. I'm not sure about that yet. If you can't hear me at any stage, just tell me to speak up?---Okay.

PN204

Now you've got the two statements in front of you, is that right?---I do, yes. Yes.

PN205

I'm just going to call them the first and the second statement, is that all right?---Yes, that's fine.

*** BRONWEN FAYE HENNESSY

XXN MR ARNDT

PN206

Now you're the educational leader, and assistant nursery educator at Greenacres, is that right?---That's correct, yes.

PN207

You're in the nursery room. How old are the children in the nursery room?---Six weeks to approximately one year.

PN208

And how many children are in the nursery room?---At any one time, we have a maximum of eight, with two educators. I think we have 13 children on our role at the moment throughout the week.

PN209

So you said you've got the two educators in the room?---Yes. Yes.

PN210

Now one of those people is you?---Yes.

PN211

And the other person is the lead educator, is that right?---That's correct.

PN212

If you're the assistant educator, does that mean you report to the lead educator?---Yes.

PN213

And so what's the difference between your role as an assistant educator, and the lead educator?---My understanding officially is that we're all responsible for doing pretty much everything, but the responsibility of making sure that it happens and implementing it falls onto the lead educator.

PN214

Okay, thank you. You are also the nominated educational leader, is that right?---That's correct, yes.

PN215

And so as the educational leader, or you are the educational leader and you report to the lead educator?---Yes.

PN216

Apologies if that's - - -?---So as educational leader I sort of oversee the programming for the centre, whereas in the room I report to her, if that makes sense.

PN217

Thank you. Do you spend time outside of the nursery room with children of other ages?---Not regularly, no.

*** BRONWEN FAYE HENNESSY

XXN MR ARNDT

PN218

And when you say, not regularly, how much time would you spend outside of the nursery room, observing other children?---We do a family grouping at the start and end of the day, and I'm on close shift at the moment, so usually at about between 5.00, 5.30, our room would be closed and we sort of consolidate all of our children in one room. So I get to spend, yes, up to an hour and a half a day, interacting with them at those end of day times. As educational leader I do support all the rooms, so I do get to spend some time in the rooms with the other educators, and also being – with their programming and how they're interacting with the children. But most of the time I'm in my own room.

PN219

And it could be just that I'm confused. You said that you were not regularly out of the nursery room. But from the sounds of it you've just said you are outside the nursery room, observing other children up to an hour and a half a day, plus also in your role as educational leader? Can you just explain that?---Yes. I guess I don't really think of it as – I didn't really think of it that way because I am in my room for the bulk of the day, and it's very dependent on the shift. It's only because I'm on the late shift that I really get to spend that time at the end of the day with the other children. Because if I were on sort of an 8.00 to 4.30 shift I would be almost solely in my room. Because we have our own rooms, we have primary care children, we're expected to be with our children as much as possible, and it's only because end of the day numbers get low, staff have to go home, I go down with my children and there are other children there. Does that make sense?

PN220

It does. Sorry, were you going to say something?---(No audible reply)

PN221

Just to round out this end of the day scenario, so said that the staff go home and children – the numbers get lower, so that period at the end of the day, the children have started to leave and the numbers are reducing?---That's right, yes.

PN222

How many children are around, or it just depends?---There's a – it depends on a lot. I mean, so do you mean end of the day time?

PN223

Yes?---I guess, by six o'clock we can sort of have anywhere from, like, two children to 20 here. Like, it really varies a lot, just based on the day, the season, whether it's school holidays. It's almost impossible to tell, sometimes.

PN224

Ms Hennessy, how long have you been an assistant educator for?---At my current centre, or overall?

*** BRONWEN FAYE HENNESSY

XXN MR ARNDT

PN225

No, let's start with your current centre?---I've been at my current centre, nearly eight years. I think I'm coming up for eight years in July. I've been in the

industry and working as an assistant educator for nearly 20 years. I started in 2001.

PN226

Thank you. Now at Annexure A of your first statement, I believe you attach a position description of educational leader?---Yes.

PN227

You don't attach a position description of your role as assistant educator, do you?---I don't think we did, no.

PN228

Do you have one?---Not on me but I could find it.

PN229

That's all right. Maybe I can assist?---Yes.

PN230

So in speaking to your employer I have an understanding, or at least, I have a list of what your role as assistant educator entails. It's a very short list?---Yes, yes.

PN231

Perhaps I might just run through it and you can say, yes or no?---Absolutely.

PN232

So, in speaking to your employer I understand your role as assistant educator includes responsibilities to assist in completing, "what we did" forms, is that correct?---Yes.

PN233

Evaluate programming when required, is that correct?---Yes. Yes.

PN234

Assisting completing children's daily reports?---Yes.

PN235

Now your statement says that you're classified as Level 3.1 under the Children's Services Award?---Yes.

PN236

I don't want to conduct a quiz as to your knowledge of the award but I would like to ask you again whether you perform certain duties. And again, I'll just say the duties and if you - - -

*** BRONWEN FAYE HENNESSY

XXN MR ARNDT

PN237

MR BULL: I can't object to this but it would have been better for the witness if – I didn't object to the question about the position description from the employer, but in fairness, if we're going to be putting specific matters about classifications and so forth to witnesses, they should at least have what is the written document in front of them so we can be accurate about these. So if my friend's going to now

start putting to the witness whether certain things align to classifications within the award it's fair that the witness have at least those classifications in front of her when she's addressing those questions. And there's also an issue about what sort of value this witness, who's an educator, not an industrial relations expert, can bring to this matter in terms of addressing quite technical classifications.

PN238

MR ARNDT: To that point, it's not my intention to question the witness as to their understanding of the award. It's my intention to simply ask whether the witness has performed certain duties. It's not a matter for her to give evidence or to determine whether performing those duties would make her subject to the award. She's given evidence that she is classified as Level 3 under the award. She should be able to give evidence and to say, yes or no, as to whether she does certain things.

PN239

DEPUTY PRESIDENT CLANCY: Could we get the classification description to the witness? Where is the witness?

PN240

MR ARNDT: Adelaide.

PN241

DEPUTY PRESIDENT CLANCY: Adelaide, all right. So if we could get – are there any other parts of the award classification structure that you're going to - - -

PN242

MR ARNDT: No.

PN243

DEPUTY PRESIDENT CLANCY: Just the - - -

PN244

MR ARNDT: I mean, the - - -

PN245

DEPUTY PRESIDENT CLANCY: I mean, what are we talking about, a page or?

PN246

MR ARNDT: We're talking, about ten duties. What I'd proposed to do is merely read the list and she can say yes or no. Whether it's in the award or not doesn't seem to, from my perspective, at least, matter to her evidence.

PN247

DEPUTY PRESIDENT CLANCY: Because this is the list of duties that the employer has told you that the employee - - -

*** BRONWEN FAYE HENNESSY

XXN MR ARNDT

PN248

MR ARNDT: That's not correct, Commissioner. This is a list. What I propose to do is read the list of duties in the awards. I don't want to ask the witness whether

that makes her covered by the award, whether that falls out of the award. I just simply want to ask her what she does.

PN249

MR BULL: I just don't see how relevant this is. There's always going to be indicative duties in any classification structure that - - -

PN250

MR ARNDT: Well, it - - -

PN251

DEPUTY PRESIDENT CLANCY: You've said you were going to make submissions on the evidence and the weight, so you can do that.

PN252

MR BULL: If the Commission pleases.

PN253

DEPUTY PRESIDENT CLANCY: So which part of the award do you propose to take the witness to?

PN254

MR ARNDT: It will appear in the Children's Services Award.

PN255

DEPUTY PRESIDENT CLANCY: What page?

PN256

MR ARNDT: At 52 and 53.

PN257

DEPUTY PRESIDENT CLANCY: Right.

PN258

MR ARNDT: Because Level - the witness gives evidence she's a Level 3.1 and Level 3 incorporates Level 2. Again, the terms of the award - what I propose to do is actually ask the witness what she does, as opposed to asking her what she thinks the award means or whether she falls under the particular terms of the award. If she doesn't understand the question as to what the award is saying, she can say so.

PN259

DEPUTY PRESIDENT CLANCY: All right. Now, do you think you can do it without the witness requiring a copy of those two pages, or?

PN260

MR ARNDT: Well, I think I can just read the duty and she can - - -

PN261

DEPUTY PRESIDENT CLANCY: All right, we'll do that.

*** BRONWEN FAYE HENNESSY

XXN MR ARNDT

PN262

MR ARNDT: Ms Hennessy?---Yes.

PN263

What I'm going to - what I propose to do is simply ask you a question as to whether you do certain things and if you do those things, you can say yes. If you don't, you can say no. If you're not sure, you can say I'm not sure. You can answer in any way you would like?---Yes.

PN264

In your role, do you assist in the implementation of the children's program under supervision?---Yes.

PN265

Do you assist in the implementation of daily care routines?---Yes.

PN266

Do you develop an awareness of and assist in the maintenance of the health and safety of children in care?---Yes.

PN267

Do you give each child individual attention and comfort as required?---Yes.

PN268

Do you understand and work in accordance to the centre's or service's policies and procedures?---Yes.

PN269

Do you demonstrate knowledge of hygienic handling of food and equipment?---Yes.

PN270

Do you assist in the preparation, implementation and evaluation of developmentally appropriate program for individual children or groups?---Yes.

PN271

Do you record observations of individual children or groups for the program planning purposes for qualified staff?---Yes.

PN272

Do you, under direction, work with individual children with particular needs?---Yes.

PN273

Do you assist in the direction of untrained staff?---Yes.

PN274

Do you undertake and implement the requirements of quality assurance?---Yes.

*** BRONWEN FAYE HENNESSY

XXN MR ARNDT

PN275

Do you work in accordance with food and safety regulations?---Yes.

PN276

I appreciate that, thank you. Now, can I take you to 15 of your statement?---Yes.

PN277

Now, I understand you became educational leader after it was advertised to the team in the staff room and you expressed an interest. Is that correct?---That is correct, yes.

PN278

Can I take you to 17 of your first statement?---Hm-mm.

PN279

At 17 you say you are responsible for making sure policies dictated by the National Quality Framework are considered and integrated into programming and curriculum?---Yes.

PN280

Do you know where that responsibility comes from?---Ultimately it comes from my centre manager and higher than that, I guess from the National Quality Framework and ACECQA and national law.

PN281

Just unpacking those two things, when you say ultimately it comes from your centre manager, are you saying that your centre manager gave you that responsibility?---Yes, that is my understanding, yes. Delegated that responsibility, yes.

PN282

How did that delegation happen? Did the centre manager tell you that you were responsible for this?---I don't remember, I'm very sorry.

PN283

That's okay. The other part of your original answer you said that it came from ultimately the centre manager and also the National Quality Framework and regulations and so forth?---Yes.

PN284

Can I ask you, you don't know the specific part of that framework or regulations where the obligation comes from, do you?---Not off the top of my head, no.

PN285

Can I put it to you it's actually your centre manager who's actually responsible for the matters which you identify at 17?---Ultimately, yes. I recognise that.

PN286

Can I put it to you that you're not responsible for those things?---Yes, I guess ultimately, I'm not. I see it as a part of my responsibility as an educational leader to implement it and disseminate it through my centre.

*** BRONWEN FAYE HENNESSY

XXN MR ARNDT

PN287

Can I ask you to go to 18(a) of your first statement?---Yes.

PN288

You didn't develop the program or curriculum at the centre, did you?---No.

PN289

It had already been developed when you took the role as educational leader?---Yes.

PN290

Can I take you to 18(b)?---Yes.

PN291

When you say you communicate with parents about educational programs and children's progress, are you the only employee who does this at the centre?---I am not, no.

PN292

All the educators at the centre do this, don't they?---Most of them, yes.

PN293

Who wouldn't do it?---I think casuals and relief staff that are not part of our core team wouldn't be communicating about educational progress. They might communicate about the child's day, but this kind of communication is - I think it would be inappropriate for them to be communicating that with families if they're only there for the day, for example.

PN294

But everyone does?---Yes, to some extent, yes.

PN295

Can I take you to 18(d)?---Yes.

PN296

You say at 18(d) that you develop and implement specialised learning plans to support students of different educational needs. Your centre manager is responsible for this, isn't she?---Ultimately, yes.

PN297

So when you say at 18(d) that as an educational leader you develop and implement specialised learning plans to support different students of different educational needs, who do you mean?---I spent a lot of time and started off an inclusion support portal through Gowrie. I put a lot of time and effort into it and ultimately my director had to take it off my plate as it became far too big a job for me to do in my two hours of educational leader time that I was allocated per week. However, I still initiated the portal and put a lot of the initial work in.

*** BRONWEN FAYE HENNESSY

XXN MR ARNDT

PN298

Can you just explain the project you were talking about? Just tell me the name of it again?---I believe it's the Inclusion Support Subsidy which got changed over from Inclusion SAT Gowrie sometime last year or the year before. They have an online portal that we use to apply for funding and resources for children with additional needs.

PN299

At 18(d) are you only talking about that inclusion support subsidy project, or are you talking about something else?---I mean, in my educational leader role, I do a lot of work on inclusion and I do help to I guess, tailor our program and tailor curriculum towards being more inclusive and supporting other educators in this area. Does that make sense?

PN300

But you agreed before that the centre manager is ultimately responsible for this?---Yes.

PN301

Just bear with me on moment Ms Hennessy?---Hm-mm.

PN302

Can you tell me what the reconciliation action plan at 18(d) is - 18(e), sorry?---Yes, that's a plan that I began to develop as a way for our Centre to incorporate reconciliation and inclusion recognition of our first peoples into the way we do things, into our curriculum in a way to - which is obviously suggested by the ErailF and the NQS and is very important obviously, given where we live. I did pretty much the whole thing by myself. So far, it's a work in progress. It's a bit like a quality improvement plan. It's one of those documents that's always evolving and changing.

PN303

Can I ask is it a legislative requirement that Greenacres has a reconciliation plan?---I don't believe so, but I'm not actually sure. It is definitely something that is highly recommended and that our Centre - my Centre manager definitely wanted and asked for to be done.

PN304

Can I take you to 18(f)?---Hm-mm.

PN305

You say as educational leader you're required to observe interactions between educators and children and provide feedback. Apart from yourself, have you observed anyone else providing feedback to educators about their interactions with staff and children?---Yes.

PN306

Does anyone provide you feedback in relation to your interactions?---Yes.

*** BRONWEN FAYE HENNESSY

XXN MR ARNDT

PN307

Can you tell me who they are? You don't need to mention their names; maybe mention them by position?---Team leaders, director and assistant director. Almost anyone, really. We're a very open Centre and we like to have a lot of professional discussions.

PN308

It's a team effort, isn't it?---It is, yes.

PN309

You're a senior member of staff with a lot of experience. Any senior member of staff would do this?---

PN310

SPEAKER ONE: I object to that question.

PN311

MS SHAW: Your Honour - - -

PN312

MR ARNDT: I'll withdraw the question. Can we go to 19?---Hm-mm.

PN313

You say you're required to observe children with special needs closely. How many children with special needs are in the nursery room?---None currently that I know of.

PN314

And how many in the Centre altogether?---Off the top of my head, five to seven. I'm not 100 per cent sure at the moment.

PN315

Based on your evidence given before, you would have to observe those other - if there's no children with special needs in the nursery, you would have to observe the children with special needs in your time out of the nursery room. Is that right?---Yes. Yes.

PN316

That would be confined to the periods which you gave before, the afternoons?---Yes.

PN317

Can I put it to you that it's the responsibility of the lead educator in any room to monitor special needs children?---Yes.

PN318

At 20, you say that you're heavily involved in mentoring junior educators and you proof read their communications?---Yes.

*** BRONWEN FAYE HENNESSY

XXN MR ARNDT

PN319

Are these staff, the junior educators you're talking about, are they trained?---What do you mean by trained?

PN320

Are they trained in the program? Kindyhub?---We all undergo a certain amount of training in how to use Kindyhub, yes. We all did a lot of it together when we first implemented it, but since then I am usually the one who implements that training.

PN321

Can I take you to 22?---Hm-mm.

PN322

You say that you're responsible for checking the daily programming is up to date?---Hm-mm.

PN323

And that all children have planned experiences a few weeks in advance?---Hm-mm.

PN324

Can I put it to you that all educators in your Centre are required to do that?---Not all. Usually lead educators. In my case because I'm educational leader, I have gotten that role as well.

PN325

Can I take you to 28?---Hm.

PN326

The programs and templates used in your Centre were already created by the Centre manager, weren't they? You didn't create those templates?---Most of them. I have created some.

PN327

28, you say it's rare you're able to read into new curriculum research or write programs. Just focusing on the research?---Hm-mm.

PN328

Has anyone asked you to undertake research?---In some cases, yes.

PN329

Can you explain what those cases were?---One example would be the critical reflection that we have been trained to improve and develop in our Centre. I was asked to look into some various methods for doing critical reflection and what makes it useful and functional and so forth. To use that to sort of help develop our plan of how we were going to implement critical reflection amongst our staff.

*** BRONWEN FAYE HENNESSY

XXN MR ARNDT

PN330

Do you understand that you're required in your role as educational leader to undertake research?---I believe it's part of my duties, yes. I'm not 100 per cent sure what the legal requirement is, I guess.

PN331

I won't ask the next question, then. Can we talk about the sun briefly. Free sunscreen is provided in your Centre, isn't it?---Yes.

PN332

And there's spare hats that the Centre provides, isn't there?---I believe you get one when you first start.

PN333

Almost finished Ms Hennessy. At 31, you say it's not a formal requirement that you have first aid or CPR? Sorry, I misspoke. You say it's not a formal requirement that all educators have first aid and CPR?---Yes.

PN334

Do you mean by that, that no one from your employer requires you to have one?---My understanding is there has to be a certain number of people on site that have CPR. I don't know what the number is; what sort of percentage it is.

PN335

I might just ask the question again. Perhaps I wasn't clear. When you say it's not a formal requirement that all educators have these certificates, are you saying that no one from your employer has ever asked you to - has ever required you to have one of these certificates. Or, are you saying something different?---In my Centre, we are all expected to have one. I'm not sure how that differs from a requirement, but it is an expectation that everyone in my Centre - I'm not sure about the company, I'm afraid, sorry.

PN336

At 34, when you say it's a requirement that the CPR course is refreshed every 12 months and first aid refreshed every three years, whose requirement is that?---I would say that that is a Centre requirement rather than the company requirement. That is - that is how often a CPR course should be refreshed as opposed to - like I said, I'm not sure, I'm sorry.

PN337

That's okay. If you're not sure it's fine, but just so that I'm clear, in 31 you say it's not a formal requirement for all educators to have these certificates. How could it be the case that it's the Centre's requirements? Sorry, I think I'm confused with your answer?---I think I maybe got my language a little confused when I was going through this. So, I think that it's a requirement that the CPR course is refreshed. I think that's maybe just a misspoke on my part and it may not be an actual requirement, but a strong expectation.

PN338

Can I ask you about your secondary employment?---Yes.

*** BRONWEN FAYE HENNESSY

XXN MR ARNDT

PN339

You're a disability support worker?---Yes.

PN340

I just had one question about that. You take these shifts after a day at the Centre?---Yes.

PN341

And perhaps on days where you're not working at the Centre as well, I assume?---Yes.

PN342

What would be a typical shift as a disability support worker for you? What time would it start?---For me it depends on what shift I want to work. I'm not getting many shifts at the moment because I don't finish till 6.30 and that's not - I don't drive, so it's not really feasible for me to get across town at that time of night. When I was on an earlier shift, my usual shift would be say five till 10 or something like that on a week night. I often do Saturday during the day, anywhere from one and a half hours to eight hours and I occasionally do overnight respite care as well.

PN343

Your current shift pattern of working until 6.30?---Yes.

PN344

You're not getting many shifts as a disability support worker because you're working too late currently?---That's right, yes.

PN345

Thank you very much Ms Hennessy. I'll see - the Bench will see if anyone else has any questions. Thank you.

PN346

MS SHAW: I have no further questions.

PN347

MS E ARRABADLE: No further questions.

PN348

DEPUTY PRESIDENT CLANCY: Anything in re-examination?

PN349

MS DABARERA: Briefly, your Honour.

RE-EXAMINATION BY MS DABARERA

[11.23 AM]

PN350

MS DABARERA: Ms Hennessy, you were asked about your reporting requirements?---Yes.

*** BRONWEN FAYE HENNESSY

RXN MS DABARERA

PN351

In your role as educational leader, who do you report to?---My centre manager.

PN352

Thank you. You were asked a series of questions about your role as educational leader in relation to your witness statement. Could you tell us on a day to day basis what you do in your role as educational leader?---I get two hours per week currently as educational leader. During that time I audit the Centre's programming to see whether people are up to date. I offer my support on training for people who might need help with any aspect of the programming. So, whether they need help with using Kindyhub, with the dates that things are expected to be put in, with how to write a decent observation, with how to display programming, so that it's meaningful and links well. With how to following a programming cycle, so that you can see the whole process in action. We've had a how to write critical reflections, so that we're using our reflections to guide our practices and our future programming. Yes.

PN353

Thank you.

PN354

MR BULL: I've got one further matter arising.

FURTHER CROSS-EXAMINATION BY MR BULL

[11.24 AM]

PN355

Ms Hennessy, you were asked some questions about your secondary employment?---Yes.

PN356

What affect - my friend is seeking a variation which would allow ordinary hours to be up to 7.30 in the evening. What affect would working routinely till 7.30 in the evening have in relation to your capacity to do your second job?---It would make it pretty much impossible for a week night job because it just would not be worth it for the families that I work for to hire me. So, like they would be hiring me for two hours in the evening and they would not be able to go and do the things that they were hoping to do and do. They would find somebody else, which means that I would only ever be able to work on the weekend and I love my job.

PN357

Thank you. Those are the matters that we - further matters we wanted to ask her about. Thank you.

PN358

DEPUTY PRESIDENT CLANCY: Thank you Ms Hennessy for your evidence. You can step down from the witness box and you're excused from further attendance. Thank you?---Thank you.

*** BRONWEN FAYE HENNESSY

FXXN MR BULL

<THE WITNESS WITHDREW

[11.25 AM]

PN359

We'll just adjourn briefly.

SHORT ADJOURNMENT

[11.26 AM]

RESUMED

[11.31 AM]

PN360

MS DABARERA: Ms Bea, it's Ms Dabarera here. Can you hear me?

PN361

MS BEA: Yes.

PN362

MS DABARERA: Great. The associate will go through the oath or affirmation with you and then ask you a few questions.

PN363

MS BEA: Yes.

PN364

THE ASSOCIATE: Please state your full name and address.

PN365

MS BEA: Ms Pixie Bea (address supplied).

<PIXIE BEA, AFFIRMED

[11.32 AM]

EXAMINATION-IN-CHIEF BY MS DABARERA

[11.32 AM]

PN366

MS DABARERA: Ms Bea, could I get you to repeat your full name please?---Pixie Bea.

PN367

What is your occupation?---I'm an early childhood educator.

PN368

You have prepared two statements for the purposes of these proceedings?---Yes.

PN369

Do you have your statements before you?---Yes.

PN370

With your first statement, is that a statement of 71 paragraphs?---I think so, yes. Yes.

PN371

And six annexures with A to F?---Yes.

*** PIXIE BEA

XN MS DABARERA

PN372

Signed by you on 4 March 2019?---Yes.

PN373

Ms Bea, I understand you want to make a correction to one matter in the statement?---Yes. Two minor corrections. The first one is that the enterprise agreement provided is not yet approved by the Commission. I have an updated here. I have the former approved enterprise agreement here, if it's needed. The second correction is with my second statement where my partner is referred to as my husband, but we're not actually married.

PN374

Thank you, Ms Bea. With those corrections made.

PN375

DEPUTY PRESIDENT CLANCY: What's the nature of the first correction?

PN376

MS DABARERA: With the first correction, I'll just find the paragraph?---The enterprise agreement provided is one that is not yet approved.

PN377

It's paragraph 8.

PN378

DEPUTY PRESIDENT CLANCY: Yes.

PN379

MS DABARERA: Ms Bea's statement refers to the YWCA Canberra Enterprise Agreement 2018 to 2021.

PN380

DEPUTY PRESIDENT CLANCY: Yes.

PN381

MS DABARERA: Ms Bea understands now that that is yet to be approved by the Commission.

PN382

DEPUTY PRESIDENT CLANCY: All right, so the nature the amendment sought to that paragraph is what?

PN383

MS DABARERA: Ms Bea, do you have a copy of the current enterprise agreement with you?---Yes.

PN384

Would you be able to read the title of that current enterprise agreement?---Young Women Christian Association of Canberra TA, YWCA Canberra Enterprise Agreement 2014 to 2017. Is that sufficient?

*** PIXIE BEA

XN MS DABARERA

PN385

COMMISSIONER LEE: You're looking to substitute that reference to the 2018 to 2021 agreement to the 2014 to 2017 agreement. Is that the amendment?

PN386

MS DABARERA: That's correct Commissioner. We can provide a copy of that current enterprise - - -

PN387

DEPUTY PRESIDENT CLANCY: That will be new annexure B, will it?

PN388

MS DABARERA: That's correct, your Honour. If I may get a copy for the parties.

PN389

COMMISSIONER LEE: What's the relevant paragraph in terms of the second statement?---I'll just look over it. Paragraph 8 in the supplementary statement.

PN390

It's in the third line there. You want to change husband to partner? Is that the change?---Husband to partner.

PN391

Yes?---Yes.

PN392

MS DABARERA: Ms Bea, with that amendment made to your statement of 4 March 2019, is the content of that statement true and correct?---Yes.

PN393

With that amendment made to your second statement which is dated 10 April 2019, is that statement true and correct?---Yes.

PN394

Thank you Ms Bea. The other side will now ask you a few questions.

PN395

DEPUTY PRESIDENT CLANCY: I'll mark the - - -

PN396

MS DABARERA: Sorry, I apologise your Honour.

PN397

DEPUTY PRESIDENT CLANCY: I'll mark the statement of Ms Bea dated 4 March 2019 as exhibit 8.

**EXHIBIT #8 WITNESS STATEMENT OF PIXIE BEA DATED
04/03/2019**

*** PIXIE BEA

XN MS DABARERA

PN398

The supplementary statement as exhibit 9. Thank you.

**EXHIBIT #9 SUPPLEMENTARY STATEMENT OF PIXIE BEA
DATED 10/04/2019**

CROSS-EXAMINATION BY MR ARNDT

[11.38 AM]

PN399

MR ARNDT: Morning Ms Bea. My name is Julian Arndt. I'm a solicitor representing some employers in this case and I have some questions for you. Can you hear me?---Yes.

PN400

Excellent. Now, you've got the two statements. I'm just going to call them the first statement and the second statement. Is that okay?---Yes.

PN401

The time when you wrote the first statement you worked at YWCA Currawong. That's right, isn't it?---Yes.

PN402

That's right in the centre of Canberra, isn't it?---That's in Barton in central Canberra, yes.

PN403

It provides care for children of DFAT employees?---Yes.

PN404

Does it provide care to anyone else?---I'm not sure.

PN405

You worked in the nursery room at Currawong?---Yes.

PN406

How old were the children in the nursery room?---Up to two years.

PN407

What's the youngest?---The youngest would be three or four months.

PN408

From your rosters that you've put in your statements, you seem to work Tuesday to Thursday 8.30 am to 4.30 pm at Currawong?---Yes.

PN409

That was your regular roster?---For that six week block, yes.

PN410

Did you ever work later than that at Currawong?---No.

*** PIXIE BEA

XXN MR ARNDT

PN411

At 15 and 16 - I'll start that sentence again. In your first statement at paragraphs 15 and 16 you talk about your employment at Mornington?---Yes.

PN412

You say that your regular hours, or you said that you worked three days a week starting at 6.30, finishing at 2.30?---Yes.

PN413

You say you regularly worked overtime?---Yes.

PN414

When you worked overtime, did you ever work until 6.30 pm?---No.

PN415

From your second statement I understand you now work across four centres. Is that still current?---Yes.

PN416

Can you tell me the hours you work - do you have regular hours at these centres?---No.

PN417

Do you ever work until 6.00 pm at these centres?---No.

PN418

And you never work after 6.00 pm?---No.

PN419

Can you go to your second statement?---Yes.

PN420

When we talk about working till 6.30 pm and the arrangements you need to make with your partner?---Yes.

PN421

When has this happened?---Not recently. A past centre I would work till 6.00 but not later than that, unless parents were late to pick up children.

PN422

How long ago was that, if it wasn't recently?---Five years.

PN423

Can you remember how many times that happened?---One day a week.

PN424

When you say one day a week, that you were rostered until 6.00?---Yes.

*** PIXIE BEA

XXN MR ARNDT

PN425

And so how many - if you were rostered until 6.00 one day a week, how many times - how often were you - did you have to work until 6.30 because parents were late?---Never.

PN426

Never. Can I ask you a few questions about laundry?---Yes.

PN427

This is in your first statement I believe, at 26. You talk about a conversation you had with the area manager?---Yes.

PN428

Did you understand from that conversation that you were entitled to use the laundry facilities onsite?---Yes.

PN429

Did you understand that you were supposed to use the laundry facilities onsite?---I understood that it was available. I wouldn't say supposed to.

PN430

At 27, you say that it was not practically possible to use the laundry facilities to wash your shirts?---Yes.

PN431

Did you ever raise this with your area manager?---No.

PN432

Did you raise it with any of your managers from the business?---I quit soon after that conversation.

PN433

How soon?---Actually, correction. I had already put in my resignation before that conversation.

PN434

How long had you been working there for, when you put your resignation in?---I believe that's included in my statement.

PN435

I can't find when you resigned in your statement. I could be wrong?---I had to give a week's notice. I finished work on 31 January.

PN436

Thank you. A week before then, then?---Yes.

PN437

Thank you. Now, in relation to paragraph 28, you say that both washing machines were in constant use throughout the entire day?---Yes.

*** PIXIE BEA

XXN MR ARNDT

PN438

So, both machines were on all day?---Yes.

PN439

You talk about a laundry schedule at 33?---Yes.

PN440

It's your evidence that there was no space whatsoever in that laundry schedule to wash a load of shirts?---There was no time in the day to wash a load of shirts.

PN441

Is that because your other duties prevented that, or is it because the washing machines were operating all day, both machines?---Both.

PN442

Both. In relation to 33 again, you say there's no space on the tag of your shirt to put a name. Was there room for a number?---No.

PN443

What was the tag on the shirt?---Black with embroidered writing on it. There was no space to write on it.

PN444

Could you have marked the shirt with a texta?---No.

PN445

You couldn't?---No.

PN446

Could you have used an iron-on tag?---Possibly.

PN447

I might leave that. Can we go to your first statement, 36?---Yes.

PN448

Is it correct that first aid and CPR qualifications are required to obtain your diploma?---Yes.

PN449

Is that when you first did your CPR and first aid training?---Yes.

PN450

Can we go to 41 and 42 of your first statement?---Yes.

PN451

You say Mornington didn't reimburse you for these courses?---No.

PN452

You completed these courses before you commenced work at Mornington, didn't you?---Yes.

*** PIXIE BEA

XXN MR ARNDT

PN453

Did you ever ask for these to be reimbursed by Mornington?---No.

PN454

Where were you working at the time you did those courses?---I was working casually with YWCA Winyu.

PN455

Are you aware of any process existing at Mornington where employees could have their courses approved and these paid for?---No.

PN456

Can I put it to you that one exists?---

PN457

MR BULL: Well, there's not much point in doing that.

PN458

THE WITNESS: It might; I haven't encountered it.

PN459

MR BULL: I object to that because she's just said she doesn't know, so.

PN460

MR ARNDT: Can I take you to 40 then?---Yes.

PN461

Your statement says your employer did not reimburse course fees?---Yes.

PN462

How do you know this?---A first aid course was offered at a time that I didn't need to renew mine. Educators were given the opportunity to do the course if they needed to, but they were expected to pay for it themselves.

PN463

Do you know if that - and so, from that experience you've determined that the Mornington has a general policy of not paying for courses?---Yes.

PN464

Can you please go to 43?---Yes.

PN465

At 43 you talk about being expected to read updated policies and procedures in your own time?---Yes.

PN466

Is it correct that policy updates were addressed at team meetings?---Not that I remember.

*** PIXIE BEA

XXN MR ARNDT

PN467

Is it correct that any changes to a policy would be identified in a table on the front of the policy document?---Yes.

PN468

And this would mean that you would only have to look at that front page to see if there's any changes. You wouldn't need to study the whole document?---No.

PN469

Can we go to 44?---Yes.

PN470

Sorry, forget I said that. Can we go to 52 instead? You say you were required to spend one to three hours per week completing programming at home.

PN471

MS E ARRABADLE: Objection. The witness doesn't say required.

PN472

MR ARNDT: That's fine. I thank my friend for her objection. 52 says you were spending about one to three hours per week completing programming activities at home?---Yes.

PN473

I was trying to work out from reading your statement, what period you're talking about here. Are you talking about from July 2018?---It did happen earlier.

PN474

Earlier than July?---Yes. The period from April to July, we didn't have a formal room leader. I was taking on many of the responsibilities without the time for it.

PN475

So the amount of - I'll ask a specific question, I won't withdraw that. I am very sorry Ms Bea, you are talking - when you say that you were spending about one to three hours per week completing programming activities at home, you're talking about a period from April onwards?---Yes.

PN476

Can I take you to 54?

PN477

DEPUTY PRESIDENT CLANCY: Sorry, paragraph 44 of the statement says I was required to program from May 2018. So is it April or May?---I can't remember.

PN478

MR ARNDT: Just bear with me Ms Bea. Can I take you to 54?---Yes.

PN479

You commenced the mentor for outdoor curriculum in the yards?---Yes.

*** PIXIE BEA

XXN MR ARNDT

PN480

You say at 55 that you were provided with more non-contact time that you'd been allocated previously?---Yes.

PN481

At 56, you say that you received the minimum two hours of non-contact time in that role for the first two months?---Yes.

PN482

Were you able to complete your necessary duties during that period?---Yes.

PN483

Can I ask you a few questions about rostering? You're a casual currently, aren't you?---Yes.

PN484

Jumping over to your second statement at 12?---Yes.

PN485

You say you're rostered to cover unexpected absences and that means your roster is usually provided to you on a Friday to begin the following Monday?---Yes.

PN486

How long is that roster for?---One week.

PN487

What happens if someone calls in sick after the roster is given?---I can be called in the early morning and asked to come in?---I imagine most unexpected absences are notified on the same day?---Yes.

PN488

When you get called in the early morning, or perhaps at any time, do you ever accept those shifts?---Yes.

PN489

Do you ever refuse them?---Yes.

PN490

Thank you Ms Bea. I don't have any other questions.

PN491

UNIDENTIFIED: No further questions.

PN492

UNIDENTIFIED: Nothing further, thank you.

PN493

DEPUTY PRESIDENT CLANCY: Anything in re-examination?

*** PIXIE BEA

XXN MR ARNDT

PN494

MS DABARERA: No, your Honours.

PN495

DEPUTY PRESIDENT CLANCY: Thank you Ms Bea for your evidence. You may step down from the witness box and you're excused from further attendance?---Thank you.

<THE WITNESS WITHDREW

[11.56 AM]

PN496

MR BULL: We actually have - our next witness is physically with us. My colleague is just getting her. It's Dr Marianne Fenech who's the expert. Thank you.

PN497

Dr Fenech, the associate is going to ask you to make an oath or an affirmation.

PN498

THE ASSOCIATE: Please state your full name and address.

PN499

DR FENECH: Marianne Fenech (address supplied).

<MARIANNE FENECH, SWORN

[11.58 AM]

EXAMINATION-IN-CHIEF BY MR BULL

[11.58 AM]

PN500

MR BULL: Your name and title is, you're an associate professor and you're a PhD, Marianne Fenech. That's correct?---That's correct.

PN501

You've given your address as you're an Associate Professor at the University of Sydney in their Department of Education?---It's the Education and Social Work.

PN502

You've made - you've provided one statement in relation to this matter which is dated 14 March 2019. Do you have that before you?---I do.

PN503

That statement principally produces - well, there's a copy of your curriculum vitae which is annexure A. There's a report which you were engaged to provide to United Voice as an independent expert, that's C. There's the letter of engagement, which is B. Is there anything you wish to alter in relation to that statement, or which isn't true and correct?---No. Everything is true and correct.

PN504

I'll tender the statement with the expert report.

*** MARIANNE FENECH

XN MR BULL

PN505

DEPUTY PRESIDENT CLANCY: Thank you. I'll mark the statement of Marianne Fenech dated 14 March 2019 with annexures as exhibit 10.

EXHIBIT #10 STATEMENT OF MARIANNE FENECH DATED 14/03/2019 WITH ANNEXURES

PN506

MR BULL: Just one brief matter. Dr Fenech, since you provided your report or authored your report, there's been a document released by ACECQA called the Educational Leader Resource that was released in March 2019?---Correct. That was after 14 March.

PN507

Okay. Is there anything in relation to that document which alters any conclusions or which you consider appropriate to bring to the attention of the Commission?---I think there are sections in that manual that affirms claims or comments that I have made in the report, particularly regarding the educational leader and their role. Did you want me to outline those now?

PN508

If you could?---Yes, okay.

PN509

DEPUTY PRESIDENT CLANCY: Sorry, just for our benefit, which exhibit are we - - -?

PN510

MR BULL: That's exhibit number 5.

PN511

DEPUTY PRESIDENT CLANCY: Thank you.

PN512

THE WITNESS: So I think overall what that document does is emphasise that the role is a significant one, and it's a significant role of leadership, not a management or - it's above and beyond an educational role, and one of the points that it makes time and time again is the time that's required to do that role effectively. I'll just see if I can find a quote for you that I think is quite pertinent - for example, on page 96, the resource states that - I'm sorry, bear with me for a minute while I find my - so the report says:

PN513

To be effective, the role of an educational leader requires time allocation in addition to and quarantined from other responsibilities.

PN514

And later:

PN515

The providers are advised to allocate set hours for the role.

*** MARIANNE FENECH

XN MR BULL

PN516

And I think because the document - it's a 148-page resource that has come out to guide the practise of educational leaders, and it talks about all the, I guess, in-depth, in detail, the work that the educational leader undertakes, so the amount of meetings, for example, that the educational leader is advised to have with educators, the influencing role, the building of collaborations, the building of a learning community, mentoring staff - these are things that require an investment of time I guess and don't happen on the run.

PN517

MR BULL: All right. So I was just clarifying, so that new document is consistent with the report you have provided?---Yes.

PN518

Just for - I think the statement of Dr Fenech is exhibit 10.

PN519

DEPUTY PRESIDENT CLANCY: Yes.

PN520

MR BULL: Okay, sorry, I didn't know whether I made a note of it. That's the evidence-in-chief from this witness.

PN521

DEPUTY PRESIDENT CLANCY: Thank you.

CROSS-EXAMINATION BY MR ARNDT

[12.02 PM]

PN522

MR ARNDT: Good morning, Dr Fenech. My name is Julian Arndt. I'm a solicitor working for some employer parties in these proceedings and I've got some questions?---Sure.

PN523

Some materials have been filed this morning, or tendered this morning, materials which I'm sure you're very well aware of. It may be that we go to them; it may be that we don't, but I might just give you a folder?---Okay.

PN524

I'm not sure what you have with you?---I certainly don't have that amount of things with me.

PN525

There are a lot of pages in this case and this area. The most important document to start with though is your report, so can I ask you to have that in front of you?---Sure.

*** MARIANNE FENECH

XXN MR ARNDT

PN526

If you can just start on page 2, in the summary about educational leaders. What do you understand regulation 118 actually requires a service to do?---So in simple

- as I have quoted there on page 2, the role succinctly is to lead the development and implementation of educational programs in the service.

PN527

I'll ask the question again. What do you understand regulation 118 actually requires a service to do?---Oh, a service to do. So the appointment, so the service - it depends what you mean by "the service." Do you actually mean the provider? What are you referring to by "the service?"

PN528

The approved provider?---Okay. So then they have to appoint the educational leader under regulation 118. Of course, the National Quality Standard builds on top of and extends on regulation 118, and it asks or requires the approved provider to actually provide support for the educational leader.

PN529

So it requires the appointment and the provision of support?---Yes.

PN530

You acknowledge in your report that the framework, and I'll just talk about the National Quality Framework as the framework?---Sure.

PN531

It doesn't stipulate the requisite minimum qualifications for an educational leader?---Correct.

PN532

And it doesn't stipulate how much experience an educational leader needs?---Correct.

PN533

You could have a teaching degree, but you don't need one?---Correct.

PN534

You could have 20 years' experience, but you don't need to?---Correct.

PN535

It's also correct that there are no job descriptions in the framework for an educational leader?---Yes.

PN536

It's also correct there are no specific skills that are identified as required for an educational leader in the framework?---In the framework? Let me just - I'm just going to the framework. Element 7.2.2 of the National Quality Standard says that:

PN537

The educational leader is supported and leads the development and implementation of the educational program and assessment and planning cycle.

*** MARIANNE FENECH

XXN MR ARNDT

PN538

So while the regulation and the framework doesn't stipulate specific skills, certainly the resource that was alluded to before outlined skills, because 7.2.2 cannot be actually fulfilled without a requisite skillset.

PN539

Just bear with me while I find 7.2.2?---Mm-hm.

PN540

So you're saying that 7.2.2, which says:

PN541

The educational leader is supported and leads the development and implementation of the educational program and assessment and planning cycles.

PN542

?---Mm-hm.

PN543

Implicit in that is a certain set of skills?---Yes.

PN544

Okay?---Which I think are also developed in the guide to the National Quality Framework, which elaborates I guess what that role entails.

PN545

But the guide or the framework doesn't specifically require any specific skills? They're not itemised anywhere?---They're not itemised.

PN546

At page 2 of your report, you say that:

PN547

The educational leader requires a specialist skillset beyond that of a generalist early childhood educator.

PN548

And you list a range of high-level traits, some of them to do with expert knowledge, expert knowledge in relation to child development, how children learn, regulatory requirements, and another set in relation to strong leadership skills to support mental and power staff developments, sustain a culture of learning and professional development, drive critical reflection and ongoing improvement. When you say that an educational leader requires that skillset, are you saying that that's what is required at law(?)?---No, it's required to do the role effectively and therefore meet the National Quality Standard, which is a legal requirement. So if services are to be I guess given a rating as meeting the National Quality Standard on 7.2.2, I would imagine that it would be very difficult for an assessor to rate a service as meeting 7.2.2 if the educational leader was not exhibiting that skillset.

PN549

Can I take you to 1.6 of the report?---Yes.

PN550

This is a paragraph in which you identify another list of traits, or it's another list at least which you say is required for an educational leader?---Mm.

PN551

And you say that list is supported by some consensus in the relevant literature?---Mm.

PN552

To my eyes, and this could just be a question of summary - - -?---Sure.

PN553

To my eyes, there are aspects of this list which are not in your list at page 2?---Yes, so the list on page 2 was trying to be a succinct summary.

PN554

Okay?---So this is more of an elaboration.

PN555

So do I take it then that - is the list on page 2 your opinion as to what's required from an educational leader, or is it a reflection of the consensus in the literature which is outlined at 1.6?---The latter. It's a reflection of the consensus of the literature, and I think the resource published by ACECQA in late March, the Educational Leaders Resource, substantiates that list.

PN556

Is your opinion consistent with the consensus?---My opinion is based on the consensus.

PN557

Thank you. The position of educational leader is relatively new, at least in its official form. In your experience, do educational leaders all possess the traits that you identify at 1.6 and on page 2?---No, they don't.

PN558

Would you hazard a guess as to what proportion of educational leaders - - -?---No.

PN559

That's all right?---The sector is so diverse, yes.

PN560

You've said earlier in your evidence that it would be very difficult to comply with the National Framework in terms of ratings if an educational leader didn't exhibit the traits on page 2?---Yes.

*** MARIANNE FENECH

XXN MR ARNDT

PN561

So if not all of the educational leaders are currently exhibiting those traits, is it the case that - what is happening to those centres without educational leaders exhibiting those traits?---I think there's a double part of the argument. So if they don't possess the skillset then the onus is on the approved provider to provide support, again going back to 7.2.2, to ensure that the educational leader has support to develop that skillset, so for example, to support their attendance at conferences, to provide the educational leader with access to professional journals, opportunities for leadership training and so on.

PN562

Do you know any consequences that are currently being felt by centres with leaders who do not exhibit the traits that you list on page 2?---The literature talks about, the one that I have cited on page 5 in - is it 1.6 - I think what the literature talks about is that it is difficult for the educational leader to fulfil that role. So they are under incredible pressure. In terms of the assessment and rating process, I can't comment on that. There's no literature that talks about, well, if they don't have that skillset then they're going to be assessed as not meeting that standard.

PN563

I thought that's what you said at the - - -?---That's my view. I would imagine that's the case. What I'm saying now is there is no research that explicitly makes that direct connection.

PN564

So you do not know whether there is any consequences for those centres which have educational leaders who are not meeting the - - -?---The skillset.

PN565

- - - the skillset which you say is required?---The NQF guide would suggest that they would be assessed as not meeting that element and therefore would be rated as working towards in quality area 7. That is the conclusion, the logical conclusion, that one would draw from the Guide to the National Quality Framework.

PN566

Do you know how many centres are not meeting the quality standards on the basis that their educational leader does not possess the skillset?---No, and certainly ACECQA wouldn't have data on that.

PN567

Are you aware of that ever happening?---Not to my own knowledge, no.

PN568

Can I take you to the first sentence of page 4? There's a problem with the syntax of this?---Okay.

*** MARIANNE FENECH

XXN MR ARNDT

PN569

I don't think it's your statement, because I've seen it in other parts of the evidence. The Standard 7.2 requires that effective leadership promotes a positive organisational culture and builds a professional learning community?---Mm-hm.

PN570

Does that mean that the standard requires effective leadership which promotes a positive organisational culture, so it requires effective leadership? It's not just a statement saying that effective leadership promotes positive organisational culture, is it?---I'm not sure of your question. Can you just repeat your question?

PN571

I'll withdraw it. I'll ask a better question. This is a better question. Standard 7.2, that applies to leadership generally, doesn't it, not just educational leaders?---Yes.

PN572

So it would include the actions of a director?---That's contentious one, because the director role is in essence a managerial compliance role. So it could include the director.

PN573

But not necessarily?---Correct.

PN574

What about an approved provider, would it encompass the leadership of an approved provider?---It could.

PN575

Would you agree that the provision of staff training would be important in promoting a positive organisational culture and the building of a professional learning community?---Yes.

PN576

Would you agree that the type of equipment in a facility and the facility generally would be important in promoting a positive organisational culture and the building of a professional learning community?---It depends what you mean, not so - - -

PN577

Well if there is - if the centre bought new toys?---No.

PN578

It wouldn't?---No.

PN579

Would you agree that the types of workplace policies that a centre would have would be important in promoting a positive organisational culture in the building of professional learning and community?---Not necessarily.

*** MARIANNE FENECH

XXN MR ARNDT

PN580

The types of workplace policies that a centre would have wouldn't have a role in promoting positive organisational culture?---It depends on the policies. The policies can be very much pertaining to, you know, the health and safety of children, for example. Building an organisational culture that supports professional learning communities goes above and beyond policy. There's a

philosophy and a commitment to ongoing professional development, and that would happen in-house as well as the educators undertaking, you know, their own external professional development, but it could be, for example, an educator going to a conference and then coming back and at the subsequent staff meeting relaying what learning they had from that conference, and then the staff planning out, okay, well, what are the implications for what you learnt at that conference and then developing, you know, how they're going to implement that in their practice. So if the centre has a policy where, you know, they support a certain amount of professional development for staff and that staff - you know, that meetings, regular meetings, are held and part of those meetings are going to be in-house professional development, then that would be an example of how a policy would be conducive to building the - but not all centres have such a policy.

PN581

Understood. Essentially what I'm trying to get to is that in terms of implementation of policies, the provision of staff training, they're the types of decisions that might be made by directors or approved providers?---Sure.

PN582

And so the Standard 7.2 speaks to their role in leadership and the things that they can do?---Yes.

PN583

It isn't confined just to educational leaders?---Yes, although 7.2.2 is specific to the educational leader, yes.

PN584

Understood. Just one moment?---Yes.

PN585

Still on 1.2 of your report, you say that the NQF guide further stipulates the educational leader in addition to the approved provider and nominated supervisor must ensure that programs for all children are based on approved learning framework and delivered in accordance with that framework?---Mm.

PN586

Do you have any knowledge as to what's required by the Children's Services Award and the Teachers Award in terms of programming?---No, that's beyond my
- - -

PN587

I won't ask you any further questions on that then. Can I take you to 1.5? The Educational Leaders Association is an advocate group for educational leaders, isn't it?---It's a support and professional development group.

PN588

Does it advocate for educational leaders in this space?---Not that I'm aware of. I can't think of an example of the advocacy work that they do.

*** MARIANNE FENECH

XXN MR ARNDT

PN589

When you say that Educational Leaders Association has 6000 online members, what does that mean? I'm specifically interested in the word, "online?"---Yes, well, because the group was set up I guess obviously as a national support for educational leaders. So basically people can log in - I don't think you pay a membership; I'm just trying to remember - but basically once you become a member of that group you can basically post questions, for example, has anyone - you know, this is a particular situation; has anyone got any idea. So it's that sort of forum of networking and support at an informal level. As far as I'm aware, they have not met in person. They may have opportunities to do that, but I'm not aware of it.

PN590

Can I put to you that they do have a paid membership platform?---Okay.

PN591

But when you say "online", you're not talking - I might rephrase the question. When you say they have 6000 online members, what do you mean?---My understanding from that conversation I had was that they are not necessarily paid members, but members who access and use that website for support.

PN592

You're not referring to how many people are on the - who are members of the educational leaders' Facebook page, are you?---I don't know.

PN593

At 1.5, you list what the Educational Leaders Association endorse as a practice standards?---Mm-hm.

PN594

None of these things are required by the NQS or the National Framework, are they?---I think certain points, so for example, "the framework requires critical reflection", that's part of the learning and planning cycle; "the leading of curriculum and practice", I think is a role in the framework, and again, the resource that was recently published would affirm all those roles, as required to effectively implement that role of the educational leader.

PN595

Are you talking about the resource that was recently published?---Mm.

PN596

Does that compel educational leaders to do a certain thing, or is it more aspirational or, I guess, suggestive?---I think it outlines what the role is like, what it involves, and what it requires to effectively - and it actually says at one point: to effectively carry out the role of the educational leader, you know, here are the things you do. So for example, if I can elaborate, on page 18 it talks about what the educational leader will do:

*** MARIANNE FENECH

XXN MR ARNDT

PN597

They will observe the educator's practice. They will collaborate with colleagues. They will build relationships. They will communicate regularly.

They can be called upon to prepare documentation, for example, the quality improvement plan. They mentor and support other educators. They plan for improved practises. They research and practise new ideas. They network with others and they lead change.

PN598

I guess what I'm finding difficult is, if we go to 1.6 of your report, it says:

PN599

The NQS nor the legislative standards are prescriptive about the qualifications, experience, skill, or role description for the person chosen to be educational leader.

PN600

So if they're not prescribing the role, how are they requiring the aspects that the Educational Leaders Association suggest that are required?---You're right, they don't prescribe the requirements for the role. They basically prescribe: this is what the role is, and then it has been up to ACECQA to elaborate what that role entails and to flesh that out.

PN601

Can I take you to 2.3, second sentence? It says:

PN602

Scholars, fleet chauffeurs, seamen and (indistinct) noted expectations on educational leaders to meet standards are high.

PN603

You list the four scholars in the year 2015. That's a reference to a single paper, isn't it?---Yes.

PN604

And that paper was based on research? Are you aware of whether it was based on research?---It was, yes.

PN605

Are you aware of what kind of research?---I can't remember, to be honest. I know it was talking to a group of educational leaders about how they were appointed and their experience of being the educational leader. I can't remember how many participants were involved.

*** MARIANNE FENECH

XXN MR ARNDT

PN606

In your report generally, you provide I guess sources for various propositions. You have also - you have listed various journal articles. You also provide a number of references to personal communication. What does that mean?---Personal communication is where, for example, some academics are engaging in research but they have yet to publish any findings, yet they've completed data analysis. So I may have called - or after an initial email I may have called the academic to say can I have a conversation; I'd like to hear more about your research; are you okay with me using your findings.

PN607

So when you refer to personal communications, you're talking about conversations you've had?---Correct.

PN608

At 2.6, you say that:

PN609

Educational leaders will most impact a provision of quality ECEC when they are supported and resourced.

PN610

And then you identify some supports and the sources from which they arise?---Mm.

PN611

In that list at 2.6, there's no reference to additional remuneration, is there?---Correct.

PN612

Do any of the articles that you cite outline or identify the need for additional pay as a support?---Not explicitly. They talk about how it can be difficult to appoint an educational leader to the role given the breadth and depth of responsibilities and why would anyone do it when they're not - they don't say - yes, they stop there. So it can be difficult to appoint someone and sanctify someone to do it, because of the extent of the role.

PN613

But they don't say that - they don't recommend, or they don't identify additional remuneration as a relevant support?---Not explicitly, no.

PN614

And nothing in the framework identifies it, does it?---I think that's beyond the scope of the framework.

PN615

Your report refers to something called the "Exemplary Educators Study?"---Yes.

PN616

Has this study been completed?---No.

PN617

Has it been published?---No.

PN618

Peer reviewed?---No.

PN619

Can you confirm whether IEU and United Voice are partners in that project?---I don't know. I think they are, but I'm not 100 per cent sure.

*** MARIANNE FENECH

XXN MR ARNDT

PN620

Can I move on to - - -?---If I can just add, one article has been published in a professional journal called Rattler. That has been the first sort of summary of the findings of the research.

PN621

Okay. Can we move on to responsible people, or responsible person?---Mm-hm.

PN622

Your report states that the national law requires a centre to have at all times a responsible person, being the approved provider, nominated supervisor, or an educator allocated as the person in charge of the day-to-day service?---Mm.

PN623

You say that a responsible person would normally be the nominated supervisor, how it could be an educator-nominated person in charge?---Yes.

PN624

Do you agree that an educator in day-to-day charge doesn't bring with it any additional legal responsibilities?---Correct.

PN625

Do you agree that a nominated supervisor and approved provider do have legal responsibilities?---Yes.

PN626

Can we go to 4.2? You say that the responsible person as nominated supervisor is legally accountable for the specific contributors of quality ECEC?---Mm-hm.

PN627

But the responsible person isn't necessarily the nominated supervisor, is it?---Yes, that's correct.

PN628

Can we go back to page 2 of your summary? It's the last paragraph on that page, the first sentence:

PN629

The responsible person is required to oversee educational programs.

PN630

Can you identify where that obligation comes from?---Yes. So it's from the national law and the regulations, 168. So that's in respect to the nominated supervisor. So my comment on page 2 is when, in the absence of the nominated supervisor, the responsible person is therefore responsible for ensuring that the educational programs are developed and delivered in accordance with the national approved framework.

*** MARIANNE FENECH

XXN MR ARNDT

PN631

So that would arise, on your evidence, where a nominated supervisor or approved provider wasn't at the centre?---Correct.

PN632

What would a person in day-to-day charge, who's a responsible person, so it's a scenario where approved provider isn't there, nominated supervisor isn't there, person in day-to-day charge - can you give me an example of what in your view that requirement would be, that is, to oversee educational programs?---Again it's a compliance role. So it's not - it could be consulting with the educational leader to check that, you know, perhaps they have met with a particular educator who was having difficulty; their nominated supervisor or the responsible person may check, you know, how is that going, or it could be, you know - who knows - they could get a spot check on the day that the nominated supervisor isn't there. So a regulatory officer turns up, and it's up to that responsible person to make sure that the educational programs are up to speed, because they're the ones that will have to talk to the authorised officer about the educational programs.

PN633

So in your view, it would be an obligation which would arise on that day to oversee the educational programs. But are these people in day-to-day charge actually doing anything when they're overseeing educational programs?---It depends on the context. Every centre is different. And it depends too whether the nominated supervisor is also the educational leader or whether the educational leader has a separate role.

PN634

I'm grateful to my colleague for passing up the reference. You refer to 168?---Mm-hm.

PN635

That section only applies to approved providers and - - -?---Nominated supervisors.

PN636

- - - nominated supervisors?---Correct. That's right.

PN637

So it doesn't apply to educators who are placed in day-to-day charge?---Yes, it does, when the nominated supervisor is not there. I can give you an example. I spoke to an educator who actually was the responsible person for three weeks while the nominated supervisor went overseas to Africa. So she was in charge of everything that's listed there on pages 9 and 10.

PN638

I'm still slightly confused about section 168. So it's your view that that applies to educators placed in day-to-day charge?---Yes, when the nominated supervisor is not on the premises. Someone has to be responsible for that role every second that the centre is operating.

*** MARIANNE FENECH

XXN MR ARNDT

PN639

I understood your previous evidence was that the educator placed in day-to-day charge didn't bring with it any additional legal responsibilities?---If something goes wrong they're not legally liable, so that's what I meant by that, but they still are responsible for those roles.

PN640

Isn't section 168 an offence provision?---Now you're getting beyond me - beyond my expertise.

PN641

MR BULL: This might assist. We've got a hard copy of the regulations, so perhaps if my friend is going to be asking these questions it would be useful if the witness had access to the regulations to look at. One of the issues is she's also not an expert on the law.

PN642

MR ARNDT: No, I appreciate that.

PN643

MR BULL: My friend has been asking these questions, but I don't - I will formally object, in the sense that this witness isn't purporting to be an expert on the law.

PN644

MR ARNDT: Can we move on to the next responsibility you list on page 2, which is the supervision of safety of children? To your knowledge, is the National Quality Framework the only source of this obligation for people working in this industry?

PN645

MR BULL: Well, once again - - -

PN646

THE WITNESS: I'd rather not comment.

PN647

MR BULL: She's not an occupational health and safety (indistinct).

PN648

MR ARNDT: Are nominated supervisors required, independently from their role as responsible persons, to supervise the safety of children?---Could you just repeat the question?

PN649

Are nominated supervisors, independent of their role as responsible persons, required to oversee the supervision and safety of children?---All educators are responsible for ensuring the supervision and safety of children, but the ultimate responsibility lies with the nominated supervisor.

*** MARIANNE FENECH

XXN MR ARNDT

PN650

Are you aware of any responsibility of a responsible person in the National Quality Framework which only exists in the National Quality Framework?---I don't know. I can't comment.

PN651

One thing I want to put to you is all of the responsibilities that you list at page 2, they all pre-existed the introduction of the National Quality Framework, didn't they?

PN652

MR BULL: Can my friend be a bit more specific? Is he talking about the educational leaders or the responsible person?

PN653

MR ARNDT: I am talking about the responsible person, and the responsibilities I am talking about are entry and exit from the premises, provision of food and beverages, administration of medication prescription/non-prescription drugs/alcohol, children's sleep and rest, excursion staffing, and the previous matters I have spoken about - oversee educational programs and the supervision of safety of children?---The educational programs is definitely different since the introduction of the National Quality Framework. That under the law and the national regulations, it talks about the responsible person as the nominated supervisor ensuring that the programs are developed and delivered in accordance with an approved learning framework. So what the National Quality Framework did was it mandated approved learning frameworks. So that didn't exist before. There was no prescribed learning outcomes, for example, that services needed to adhere to, or show evidence of, whereas now under the National Quality Framework and the introduction of the Early Years Learning Framework, the intended outcomes for children are mandated. So that falls under the responsibility of the nominated supervisor and the responsible person.

PN654

Just one moment?---If I may add to, when a service is assessed and rated, and the authorised officer comes out, that is what they will be looking for under this responsibility, whether it's the ultimate responsibility of the nominated supervisor or the responsible person to ensure that the service is actually adhering to the approved learning frameworks.

PN655

Dr Fenech, I don't want to put to you propositions which you're not comfortable in answering, but I just want to put to you that the section that you have cited, 168, wouldn't cover an educator placed in day-to-day charge of a service if they were a responsible person?---Could you repeat that? So we're talking about 168?

PN656

Yes?---Could you just repeat what you said?

*** MARIANNE FENECH

XXN MR ARNDT

PN657

I want to put to you that that section wouldn't cover an educator in day-to-day charge of a service acting as responsible person.

PN658

MR BULL: I object to the question. As I said earlier, the witness isn't an expert on the regulations. What the regulations mean is a matter for the tribunal to determine.

PN659

DEPUTY PRESIDENT CLANCY: I don't think that the proposition or the question is really going to advance the things that's asked of this witness.

PN660

MR ARNDT: If the Commission pleases. I don't have any further questions. Thank you, Dr Fenech.

PN661

MR BULL: Dr Fenech, you were asked - - -

PN662

DEPUTY PRESIDENT CLANCY: Just a moment. I'm just asking the other advocates. Thanks. Yes?

PN663

MS SHAW: No questions, thank you.

PN664

DEPUTY PRESIDENT CLANCY: Thank you.

PN665

MS ARRABALDE: I just have a couple of questions, if I may?

PN666

DEPUTY PRESIDENT CLANCY: Yes. Thank you.

CROSS-EXAMINATION BY MS ARRABALDE

[12.46 PM]

*** MARIANNE FENECH

XXN MS ARRABALDE

PN667

MS ARRABALDE: Hello, Dr Fenech. My name is Elizabeth Arrabalde. I'm just appearing as an individual. I just wanted to ask you about the role of the educational leader in terms of their day-to-day practice. So you spoke about the time being set aside for the educational leader, but I was wondering about the educational leader's role while they're engaging a practice themselves. So is it something that you would say that they can switch on or off, or do they also engage in the role while they are carrying out their other duties, like working with children?---It's a good question. So the educational leader needs to actually model what they're expecting of the other educators in the centre. So they should be modelling high quality practice in terms of the development of curriculum that is responsive to individual children and that meets the outcomes of the approved learning frameworks. So I think it's part - it's also a modelling for other staff. So

it's embedded in their practice, however the actual role is above and beyond what their practice is, because as I mentioned before, inherent in the role is working with other educators in the centre.

PN668

Thank you. My second question is, in relation to the function of the educational leader resource that was published by ACECQA, can you please tell me how much weight do you think it will be given by educators and by the sector itself in terms of its influence?---I can't comment on how it will be received. It's a very user-friendly document, so in terms of engagement with the sector, I can imagine that services would actually look at it and use it in their planning.

PN669

Do you think that it's a document which clarifies practice for educators and for assessors?---That was one of the reasons it was produced, yes.

PN670

Thank you very much, Dr Fenech. Thank you, no further questions.

PN671

DEPUTY PRESIDENT CLANCY: Thank you. Yes, Mr Bull?

RE-EXAMINATION BY MR BULL

[12.48 PM]

PN672

MR BULL: You were asked some questions about quality standards and complying with the rating system, and when assessments were made that there may be an assessment that the standard wasn't met. Do you recall those - - - ?---(No audible reply)

PN673

No. If you get an assessment which says that you don't meet a particular standard, can you tell the Commission what - that can mean several things, is that correct?---Well, it can, because the services' ratings are actually publicly available. So the intent of the National Quality - or one of the intentions of the National Quality Framework was to help parents make informed choices, so one way parents can do that is to actually look up a centre's rating. So what is publicly available are services' ratings on each of the seven quality areas, as well as their overall quality rating. So if a service is rated as working towards, for example, quality area 7, that can also impact on their overall centre rating.

PN674

But it's not as bland as pass or fail, is it?---No.

PN675

Can you elaborate on - - -?---There's a five - - -

PN676

Can you elaborate on the non-binary nature of these assessments?---Do you mean the five-tiered system?

*** MARIANNE FENECH

RXN MR BULL

PN677

Yes, if you could - - -?---So services are rated as either "Significant improvement required", which that means the health and safety of children is at risk; or "Working towards the National Quality Standard", so they're not meeting the national benchmark. They may be rated as "Exceeding the benchmark", and then if they're rated as "Exceeding" they can apply to be rated as "Excellent." So it has market value, it also has status value, but it is also a reflection of the work that educators are or are not doing in the centre.

PN678

Thank you. You were asked some questions about the quality standards which deal with effective leadership. This is effective leadership in relation to the educational leader role?---Mm-hm.

PN679

Can you perhaps elaborate on, in the context of - this is the Standard 7.2 - what is meant by "effective leadership" when the document addresses that matter?---Are you talking about how the resource talks about the role?

PN680

What are they getting at when they talk about effective leadership?---It's a role of influence and a role that is empowering for other staff. It's a role that's critical for all educators in the service to actually collectively be working towards quality education and care for children and outcomes for children. So in terms of - it's a leadership role because it requires or it involves bringing educators on board and changing their practises sometimes, so again doing that professional development and looking at how they can be improving their service, because that's one of the tenets of the National Quality Framework. It's not just even if you're doing things okay; it's about how can you keep improving. And with the staff turnover that we have in the sector, I think that is often an issue for educational leaders in terms of trying to build quality as a whole team within a service. As I mentioned before, the educational leader is responsible for mentoring staff, modelling practice, enabling high quality practice, so it's not a role that can be done on the run. It's a role that requires intentionality I think.

PN681

Thank you for that. You were asked some questions about issues around comments you make in your paper about the absence of additional remuneration for the educational leader role, and the cursory manner in which the academic literature deals with the issue?---Mm.

PN682

The body of academics you were talking about, what field of academia - what area of study are we talking about?---It's early childhood education. So the focus is on children.

PN683

Okay, and they're education academics?---Correct.

*** MARIANNE FENECH

RXN MR BULL

PN684

Thank you. Nothing more arising.

PN685

DEPUTY PRESIDENT CLANCY: Thank you, Dr Fenech, for your evidence?---Thank you.

PN686

You may step down from the witness box and you're excused from further attendance.

<THE WITNESS WITHDREW

[12.53 PM]

PN687

DEPUTY PRESIDENT CLANCY: Thank you. We'll adjourn now, and can I take it that our next witness is still expected at 2 pm?

PN688

MR BULL: It's not our witness, I think.

PN689

MS DABARERA: Yes, it is.

PN690

MR BULL: Yes? Sorry, I withdraw that - yes.

PN691

DEPUTY PRESIDENT CLANCY: Yes, all right. Well, we will adjourn until 2 pm. Thank you.

LUNCHEON ADJOURNMENT

[12.53 PM]

RESUMED

[2.05 PM]

PN692

DEPUTY PRESIDENT CLANCY: Thank you. So I understand we've got Ms Wade on the phone. Is that right?

PN693

MS DABARERA: Correct, your Honour.

PN694

MS WADE: Yes.

PN695

MS DABARERA: Ms Wade, it's Natalie Dabarera here. I'm going to ask you a few - - -

PN696

MS WADE: Hi.

*** MARIANNE FENECH

RXN MR BULL

PN697

MS DABARERA: Hi, Ms Wade. Can you hear me well?

PN698

MS WADE: Yes, I can.

PN699

MS DABARERA: Great. I'll ask you a few questions and then the other side will ask you some questions as well. Ms Wade, could you please state your - sorry, before we start, the Associate will take you through the oath or affirmation.

PN700

THE ASSOCIATE: Ms Wade, before we start, could I please ask you if you will be taking the oath or affirmation this afternoon?

PN701

MS WADE: Yes.

PN702

THE ASSOCIATE: So is it the oath or affirmation?

PN703

MS WADE: The oath please.

PN704

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

PN705

MS WADE: Yes, it's Alicia Anne Wade, (address supplied).

<ALICIA ANNE WADE, AFFIRMED

[2.06 PM]

EXAMINATION-IN-CHIEF BY MS DABARERA

[2.06 PM]

PN706

MS DABARERA: Ms Wade, it's Natalie Dabarera again. Could you please repeat your full name?---Yes, it's Alicia Anne Wade.

PN707

What is your occupation?---I am currently a centre manager at Aussie Kindies, Torquay. My employer is Affinity Education.

PN708

Thank you. You have prepared two statements for the purposes of these proceedings?---Correct.

PN709

Do you have your statements before you?---Yes, I do.

*** ALICIA ANNE WADE

XN MS DABARERA

PN710

With your first statement, is that a statement signed by you on 8 March 2019?---Yes, it is.

PN711

Are the contents of that statement true and correct?---Yes, it is.

PN712

With your second statement, is that a statement signed by you on 12 April 2019?---Yes, it is.

PN713

Are the contents of that statement true and correct?---Yes, it is.

PN714

Your Honours, I seek to tender those statements.

PN715

DEPUTY PRESIDENT CLANCY: Thank you, I'll mark the statement of Alicia Anne Wade as exhibit 11, and the supplementary statement of Alicia Anne Wade as exhibit 12.

**EXHIBIT #11 WITNESS STATEMENT OF ALICIA ANNE WADE
DATED 08/03/2019**

**EXHIBIT #12 SUPPLEMENTARY WITNESS STATEMENT OF
ALICIA ANNE WADE DATED 12/04/2019**

PN716

MS DABARERA: Thank you, Ms Wade. The employer's side will now ask you some questions?---Thank you.

CROSS-EXAMINATION BY MR ARNDT

[2.08 PM]

PN717

MR ARNDT: Good afternoon, Ms Wade. My name is Julian Arndt. I'm a solicitor representing some of the employers in this case. Can you hear me?---Yes, I can.

PN718

I just have a few questions for you and they're in relation to your two statements. I'll just call them your first and second statement. You're a centre manager, that's your job title isn't it?---Correct.

PN719

If I could take you to your statement, your first statement, at 5, you outline the main responsibilities, duties as centre manager?---Correct.

*** ALICIA ANNE WADE

XXN MR ARNDT

PN720

Does your role as centre manager require any monitoring of the centre on your days off?---No, I have a second job which I am unable to oversee the centre

operational needs of the service, so I have my assistant centre manager set up into that position.

PN721

Do you ever get contacted on your days off?---Very rarely.

PN722

That would be by your assistant manager?---Correct.

PN723

Do you ever contact the centre on your day off to see how things are going?---Correct, yes, I do.

PN724

How often do you do that?---It could be one or twice a day, depending on what has happened in the service. So if I do get a phone call due to critical incidents that do occur, I do have to be notified of that, which then leads to other matters in terms of following policies and procedures.

PN725

Now I imagine that there aren't one or two critical incidents a day. What are some other reasons why you might call in?---Families that need to be contacted in terms of debt collecting and just ensuring that that is being maintained and keep in communication with my assistant centre manager. Any complaints that have come through via emails since I do have access to my email, the centre email, so that does sometimes come through. And also directions from the area manager, and just ensuring that the assistant centre manager is following up on those requests from the area manager.

PN726

Thank you, Ms Wade. You're the nominated supervisor for the centre?---Correct.

PN727

Do you know who the approved provider is?---Approved provider, that would be Affinity Education.

PN728

Now if we could go to 25 of your first statement?---Yes.

PN729

At 25 you outline - it says, "For example, I am responsible for", so it's a list of your duties as nominated supervisor?---Yes.

PN730

1 to 4. Is it also part of your duties as nominated supervisor to interact with children and families?---At times depending on if ratios need to be met, educators may call me on the floor to make ratios and also I've got to interact with families just for that customer service, because it is a business at the same time, so I've got to ensure that I am being the face of the service.

*** ALICIA ANNE WADE

XXN MR ARNDT

PN731

So we've gone to paragraph 5 of your first statement, which talks about your main responsibilities, duties as centre manager, and we've just gone to paragraph 25, which talks about your responsibility as nominated supervisor. Is there a difference between your responsibility as nominated supervisor and centre manager?---So centre manager, you can see that it looks at the business side of things and then with 25 it's more of the NQS, the National Quality Framework and the National Quality Standards.

PN732

So when you say the business side of things, what do you mean?---You can see here in 5, you can see sales business, profit, finance, health and safety, relationships with internal stakeholders, customer relationships with parents, gaining feedback from families. Then as nominated supervisor it's more talking about the National Quality Framework and ensuring that staffing requirements are met as nominated supervisor. And the rules and regulations which it states there as well in 25.

PN733

So are you saying that your - that the obligations in relation - are you saying that your obligations as centre manager don't involve compliance with the National Quality Framework?---It does require that but as a nominated supervisor it's more in detail and in-depth. It does state that in the National Quality Framework under National Quality Standard 7, Leadership and Governance. A nominated supervisor is nominated, and a centre manager can differ in terms of job description and job roles. That differs from centre to centre as well, depending on who owns the service.

PN734

But in your case it doesn't, does it?---It - - -

PN735

Sorry, I missed that answer?---Sorry, I'm just - can you please clarify?

PN736

You said that the nominated supervisor can differ from the centre manager but in your case you're both?---That's right. I've got to take on two roles. There's two separate roles and I've got to take on those two roles.

PN737

Can I put it to you that everything that you're required to do as nominated supervisor, you're also required to do as director?---I disagree.

PN738

Can you identify what you are required to do as nominated supervisor which you are not required to do as director?---I've already stated this and it shows in number 25 what I am supposed to do as a nominated supervisor, and again in number 5 it shows what I do as the centre manager.

*** ALICIA ANNE WADE

XXN MR ARNDT

PN739

Can I put it to you that the list that you put in 25 would be encompassed by the list that's put in 5?---Can you please clarify that question?

PN740

Can I put it to you that the list of duties that you identified, and it is only an example list of responsibilities as nominated supervisor in 25, would be encompassed by your responsibilities and duties as centre manager as identified at 5?---I disagree. There's two separate roles as mentioned before.

PN741

Can you elaborate on the specific differences?---As already mentioned, as nominated supervisor it's ensuring that I'm meeting all the rules and regulations outlined in the National Quality Framework as the requirements of state legislation. So I'm just going to stick with whatever's been written in number 25.

PN742

When you say at 5 that you are responsible as centre manager for quality outcomes, does that include compliance with the National Quality Framework?---Quality outcomes in terms of our employer Affinity Education, they have quality outcomes that we need to maintain and (indistinct) that we need to adhere to on the business scope of things.

PN743

So you're not talking about the National Quality Framework?---No.

PN744

Are you saying that as centre manager you are not required - your duties as centre manager does not require you to ensure compliance with the National Quality Framework?---You've got to maintain the - because I'm doing the two roles here as centre manager and nominated supervisor, which you have just discussed with me, I'm doing these two roles in this position, hence the reason why I would say that I would be doing that.

PN745

I might try a different tact Ms Wade. If you went to 80 of your statement, it says you're employed under the Children's Services Award. Have you got that?---Yes, I do.

PN746

You're classified as director, Level 6.9?---Yes.

PN747

Do you have any familiarity with the Children's Services Awards?---I have familiarity with it, yes.

PN748

Is it correct that a director under the award is just the name for a centre manager?---It's part of the role, yes.

*** ALICIA ANNE WADE

XXN MR ARNDT

PN749

So there's a difference - - -?---But every company has a different award and enterprise agreement, so it just depends on which award the company is going to be choosing to pay their employees - - -

PN750

But you're - - -?--- - - - and the role that they play.

PN751

I'm sorry, Ms Wade?---That's okay.

PN752

Your employer and your employment is covered by the Children's Service Award isn't it?---Correct.

PN753

So what I'm asking you is for your employment, you say that you're a director Level 6.9 at 13 of your statement. Not 13 of your statement, 8 of your statement?---Correct.

PN754

What I'm asking you is, is centre manager under the award just another - is director under the award another for centre manager?---If we're looking at it from my job role and responsibility in the service, I've taken on the role and responsibility as I've already stated as a nominated supervisor and centre manager, which falls under that director's role.

PN755

So am I correct in saying that the main responsibilities and duties in your role as centre manager, which you identify at 5, they're the duties relevant to your role as director?---5 and 8 would have a correlation together, correct.

PN756

Just one moment, Ms Wade. Are you aware that under the award a director is required to ensure that the centre or service adheres to all relevant regulation and statutory requirements?---That would be the rules and regulations, yes.

PN757

Would those rules and regulations include the National Quality Framework?---In some forms, yes.

PN758

When you say "in some forms", what do you mean?---I just - can you please clarify that question because I'm just trying to process that through.

PN759

MS DABARERA: Excuse me, if you're taking her to the award, could you take her to the page or the relevant clause of the award?

PN760

THE WITNESS: Please.

*** ALICIA ANNE WADE

XXN MR ARNDT

PN761

MR ARNDT: One moment, Ms Wade. Can you go to page 57 of the Children's Services Award?---Sure, which one?

PN762

It's the fifth dot point down?---So are you - just to clarify, is this (e) qualified coordinator or is it another one?

PN763

Just go onto Level 6 director, indicative duties?---Sorry, could you please clarify that because I've got the Children's Services Award. Is it okay if I just ask Natalie? Natalie, I printed out the Children's Services Award 2010 that you had sent to me. I'm looking at page 57 but I can't see the director Level 6.

PN764

DEPUTY PRESIDENT CLANCY: It might be on 56. My version is on 56.

PN765

MS DABARERA: It is. Ms Wade, it starts on 56 and then goes onto 57.

PN766

THE WITNESS: Thank you. I can see that now.

PN767

DEPUTY PRESIDENT CLANCY: Ms Wade, it's Clancy DP here. On the version you have, at the top of page 56 does it say (a) indicative duties?---Yes.

PN768

Yes, I think Mr Arndt's wanting to ask you about the fifth dot point underneath that heading "Indicative duties"?---So the qualified coordinator?

PN769

No, no, sorry, in (a) Indicative duties there's all those dot points?---So can we ask the question again so I am aware of what's being asked.

PN770

Yes.

PN771

MR ARNDT: Yes, Ms Wade. So my question was and maybe we might have to jump back two questions. My question was are you aware that under the award part of the director's duties are to ensure that the centre or service adheres to all the relevant regulations and statutory requirements?---Yes, so that's your regulations and your laws, yes.

PN772

That includes the National Quality Framework?---That's a separate document.

*** ALICIA ANNE WADE

XXN MR ARNDT

PN773

So the National Quality Framework isn't a relevant regulation or statutory requirement?---It's a suggested framework that helps guide and underpin the standards within an early childhood service. It's an additional piece of documentation that we need to follow. Point 5 is just saying "adheres to relevant regulations". It does not state National Quality Framework there.

PN774

So maybe I can take you to the education and care services national regulations, which has as a schedule the National Quality Standard. You'd agree that your requirements as a director under the award would require you to ensure that the centre or service adheres to that regulation, and to the National Quality Standard?

PN775

MS DABARERA: Objection, that's not been provided to the witness. That wasn't in the bundle that we were asked to provide to the witness.

PN776

MR ARNDT: The witness has given evidence about what's a relevant regulation and statutory requirement?

PN777

DEPUTY PRESIDENT CLANCY: Well, as I understand her answer she doesn't regard the National Quality Framework as falling within that definition. Now you might have something different to say about that. I mean I'm not sure what the parties are eventually going to say the status of the NQF are, but it seems as though one party's going to submit that it isn't part of relevant regulations and one party is and we'll make some sort of a determination on it.

PN778

MR ARNDT: So it's your evidence, Ms Wade, that your role as director does not require you to ensure that the centre complies with the National Quality Framework?---As the centre manager or as the centre manager and nominated supervisor?

PN779

No specifically director?---Okay, because I am a centre manager and a nominated supervisor, as clearly stated before.

PN780

Well I've listened to your answer on that. I'm asking you in relation to your status as a director which I understand your evidence was that director - director in the award is centre manager. So director is the award's name for centre manager. So I'm only asking about your status as a director, is it your evidence that your status as a director doesn't require you to comply with the National Quality Framework?---Well, I've already spoken about in relation to number 5 what my main responsibilities are, so if we can refer to that, that would be fantastic.

*** ALICIA ANNE WADE

XXN MR ARNDT

PN781

DEPUTY PRESIDENT CLANCY: Well, Ms Wade, I'd like you to answer that question please, it's Clancy DP. It's a direct question?---Sure. Okay, yes. Can you repeat the question please?

PN782

MR ARNDT: Is it your evidence that your responsibilities as a director does not require you - does not include the requirement to ensure that the centre or service adheres to the National Quality Framework?---Going by the evidence that is stated here, no.

PN783

That's your evidence, Ms Wade. I'm asking you the question?---Yes.

PN784

Can we go to 24?---Yes.

PN785

24 says:

PN786

As nominated supervisor I am the responsible person when I'm present at the centre.

PN787

Now that's because the approved provider isn't a person is it?---Well, that's right.

PN788

So at 35 you say that as a responsible person - I withdraw that. At 35 you say:

PN789

The responsible person is the main contact for any concerns and inquiries.

PN790

?---Correct.

PN791

Are you saying that you are the main point of contact?---I'm one of the main points of contact because I work a four day week and the other responsible people are people who hold different qualifications and they're the other points of call when I am not present.

PN792

What are their roles in the business? Their job titles?---I have assistant educators who are Certificate III. I have - yeah, assisting educators. I have lead educators and I also have educational leaders and assistants and managers that take on that role as well.

*** ALICIA ANNE WADE

XXN MR ARNDT

PN793

How many different responsible people do you have in your centre?---About eight of us because it depends on how many people do fall sick. In our service

sometimes we have to have a lot of people that need to take on that role in case there's absences; myself, my assistant centre manager and other people in that role.

PN794

Do they all share the - do they all share - withdraw that. Is any particular employee's responsible person more than others or are all eight equally assigned responsible person status?---Equally assigned. If I am absent from the centre, they take on the responsibility of the service to ensure a smooth operating day is there and maintained.

PN795

How do you determine who's going to be the responsible person?---As outlined in the National Quality Framework.

PN796

Can I ask you to give your - - -?---Elaborate a little bit more?

PN797

That's right. How do you do it?---How do I do it? It goes by qualifications, so you can have diplomas that can hold that or studying towards a diploma. An educator who holds a Certificate III for three or more years and obviously holds a First Aid Certificate CPR, Anaphylactic and Asthma Certificate.

PN798

So just to be quite specific about this, if you were going to take the day off, you would determine who the replacement responsible person would be, wouldn't you?---Correct. I work a four day week, so my assistant centre manager takes on that role between 6.30 and 3 pm, which is in the evidence provided. And then after 3 pm another person is then taking on that role as the responsible person.

PN799

So who decides who that other person is, do you?---In my - I do the rostering for the service, yes, but if there is someone away my assistant centre manager would then make the determination on what is appropriate for the service, because she's the responsible person.

PN800

If you're at the top of the list, I guess, because when you are there you are the responsible person and your assistant manager is second, how is it that you determine the ranking of the other responsible people?---It comes down to qualifications. It's like when you go for a centre manager's position, I just have to - you have to get a certain amount of qualifications, hold certain First Aid Certificates so then that way you can uphold that position in a service. So we go by qualifications and First Aid Certificates, and child (indistinct) as well.

PN801

So you have a list?---There is a list, yes. There's criteria that you need to have.

*** ALICIA ANNE WADE

XXN MR ARNDT

PN802

Am I right in saying that if you're unavailable - you've said that eight people can be assigned responsible person status. Am I right in saying that for the eighth person on that list, all of the other responsible people would have to be unavailable?---Well, it's not - I have three that are assistant educators on a Certificate III and it depends on rostering as well, and who's opening and closing a service because the rosters can vary. It's quite complex.

PN803

We started talking about this because we were talking about who receives inquiries, the responsible person being the main point of contact for any concerns and inquiries. How are inquiries generally made?---Phone call, face to face, when the centre opens or closes or during the day.

PN804

Does anyone send emails?---And there's also - yes, and emails and we've also got an online portal story park, we have text messaging as well that comes through to our CRN's management tool as well.

PN805

If someone came with a concern and they discussed their concern in person, would that discussion with the parent occur immediately or do occasionally you have a meeting about it at some later date?---What specifically is the issue, because it all - it's all determined how serious the concern is, because that's quite a broad question. So what specifically?

PN806

So let's use by way of example, a parent was concerned that their child had come home and was no longer eating, and they emailed the centre just to inform them of this and to request any assistance or any insight into what had happened on that day. If that - would that be something that you would deal with immediately or would it be a meeting - - -?---Immediately. Immediately.

PN807

What if a parent had concerns about the speech of a child?---That would be determined by the educators in the room. The lead educators, which are - most of my lead educators are responsible people. In terms of having a meeting with speech, are you suggesting that it's done immediately or is it done at a later time? I'm just trying to understand the question.

PN808

Perhaps I'll be clearer, Ms Wade, because I don't think I was entirely clear with that example?---Yes.

*** ALICIA ANNE WADE

XXN MR ARNDT

PN809

I'm really asking you, you are not the responsible person at all times at the centre, because you do not work all the time. What I'm asking you is are there any inquiries or questions that are asked when you are not there that you subsequently attend the meeting for or answer yourself?---No, because my responsible people there deal with those matters quite frequently and any complaints that come

through. We haven't had - we really haven't had any complaints because our issues that are brought up straight away are dealt with with the responsible person in a timely manner, so that families are satisfied with the service that we provide for children, and for the families.

PN810

So when you gave evidence earlier that when you check in on emails and you check in with the centre, I believe it was once or twice a day?---Yes.

PN811

Some of those responses being in relation to complaints, how is that consistent with the evidence that you've just given that your - while you're away essentially your responsible people in your absence deal with everything themselves?---Well, it depends on the circumstances. If it's a serious incident, like I said a critical incident, where the Department of Education have to be notified, yes. But in terms of what you're stating to me, no.

PN812

Do they ever tell you about the complaints that are made to them while you're away?---Of course.

PN813

What if a complaint was made and a parent requested a meeting later in the week, would you attend that meeting or would you leave it to your other staff members to deal with a complaint?---I would obviously have that staff member and myself be in the meeting together if they're requesting that.

PN814

Can I ask you about feedback. If you receive some feedback from a parent about improvements that could be made to the centre, and if that feedback was received on a day in which you weren't engaged or you weren't at the centre, would you become involved in making a decision about whether anything needed to be done?---Collaboratively with my team, yes.

PN815

So you wouldn't leave to the replacement responsible person just to deal with it themselves?---What specifically are you stating here, because it's quite a broad question again.

PN816

If, for example - you have to forgive me, I'm making this up in my own head?---Yes.

*** ALICIA ANNE WADE

XXN MR ARNDT

PN817

If, for example, you received feedback that the policy of the centre in relation to children's lunches needed to be changed, would you leave it to the responsible person who received that complaint to deal with it or would you - or would you become involved?---We have a grievance and complaints procedure, so we would follow the policy stated with our company. And unfortunately that's not in my submissions here.

PN818

But it's likely that you'd be involved, wouldn't you?---Well, there's different lines of management that get involved with complaints like that so it just all depends on the severity and how serious it is. But if it's in terms of lunches and not being provided lunches, it would be the responsible person to ensure that they're dealing with that as professionally as they can, and then following up with me. Are you asking then - a meeting is then held with the family by myself?

PN819

I guess I'm really asking - - -?---Because if the matter is resolved there and then the family would not be progressing that any further because it would be dealt with on the spot in the service. If the parent was not happy with that outcome, then obviously we follow the grievance and complaints procedure, which we have with our company, and then we would follow the lines of management as stated in our policies and procedures.

PN820

You do accept, don't you, that there are - there is feedback complaints or contact with parents that your staff receive while you are not there, that they don't deal with - they don't deal with themselves and involve you at some later date?---In some ways, yes, because we've got to keep open communication. It's a business so we've got to ensure that our families and our children are at the forefront and that we're ensuring that they're being looked after and cared for.

PN821

At 33 of your statement you talk about your duties as a responsible person?---Yes.

PN822

Is there a difference between the duties that you have as a responsible person and your duties as a nominated supervisor?---I'm just comparing the two, bear with me. Are you stating that they're the same, are you?

PN823

Well, I'm asking you. I should also say in fairness to you, I don't think in your statement you say that these are all of my duties as a nominated supervisor, you just provide a list of - an example list. What I'm asking you is are your duties the same for responsible person as they are for nominated supervisor?---No, they're not the same.

PN824

Can you elaborate as to why?---Because in 25 you can say ensuring the physical environment is appropriate and that's not stated in 33. Because the physical environment is facilities which I deal with. My staff who are responsible people, they do to some extent but it's totally - it's different.

PN825

Just one second, Ms Wade. At 18 of your statement, you say there's 17 employees?---Yes.

*** ALICIA ANNE WADE

XXN MR ARNDT

PN826

At 22 you say all other educators are covered by the Children's Services Award?---Yes.

PN827

MS DABARERA: Objection.

PN828

MR ARNDT: Can I ask you how many awards apply in your business?

PN829

MS DABARERA: I object to this line of questioning, she's not - - -

PN830

MR ARNDT: Sorry?

PN831

MS DABARERA: I object to this line of questioning, her opinion as to award coverage is no assistance to the Commission.

PN832

DEPUTY PRESIDENT CLANCY: It's not an opinion, it's a question as to how many are covered by each award in the centre.

PN833

MS DABARERA: If it's how many are applied in the centre, that's so your Honour, but if it's a question of coverage as a legal question it's not.

PN834

DEPUTY PRESIDENT CLANCY: I don't think it is, I'll just ask him - - -

PN835

MR ARNDT: I'm - - -

PN836

DEPUTY PRESIDENT CLANCY: Or are you asking how many are applied? What are you asking?

PN837

MR ARNDT: No, I'm asking - there's a list, at 18 there's 17 employees, then at 22 you talk about the coverage, all other educators of the Children's Services Award. I'm wondering what awards are you applying at your business?---The Children's Services Award.

PN838

DEPUTY PRESIDENT CLANCY: I should flag that we are going to be interested in any centre that's the subject of evidence here, which awards are being applied and which are said to be applied. So I'll just flag that for - because we want to get a sense of the prevalence of the Teaching Award.

*** ALICIA ANNE WADE

XXN MR ARNDT

PN839

MR ARNDT: Ms Wade, at 18 you say you have four casuals?---Yes.

PN840

How long have they been employed?---The last - I've had - sorry, because I've had some go (indistinct) in a permanent part-time role. I've had some for the last year and then some coming onboard just at the beginning of this year.

PN841

How often do you roster them?---Quite regularly. Every week at the moment because of occupancy levels increasing.

PN842

Can I take you to 52?---Yes.

PN843

You say:

PN844

All lead educators at the centre have programming duties and -

PN845

Apologies, I withdraw that.

PN846

As centre manager I have observed that it's difficult for lead educators to complete programming in the two hours of allocated time.

PN847

?---Yes.

PN848

How often do lead educators fail to complete programming in the allocated time?---Probably about 80 per cent of the time because it depends on children's behaviours. Our service is an inclusive service, so we've got children with high support needs, so sometimes there will be outbursts and so staff will have to go on the floor to support the staff members that are on the floor. So sometimes programming can be interrupted.

PN849

When you say programming can be interrupted, do your lead educators always get two hours of non contact time per week?---Yes, I always roster that in.

PN850

So what do you mean by interrupted?---As I just stated, a staff member may - because we have a programming cover person and sometimes that staff member will be by themselves in an allocated room, and if there is a child with high support needs having a situation where additional staff members are needed on the floor, like myself and the person that is programming, we then go on the floor to help out so children can remain safe.

*** ALICIA ANNE WADE

XXN MR ARNDT

PN851

So do you then make the two hours of non contact time up later?---Try to, yes. If we have the staffing available.

PN852

Do you sometimes not have the staffing available?---It's - yes, it's really hard at the moment, especially when you're increasing in occupancy and over the last couple of weeks we increased about 10 per cent, which means that most of my casuals are now becoming more permanent, which means I need to recruit more staff.

PN853

So if we could just go back to - your evidence was that your lead educators always get two hours of non contact time per week, or was your evidence that they're rostered for those two hours of non contact time?---I have to roster that in.

PN854

But do they get that in accordance with their roster?---Yes.

PN855

They always get it?---Yes.

PN856

So why would their non contact time being interrupted to go deal with a situation on the floor, why would that make any difference?---Because the children's health and safety is first and foremost, otherwise we would end up with family complaints because the safety of children have not been maintained in the service and we need to guide children's behaviour to ensure that everyone is safe. That could be - it doesn't have to be just outbursts. If a critical incident occurs that could be interrupted as well, because anything can possibly happen at any time in a service.

PN857

Have you considered adjusting the programming methods that you use in your centre for your lead educators?---What specifically, like adjust it, what do you mean by - - -

PN858

My question is your lead - your evidence has been that your lead educators always get two hours of non contact time but that you have observed it's difficult for them to complete programing in the allocated time?---Correct.

PN859

Have you ever considered adjusting programming methods that your centre uses?---No, because that's the standard requirement and we are - to ensure that we're providing a quality program for families and for children, we've got to produce this quality education for children.

*** ALICIA ANNE WADE

XXN MR ARNDT

PN860

Have you ever considered - - -?---It's bit much like a school - it's a bit much like a school system, you know, the school system has a program which they provide for children with an observation list and we do very much similar to what they do.

PN861

Have you ever considered providing assistance or mentoring to your lead educators that would allow them to complete the programming in the allocated time?---There's observations, there's analysis, there's a valuation, there's critical reflection. It's quite extensive what these educators need to do, so it's quite extensive in terms of ensuring that they're meeting each individual needs of the children and some rooms could have up to 36 children which means that they've got 36 portfolios which they have to maintain and ensure that each individual needs and interests of each child is maintained in the service. So to provide that education and care for the children two hours is not sufficient enough.

PN862

So that wasn't actually my question - - -?---And then on top of that they do get - they do have an educational leader who meets with them once a week. We do provide educational leader time and my educational leader will allocate time and my assistant centre manager will go on the floor to then help for extra time for the staff members to go off the floor. So that's something that I do for my educators to try and do that, but that's only if that allows it to happen.

PN863

So I must might ask that question again, Ms Wade. Have you considered providing any assistance or mentoring to your lead educators as to how they can complete the programming in the allocated time?---They can't, but they - there's not enough time. Two hours is not enough time.

PN864

So you have not - - -?---I know myself - I know myself because I've been in that position before and I've taken work home.

PN865

So you haven't considered providing any assistance or mentoring?---We've provided - we've provided mentoring, coaching, we've got the educational leader. We're doing this all the time but two hours is not enough time. I know myself being in those positions as an educational leader, as a lead educator for over 20 years now, I have even taken work home on weekends, and doing work at night.

PN866

Just one second, Ms Wade. You say that your staff members are taking work home?---Yes. I have put in my statement that I do get notifications at irregular times on when they're updating their programming and planning.

*** ALICIA ANNE WADE

XXN MR ARNDT

PN867

Have you done anything to try and stop this?---I have encouraged them but I have passionate educators that want to produce quality education and care for children

and because of the pressure put on them, they feel guilty if the work hasn't been done and they don't want to let down the families and the children.

PN868

Who's putting the pressure on them?---Well, you've got a National Quality Framework that we have to meet and then we have the Department of Education that come in and do spot checks. And if they are not meeting that and the programming is not acceptable to families at all times, it's a breach and a compliance letter from the Department of Education.

PN869

Can I take you to 74 of your statement?---Yes.

PN870

It says you started leadership and coaching business. Is your wage identified at 69 inclusive of all your income or is it just earned from childcare?---That's just childcare.

PN871

At 70 you say you own an investment property. When did you purchase that property?---In was either 2015, 2016.

PN872

Can we go to your second statement?---Yes.

PN873

Do you ever require staff to work beyond 6.30 pm?---No. As stated we have most of families leave by 5 or 6.15 pm at the latest.

PN874

I might just state it again and I'll emphasise the "ever". Do you ever require your staff to work beyond 6.30 pm?---No.

PN875

What happens if families are late, are they ever late?---We haven't had a late family in about a year and a half now.

PN876

Torquay's in Harvey Bay, isn't it?---Correct.

PN877

You give some - sorry, Ms Wade. Are you responsible for setting hours of work, the opening hours of your centre?---As mentioned before, I do the rostering for the service.

PN878

Not the rostering but the opening hours?---That's up Affinity Education.

*** ALICIA ANNE WADE

XXN MR ARNDT

PN879

Now you give some evidence at 6 of your second statement that you had some employees who have children in afterschool care which finishes at six and you stay open until 6.30?---Yes.

PN880

You also say that - sorry, I'll just pause there. Didn't you just previously given evidence that you don't - how many employees are required to work back until 6.30?---I only have to require two and not all of them have children.

PN881

How often do you stay open until 6.30?---It's our licensing requirement so it's part - it has to remain open till 6.30.

PN882

So of these employees who have children in afterschool care which finished at six, how many employees are in that group?---I would say 80 per cent of my staff, including myself.

PN883

Are you aware of what these employees do to manage this?---Yes, and it's really hard for them.

PN884

What do they do?---They have to ask friends within the - their school friends, so the children's school friends, parents and ask upon them to pick up children and look after them. They have to get babysitters, they need to look family members travelling from out of town up to half an hour to an hour out of town to pick up their children. So yes, it's just a lot of pressure externally on them.

PN885

Have they ever - have these employees ever expressed to you a desire that your centre closes earlier?---I have had a couple, yes.

PN886

Have they ever requested to leave earlier so they can get to their child's centre in time for closing?---I had tried - I have avoided that from happening because they seem to organise things so they can pick up those children, and as I mentioned before I try to - I have my staff members who don't have children are allocated that roster.

PN887

Have these employees ever expressed a desire to you that the hours in their child's afterschool care extend?---No.

PN888

At annexure B, which is your roster, it suggests that your finishing time is 4.30 or 5. Is that your standard pattern of work?---4.30, 5, yes. Just recently I'm actually doing a 10 till 6.30 due to the issues I'm facing with my staff with children. So I am now having my family look after my daughter.

*** ALICIA ANNE WADE

XXN MR ARNDT

PN889

Because you're required to work till 6.30?---Correct. School finishes at three, so.

PN890

Just a few more questions, Mw Wade. At 11 of your second statement you say:

PN891

Most staff are flexible and cooperative when there needs to be a late amendment to the rosters.

PN892

?---Yes.

PN893

How often are you in a position where you need to give them less than seven days' notice to change your roster - their rosters?---As it states, if someone has an urgent appointment or a family emergency has occurred.

PN894

But how often does that happen?---That's - it just all depends on who gets sick or if something happens outside, that is something I can't predict.

PN895

I'm not asking you to predict, I'm asking you to - how often has it happened in your experience on average. Does it happen once a week, twice a week?---Every week it does, yes. It can happen that much - it can happen like five days a week. It can be one to five days a week.

PN896

At 12 you say you've got one casual diploma qualified educator who is a casual, and she's generally who you rely on to cover unexpected absences?---Yes.

PN897

Has she ever been unavailable?---No, she's always been available for me.

PN898

Every single time you've called her?---Pretty much.

PN899

How long has she been working for you?---Since the beginning of the year or end of last year, beginning of the year.

PN900

How often does she work?---As I stated before, produce the increasing of occupancy. She's pretty much working every day now.

PN901

Have you ever needed two people to come in?---No, it's different to - regional's different to city services. It's a bit different because I've worked in the city and regional seems to be quite different.

*** ALICIA ANNE WADE

XXN MR ARNDT

PN902

Ms Wade, I don't have any further questions, thank you?---Thank you.

PN903

DEPUTY PRESIDENT CLANCY: Yes, Ms Shaw.

CROSS-EXAMINATION BY MS SHAW

[3.03 PM]

PN904

MS SHAW: Good afternoon, Ms Wade. My name's Nicola Shaw and I'm a workplace relations consultant with an employers association. I just have a few further questions for you?---Sure.

PN905

Can I take you to your position description at annexure A of your statement number 1. Under "Leadership and people management" one of your accountabilities is recruitment?---Yes.

PN906

As the centre manager, what is the extent of your authority to make recruitment decisions?---Sorry, could you speak up a little bit, it's not that loud?

PN907

Sorry, yes. As a centre manager, what is the extent of your authority to make recruitment decisions?---I have all of the authority over that.

PN908

What is the extent of the assistant director's authority in making recruitment decisions?---She has some input as well.

PN909

For the responsible person who works the days you're off while the assistant director is there, what is their authority in making recruitment decisions?---Is this in terms of rostering staff on or is this recruiting as in onboarding new staff members?

PN910

Probably more in onboarding new staff members?---Okay. Well, if it's onboarding staff members they wouldn't have anything to do with that.

PN911

Thank you. Another one of your accountabilities is performance management. What is the extent of your authority in performance management of staff? Can you decide to issue a warning letter?---I have to do that in consultation with my HR team, area manager and if appropriate, depending the circumstances and the situation, my assistant centre manager will be also in liaison with me.

PN912

Do you conduct appraisals?---Yes.

*** ALICIA ANNE WADE

XXN MS SHAW

PN913

What would be the extent of the assistant director's authority in performance management. Can they issue warnings in line with HR?---It has to be in liaison with - yes, with HR.

PN914

For a responsible person who worked the days you're off while the assistant director is not there, can they issue warning letters in conjunction with HR?---No. No.

PN915

Do any other temporary responsible persons conduct performance appraisals?---No.

PN916

Now in clause 37 of your statement, what is involved in finding casual employees?---Casual employees, it's quite stressful at times.

PN917

What's the process? Like what steps would you use to find a casual employee if you - to make those staffing ratios?---I did have - sorry, could you repeat the question?

PN918

I was just asking what's involved in finding casual employees in regards to clause 37 of your statement?---So if I was to have several educators that are sick, as you can see I have stated that our occupancy has increased quite dramatically, which means if I had four staff members away sick I'd have to force those - well, not force those educators but they would have to work to maintain ratios and we'd have to replace them with casual staff members, and I did staff that, I've got one staff member. But we haven't had that happen currently, so it does make it really hard. We don't have agencies up here so Randstad Education is not in regional Queensland, which proves really difficult. Whereas when you're working in Sydney services you can call on agencies and get agency staff to work with you straight away. There is a lack of qualified educators in our regional area which proves to be really difficult, especially if you want to maintain your staff ratio qualification requirements.

PN919

Do you provide staff with a procedure for the steps to be followed to source additional staff on days that you're not in the centre?---Yes, we have policies and procedures in place for that.

PN920

When you say it's difficult, stressful and hard, do you mean it takes time and persistence?---It takes time and persistence and it also puts people in a state of anxiety, stress in terms of breaking any laws or breaching any laws, and then we've got to report that to the Department of Education.

*** ALICIA ANNE WADE

XXN MS SHAW

PN921

At clause 49 of your statement you say in paragraph 49 that your employer recommended that you complete a module that you hadn't been updated for a diploma and Certificate III course. If you didn't undertake that module, would you have been in breach of instructions from your employer?---Yes.

PN922

Thank you, no further questions.

PN923

DEPUTY PRESIDENT CLANCY: Ms Arrabalde.

CROSS-EXAMINATION BY MS ARRABALDE

[3.09 PM]

PN924

MS ARRABALDE: Thank you. Ms Wade, my name's Elizabeth Arrabalde, I'm appearing as an individual in this matter and I've just got - it's a question but it's linked to some others to ask you. I just wanted to know, when you're aware from the centre and somebody else is appointed as a responsible person, are you required to deal with the immediate issues relating to parents and children, or is that something that the responsible person who's appointed deals with?---Sorry, you're cutting in and out. Can you speak clearly please.

PN925

Sorry, I was just asking when somebody else is appointed as the responsible person and you're away from the centre, who deals with the immediate issues relating to parents and children?---The responsible person.

PN926

If there's a fire drill or an evacuation drill that's happening at the time, who participates in that?---We have a fire warden so that's a separate role in itself, because we have a policy and procedure in terms of that.

PN927

Yes, would the responsible person be part of that fire drill, the person who's there on the day?---Yes, I have four staff members that are fire wardens as well and they undergo fire warden training and extinguisher training as well.

PN928

Also when you're aware from the centre somebody else is appointed as a responsible person, who is the point of contact for parents?---The responsible person.

PN929

Thank you very much, Ms Wade?---Thank you.

PN930

*** ALICIA ANNE WADE

XXN MS ARRABALDE

*** ALICIA ANNE WADE

XXN MS SAUNDERS

DEPUTY PRESIDENT CLANCY: Ms Saunders.

CROSS-EXAMINATION BY MS SAUNDERS

[3.10 PM]

PN931

MS SAUNDERS: Good afternoon, Ms Wade. My name's Lucy Saunders. I'm from the Independent Education Union. I understand your centre has 75 approved places, is that right?---Correct.

PN932

What's your occupancy rate?---Currently we're sitting at approximately 55 to 58 per cent.

PN933

So you're still required to have an early childhood teacher present at the centre?---Yes, because we provide a kindergarten program which falls under the Queensland Kindergarten Funding requirement.

PN934

How many teachers does your centre employ?---One but I've also - I've also got my degree as well.

PN935

Yes, so you count towards the ratios for early childhood teachers?---I don't count towards - New South Wales and Queensland are different.

PN936

How so?---In New South Wales for every amount of children that are on the premises you have to have one early childhood teacher on premises, whereas in Queensland you only have to have one.

PN937

I understand that. What I meant is that you could count towards the ratio?---No, because I'm not working directly with the children.

PN938

Do you do any direct work with children?---Sometimes, it depends on if I have staffing away or in the mornings or in the afternoons they need me to come on the floor so people can go home.

PN939

How often does that happen?---It can happen weekly.

PN940

You use your skills as a teacher when you're doing that, don't you?---Of course.

PN941

You use your skills as a teacher when you're working as a director in your programming responsibilities, don't you?---Sorry, can you clarify that question? I'm just trying to understand what you're - - -

*** ALICIA ANNE WADE

XXN MS SAUNDERS

PN942

Yes, that's fine. One of your responsibilities as centre manager is dealing with quality outcomes, you remember that?---Yes.

PN943

By quality that's educational quality?---Sorry, I'm just looking at my job description.

PN944

No, just tell me what you understand quality outcomes to mean?---Well, we've got a quality review process so that - yes, it goes there. I have some supervision over it but our educational leader is in charge of that and then liaises with me, to report to me what's going on.

PN945

Yes, but when you're doing that overall supervision, do you use some of your - the learning you acquired through your - - -?---Yes, of course.

PN946

Of course, and if you just want to go to 25?---25 of which one, sorry?

PN947

Your first statement?---Thank you. Yes.

PN948

Number 2, "Ensuring programming and planning for the children is carried out in accordance with the NQF"?---Yes.

PN949

You use your skills as a teacher in that aspect as well, don't you?---Yes.

PN950

When you said in your statement that you're covered by the Children's Services Award, how do you know that?---Children's Services Award?

PN951

Yes, how do you know that's the award that covers you?---Because it's given to me by my HR team - - -

PN952

MS DABARERA: Objection.

PN953

DEPUTY PRESIDENT CLANCY: Wait, sorry?---Pardon?

PN954

MS DABARERA: Our view would be that she is covered by - she's not an expert on which award coverage - - -

*** ALICIA ANNE WADE

XXN MS SAUNDERS

PN955

MS SAUNDERS: I'm not asking her about the actual coverage, I'm asking her the source of her knowledge for an assertion made in her witness statement.

PN956

DEPUTY PRESIDENT CLANCY: At paragraph 8?

PN957

MS SAUNDERS: Yes. I'll just repeat the question for you, Ms Wade. How do you know you're covered by the Children's Services Award?---Because that is given to me by my HR team and it's in our policies and procedures.

PN958

So you've just been told that?---It also has the link to it.

PN959

When you refer in 22 to all other educators, are you including the teacher in that?---I'm not including the teacher in that.

PN960

Nothing further.

PN961

DEPUTY PRESIDENT CLANCY: Any re-examination?

PN962

MS DABARERA: No re-examination, your Honours.

PN963

DEPUTY PRESIDENT CLANCY: Thank you. Ms Wade, thank you for your evidence. You are now excused from further attendance and may hang up the phone?---Thank you very much.

PN964

Thank you.

<THE WITNESS WITHDREW

[3.15 PM]

PN965

MS DABARERA: The next witness is here. Could I ask that we have a five minute adjournment?

PN966

DEPUTY PRESIDENT CLANCY: Sure. We'll adjourn till 20 past 3.

SHORT ADJOURNMENT

[3.16 PM]

RESUMED

[3.29 PM]

*** ALICIA ANNE WADE

XXN MS SAUNDERS

PN967

MS ARNDT: Deputy President and Commissioner, Ms Whish will be leading evidence from the ECE employers.

PN968

DEPUTY PRESIDENT CLANCY: Thank you.

PN969

MS WHISH: Ms Viknarasah, I'll just ask the associate to take your oath or affirmation and then I'll take it from there.

PN970

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

PN971

MS K VIKNARASAH: Karthika Viknarasah (address supplied).

<KARTHIKA VIKNARASAH, AFFIRMED [3.29 PM]

EXAMINATION-IN-CHIEF BY MS WHISH [3.30 PM]

PN972

MS WHISH: Ms Viknarasah, could you please state your name and address?---Karthika Viknarasah (address supplied).

PN973

And have you provided a statement in these proceedings?---Yes I have.

PN974

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

PN975

And that statement is 163 paragraphs and was signed on 11 April 2009(sic), is that correct?---That is correct.

PN976

And are there any changes that you'd like to make to your statement?---No.

PN977

And is your statement true and correct to the best of your knowledge?---Yes.

PN978

I seek to tender that statement into evidence.

PN979

MR BULL: No objection, subject to I suppose the general caveat that I made at the beginning of these proceedings. There are matters which are problematic but we'll raise them in submissions.

*** KARTHIKA VIKNARASAH

XN MS WHISH

PN980

DEPUTY PRESIDENT CLANCY: Yes. Thank you, I'll mark the statement of Ms Viknarasah dated 11 April as exhibit 13.

**EXHIBIT #13 WITNESS STATEMENT OF KARTHIKA
VIKNARASAH DATED 11 APRIL**

CROSS-EXAMINATION BY MS SAUNDERS

[3.31 PM]

PN981

MS SAUNDERS: Thank you, Ms Viknarasah. I just want to start by asking about your qualifications. You have a Bachelors Degree in Accounting?---In business, yes.

PN982

Great. I just need you to say 'Yes' or 'No' for the record. It's just for the transcript, it can't pick up the sort of 'Mm-hm'?---Okay.

PN983

So that was your first professional career, accountancy?---Yes.

PN984

Yes, you then went and did a Certificate III in Childcare?---Yes.

PN985

How long did that take you?---About nine months.

PN986

Sure, and there's a work experience component as well which you did in your family business?---Yes.

PN987

You then went to university - sorry, the graduate diploma, where did you get that?---At the University of South Australia.

PN988

Yes, and that was in Early Childhood Education?---Yes.

PN989

Then you went back to uni again for your Masters in Education?---Masters in Educational Leadership.

PN990

What's the difference?---So an Education Masters would be focussed just on education broadly, and educational leadership focusses on leadership specifically.

PN991

I see. So with each qualification your skills increased?---Yes.

PN992

Your skills as an educator?---Yes.

*** KARTHIKA VIKNARASAH

XXN MS SAUNDERS

PN993

Your family business operates two early childhood education centres. Is that right?---Yes.

PN994

You employ one early childhood teacher at this point?---Yes.

PN995

She's based in Lidcombe?---Yes.

PN996

Sorry, I should say one centre is in Lidcombe, one centre is in Auburn. The Auburn centre is only partially focussed on early childhood. Is that right?---Yes, so we're licensed for 24 pre-school or under children.

PN997

Yes?---And we're allowed to have another 20 after school care children.

PN998

I see. So over five?---Yes.

PN999

The ECT we were talking about, she works four days a week at Lidcombe?---Yes.

PN1000

Does that totally cover your requirement to have an ECT at that centre?---Yes.

PN1001

And the Auburn centre just needs access to an ECT for 20 per cent of the time?---Yes.

PN1002

And you cover that yourself?---Yes.

PN1003

Are you recruiting early childhood teacher at the moment?---Not at the moment, no.

PN1004

Have you been recently trying to hire an early childhood teacher?---Not an early childhood teacher.

PN1005

A teacher at large?---A trainee is what I've advertised for.

PN1006

But you've tried to hire an early childhood teacher in the past?---Yes.

PN1007

They're not the easiest job position to fill, are they?---No.

*** KARTHIKA VIKNARASAH

XXN MS SAUNDERS

PN1008

And it's quite difficult to find candidates?---It's - to find suitable candidates, yes.

PN1009

Sure. Part of the problem is you're competing with primary schools?---Yes, that's
- - -

PN1010

Primary schools pay more?---No, not really. That's - the issue that we've had in the past with recruiting early childhood teacher is not that there haven't been applicants. There have been applicants but finding suitable applicants has been problematic just because they haven't had the - what we consider the appropriate experience.

PN1011

It's very, very junior teachers applying for your jobs. Is that right?---No, I've actually had a Masters student apply for a job, which I was very excited when she did. I thought 'Excellent, we'll have a very high quality ECT' but unfortunately she just didn't have the skills to work.

PN1012

How familiar with you are - sorry, how familiar are you with the rates teachers in government primary schools are paid?---Not very familiar.

PN1013

Do you know whether they're higher or lower than the rates you pay?---I believe that they're under a agreement, like a Crown agreement or something, which is probably higher. I don't know.

PN1014

You just don't know?---Yes.

PN1015

You know they've got more - teachers in primary schools have access to more leave?---I would assume so, yes.

PN1016

Would you agree that they have better working conditions than early childhood teachers?---No.

PN1017

I want to ask you some questions about directors of early childhood centres. When I say director, you're currently the director of both the Lidcombe and Auburn centre?---Yes.

PN1018

Okay. If I can just show the witness a document. It's the Early Childhood Services Award. I assume everyone has got a copy, but I have spares if anyone needs.

*** KARTHIKA VIKNARASAH

XXN MS SAUNDERS

PN1019

DEPUTY PRESIDENT CLANCY: Sure.

PN1020

MS SAUNDERS: Thank you.

PN1021

If I can just take you to page 55 of that award. You see down the bottom 'Level 6 director'?---Yes.

PN1022

If you can just go over the page now. Okay, that 'List of indicative duties', have you seen this before?---Yes.

PN1023

You agree that's an accurate description of the role of director at your centres?---Yes.

PN1024

The second dot point 'Supervise the implementation of developmentally appropriate programs for children', that refers to educational programs?---Yes.

PN1025

And you use the skills you learnt in your teaching qualifications including your degree to fulfil that part of the role, don't you?---Yes.

PN1026

You use a phrase in your statement 'insight into the playroom', can you just elaborate a bit on what that means?---Sorry, could you refer me to where that - - -

PN1027

Paragraph 159?---Paragraph a hundred?

PN1028

A hundred and sixty, I'm sorry. Sorry, I'm assisted by - 150. So here you're responding to a statement of Ms Farrant about the skills she as a teacher uses as a director and you 'would agree the degree might give a teacher more insight into the playroom'. You mean more insight than a diploma qualified worker?---Yes.

PN1029

And what does that mean 'insight into the playroom'?---So I was referring to where the statement - Ms Farrant's statement said 'A depth of knowledge and understanding to a playroom that is much deeper and allows them to promote the children's development'.

PN1030

Sure. Yes, I'm just interested in what you understand it to mean?---Yes, so - - -

PN1031

So you clearly agree for the habits - - -?---Yes.

*** KARTHIKA VIKNARASAH

XXN MS SAUNDERS

PN1032

- - - and meaning. What does 'insight into the playroom' refer to?---An understanding of children's learning or the setup of the playroom.

PN1033

So, pedagogical skills?---Yes.

PN1034

If you can just go back to 160 which is what I accidentally referred you to earlier. You agree that one of the things a teacher could do better than a diploma qualified director was ensuring that the team provide effective programs that encompass all aspects of a child's development and learning?---No.

PN1035

It's possible?---It's possible, yes.

PN1036

Yes. These are important parts of a director's role?---Eight point three you're referring to?

PN1037

Yes?---Yes.

PN1038

It's not the only part of the role though is it?---No.

PN1039

No, it's quite a complicated position?---Yes.

PN1040

It's a senior position in the service?---Yes.

PN1041

You wouldn't appoint a teacher, a fresh graduate teacher to that role would you?---No.

PN1042

You probably wouldn't appoint someone who had just walked into your service with a diploma either, would you?---No.

PN1043

You'd want them to have some experience?---Yes.

PN1044

You're likely to remain the director of both your services, aren't you?---Yes.

*** KARTHIKA VIKNARASAH

XXN MS SAUNDERS

PN1045

Yes. But I just want to consider a hypothetical situation. Imagine that you had a teacher that had worked for you for a number of years. You decided to appoint

them to the director role. That would be a promotion for them wouldn't it?---Yes, I wouldn't appoint a teacher to a director role if she was a good teacher though.

PN1046

Yes, because you'd lose their skills in the playroom. But if you did it would be a promotion for her?---I don't know. It depends on what her skill set and what her interests are. My teacher at the moment would not see that as a promotion.

PN1047

They'd have more responsibilities across the service?---Yes.

PN1048

They'd supervise staff?---Yes.

PN1049

It's in that sense a more senior role than just being a teacher on the floor?---Yes.

PN1050

Yes, think about the theoretical person, not your actual teacher. That theoretical teacher, if you put them up into the position of director, would you think it was fair to cut their pay?---It depends on what they had to do.

PN1051

If they moved from being a teacher on the floor to being a director. I'm not talking about your actual teacher, just that theoretical teacher that's worked for you for a number of years.

PN1052

MS WHISH: Objection. Ms Viknarasah doesn't have the awards or the pay rate, the specific pay rates in relation to both awards that Ms Saunders is speaking about today in order to make that finding.

PN1053

MS SAUNDERS: No, I'm asking her what she would do as a matter of practice. It's not a question of what the award requires.

PN1054

MS WHISH: No, she was asking whether or not she'd be paid more or less under the Children's Services Award or the Teachers Award.

PN1055

MS SAUNDERS: No, that's not what I asked. I'll rephrase the question.

PN1056

You are paying a teacher?---Yes.

PN1057

Under the Teachers Award, that's right?---Yes.

*** KARTHIKA VIKNARASAH

XXN MS SAUNDERS

PN1058

You put her up into the director's position?---Yes.

PN1059

Do you think it's fair to cut her pay?---Yes.

PN1060

I want to ask you about casuals. You don't employ any casual teachers do you?---We do.

PN1061

Just go to paragraph 164 of your statement?---A hundred and?

PN1062

Sixty four?---My statement goes to 163.

PN1063

Sixty one where you say 'I do not hire any casual teachers as a - - -?---I don't - sorry, I don't hire casual teachers. I do hire casual staff.

PN1064

Sure. I'm just asking about teachers at this stage?---Right. No casual teachers.

PN1065

You don't hire any casual teachers?---No.

PN1066

Why is that?---They're expensive. I don't need them.

PN1067

Better to have a teacher for a full day?---Yes.

PN1068

And continuity of care is important?---Yes.

PN1069

It's important that the kids see the same teacher as much as possible when they turn up?---Yes.

PN1070

Yes. If you did employ a casual teacher would you expect them to work for free at all?---No.

PN1071

I want to talk about the hours that your centre operates. You understand that one of the claims the ACA are making are to extend the ordinary hours of the two awards?---Yes.

PN1072

They're currently six to 6.30, that's right?---Sorry my - - -

*** KARTHIKA VIKNARASAH

XXN MS SAUNDERS

PN1073

The current span?---My services?

PN1074

No, I'll come to that. The current ordinary hours under the award. You understand that it's 6 am to 6.30 pm?---Yes.

PN1075

And the claim that you support is to make it 6 am to 7.30 pm?---Yes.

PN1076

You support this claim in part because you say it might let you open your centre longer?---Yes.

PN1077

You've suggested in your statement that there's a few parents that want this?---Yes.

PN1078

It's just one family you give an example of, that's right?---Yes.

PN1079

They instead went to a family day care?---That was our suggestion to them.

PN1080

Yes, what's the difference between family day care and your service?---So there are some family day care services that open longer hours but our service only opens until 6 o'clock.

PN1081

They're conducted in people's homes, aren't they?---Yes.

PN1082

Yes, so it's a different environment for the child?---Yes.

PN1083

It might be more conducive for a young child to be in someone's home late at night than to be in a childcare centre?---It depends on the setting. If you asked me, I wouldn't put my child in a - somebody's home unless I absolutely had to. I would rather them be in a centre based setting.

PN1084

Someone else's centre or your own?---Any centre.

PN1085

If you were able to open longer, part of the reason that's attractive to you is you might get more business?---Yes.

PN1086

And that would allow your services to make more money?---Yes.

*** KARTHIKA VIKNARASAH

XXN MS SAUNDERS

PN1087

You are a for profit operation, that's right?---Yes.

PN1088

One of the other reasons you support the claim - you've done no business case modelling on the actual demand for longer hours, have you?---No.

PN1089

You haven't surveyed your parents?---No.

PN1090

One of the other reasons you support the claim is the problem created by parents who pick up their children late. Is that right?---For me, no. That's a very rare occurrence in our centre.

PN1091

How rare?---Two or three times a year.

PN1092

I'm sorry, just bear with me one second. So that's not a major cost at all, late pick-ups for your centre, is it?---Because it's not frequent it's not a cost, no.

PN1093

You haven't surveyed your employees about whether they want to work till 7.30 at night?---I know that they don't want to work till 7.30 at night at the moment.

PN1094

Yes?---If they can avoid it.

PN1095

They've given you no indication that they'd ever want to work that late, have they?---Depending on the circumstance they would.

PN1096

If they were paid overtime they might be more willing?---They might.

PN1097

Your staff are predominantly female?---Yes.

PN1098

A lot of them are part-time?---Yes.

PN1099

Many of them have young families of their own?---Yes.

PN1100

Working till 7.30, that's family time isn't it?---Yes.

*** KARTHIKA VIKNARASAH

XXN MS SAUNDERS

PN1101

It would be quite inconvenient for a lot of your workers to stay at work that late, wouldn't it?---Well, they just wouldn't do it.

PN1102

Do you think you should be able to make them do it?---No. I don't make them do it. You can't force somebody to come to work.

PN1103

Sure. But you think you should be able to do that?---No.

PN1104

I want to ask you some questions about roster changes. This is the other part of the claim?---Yes.

PN1105

Can you just explain your current understanding of what the award requires if you want to change an educator - so it's certificate workers - roster without their agreement?---I have to give them seven days' notice.

PN1106

Can you do it in any other way?---I am not aware - I have never done that, never had to change anyone's roster without their agreement.

PN1107

You roster weekly, is that right?---Yes.

PN1108

On Thursdays?---Yes.

PN1109

For the week starting on Monday?---Yes.

PN1110

How variable are - sorry, I withdraw that. A lot of your workers are part-time you said earlier. How much do their shifts in practice change week to week?---We try to give as much stability as possible but depending on people's circumstances something comes up every week.

PN1111

Of course. So sometimes you have to change someone's regular shift?---Mm-hm.

PN1112

In that Thursday roster?---Yes.

PN1113

Sometimes they might not necessarily - you don't necessarily ask them first?---I always ask them first.

PN1114

What if they say no?---Then I'd ask someone else if they could cover it.

*** KARTHIKA VIKNARASAH

XXN MS SAUNDERS

PN1115

Do you think you should be able to force them to change their regular shift?---No.

PN1116

Staff do make requests for leave and other time off?---Yes.

PN1117

You've got a whiteboard or something, a calendar on the wall?---Yes.

PN1118

And they just mark in what time they want, if they want to swap shifts or something?---Yes.

PN1119

You accommodate this if you can?---Yes.

PN1120

You can't always?---No.

PN1121

Your understanding of ordinary hours, your part-time workers, do they have a maximum number of ordinary hours they work per week?---Yes on their contract it states that they - it's not a maximum, it's a minimum number of ordinary hours they work per week.

PN1122

Do you ever roster them more than that?---Yes.

PN1123

How much more?---Depending on the circumstance. If they wanted more hours we would give them more hours if possible.

PN1124

What do you pay them for that?---The ordinary rate.

PN1125

I want to talk to you about short notice changes to the roster?---Yes.

PN1126

So you've set it on Thursday?---Yes.

PN1127

And then we get to Monday, sometimes changes still need to be made?---Yes.

PN1128

This is usually because of sick leave?---Yes.

*** KARTHIKA VIKNARASAH

XXN MS SAUNDERS

PN1129

Yes. It's not unusual in early childhood settings. It's a particular risk of the work, isn't it, exposure to illness?---It's not always because the educator is ill. Sometimes it's their children who are ill as well, so family - - -

PN1130

So family - - -?---Yes.

PN1131

But it is a risk of the work you do, exposure to illness?---Yes.

PN1132

And all your permanent workers are entitled to sick leave?---Yes.

PN1133

It's something you can really expect to happen?---Yes.

PN1134

You give some evidence in your statement about the minimum staffing ratios. How close to those ratios do you roster?---We try to do the ratio plus one where possible across the service but it's not always possible.

PN1135

Okay, so sometimes you've got a very small buffer?---Yes.

PN1136

And sometimes you don't have a buffer at all?---Yes.

PN1137

And this is why if someone calls in sick it can be a big problem for you?---Yes.

PN1138

Yes, of course you have a range of options to cover that, don't you?---Yes.

PN1139

The first thing you do is you call around and ask your staff if they will step in?---So usually if someone calls in sick they will do that before contacting me.

PN1140

They'll try and find someone to swap shifts with them?---Yes.

PN1141

If they can't do that you could call around yourself?---Yes.

PN1142

If no one's willing to swap shifts you could offer people additional hours?---Yes.

PN1143

You yourself can step in and cover?---Yes.

*** KARTHIKA VIKNARASAH

XXN MS SAUNDERS

PN1144

Because you're not formally on the roster yourself, are you?---No, rarely.

PN1145

Yes. You could theoretically employ more casual staff?---Yes.

PN1146

You could theoretically employ qualified agency staff?---Yes.

PN1147

You have a cost preference not to do that?---Yes.

PN1148

You could also theoretically employ more permanent staff and roster a greater buffer, couldn't you?---Yes.

PN1149

It would reduce the risk of people calling in sick?---Yes.

PN1150

Sorry, I'll rephrase that. It would reduce the risk of you falling below the ratio if one person called in sick?---Yes.

PN1151

But again you don't do that for cost reasons?---We would be making a loss if we did that, yes.

PN1152

You haven't put your financial statements in your evidence at all, have you?---I have.

PN1153

In your statement?---As - - -

PN1154

I withdraw the question. Can I show the witness a document. Do you recognise this document?---Yes.

PN1155

What is it?---It's a staff roster.

PN1156

Yes, it's from one of your centres isn't it?---Yes.

PN1157

I want to ask you some questions about this roster?---Yes.

PN1158

I'm just using it as an example. I don't need to know precisely what happened on the week of 18 February?---Sure.

*** KARTHIKA VIKNARASAH

XXN MS SAUNDERS

PN1159

But just for illustration. Okay, so you see there [REDACTED] Yes.

PN1160

She's one of your part-time staff?---Yes.

PN1161

[REDACTED]
[REDACTED]

PN1162

[REDACTED]
[REDACTED]

PN1163

Okay, so she can fill that role?---She can.

PN1164

You see [REDACTED] is rostered on Monday, Wednesday, Thursday and Friday?---Yes.

PN1165

So she has got Tuesday off?---Yes.

PN1166

You've told her - you've confirmed to her the Thursday before that she'll have that Tuesday off?---[REDACTED].

PN1167

Yes, so she had something she needed to do that day?---[REDACTED]
[REDACTED].

PN1168

Yes, okay. So you see [REDACTED] the second line? She's rostered on Tuesday to start at 7 am?---Yes.

PN1169

I know this didn't happen, but pretend it did; say [REDACTED] called in sick that Tuesday, called you at 5.30?---Yes.

PN1170

That could happen?---Yes.

PN1171

And that would - say that put you under the ratio. That's possible?---Yes.

PN1172

Do you think you should be able to call [REDACTED] at 5.30 that morning and force her to come in?---I can call [REDACTED] and ask her. Like I said, I don't know how someone would force someone to come to work.

*** KARTHIKA VIKNARASAH

XXN MS SAUNDERS

PN1173

Do you think you should be able to tell her 'Your ordinary hours are now 7 am to 3.30 pm today'?---No.

PN1174

And you don't think you should require her to work that shift to fill in for [REDACTED]?---I can ask her, but it's up to her to accept or not accept.

PN1175

You do not think it is fair to be able to force her to cover that shift, do you?---No.

PN1176

You don't need to be able to do that, do you?---To force somebody? No.

PN1177

Nothing further.

PN1178

MR BULL: I notice the time. I'm going to be about 20 minutes or so. Is the Commission happy to sit through?

PN1179

DEPUTY PRESIDENT CLANCY: Yes.

CROSS-EXAMINATION BY MR BULL

[3.55 PM]

PN1180

MR BULL: Okay. Ms Viknarasah - I hope I've got your name right?---Close enough.

PN1181

My name is Stephen Bull. I'm one of I suppose the industrial people for United Voice and I'm going to ask you a few questions?---Sure.

PN1182

So you've addressed some of our claims in your statement so it will be directed for those matters and some general matters. And have you got a copy of the award with you, the Children's Services Award?---No.

PN1183

Okay.

PN1184

MS SAUNDERS: Yes, she does.

PN1185

THE WITNESS: The one that you've just given me? Yes.

PN1186

MR BULL: Sorry, just I might refer to that at some stage?---Sure.

*** KARTHIKA VIKNARASAH

XXN MR BULL

PN1187

So you've got two centres, one in Auburn, one in Lidcombe?---Yes.

PN1188

And your mother has been involved in this sector for over 30 years?---Yes.

PN1189

And you've been working in the sector for over 10 years?---Yes.

PN1190

So when you commenced, was this before the National Quality Framework came in?---Just before, yes.

PN1191

Just before, okay. So would you generally agree that the National Quality Framework was a significant event in the life of this sector?---Yes. It's why my mother asked me to step in, because she didn't want to have to deal with such a big change.

PN1192

So she needed her well educated daughter to assist her?---Well, she just didn't have the energy to do this.

PN1193

Okay, so from the point of view of being a long term provider of childcare it was a significant event and it occasioned your mother to essentially ask you to get into the business and assist her?---Yes.

PN1194

And that was because of the increased regulation and the higher quality standards?---Because of the increased regulations, yes.

PN1195

But doesn't that necessarily also involve - they were directed towards higher quality?---That was the intent.

PN1196

So you had some argument about whether that in fact has been the case?---Yes.

PN1197

But it made the job more difficult. You'd agree with that proposition?---Yes.

PN1198

And it made it more difficult for everyone, that's the people who operate, the providers, and also the educators, the workers in the sector? You'd agree with that?---Yes.

PN1199

And the reason it made it more difficult, because it had more standards?---Yes.

*** KARTHIKA VIKNARASAH

XXN MR BULL

PN1200

They were more complex?---Yes.

PN1201

And they were more prescriptive in that you couldn't derogate from that as much as you could previously. Is that a reasonable statement?---The problem is that they were less prescriptive and that's why they're so difficult to adhere to. The previous system that we had was very prescriptive so we either knew we were following or not following. Because the National Quality Framework is so open to interpretation it's very difficult to know exactly how we're going.

PN1202

And does that relate to I suppose the sort of - to use the buzz word, the jargon, of continuous improvement?---Yes.

PN1203

So it's a work in progress. You'd agree with that?---Yes.

PN1204

And a lot of the standards are quite vague because they're intending to deal with complex and - the different situation that the children in the centres find themselves in?---Yes.

PN1205

So they're quite deliberately phrased in a sort of vague manner because they're meant to be continuously worked on. You'd agree with that proposition?---I don't know why they were phrased in a vague manner. I would have thought some things like health and safety wouldn't need to be phrased in a vague manner. That should be quite easy and straightforward to address but for whatever reason they are vague.

PN1206

But you still - you say they're not as precise but they're still prescriptive in the sense that you've got to be constantly mindful of them. You'd agree with that?---Yes. We've always had to do that though.

PN1207

Okay, but this is a different beast to the one you had to deal with before 2012?---Yes.

PN1208

And you've still got to deal with - you've got to carefully monitor educator to child ratios?---Yes.

PN1209

And the educational qualifications of your staff?---Yes.

*** KARTHIKA VIKNARASAH

XXN MR BULL

PN1210

But one of the I suppose significant changes is that the National Quality Framework requires that all your staff need to have some level of qualification or be working towards a qualification?---Yes.

PN1211

And that wasn't the case before. That's correct?---I don't recall what the regulations were before but we've always - at our particular centres we've always had staff qualified or working towards qualification.

PN1212

Are you aware through your experience in this sector that prior to the National Quality Framework you could have educators, people working in the sector, who didn't have qualifications or weren't aspiring to them. Are you aware of that?---Yes I know that that did happen. Yes.

PN1213

And that's obviously a significant change, that suddenly everyone needs to have or be working towards qualifications?---Yes.

PN1214

You'd agree that having senior well qualified staff at your centre most of the time is a desirable state of affairs?---Yes.

PN1215

That it's not desirable to have the least qualified people responsible or looking after the children?---Yes.

PN1216

So even though you may be notionally compliant with the regulations it's best to have the more senior people there most of the time?---Yes.

PN1217

You've given some evidence to the effect that nothing much has changed with the responsible person and so forth?---Yes.

PN1218

You'd agree that whilst if you look at the - and perhaps if you could look at the award. You and your association I suppose are presenting an argument to the effect that a responsible person's duties or, rather, a director's duties are broadly similar with the responsible person?---Yes. Not just a director. I guess any educator's duties are similar to a responsible person in terms of their duty of care to the children.

PN1219

But you'd agree that if you look at the indicative duties of a director there's responsibilities - at page 57 it talks about 'The director is responsible for the overall management and administrative of the service'?---Yes.

*** KARTHIKA VIKNARASAH

XXN MR BULL

PN1220

Now the director can do that job when she or he is not on premises. You'd agree with that?---Yes.

PN1221

So a director can perform overall management administration when they're not on the premises?---Yes.

PN1222

A responsible person can't do that?---Sorry, I'm not understanding the - - -

PN1223

The responsible person by definition has to be on the premises?---Yes.

PN1224

So that's a difference, isn't it?---Yes.

PN1225

And there always needs to be a responsible person at any centre?---Yes.

PN1226

So you usually assume that role?---In my centre?

PN1227

Yes?---It's usually a nominated supervisor, not me.

PN1228

Okay, but when that nominated supervisor leaves the premises obviously there needs to be another person appointed to the role of responsible person?---Yes.

PN1229

And that needs to be placed in a log?---Yes.

PN1230

And that log needs to be publicly available so any parent or person from the public who wants to know who at any particular time is the responsible person can easily find that out?---So the way we do it at our centre, as was recommended to us by the Department of Education, was we have the photos of all our staff on the wall near the entrance and a little arrow pointing to who the responsible person is. So when the nominated supervisor leaves she takes the arrow and puts it on whoever the next responsible person is.

PN1231

And that can be anyone depending on - it could be [REDACTED] if there's no one else available?---Yes.

PN1232

So there are not stringent requirements in relation to qualifications but there are stringent requirements in relation to someone being that person?---Yes.

*** KARTHIKA VIKNARASAH

XXN MR BULL

PN1233

Now currently [REDACTED] Yes.

PN1234

If she has to be the responsible person does she get any payment or an allowance for the assumption of those - - -?---No.

PN1235

- - - additional responsibilities?---No.

PN1236

You've said earlier in your evidence that it's a desirable state of affairs that centres should be staffed with the senior and the best qualified people most of the time?---Yes.

PN1237

Do you think having some allowance or some money associated with being the responsible person would encourage that state of affairs?---Well, [REDACTED] already agreed to be the person and [REDACTED].

PN1238

No, but as part of the award if you had to pay an allowance to the responsible person do you think that would alter some of the decisions you make as an owner operator of services as to who became the responsible person?---Yes, I would probably not put [REDACTED] as the responsible person. It would - I would probably step in much more often so that I wouldn't have to pay that allowance.

PN1239

But you're also a far more qualified and better experienced educator than [REDACTED] is?---Yes.

PN1240

So currently under the award there's no incentive particularly for you to assume that responsibility?---I mean there's a legal requirement for somebody to do it so if nobody's going to do it, it would have to be me.

PN1241

But you'd agree that effectively there's no - nothing is paid to the responsible person when they have to assume that position?---Yes, apart from their normal ordinary hours.

PN1242

You've said in your statement at 116 that in the regulations prior to the National Quality Framework, that there's always been somebody who's done the job of the responsible person?---Yes.

PN1243

Now prior to the National Quality Framework there was no thing called precisely the responsible person was there?---Correct.

*** KARTHIKA VIKNARASAH

XXN MR BULL

PN1244

And in the sense that directors, educators are responsible, there have been responsible people in childcare since it started?---Yes.

PN1245

But there was no requirement that services display prominently who's I suppose the responsible person, was there, before 2012 in New South Wales?---Correct?---

PN1246

Are you familiar with the New South Wales Children's Services regulations that applied in New South Wales? Do you have any familiarity with those?---Some. It's a very long time ago so I'm not very - yes, I can't remember.

PN1247

Okay, it doesn't ring a bell that there was a concept of an authorised supervisor. Do you recall that?---Yes.

PN1248

Do you recall what the regulatory requirements were in relation to the authorised supervisor?

PN1249

MS WHISH: Objection. Unless this document is going to be put to Ms Viknarasah I don't see why she should answer that.

PN1250

MR BULL: Well, she said she remembers the concept

PN1251

of the authorised supervisor. She's given evidence that nothing has changed. I just want to ask her a few questions about it.

PN1252

You remember the old concept of the authorised supervisor?---Yes.

PN1253

What's your recollection of that requirement?---That it was the same as what's now called a nominated supervisor.

PN1254

Okay, so it doesn't bear any - did they need to be on the premises all the time?---I don't recall.

PN1255

You don't recall that there was any requirement in relation to a service like yours that they needed to be on the premises no less than 50 per cent of the time?---I don't recall.

PN1256

Now in your statement you're involved in a number of associations and sort of academic editorial committees and so forth?---Yes.

*** KARTHIKA VIKNARASAH

XXN MR BULL

PN1257

This is at paragraph 9 to 12?---Yes.

PN1258

So you were involved in the Western Sydney early childhood round table?---Yes.

PN1259

You were an editorial member of the Australian Education Leader Journal?---Yes.

PN1260

And you also write for the Council of the Educational Leaders Resource in Action Early Childhood?---Yes.

PN1261

All those activities in a sense are about generating materials to assist educational leaders and educators deal with the continuous improvement required by the National Quality Framework. You'd agree with that?---Some, yes.

PN1262

So they're to deal with the increased sort of burden and the critical reflection that the National Quality Framework requires of educational leaders and educators generally?---Yes, to help clarify some of the issues because the National Quality Framework is so vague, so to help people get a better understanding.

PN1263

But you concede that the regulations as they stand require an employee in each service to appoint an educational leader?---Yes.

PN1264

And that failure to appoint an educational leader is an offence?---Yes.

PN1265

And in relation to the Children's Services Award you'd agree that there's no recognition of the appointment that an employee has to be appointed to that role. You'd agree with that?---Yes.

PN1266

There's no recognition of that role within the classifications?---Yes.

PN1267

Of employees covered by the award?---Maybe in the classification description of a director where it talks about overseeing the educational program or something like that.

PN1268

But the educational leader will not necessarily, and frequently not be the director. That's correct?---Yes.

*** KARTHIKA VIKNARASAH

XXN MR BULL

PN1269

Because the educational leader will usually be a more junior staff member?---I'm not sure what happens in other services. As far as I know in small services they tend to be the same person.

PN1270

Okay, but there's work involved in being the educational leader in a service. You'd agree with that?---Yes.

PN1271

And it's quite onerous?---No.

PN1272

Right?---It's not.

PN1273

But it's work?---So my understanding of an educational leader is someone who gives some guidance to the other people that they work with as to what the educational program could be, and how it works for me is that I give research and share information with the other staff.

PN1274

Thanks. I'm just looking for a document, sorry. I've got it. I might just show you a document. I'm just showing you - that's a document of the authority?---Yes.

PN1275

It's the role of the educational leader and it lists some of the roles and the things that this person has to do. It's exhibit number 3.

PN1276

DEPUTY PRESIDENT CLANCY: Which exhibit?

PN1277

MR BULL: Exhibit number 3.

PN1278

The educational leader is the person within the service who has to deal with what you've spoken to in relation to the sort of interacting with these evolving quality standards?---Everyone has to do that, not just the educational leader.

PN1279

But the educational leader is the principal person in the service who has to lead that interaction with these quality standards. You'd agree with that?---No.

PN1280

Right, well, apparently according to this document - this is on the second page - the role of the educational leader is primarily to collaborate with educators and provide curriculum direction and guidance. Doesn't that indicate that they have a key role in providing educational assistance and curriculum management?---Yes.

*** KARTHIKA VIKNARASAH

XXN MR BULL

PN1281

The leader is 'primarily to support educators to effectively implement the cycle of planning to enhance programs and practices'?---Yes.

PN1282

Doesn't that mean that they - the word 'primary', that they've got the main role in supporting educators to implement cycles of planning to enhance programs and practices?---So you asked me about the National Quality Standards, whether they have a main responsibility in leading that so - - -

PN1283

I'm asking you about, I suppose, the burden of regulation, what an educational leader is required and asked to do under the current scheme, and according to the summary from the regulator they have this primary role in these various activities?---So the National Quality Standards is seven quality areas. So the first quality area relates to educational program and that's where the educational leader has a role. In the other quality standards, so that's two to seven, they don't necessarily have a role.

PN1284

But don't sort of words like 'leader' and 'primary' give it all away that they are supposed to have some leadership role in the service for the - - -?---In the quality area 1.

PN1285

- - - for these quality areas?---For quality area 1, yes.

PN1286

Yes, so it's above and beyond what they would do as an educator just in their normal classification?---Right.

PN1287

You'd agree with that?---That it's above and beyond their normal work?

PN1288

Well, you might have an educational leader who's classified at the Level 4. That's possible?---Right, yes.

PN1289

And if they're appointed the educational leader within a service they will have additional things that in theory they should be doing?---They won't have it on top of their work. They would have it in lieu of their work. So if they were spending an hour doing their educational leader role then they'd spend an hour less doing another role.

PN1290

But a Level 4 doesn't have any supervisory responsibilities in relation to other educators. Does a person at a Level 4 have those responsibilities?---I - they could. I don't know.

*** KARTHIKA VIKNARASAH

XXN MR BULL

PN1291

Do you want to look - - -?---They're a diploma holder so they're usually in a senior position. If they're a Level 4 they're usually a room leader.

PN1292

MS WHISH: Objection. If she's going to be tested on the awards then she should be taken to the award.

PN1293

MR BULL: I'm just about to do that.

PN1294

If you go to - it's page 54 of the award.

PN1295

DEPUTY PRESIDENT CLANCY: I'm just wondering whether we've got the same problem with the award again. What are you going to be going to? Is it - - -

PN1296

MR BULL: There's indicative duties.

PN1297

DEPUTY PRESIDENT CLANCY: For Level 4?

PN1298

MR BULL: Level 4.

PN1299

DEPUTY PRESIDENT CLANCY: Okay, so on my version it's at page 53.

PN1300

MR BULL: Sorry about that. Can you go to page 53? Sorry about that.

PN1301

DEPUTY PRESIDENT CLANCY: But it's what, B.1.6 Level 4?

PN1302

MR BULL: Correct.

PN1303

DEPUTY PRESIDENT CLANCY: Yes.

PN1304

MR BULL: Have you got B.1.6 Level 4?---Yes.

PN1305

Now a Level 4 is going to be a qualified educator?---Yes.

PN1306

And that person will have at least a Cert IV, so they're not the least - they're mid-range, they're usually well-qualified?---Yes.

*** KARTHIKA VIKNARASAH

XXN MR BULL

PN1307

And experienced educators?---Yes.

PN1308

But they still work under the supervision of the assistant director or the director?---Yes.

PN1309

Now if that person's appointed an educational leader, according to the summary they have to 'collaborate with educators and provide curriculum direction and guidance'. They have to 'support educators to effectively implement the cycle or plan to enhance programs and practices and lead the development and implementation of an effective educational program in the service' and so forth.

PN1310

DEPUTY PRESIDENT CLANCY: What are you looking at now?

PN1311

MR BULL: So I'm looking at the summary document.

PN1312

DEPUTY PRESIDENT CLANCY: Right. Just be - - -

PN1313

MR BULL: These are the roles of the educational - - -

PN1314

DEPUTY PRESIDENT CLANCY: Yes, it just helps if you signpost what you're referring to.

PN1315

MR BULL: Sorry.

PN1316

DEPUTY PRESIDENT CLANCY: So we can all follow you.

PN1317

MR BULL: I've just read out - these are the roles of the educational leader.

PN1318

DEPUTY PRESIDENT CLANCY: So that's in exhibit 2.

PN1319

MR BULL: And you've got that document?---Yes.

PN1320

And it talks about collaboration and supporting and leading the development?---Yes.

*** KARTHIKA VIKNARASAH

XXN MR BULL

PN1321

You'd agree that these duties aren't part of the indicative duties of a Level 4?---So Level 4 says that they need to 'prepare, implement and evaluate a developmentally appropriate program in consultation with the assistant director'. It says that they're 'responsible for the supervision of students on placement, responsible for maintaining a safe environment for staff and children' and if you see I think earlier or lower levels would be 'work in collaboration with staff' would be a given in any organisation, so.

PN1322

But the point is the award says that they do these things for themselves in their work?---Yes.

PN1323

In consultation with their director or assistant director?---Yes.

PN1324

The point is an educational leader has to do these things but also in the context of providing guidance and mentoring with all the other educators within the service?---Right.

PN1325

You'd agree with that?---Yes.

PN1326

So it's above and beyond simply doing your own work. It's also having some role in this rather uncertain quality framework environment of how your colleagues are also complying with these quality standards and so forth. You'd agree with that?---Yes, but then that's true of any role. So if I have a WH person who's in charge of work health and safety, well, they're doing that on top of their ordinary role. If I have someone in charge of the vegetable garden, well, they're doing that on top of their ordinary role, and that's what an educational leader does as well on top of their ordinary role.

PN1327

So it's on top of their ordinary role in terms of the award classification in the Children's Services Award?---In terms of what extra work they would do, it would be in lieu of what - the hours that they'd spend in their work. So if I'm doing the vegetable garden I'm doing that for an hour a week instead of sitting with the children and educating them. If I'm being an educational leader I'm doing that an hour a week instead of sitting with the children and educating them.

PN1328

Now you agree that the NQF has increased the amount of I suppose paperwork that needs to be done in childcare?---No.

PN1329

You don't?---It has decreased the amount of paperwork and that was the intent of the NQF.

*** KARTHIKA VIKNARASAH

XXN MR BULL

PN1330

So you think it - but you've said earlier that your mother got you involved because it was all too much and there was this - - -?---Yes she had change fatigue, so she didn't want to have to deal with change.

PN1331

Of what exists now, has it increased the paperwork, for want of a better term, on the room leaders and the educational leaders?---No.

PN1332

The quality standards talk about critical reflection and child-focussed care. You're familiar with those concepts?---Yes.

PN1333

And child-focussed care requires a consideration of the individual learning experience of individual children?---Yes.

PN1334

But that involves some consideration of how an individual child is going within the centre. You'd agree with that?---Yes.

PN1335

And that's mainly on room leaders and educational leaders?---Sorry, that's mainly on?

PN1336

The room leaders and the educational leaders are the workers within a centre who have to focus on how the individual child is going from day to day and week to week and so forth. You'd agree with that?---No, every educator has to focus on that.

PN1337

In terms of leading critical reflection, that's an activity that takes place amongst the educators at a service. You'd agree with that?---Yes.

PN1338

And who will lead the critical reflection?---Typically it would be an educational leader but it could be anybody.

PN1339

But that's a role which the educational leader is compelled to assume by the force of regulation?---To lead critical reflection? Yes, do you know what critical reflection is?

*** KARTHIKA VIKNARASAH

XXN MR BULL

PN1340

I do but what I think of what terms mean is - the Commission is not interested in my view, so?---So critical reflection is thinking about the work that we do and why we do it, looking at are we addressing issues like gender, are we addressing issues like sort of same sex parents, those kind of social justice type issues. Now that is not something that you sit down and say 'Okay, let's sit down and think about this and write something down'. That's something that you have to - it takes

weeks, months for people to think about it, talk about it, read up on it, and that everybody has to do not just an educational leader. So an educational leader might say 'Let's talk about same sex parents for the next week or so. I've got to share some information with you'. But that doesn't end after a week. You know, that's part of everyone's ongoing learning and that's what critical reflection is. So an educational leader might bring the question up but they don't actually have to do a lot of work in terms of extra work. It's something that everyone does together.

PN1341

But the expectation is they lead discussion or they'll assist the others in their critical reflection on that issue?---So they might talk about it with the others, yes.

PN1342

So their role is a bit more than just as a member of the team. They're supposed to raise these issues and push them along in the workplace as matters of critical reflection. You'd agree with that?---Yes.

PN1343

And that can pan out in all sorts of ways. It can involve just discussing an idea?---Yes.

PN1344

It can involve research?---Yes.

PN1345

People get onto the internet and Google things and bring things in?---Yes.

PN1346

And it can become quite time-consuming?---Yes, so anybody could do that.

PN1347

But the expectation is the educational leader will lead this?---Or bring the questions up, yes.

PN1348

Now do you with your workforce - you hire people who are basically qualified so they've got their certificates and their tickets and so forth?---It depends. I try to get people who are not qualified but it's not easy to find people who are coming in as a new starter in this industry.

PN1349

But do you think it's appropriate that if you direct an employee to do a particular course which you think is going to benefit you as an employer, that they should pay the full cost of the course?---If I direct an employee to do a course?

*** KARTHIKA VIKNARASAH

XXN MR BULL

PN1350

Well, [REDACTED]; do you think if you

require her under your direction to do a particular [REDACTED] course, do you think [REDACTED] should pay for the course?---If it's - if I require her then I would pay for it.

PN1351

Right, so you think that's reasonable that you pay for a course that you require an employee to do?---I might suggest something to her and then she could pay for it but if I say 'You have to do it' then I would have to - I would pay for it.

PN1352

All right, so you - - -?---But I would never direct her to do something that she didn't want to do.

PN1353

My friend has already asked you a few questions about rostering and I'll be quite quick. You've got a relatively small cohort of employees. From memory you've got two casuals and a couple of full-time employees?---Yes.

PN1354

But the bulk of your staff are part-time, permanent part-timers under the Children's Services Award?---Yes.

PN1355

Just quickly, you don't have a big problem paying large amounts of overtime, is that correct?---Correct.

PN1356

Because basically your staff agree to come in when there's a need?---Well, because we don't have overtime. Like we don't have any work in overtime rates. It's - I'm not - the reason we don't have overtime, we don't have to pay overtime is because I don't ask staff to do overtime.

PN1357

In relation to the span of hours issue, you do charge late fees?---Yes.

PN1358

But you say that's infrequent?---Yes.

PN1359

Just as a general matter do you think normalising absences, children's absences from their parents, and these are relatively young children under the age of four up to 7.30 in the evening is appropriate or a good thing?---I didn't follow the question. Children's absences?

PN1360

If your association's claim to extend the ordinary hours is successful?---Right.

PN1361

You'll be able to stay open till 7.30 in the evening?---Yes.

*** KARTHIKA VIKNARASAH

XXN MR BULL

PN1362

Do you think it's appropriate that will normalise then parents picking up their children at 7.30 or seven?---Yes.

PN1363

Do you think as a general matter - and you're an experienced person in terms of childcare - do you think normalising those sort of absences into the early evening is an appropriate thing?---Are you asking whether it's okay for children to be in care until 7.30 in the evening?

PN1364

Well, to a certain extent. What I'm asking you is, is normalising those sort of absences into the early evening, do you think that's good for children?---Sorry, I don't understand what you mean by 'absences'.

PN1365

Obviously if a child is in childcare till seven or 7.30 it's absent from its parent?---Right.

PN1366

And we're talking about children under the age of four often?---Yes.

PN1367

Do you think it's a good thing to have that done routinely?---Of course ideally not, but we have to be able to cater for parents' requirements as well. I mean lots of parents these days work shift work late into the evening so we need to be able to provide them some support.

PN1368

But currently you don't have a great problem with late pick-ups?---No.

PN1369

Nothing further.

PN1370

MS ARRABALDE: No further questions. Thank you.

PN1371

DEPUTY PRESIDENT CLANCY: Thank you, anything in - - -

RE-EXAMINATION BY MS WHISH

[4.29 PM]

PN1372

MS WHISH: Yes, I will.

PN1373

Ms Saunders asked you about a survey for parents in relation to the closing time. Why haven't you surveyed the parents about a later closing time?

*** KARTHIKA VIKNARASAH

RXN MS WHISH

PN1374

MS SAUNDERS: I object to the question. It doesn't arise. Both the question and the answer were perfectly clear. Re-examination isn't an opportunity to get new evidence in.

PN1375

DEPUTY PRESIDENT CLANCY: I'm going to allow the question.

PN1376

MS WHISH: Shall I repeat that? Why haven't you surveyed your parents regarding a later closing time?---Parents have indicated to us - the ones who want a later closing time have indicated to us verbally that they do and other parents - because we know them quite well, because they know they wouldn't necessarily want that. So we know their working patterns, we know what their home life's like so we have a good idea of what parents need.

PN1377

Thank you. Ms Saunders asked about casual and agency staff. Your preference is not to employ casuals and agency staff. Why is that?---They're too expensive and it's not continuity of care for children.

PN1378

Could you explain continuity of care for children?---So if you can imagine a group of three-year olds or four-year olds who've got two or three teachers or educators that they see every day and suddenly a stranger walks in that they haven't seen before, that could be quite unsettling for most of the children.

PN1379

Mr Bull asked about late payments in relation to your centre. Why do you close at 6 pm and not at 6.30 pm?---Most of the parents only require care till 6 o'clock so that's why we close at six. I think I've said in my statement we used to close at 5.30 but when the parents required longer hours we extended our hours to 6 o'clock. If that happened again and we had enough parents wanting to extend till 6.30 or seven or whatever it was we would consider doing that.

PN1380

Thank you. No further questions.

PN1381

DEPUTY PRESIDENT CLANCY: Thank you, Ms Viknarsah. You may step down. You're excused from further attendance?---Thank you.

<THE WITNESS WITHDREW

[4.33 PM]

PN1382

DEPUTY PRESIDENT CLANCY: Now at the start of today I think it was indicated in terms of Ms Arrabalde there wasn't going to be any cross-examination. So is it a matter of just receiving - is it going to be her submissions into evidence? Is that what you were proposing to do according to this program?

*** KARTHIKA VIKNARASAH

RXN MS WHISH

PN1383

MR BULL: That was the understanding.

PN1384

DEPUTY PRESIDENT CLANCY: Yes.

PN1385

MR BULL: That they wanted to swear to their evidence. They've waited all day so we could do it very quickly if you want to?

PN1386

MS ARRABALDE: I understand that Ms Saunders might have some questions for me, your Honour.

PN1387

MS SAUNDERS: I have two questions. It will take two minutes.

PN1388

DEPUTY PRESIDENT CLANCY: All right, well, let's do that now and then that can be squared off.

PN1389

THE ASSOCIATE: Please state your full name and address?

PN1390

MS E ARRABALDE: Elizabeth Janette Arrabalde (address supplied).

<ELIZABETH JANETTE ARRABALDE, AFFIRMED [4.34 PM]

EXAMINATION-IN-CHIEF BY MR BULL [4.34 PM]

PN1391

MR BULL: Ms Arrabalde, you've made two - you've submitted two documents to this Commission in relation to the review of the Children's Services Award?---Yes, that's right.

PN1392

And also the Teachers Award?---Yes, that's right.

PN1393

So your first document is dated 14 March this year?---Yes, that's correct.

PN1394

And the second document is dated 26 April this year?---Yes, that's right.

PN1395

Now you've had an opportunity to review them?---Yes I have.

*** ELIZABETH JANETTE ARRABALDE

XN MR BULL

PN1396

In relation to the first one, the March document, is there anything which you want to alter?---No there's nothing I'd like to alter.

PN1397

In relation to the later document is there anything you want to alter?---No.

PN1398

I might tender both those documents.

PN1399

DEPUTY PRESIDENT CLANCY: Sorry, just so I've got them right, there's 14 March.

PN1400

MR BULL: That's the first one.

PN1401

DEPUTY PRESIDENT CLANCY: That's the first one? All right, I'll mark that exhibit 14.

EXHIBIT #14 FIRST WITNESS STATEMENT OF ELIZABETH ARRABALDE DATED 14/03/2019

PN1402

And then the next one is?

PN1403

MR BULL: 26 April.

PN1404

DEPUTY PRESIDENT CLANCY: 26 April or the 29th?

PN1405

MR BULL: I've got the 26th.

PN1406

DEPUTY PRESIDENT CLANCY: Okay, just a minute.

PN1407

MR BULL: On the top.

PN1408

DEPUTY PRESIDENT CLANCY: Yes. Yes, it has got it here. Thank you. That will be exhibit 15.

EXHIBIT #15 SECOND WITNESS STATEMENT OF ELIZABETH ARRABALDE DATED 26/04/2019

PN1409

Thank you.

*** ELIZABETH JANETTE ARRABALDE

XN MR BULL

PN1410

MR BULL: That is I believe the evidence-in-chief from this witness.

PN1411

DEPUTY PRESIDENT CLANCY: Thank you. Yes?

CROSS-EXAMINATION BY MS SAUNDERS

[4.36 PM]

PN1412

MS SAUNDERS: Thank you, Ms Arrabalde. You're an early childhood teacher. Is that right?---Yes, that's right.

PN1413

Have you ever been employed as a director?---Only on a temporary basis.

PN1414

Sure. Do you know what award you were paid under?---Yes, I'm paid under the Children's - sorry, the Educational - the Teachers Award. Educational services, yes, Teachers Award.

PN1415

That's all right, the Teachers Award is fine?---Yes.

PN1416

And was that the case when you were acting as a temporary director?---Yes it was.

PN1417

If you were employed as a director what award would you be expected to be paid under?---Under the Teachers Award.

PN1418

Why is that?---Because of my qualifications and the way that it contributes to my work and my understanding of how work should be performed.

PN1419

Thank you very much. Nothing further.

PN1420

DEPUTY PRESIDENT CLANCY: Thank you.

PN1421

Anything?

PN1422

MR BULL: Nothing arising.

PN1423

DEPUTY PRESIDENT CLANCY: Thank you.

*** ELIZABETH JANETTE ARRABALDE

XXN MS SAUNDERS

PN1424

All right, thank you, Ms Arrabalde, you may step down?---Thank you. Thanks.

<THE WITNESS WITHDREW

[4.37 PM]

PN1425

DEPUTY PRESIDENT CLANCY: All right. Thank you, we'll adjourn then for today. As I understand it we should expect - is it Mr Warner or Ms Warner?

PN1426

MS DABARERA: It's Ms.

PN1427

DEPUTY PRESIDENT CLANCY: Ms Warner. That will be at 9.30 in the morning. Thank you.

ADJOURNED UNTIL TUESDAY, 07 MAY 2019

[4.38 PM]

ELIZABETH JANETTE ARRABALDE

XXN MS SAUNDERS

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