



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

1056935

**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

10.05 AM, WEDNESDAY, 8 MAY 2019

Continued from 7/05/2019

PN3206

DEPUTY PRESIDENT CLANCY: Good morning.

PN3207

MS SAUNDERS: Thank you. Your Honour, some of the IEU witnesses are now to be interposed? I call Ms Farrant, who is on video link.

PN3208

DEPUTY PRESIDENT CLANCY: Thank you.

PN3209

THE ASSOCIATE: Ms Farrant, could you please state your full name and address.

PN3210

MS FARRANT: Lindy Jane Farrant, (address supplied).

<LINDY JANE FARRANT, AFFIRMED

[10.06 AM]

EXAMINATION-IN-CHIEF BY MS SAUNDERS

[10.07 AM]

PN3211

MS SAUNDERS: Good morning, Ms Farrant. Could you state your full name for the record, please?---Lindy Jane Farrant.

PN3212

And your address?---(Address supplied)

PN3213

You've prepared a statement in these proceedings. Is that correct?---That's correct.

PN3214

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

PN3215

I understand there is a correction you wish to make to that statement. Could you take as to the paragraph, please?---Paragraph 26.

PN3216

What should the change be?---If we just remove the second sentence:

PN3217

This includes teacher programming, meetings (indistinct) for a full day for a full day, and educator meetings.

PN3218

Are there any other corrections you wish to make?---No, thank you.

*** LINDY JANE FARRANT

XN MS SAUNDERS

PN3219

That alteration is everything in that statement true and correct to the best of your knowledge?---To the best of my knowledge, yes.

PN3220

I tender the statement.

PN3221

DEPUTY PRESIDENT CLANCY: Thank you. I will mark the witness statement of Lindy Farrant dated 14 March 2019 as exhibit 31.

**EXHIBIT #31 WITNESS STATEMENT OF LINDY FARRANT
DATED 14/03/2019**

PN3222

MS SAUNDERS: Nothing further.

CROSS-EXAMINATION BY MR ARNDT

[10.08 AM]

PN3223

MR ARNDT: Good morning, Ms Farrant?---Good morning.

PN3224

My name is Julian Arndt. I'm a solicitor representing to employers in this matter. Can you hear me okay?---Yes, thank you.

PN3225

I will just move the mic slightly up, so sorry if there's a sound. I will be referring to your statement. You're a director at the Centre in early childhood in Parkes. That's right?---Yes.

PN3226

Your centre is not-for-profit?---Yes.

PN3227

How many employees to have employed at the centre?---26 permanent staff and another nine casuals.

PN3228

How many of those staff are engaged in work with the children? So what we've used in these proceedings at teachers and educators. How many are on the floor, so to speak?---So primary contact staff, there would be 24 - sorry, 22, I beg your pardon.

PN3229

How many of those staff have teaching degrees?---There's seven of us, counting myself and our assistant director, so there would be five working in the playrooms.

*** LINDY JANE FARRANT

XXN MR ARNDT

PN3230

Does that mean that 15 have either Cert IIIs or diplomas?---I've got 17 here. 10 with diploma and seven with Cert III.

PN3231

My maths is probably wrong. I will trust yours. And did you say that your assistant manager had a teaching degree?---Correct.

PN3232

What about your educational leader?---Yes, that's the same person.

PN3233

Are they the responsible person when you're not there?---Correct.

PN3234

Does anyone else fill the role of responsible person?---Yes.

PN3235

How many people?---Off the top of my head there could be 10 that are certainly certified supervisors.

PN3236

I think my maths is correct. Not all of those 10 would have teaching degrees, would they?---No.

PN3237

Do you know how many would?---Yes. All of our teachers are certified supervisors.

PN3238

How many of them act as responsible people, though?---In my absence and in the absence of my assistant director, all of them, according to seniority.

PN3239

Yes. But not all of those people have teaching degrees?---Correct.

PN3240

I'm sorry, I think I have asked this before, but how many of them have teaching degrees?---Five.

PN3241

And then around five who don't?---Correct.

PN3242

Thank you. Can we just go to your statement on the first page, I guess this would be called your resume. You started out in the industry in 1977 as an early childhood teacher?---Yes.

*** LINDY JANE FARRANT

XXN MR ARNDT

PN3243

And then at paragraph 4 you've noted that you got your Diploma of Education Early Childhood in 1978. How long was the course?---That was a three-year teaching course.

PN3244

So that diploma was sufficient for you to become a teacher in 1978?---Correct.

PN3245

Would that diploma be sufficient for you to become a teacher nowadays, if you did that diploma now?---It's the equivalent of a three-year teaching degree.

PN3246

It's a different system now, isn't it, in terms of the educational qualifications to teachers?---I would say to you this is a teaching degree that was - and it was the early childhood teaching degree that was available back in the 70s. It was a three-year course. They called it at the time a diploma, but it was a teaching degree. The terminology has changed.

PN3247

Thank you very much. So following the attainment of your diploma you were an early childhood teacher for four years until 1982?---Correct.

PN3248

But it seems like during that period as well you were undertaking your Bachelor of Education Early Childhood at - was it called Mitchell College of Advanced Education?---Correct.

PN3249

So you were working at the same time you were doing this degree?---I was.

PN3250

You attained that in 1984, but your paragraph 3 says that in 1984 you became a children's services adviser to the Department of Family Community Services in the New South Wales Government?---That's right.

PN3251

You then went on to teach at Western Region TAFE?---Correct.

PN3252

And then you became an office-based director?---Correct.

PN3253

The question I'm getting to is - and what I'm interested in is if you got your Bachelor of Education in 1984, at least in respect of that qualification did you ever undertake any teaching in an early childhood centre once you have that qualification? Because it - - - ?---Yes.

PN3254

You did?---Yes.

*** LINDY JANE FARRANT

XXN MR ARNDT

PN3255

When did you do that?---That would have been in 1993 at Parkes.

PN3256

So you taught in 1993 at Parkes?---Yes.

PN3257

And that was part of your role as an office-based director?---That's actually an oversight on my behalf because there was 12 months there as a teaching director, and then 1994 I became an office-based director.

PN3258

Thank you to that correction. If I get confused with that at some later time, please just correct me again. So you've been an office-based director for - I thought it was 26 years, but it's 25 years?---Correct.

PN3259

And when you say office-based, what you mean?---I would use the term non-teaching director.

PN3260

So you don't teach?---No. Not directly with children, no.

PN3261

Do you spend time on the floor?---I do. Not teaching.

PN3262

You're not assigned any group of children?---No.

PN3263

And you haven't undertaken any teaching since 1993?---Correct.

PN3264

But that was only one year of teaching. Before that you hadn't undertaken any teaching since 1982?---Sorry, could you just repeat the question.

PN3265

In 1993 you taught for 12 months?---Yes.

PN3266

But the period before that in which you taught was actually in - ended in 1982, because you had - well, you had eight years between - not eight years, you had 12 years between finishing up as an early childhood teacher at Parkes and then recommencing as a teaching director in 1993?---Yes.

PN3267

You have some documents in front of you, I understand?---Yes.

*** LINDY JANE FARRANT

XXN MR ARNDT

PN3268

You may be able to answer this off the top of your head, but your roles and responsibilities as a director don't include teaching, do they?---That's correct.

PN3269

Just one moment, Ms Farrant. I just need to change the dates. Can I take you to 7 of your statement. Have you got that?---I do.

PN3270

You talk about your early childhood teaching qualifications and experience. Can you just be really precise about what qualification you're talking about?---Is this paragraph 7?

PN3271

Yes. I can give you a line if you would like. It's the first word of line 4, Qualifications?---Yes, and experience.

PN3272

Yes. When you talk about qualifications, which qualification are you talking about?---I would be talking about both my three-year degree and my fourth year.

PN3273

Can I take you to clause 7.2. In that clause you refer to the National Quality Framework, its various components; the national law; national regulations; quality standards; the national learning framework. None of those things were in existence at the time you completed your qualifications, were they?---Absolutely not.

PN3274

And they didn't form a part of your coursework?---No.

PN3275

And the sector has changed a lot in respect of those types of instruments, hasn't it?---It has.

PN3276

Can we go to 7.2. Can I ask why would your capacity to carry out your responsibilities in accordance with the National Quality Framework be greatly enhanced by your teaching qualifications?---I think that teaching qualifications gives you enhanced skills to be able to understand, to interpret, to analyse, and to implement things like legislation, standards, curriculum, et cetera.

PN3277

You would get that in any university degree, wouldn't you?---I would think that - no, I don't agree. I think that having a teaching qualification provides you with specialist knowledge to be able to do that.

PN3278

About interpreting legislation?---Not about - about, I guess, implementation of that, and the curriculum in particular.

*** LINDY JANE FARRANT

XXN MR ARNDT

PN3279

But the curriculum has changed since you undertook your qualifications, hasn't it?---Yes.

PN3280

I take you to 7.3. You talk about management of recruitment, evaluation of potential employees. Was there a recruitment or human resources part of either of your qualifications?---No. I have engaged in ongoing professional development for all of my career, and those sorts of skills have been gained through ongoing professional development.

PN3281

That ongoing professional development encompasses your experience working?---That would be correct, as well as attending particular courses or - yes, a broad range of professional development.

PN3282

But it doesn't have anything to do with your qualifications that you obtained in the late 1970s and mid-1980s, does it?---Recruitment?

PN3283

Yes?---I would say that that wasn't part of my qualification, but said part of my professional development and I guess ongoing changing roles and what have you, it's really important to have a teaching degree to be able to make informed decisions about recruitment and the sorts of qualities that we need within our staff.

PN3284

Before you said that those skills were things that you had picked up in professional development after you finished your qualifications?---Yes.

PN3285

So they were also picked up during your qualifications?--- ongoing qualifications? I'm sorry, I'm a little confused here.

PN3286

I will be very clear. When I use the word qualifications - remember I asked you about what qualifications you were referring to?---Yes.

PN3287

And you said both your diploma and your bachelors degree?---Yes.

PN3288

I will use the word qualifications to refer to those two courses or pieces of paper or qualifications that you have?---Yes.

PN3289

Can I take you to 7.4?---Mm-hm.

*** LINDY JANE FARRANT

XXN MR ARNDT

PN3290

Can I ask you why does your teaching qualifications greatly enhance your facilitating professional development entrenching programs for teachers and other educators for the successful implementation of early years learning framework, national quality framework, PEC, quality improvement plan, and the centre's philosophy of education and care? That paragraph just says that it does. Can I ask why?---In terms of leading a group of teachers and educators, I believe it's really crucial is that I have a teaching degree to be able to understand, and in some cases translate and train, and support my staff to implement those frameworks and documents and curriculum, et cetera.

PN3291

But why?---As a leader you need to - I guess it is my belief that you need to have an understanding so that I can explain and train and lead my team in becoming familiar with those documents and implementing them on an ongoing basis.

PN3292

You didn't study any of those documents in your qualifications, though, did you?---No. I go back to the point I made before about ongoing professional development and the obligations we have as professionals in education to keep up-to-date and learn about and implement and embed new legislation or curriculum is or new practices or what have you.

PN3293

Could I put it to you that that ongoing professional development is what allows you to do the things that you say you do in 7.4, and it's not your qualification?---I think the qualification has given me a basis to be able to implement that as a teacher, with an understanding of teaching and education.

PN3294

Can I take you to 7.5. You talk about having a working knowledge of research and development, of and developing an environment which supports brain development in the early years. There might be something wrong with that sentence, I'm not sure, but I think we get the message. Are you aware that there has been any developments in research in respect of brain development since the 1970s and 80s?---Absolutely.

PN3295

There's been a great deal of development, hasn't there?---There has.

PN3296

Are those developments only accessible to people teaching degrees?---No.

PN3297

Can I take you to 8. So you say that your teaching qualification and experience means you have a more welfare and child-centred approach to early childhood education. More than who, or have I misinterpreted that?---It has been my observation that there are practitioners and services where their focus is perhaps more on financial - the finances of an organisation rather than the educational processes of the children.

*** LINDY JANE FARRANT

XXN MR ARNDT

PN3298

So when you say, "This means I have a more welfare and child-centred approach to early childhood education", you're saying you have a more welfare and child-centred approach to early childhood education than someone without a teaching degree?---Yes.

PN3299

Still on 8, and I think it's the sentence before that, you say that your focus is on the child and not the best interests of your organisation?---Yes. So the focus is about decisions around the needs of the children and best practice around the children is always our focus point, rather than the - and then that then influences the way we run the rest of the centre.

PN3300

But sometimes you don't act in the best interests of your organisation?---I always act in the best interests of my organisation, but my focus is always on the children.

PN3301

I just take you back to 8. You said you focus your decisions in the context of the best interests of the child instead of the organisation. So is and your evidence that sometimes you don't act in the best interest of your organisation?---That's not the intention of the sentence.

PN3302

Is it your evidence, then, that someone holding a teaching qualification is more likely - it's your evidence then that someone holding a teaching qualification is more likely to focus on the interests of a child - of the children. That's right, isn't it?---Yes.

PN3303

Does that mean that someone holding a teaching qualification is more likely not to focus on the best interests of the employer?---No. As I say, that was not the intention of the sentence. That's about the focus being on the needs of the children and the rights of the children and best practice around the children, and this is the focus. And perhaps that was a poor choice of words because - and then the organisation wraps around that to support the children and their best interests.

PN3304

So it's not your evidence that you focus of the best interest of the children instead of the organisation?---I will just repeat what I said, is that the children are our focus. The decisions that we make are in the best interests of the children, and the organisation wraps around the concept.

*** LINDY JANE FARRANT

XXN MR ARNDT

PN3305

Can I take you to 9, Ms Farrant. You identify some units you studied in your bachelors degree and how they directly influence your ability to be a director. You say you couldn't have the same basis to build if you only possessed a certificate or diploma. I'm interested. Earlier on you said that the qualifications

you were referring to - I asked you a question about your qualifications earlier and what you meant, and you said both your bachelors and your diploma?---Yes.

PN3306

Here you seem to specify down to your bachelors. Why do you do that?---I guess it says it had included behavioural (indistinct) processes, human development, literacy, science communication, and teaching practice as an example.

PN3307

But why have you dropped your diploma off here?---I don't know the answer to that question.

PN3308

Wasn't the majority of your teaching undertaken with your diploma as opposed to your bachelors?---Sorry, could you just repeat that.

PN3309

Wasn't the majority of your teaching undertaken while you had a diploma and not your bachelors?---Yes.

PN3310

Can I take you to 11. You say;

PN3311

In order to lead a group of teachers in early childhood education it's essential to have at least the same qualification.

PN3312

What do you mean by essential?---It is my opinion that to be able to provide the type of leadership that inspires and has credibility with our teaching staff, it's essential to have the same qualification as them.

PN3313

Are you aware the centre can have a director without a teaching degree?---Yes.

PN3314

In your view what are the consequences for a centre if it doesn't employ a bachelor-qualified director?---It would be my sense that the leadership and the outcomes would not be as high.

PN3315

And that's why it is essential?---That would be my belief. If we want best outcomes, best practice in early child education.

PN3316

So it's essential to get the absolute best outcomes, in your view, to have a bachelor-qualified director?---I would say that, yes.

*** LINDY JANE FARRANT

XXN MR ARNDT

PN3317

But there's no other - in your view there is no other consequences? People do it, don't they?---I'm sure they do. I'm sure there are - there would be services around that don't have bachelor-qualified staff leading. But the research would certainly say it is important - - -

PN3318

Just hold on, Ms Farrant.

PN3319

MS SAUNDERS: I'm sorry to interrupt. It's an objection to the undifferentiated use of bachelor and diploma. It's just getting a bit - if my friend can be a little clear, bachelor of - - -

PN3320

DEPUTY PRESIDENT CLANCY: Bachelor of Education.

PN3321

MS SAUNDERS: Bachelor of Education and Diploma, AQF diploma.

PN3322

DEPUTY PRESIDENT CLANCY: Personally I've taken it that's what he has meant, but you should keep saying it, otherwise it could be a Bachelor of Economics, bachelor of anything.

PN3323

MR ARNDT: Indeed.

PN3324

Ms Farrant, do you think educators with our teaching degrees aren't credible?---Absolutely not. They're an integral part of any early childhood services team.

PN3325

I'm grateful to my friend.

PN3326

When I say educators - apology, Ms Farrant. I will just repeat the question, and if you have any difficulty with what I mean, or if anyone does, they can speak. Do you think educators aren't credible?---That's not correct.

PN3327

They know what they're talking about?---They do.

PN3328

Many of them have a great deal of experience?---Correct.

*** LINDY JANE FARRANT

XXN MR ARNDT

PN3329

Can I take you to 13. Can you just explain - you talk about the committee of the centre. Could you just tell me what the role of the committee is at your centre?---They're responsible for the ongoing management of our service around

governance and I guess the bigger picture. I'm responsible for the day-to-day operations and they're responsible for the long-term management of the service.

PN3330

In terms of business trajectory or - when you say long-term, what do you mean? What decisions are they making?---Financial, approving policies, about directions for the centre; they are the employers of the staff.

PN3331

Can I take you to 19. At 19 in the third sentence you say:

PN3332

An educator with a certificate or diploma-level qualification does not have the same depth of knowledge and experience in relation to children with additional needs.

PN3333

Are you saying that in respect of children with additional needs, let's say a diploma-qualified educator with 20 years' experience has less depth of experience than a 22-year-old recent uni grad with a Bachelor of Education?---That would depend on the individual. Certainly a person who has had 20 years' experience as opposed to a graduate could have or expertise, but should we be comparing - if you said to me a teacher with 20 years' experience as opposed to a diploma with 20 years' experience I would say that the teacher had a greater level of expertise.

PN3334

But it depends on the person and what level of expertise they have, doesn't it? I withdraw that. It depends on the person and what level of experience they have, wouldn't it?

PN3335

MS SAUNDERS: I object to the question on the basis of relevance. The characteristics of individual employees, their relative skill, has no probative value in a general award question.

PN3336

DEPUTY PRESIDENT CLANCY: You can ask the question.

PN3337

MR ARNDT: Ms Farrant, it would depend on the experience, the disposition of a particular employee in relation to whether they had experience in relation to children with additional needs, rather than just their qualification, wouldn't it?---Sorry, can you just ask that again.

PN3338

It's a slightly different question, so forgive me. Whether someone had experience in relation to children with additional needs, it would depend on that person's particular experience and their skills, as opposed to necessarily their qualifications?---I think qualifications are an integral part of that.

*** LINDY JANE FARRANT

XXN MR ARNDT

PN3339

But you accepted, didn't you, that - sorry, Ms Farrant, go on?---Working with staff with this range of qualifications who have teacher qualifications or diploma qualifications or Certificate III qualifications, it's very apparent that working with children with additional needs and their capacity to do that, part of that is the qualification that that person has around their knowledge of child development and the teaching and learning that should occur, the programming that needs to occur for those children.

PN3340

But you say in the third sentence of 19 that:

PN3341

An educator with certificate or diploma level qualifications does not have the same depth of knowledge and experience in relation to children with additional needs.

PN3342

That's not right, is it?---Experience perhaps in relation to the level of programming that's required.

PN3343

So to use the hypothetical comparison again, the 30-year educator will have less experience in programming than the 22-year-old education bachelor?---Years of experience are perhaps - perhaps depth and knowledge of experience, the teacher will have a far greater understanding of the need to run programming.

PN3344

Ms Farrant, why don't we move on. Let's move on to 30. You say that:

PN3345

A teacher-qualified director performs the role in a way that has more expertise than a diploma or certificate educator would.

PN3346

I just want to put to you that it would depend on the particular director, wouldn't it?---No. A qualification gives you a starting point. If you have studied for four years as a teacher, as opposed to study for two years as a diploma, the four years is going to give you greater expertise in relation to the job that you're doing.

PN3347

So the 30-year veteran with the diploma has less expertise than the new freshly minted grad out of university with the Bachelor of Education. Is that your evidence?

PN3348

DEPUTY PRESIDENT CLANCY: That's a different proposition, isn't it? The proposition is around teacher-qualified directors against directors that aren't teacher-qualified.

*** LINDY JANE FARRANT

XXN MR ARNDT

PN3349

MR ARNDT: I apologise if I haven't made that distinction. Apologies, Ms Farrant.

PN3350

DEPUTY PRESIDENT CLANCY: So someone fresh out of university is unlikely to be a director.

PN3351

MR ARNDT: That may be true. Ms Farrant - - -

PN3352

DEPUTY PRESIDENT CLANCY: If that subsequently got teaching qualifications, having worked in the sector, and then moved to director, that might be a different thing, but it's a little bit more nuanced.

PN3353

MR ARNDT: It is possible for someone to be out of uni for a relatively short time and become a director.

PN3354

MS SAUNDERS: I don't think that is necessarily possible, but this line of questioning is not of any real use to the Bench, and the evidence is clearly an apples and apples comparison. There may well be a spectacular 30-year diploma qualified director who's out there being flagrantly underpaid. It's not to the point.

PN3355

DEPUTY PRESIDENT CLANCY: We've delved into a lot of hypotheticals in the last few days.

PN3356

MR ARNDT: I was going to say, goodness me.

PN3357

Thanks for your patience, Ms Farrant. Can I talk about the people who assume the duties of responsible person when you're away?---Mm-hm.

PN3358

Berry charge of the centre when you're not there?---Correct.

PN3359

And let's put aside those people, such as your assistant manager, who has the teaching degree, and let's just focus on the educators without the teaching degree. For those people who act as responsible persons, they make decisions about the centre when you're not there, don't they?---Correct.

PN3360

They have to make big decisions?---No.

*** LINDY JANE FARRANT

XXN MR ARNDT

PN3361

What you say that?---If I'm not at the centre and my assistant director isn't at the centre, then according to the hierarchy there would be five teachers that would become a certified supervisor before we got to someone with a diploma or a certificate. It's always my practice to make sure that if there are any difficulties that arise, or problems or queries, that my staff who are certified supervisor is now that they can always ring me; or if they can't get on to me, they can always ring our assistant director to get some guidance or some clarity around any situation that may arise.

PN3362

Any difficulties, they call you?---Yes, anything that they don't feel confident about.

PN3363

Do you have any concerns about leaving the centre in the hands of a responsible person who doesn't have a Bachelor of Teaching as a responsible person?---No, because the decisions we've made is about the capabilities of that person, of their ability to follow policies and procedures. And as I say, they are never left unsupported or without access to guidance.

PN3364

Just one moment, Ms Farrant. Thank you very much front and my questions, Ms Farrant. Someone may have more questions. I'm sure they will.

PN3365

MS WHISH: No questions, thank you.

PN3366

DEPUTY PRESIDENT CLANCY: Ms Arrabalde?

PN3367

MR BULL: No questions.

PN3368

DEPUTY PRESIDENT CLANCY: Ms Arrabalde?

PN3369

MS ARRABALDE: No further questions.

PN3370

DEPUTY PRESIDENT CLANCY: Anything in re-examination?

PN3371

MS SAUNDERS: No.

PN3372

DEPUTY PRESIDENT CLANCY: Ms Farrant, thank you very much for your evidence this morning. You may step down, and you're excused from further attendance. Thank you?---Thank you.

*** LINDY JANE FARRANT

XXN MR ARNDT

<THE WITNESS WITHDREW

[10.50 AM]

PN3373

DEPUTY PRESIDENT CLANCY: We've got set up a video link to Brisbane, so we might step outside and - - -

PN3374

MS SAUNDERS: Just before, if I could refer to another IEU witness who's not required for cross-examination. I might just deal with her statements quickly.

PN3375

DEPUTY PRESIDENT CLANCY: Is that Ms Frend, is it?

PN3376

MS SAUNDERS: Ms James. There's two statements, one of 15 February 2019. I should say for completeness Ms James is here if she's required, but I don't think any party needs to ask questions of her.

PN3377

DEPUTY PRESIDENT CLANCY: All right. We will go to her statements. Which one do you want to put in first?

PN3378

MS SAUNDERS: 15 March 2019. Can I tender that?

PN3379

DEPUTY PRESIDENT CLANCY: Yes, all right. The statement of Lisa James dated 15 March 2019 with annexures will be exhibit 32.

**EXHIBIT #32 STATEMENT OF LISA JAMES DATED 15/03/2019,
WITH ANNEXURES**

PN3380

MS SAUNDERS: Followed by 15 April 2019.

PN3381

DEPUTY PRESIDENT CLANCY: The statement of 15 April 2019 of Lisa James will be exhibit 33.

EXHIBIT #33 STATEMENT OF LISA JAMES DATED 15/04/2019

PN3382

MS SAUNDERS: Thank you.

PN3383

DEPUTY PRESIDENT CLANCY: We will step outside so the video link to Brisbane can be established. Thank you.

SHORT ADJOURNMENT

[10.51 AM]

*** LINDY JANE FARRANT

XXN MR ARNDT

RESUMED

[10.59 AM]

PN3384

MR ARNDT: One point of update.

PN3385

DEPUTY PRESIDENT CLANCY: Yes.

PN3386

MR ARNDT: Rosina Smith's statement is no longer relied upon, so will not be featuring today.

PN3387

DEPUTY PRESIDENT CLANCY: Yes.

PN3388

MR ARNDT: I understand that assists some of the timing concerns in relation to the timings today that we had. But from what I understand the one firm commitment we need to keep is Ms Frend in the afternoon.

PN3389

DEPUTY PRESIDENT CLANCY: Yes.

PN3390

MR ARNDT: In Gunnedah.

PN3391

DEPUTY PRESIDENT CLANCY: Right, thank you. Sorry, so Ms Frend will now be at 2.00, will she?

PN3392

MS SAUNDERS: Yes.

PN3393

DEPUTY PRESIDENT CLANCY: She can be at 2.00?

PN3394

MS SAUNDERS: She can be at 2.00. She's just got a time commitment in the afternoon, but she can be at 2.00, possibly 2.15, but close to.

PN3395

DEPUTY PRESIDENT CLANCY: All right, thank you.

PN3396

MS WHISH: Ms Brannelly, can you hear me?

PN3397

MS BRANNELLY: Yes, I can.

*** LINDY JANE FARRANT

XXN MR ARNDT

PN3398

MS SAUNDERS: Sophie Whish from Australian Business Lawyers and Advisors on behalf of ACA and Nosha and several other organisations in these proceedings. I'm just going to have the Associate go through your oath or affirmation and then I'll ask you some questions.

PN3399

MS BRANNELLY: Thank you.

PN3400

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

PN3401

MS BRANNELLY: Kylie Ann Brannelly (address supplied).

<KYLIE ANN BRANNELLY, AFFIRMED [11.01 AM]

EXAMINATION-IN-CHIEF BY MS WHISH [11.01 AM]

PN3402

MS WHISH: Ms Brannelly, could I get you to confirm your full name and address?---Kylie Ann Brannelly (address supplied).

PN3403

Thank you. Have you provided a statement in these proceedings?---Yes, I have.

PN3404

Did you want to make any changes to that statement?---I want to make one clarification and that is to point 29.

PN3405

What would that be?---The clarification is that the example I have provided around qualifications is for services in Queensland. The statement about the 50 per cent qualification requirement does apply to all jurisdictions across the country. However, the example that I have provided is a Queensland-based example because every jurisdiction maintains different requirements for qualifications when it comes to the provisions of outside school hours care.

PN3406

DEPUTY PRESIDENT CLANCY: Would your statement be better expressed as, in paragraph 29, "qualification requirements in Queensland necessitate a service provider" et cetera?---Yes, and I would probably move the last sentence, that being the case, of it being an example to "The majority of jurisdictions across Queensland have a 50 per cent qualification requirement. In the instance of Queensland, this is ..."

PN3407

MS WHISH: Did you want Ms Brannelly to repeat that wording of paragraph 29?

*** KYLIE ANN BRANNELLY

XN MS WHISH

PN3408

DEPUTY PRESIDENT CLANCY: Well, I'm taking that the first sentence will become "Qualification requirements in Queensland necessitate..." But I'm not sure what is meant by the last sentence.

PN3409

MS WHISH: Ms Brannelly, would your preference be to - have you got paragraph 29 in front of you?---I do.

PN3410

Would your preference be to delete the last sentence "This is more commonly known..."? Or say, "This is more commonly known in Queensland"?---Look, I'm happy to say this is more commonly known in Queensland. I guess the point I want to make is that all jurisdictions do maintain some sort of qualification requirement that leads to 50 per cent of educators being qualified of 50 per cent being unqualified. But the way they manage that is differently. So, I'm happy for you to just say in Queensland with that understanding.

PN3411

MS SAUNDERS: Perhaps the thing to do is just take what Ms Brannelly said as evidence in chief, rather than amending the statement.

PN3412

DEPUTY PRESIDENT CLANCY: Thank you.

PN3413

MS WHISH: Thank you Ms Brannelly. Subject to those changes, if your statement a true and correct record to the best of your knowledge?---Yes.

PN3414

I seek to tender that statement.

PN3415

DEPUTY PRESIDENT CLANCY: Thank you. I will mark the witness statement of Kylie Ann Brannelly dated 15 April 2019 as exhibit 34.

EXHIBIT #34 WITNESS STATEMENT OF KYLIE ANN BRANNELLY DATED 15/04/2019

PN3416

MS SAUNDERS: I have no questions.

PN3417

DEPUTY PRESIDENT CLANCY: Thank you.

PN3418

MR BULL: I have a few questions.

PN3419

DEPUTY PRESIDENT CLANCY: Yes, thank you Mr Bull.

*** KYLIE ANN BRANNELLY

XN MS WHISH

PN3420

MR BULL: Ms Brannelly, my name is Stephen Bull. I'm an officer of United Voice and I was going to ask you a few questions about your statement. Can you hear me?---Yes, I can.

PN3421

Just a general question about occupancy and after hours - outside of school hours care. We've heard that in relation to long day care, that that's not occupancy-based industry. You'd agree that the same statement could be made in relation to outside of school hours care?---Can you make that statement again, because I missed what you said just before occupancy-based.

PN3422

It's occupancy-based, which means that it's about the numbers of children in a Centre may fluctuate from time to time?---Yes. So, outside school hours care is occupancy-based.

PN3423

In relation to ratios, you've also got to maintain ratios, but parents will book their children into care at your facilities and if the children don't turn up, the parents still have to pay. That's correct?---It varies from service to service. Some services have incredibly generous policies, where a parent can notify them at very short notice. So, I'm talking about two hours within the session of care starting and they won't charge families. There is the practice, as you state, where other services charge for a permanent booking whether or not the parent cancels the session of care.

PN3424

In your position as someone who's worked in the sector for a long time and continue to work in the sector, would you say the latter, where parents are charged whether the child turns up or not, because they're booked in a place for the child, is a more common practice?---It has become a more common practice in recent times.

PN3425

That takes some stress off the ratios, because the children aren't physically present on the premises?---Are you suggesting that the children who are absent from care take the pressure off the ratios because the parents are paying and the service has provided staff for them anyway? Is that what you're suggesting?

PN3426

Well, partly. It's more - it's a bit more basic than that. It will assist a provider maintain appropriate ratios because there's less children to care for, but they're still being for the person who would notionally have cared for the child?---So, services will staff based on their bookings. So, your occupancy and yes, if parents choose not to use that session of care, then the staff will still be there.

*** KYLIE ANN BRANNELLY

XXN MR BULL

PN3427

Thank you. Could you go to paragraph 33 of your statement?---Yes.

PN3428

You're addressing from 33 onwards to 37, "Our claim for responsible person allowance". Now, could you go to 37. You make a statement that the majority of OSHC Centres would be required to pay the higher allowance amount due to the number of places OHSC services have when compared to long day care. What basis do you make that statement?---In my analysis and observations of the sector, outside school hours care services to continue to grow, not just in the number of services, but in the size of the services. So, every year, school populations are increasing or the percentage of a school population that requires outside school care continues to increase and the sector responds by increasing their capacity. I have seen in a number of services a 15 per cent increase of capacity on an annual basis for the past five years. What I'm trying to suggest with that table is that in the outside school hours care sector, there are many more services that are over 60 places and above and that is not considered by any means, a large service in today's operating context of outside school hours care. In fact, a service of 60 is a very average place to service.

PN3429

Well, that may be the case, but what you've made is a comparison between outside school hours care and long day care. You've essentially said that outside school hours care, they're larger generally than long day care centres. What basis do you have to make that assertion?---Looking at the size of the long day care services, so the purpose built facilities and I can give Queensland as an example, the majority of services in Queensland were purpose built for a particular size, up to about 75 places. So, 65 to 75 places is common for the majority of services of long day care services in my observations and analysis in comparison. Whereas in outside school hours care, our analysis is telling us that the majority of services are well above that number and in fact, there's a significant - I'll give you one example. A service is operated by one type of provider. There's 130 services operated by one type of provider in Queensland. For that one type of provider, over 50 per cent of their services have a service approval for more than 100 places.

PN3430

Are you suggesting that the basis of your observation is a number of individual observations you've made of how particular operators conduct their business?---It's based on the number of places that services have capacity for.

PN3431

Have you got any - have you done any empirical research which would provide a basis for this opinion?---Yes, I have some data that I can draw upon.

PN3432

Is that data which - sorry?---It's statistical - yes, statistical data based on information available through the ACECQA portal where you can identify services' licensed capacity or their approval capacity.

*** KYLIE ANN BRANNELLY

XXN MR BULL

PN3433

Is it the most recent data?---Yes.

PN3434

Does that concern the percentage of outside school hours care and long day care respectively that have 60 plus places and so forth?---Yes.

PN3435

Are you able to quote those percentages to us?---No, I didn't bring that information with me, but I would be happy to follow up with that.

PN3436

Well, we'd appreciate if you did. We've reviewed that data and from our review of that data, there's not a great deal of difference between the size of outside school hours care providers, in terms of the number of places and long day care centres. So, the most recent data - this is in terms of percentages, in outside school hours care providers in the 60 plus bracket, that's 54, 85 per cent of the sector. Does that sound about right?---54 to - sorry, what was the - - -

PN3437

It's 54.85 per cent of the sector have 60 plus places?---Yes.

PN3438

MS WHISH: Objection. Ms Brannelly doesn't have this data in front of her and when Mr Bull's referring to the sector, is he including long day care, preschools, outside school hours care in his data, or his data just confined to outside school hours care?

PN3439

DEPUTY PRESIDENT CLANCY: Why don't we just approach this by getting the data. The data that you've relied on and the data that Ms Brannelly has.

PN3440

MR BULL: I can call for the data and I can also provide it to the Commission, because we're - - -

PN3441

DEPUTY PRESIDENT CLANCY: The parties can then make submissions.

PN3442

MR BULL: I will put a general proposition to her if I may. Look, the general proposition I'm going put to you is that there's not - if you look at the percentages, in terms of size, there's no great difference between outside school hours care and long day care. Would you agree with that proposition?---No, I wouldn't agree with that proposition.

*** KYLIE ANN BRANNELLY

XXN MR BULL

PN3443

Thank you. If you could just go to your table, at 36. You seem to have - this may be an error, and when you were asked to correct things, we seem to be missing certain cohorts and so forth. In relation to outside school hours care, there's no

more than 59 and then it's 79 to 89. Is that just an error that we're missing the 90 to 119 bracket?---I would suggest that it is.

PN3444

And likewise, it's an error in relation to long day care where it's a 39 and then we miss 40 to - I'll withdraw that. In relation to the 59 - sorry. Yes, in relation to 39 rather, we're missing the 40 to 48. That's also an error?---40 - yes. So, yes I can see what you're looking at and so, the 60 to 119 should be the figure in that middle box. Yes, I can see that.

PN3445

That table doesn't really tell us anything. You'd agree?---Yes. Look, I said that I'm happy to provide the data that contributed to the statement that I made.

PN3446

Going on to paragraph 38 of your statement, you've indicated that responsible person duties existed prior - well, are contained in the existing award classifications?---Yes.

PN3447

You'd agree that the essence of the responsible person is that that person is on the premises. You'd agree with that?---Yes.

PN3448

Now, can you point to any - and we'll focus on the Children's Services Award, any classification connoting responsibility or supervision which includes the requirement that the person must be on the premises. Just to assist you if you've got the award with you, the relevant ones start around page 55?---Okay. So, just so I can be sure what you're asking, point to a statement that references that somebody needs to be physically present in the service.

PN3449

Correct?---So, in the indicative duties at Level 4, "Responsible for the day to day management of the Centre of service in the temporary absence of the director and for management and compliance with licensing and all statutory and quality assurance issues", are you suggesting that that can be done away from the Centre?

PN3450

Potentially, yes. Because management would involve a wide range of activities. You'd agree with that proposition?---Yes, management would.

PN3451

Some of the management activities of a director can quite conceivably be conducted when the director is not physically on the premises. You'd agree with that?---Some of it; yes it could.

*** KYLIE ANN BRANNELLY

XXN MR BULL

PN3452

I'm not trying to be overly technical, but a Level 4 could step into the role of the director and perform some of the management functions of the director and not be on the premises. You'd agree with that proposition?---Not day to day

management. So, that statement clearly says responsible for the day to day management. Under the national law when it talks about a responsible person in the absence of the nominated supervisor, it too references day to day management implying the physical presence of that person.

PN3453

Well, it may not be good management, but it's not inconceivable that you could conduct day to day management via your telephone or some electronic means. That's possible isn't it?---I don't - that's not how I interpret that statement. So, I can't suggest that I think it's possible by reading that statement to agree with what you're suggesting. I believe that responsible day to day management of the Centre or service in the temporary absence of the director, means physical presence.

PN3454

Okay. But you'd agree that the essence of being a responsible person in terms of the national law is that that person is present at all times at the premises of the service provider?---No. The responsible person doesn't need to be physically present at all times the service is in operation. The responsible person is placed in day to day charge in the absence of the nominated supervisor and that could be for a short period of time and it could be as this statement suggests, in the temporary absence of the director or the nominated supervisor. So, I believe that it does meet the requirement of being physically present and that the duties suggested here aren't duties that would be done over the telephone.

PN3455

Yes, but what I'm putting to you is, that the responsible person needs to be physically present on the premises while the provider is providing education and care services. You agree with that?---Yes.

PN3456

That's the essence of what a responsible person is?---Is physically present in day to day charge in the absence of the nominated supervisor.

PN3457

You'd agree that the requirement of being physically present is found nowhere in the classifications of any level within the award?---No, I disagree. I think that while you're suggesting that the wording of physically present isn't verbatim in that statement, I believe the implication of placing somebody in day to day management of the Centre means that while the director is not there, somebody is placed in charge.

PN3458

Thank you. Now in relation to - if you go to paragraph 41 of your statement, and its title Responsible Person Role Existed Prior to 2012. You'd agree that prior to the National Quality Framework, there was no uniform standard in relation to what a responsible person was?---There was no legislated requirement for a responsible person to be placed in charge.

*** KYLIE ANN BRANNELLY

XXN MR BULL

PN3459

Well, there were individual regulations in relation to each state and territory concerning licensees, supervisors, authorised supervisors. In Queensland the term was - the director was attributed with that responsibility. You'd agree with that?---Yes, in outside school hours care it was referred to as a coordinator in the regulation.

PN3460

But there was no uniformity and there was great difference between the regulations across the states and territories. You'd agree with that?---Yes, there was great difference.

PN3461

Some were more proscriptive, required higher levels of responsibility than others. You'd agree with that?---Yes.

PN3462

The bland statement that the responsible person role existed prior to 2012, is one that does need to be heavily qualified. You'd agree with that?---Can you clarify what you mean by heavily qualified?

PN3463

Well, you've just indicated that there was significant variation in the individual state and territory schemes concerning authorised supervisors, responsible person or roles attributed to directors and it varied across states and territories. You can't simply say that that role existed prior to 2012, because what was effectively that role, varied significantly?---Well, while it did vary significantly in a legislative sense, since 1995 there have been national standards for outside school hours care in Australia. Those standards were adopted by jurisdictions who were not required to have - be legislated because their state or territory didn't regulate. So, I do believe in those standards that the intention of the responsible person has existed in a uniform way because of the National Quality Standard, the National Standards for outside school hours care from 1995.

PN3464

Thank you Ms Brannelly. Look, just going to paragraph 43 of your statement, and here you're addressing the educational leader allowance. Once again in a similar vein, there's always been recognition of the educational role of educators in child care and after school hours care, but there was no educational leader role prior to the introduction of the National Quality Framework. You'd agree with that proposition?---No. I actually wouldn't agree with that proposition. I believe that while the National Quality Framework described and gave a name to the educational leader role, that name came from a history of people working in a capacity of an educational leader in relation to the programs that in 2012 was given a title for a position that already existed. It wasn't a newly created position; it was something that had existed for some time.

*** KYLIE ANN BRANNELLY

XXN MR BULL

PN3465

But there was no recognised role of an educational leader which was uniformly applied across all states and territories prior to 2012. You'd agree with that proposition?---I would agree that there was no title.

PN3466

Okay. You've also suggested - sorry, I didn't mean to interrupt you?---No, that's okay. You're right, go.

PN3467

This is at paragraph 46 of your statement that the duties of educational leader have consistently been accepted by OSHC providers as a responsibility of employees engaged on at least a Level 4A under the Children's Services Award when the National Quality Standard for the sector was first introduced in 2012. Now, that's not a requirement of the national law, is it?---So, the - sorry, can you repeat that question?

PN3468

Well, you've said that basically educational leaders have consistently been accepted by OSHC providers as something that Level 4A employees should do under the Children's Services Award. I'm looking at the last sentence in paragraph 46 of your statement?---Yes, so since 2012, when the national law was introduced, and stop me if I'm not answering your question, but this is what I understand is the question that you're asking. Prior to 2012, the work of the educational leader in terms of leading the program was conducted by an employee as either the assistant coordinator or the coordinator of the service. So that's at Level 4 or Level 5.

PN3469

But what I was putting to you principally was, that you don't - there's no requirement under the award - well, the award doesn't recognise the role of the educational leader. You'd agree with that?---The award does not use the title of the educational leader in its definitions.

PN3470

And the award doesn't tell you what level and above can be the educational leader. You agree with that?---No. No, it doesn't. I agree with that.

PN3471

And your group - you say - attributes this responsibility to level four and above, generally?---So this is - yes, the sector tell me that the way in which they apply the Educational Leader role in terms of the award is at Level 4, because that recognises, has always recognised responsibilities in relation to the program design, development, and implementation and guidance.

PN3472

But that's a self-identified practise which in part is a recognition of the level of responsibility implicit in the role of Educational Leader. Do you agree with that proposition?---Yes.

*** KYLIE ANN BRANNELLY

XXN MR BULL

PN3473

In relation to out of hours care. I'll use that term. The type of program that's provided is, in some respects, a bit more complex than long day care because they're older children?---I wouldn't suggest that the program is necessarily more complex. I think older - and your statement about older children - certainly we are programming for older children. I think the process for programming for older children is a much more collaborative one. Older children in outside school hours care we like to ensure they have a choice and voice in their leisure time. And so we'd like to actually share responsibility with older children and give them a lot of agency in the design and implementation of the program in school-age care.

PN3474

So that would tend to mean that the programs need to be a bit more complex. You'd agree with that?---No, I wouldn't agree with that. I think that each age group has - and developmental group has its own complexities and I think if I made that statement the early childhood sector would challenge me violently in suggesting that our programming is more complex.

PN3475

All right?---Than early childhood programming. That has got long histories of very intelligent pedagogical practises and research and evidence based behind that.

PN3476

I'm sure it's all complex. Well, I'll move on to another issue. Out of school hours care has punctuation which isn't perhaps present in long day care and I'll explain what I mean by that. You're dictated by the hours of the school. You'd agree with that?---Yes.

PN3477

And the sort of intensity or duration of the services you provide alter during school holidays. You'd agree with that?---Yes.

PN3478

So the program you provide when the schools are up and running is different to the program you provide during school holidays?---Yes.

PN3479

So that is one thing we can say without comparing educational environments for age that you have to do two sets of programs, at least - one for when school is running and one for school holidays?---Yes, it's a different program.

PN3480

And you obviously need educational leaders to do these different programs?---Yes. You need educational leadership to design and support implementation of all programs.

*** KYLIE ANN BRANNELLY

XXN MR BULL

PN3481

You've indicated - this is at paragraph 51 of your statement - that sometimes there may be a number of educators in after school hours care settings who share the

educational leader role. Is that an acknowledgement of the importance of the role in your sector?---It's acknowledging that there is leadership required and there has always been leadership required but it acknowledges that because of the way in which our sector works and our workforce is that we do need a number of people who've got expertise in different areas and sometimes it's actually about people's availability to undertake that work.

PN3482

And you, effectively, you're suggesting and correct me if I'm wrong that in excess of the requirements because you only need to designate one per provider. Effectively, there's another one which is the de facto second Educational Leader in large services. Is that a correct statement of your evidence?---Yes. So in larger services it is not uncommon for more than one person to be designated in that responsibility.

PN3483

And there are some large providers in after school hours care?---Very large providers.

PN3484

Where they have got in excess of 150 children to look after?---Yes.

PN3485

And the fact that a practise has evolved to appoint more than one educational leader that's an acknowledgement really of the value and the work involved in the role. You'd agree with that proposition?---So just to be clear. In terms of - and can I - I need to do that by providing you with one example. So prior to 2012 one of the very large services in North Brisbane that I was working with that already had over a 150 children they already had several people in educational leadership positions. So when the National law was introduced they couldn't possibly just allocate one person to that role because they already had several existing leaders undertaking that work. So since that time other services, as they've grown larger have adopted a similar practise, but I'm suggesting that this isn't something that came about from the National law in 2012. This was how existing services and their existing practises accommodated the new requirements of the National law and that definition for one person.

PN3486

Well, you haven't quite answered my question. It was about - you've reinforced some of the premises. You've said that the larger providers often have several people doing this work. I'm putting it to you that the reason they have several people doing this work is that it's of value and it involves some responsibility in time and so forth to do it. How do you respond to that?---Yes, I agree.

PN3487

You agree with that?---Yes, I agree with that.

*** KYLIE ANN BRANNELLY

XXN MR BULL

PN3488

Thanks for that. Could you look at paragraph 53 of your statement? And, particularly, what is sub-paragraph (a) and you say, "Employees classified as Level 3 or below who are asked to do the Educational Leader will be either paid higher duties in accordance with the Children's Services Award." Now, can you point us to the provision in the award which requires an employer to pay higher duties to an educational leader that's classified as Level 3 or below?---So I don't think I can point you to somewhere in the award where it states that. What I'm speaking to is how the sector deal with that.

PN3489

Well, I put it to you, you can't point me to a clause in the award because no such clause exists?---That's correct.

PN3490

Thank you. (b) you talk about the Parents and Citizens Association Award. Is that an old State Award?---Yes.

PN3491

Okay, thank you?---Well, it's not an old State Award - it's still in existence.

PN3492

But it's got limited application?---It applies to close to 20 to 25 percent of services in Queensland.

PN3493

And they're government schools?---No, they're not run by - they are government schools but they're not run by the school.

PN3494

And you're saying the Children Services Award doesn't apply to these employers?---No.

PN3495

Okay. You've indicated at paragraph 55 that - and once again forgive me if I am misrepresenting what you have said that it's not uncommon for employers in your sector to provide more than two hours non-contact time because of the demands of providing educational programs and other matters in your centres. It's negotiated, you say, additional time?---It is negotiated.

PN3496

And the fact that there's a need for negotiation indicates that there's a need for additional non-contact time. You'd agree with that proposition?---I would agree that the need for additional non-contact time depends on the capacity of the service.

PN3497

Well, you're saying that it - - -?---And by that I meant - - -

*** KYLIE ANN BRANNELLY

XXN MR BULL

PN3498

Sorry?---By that I mean the size of the service. So a service with 250 children may require significantly more non-contact time for the educational leader role than a service of 10 children.

PN3499

And that may be significantly more than the two hours mandated by the award?---It may be.

PN3500

Now just in relation to training - this is just a general proposition. If an employer directs an employee to undertake a course which is for the benefit of principally the employer because of a particular skill or updated a skill as required, do you think it's reasonable that the employer paid for the course?---I think it's reasonable that the employer pay for the course.

PN3501

And if that course takes place - that course if it takes place during the week should be remunerated as work time do you agree with that?---In outside school hours care that's a very difficult statement to give a blanket agreement to because when you're talking about work time, during the ordinary week, our work time is not 9am to 3pm when the majority of training takes place. So, technically, it's not work time and so therefore if an employee isn't being taken away from their work time to undertake training it is out of work time, even though it's during the day.

PN3502

So you're saying they don't have time to do it during the working week? Or they shouldn't do it during the working week?---No. What I'm saying is that during the working week because of our - and this is where you need to understand the unique characteristics of outside school hours care. During the working week there's ample time should our educators be available to undertake training when training is usually delivered and training is typically delivered between the hours of 9am and 3pm. So our educators would not be working often during those hours because our service operating hours are around those hours. So they're not typically working hours. However, a number of our educators also have other responsibilities. They might be at uni, have a second job and they're not available during that time, in which case the training does have to be undertaken of an evening or on the weekend and we commonly do weekend and evening training in our sector.

PN3503

But you agree that if they're doing training which is a requirement from the employer at the direction of the employer and that training takes some time, that that time should count as work time?---If the training is, as you say, directed by the employer and required by the employer then that meets that definition. I agree.

*** KYLIE ANN BRANNELLY

XXN MR BULL

PN3504

So you're agreeing with me. Thank you. Just quickly out of hours, out of school hours care, that service is provided almost all the year, isn't it?---For the majority

a lot of services do close over the two weeks during the Christmas holidays - but usually services are open for between 48 and 50 weeks of the year.

PN3505

So a two-week shutdown over the Christmas/New Year period is the only period that some services close down typically?---Yes. Typically.

PN3506

So if the award were to be restricted to only allowing you, effectively a two-week shutdown over the Christmas/New Year period that would not impede the operation of most services?---No.

PN3507

Okay. Those are all the questions I have. Thanks very much, Ms Brannelly?---Thank you.

PN3508

DEPUTY PRESIDENT CLANCY: Are there any questions? Just before Ms Arrabalde - any questions?

PN3509

MS ARRABALDE: Yes. Can I please ask one?

PN3510

DEPUTY PRESIDENT CLANCY: Yes.

CROSS-EXAMINATION BY MS ARRABALDE

[11.44 AM]

PN3511

MS ARRABALDE: Hi, Ms Brannelly. My name is Isabelle Arrabalde and I'm just appearing as an individual in this case. And I've just got a couple of questions to ask you? If that's okay? Can you hear me?---Yes.

PN3512

Yes?---Yes, I can hear you.

PN3513

My first question relates to clause 47 of your statement where you say that "Developing and implementing a program for children has always occurred in some form." And you also refer us to a table at KAB4 with information from - legislation from 1995, 2003 and 2006 and I was wondering if you could please point out the parts of that table, prior to 2012, that relates to the role of the Educational Leader?---I don't - I can speak to it. I don't have the table attached to the statement in front of me but I can speak to the requirements because I have the regulation in front of me. So I can definitely do that. I'm just pulling the program requirements up now.

*** KYLIE ANN BRANNELLY

XXN MS ARRABALDE

PN3514

So in the program requirements prior to 2012, it talked about matters relevant to the content of the program, specific requirements of a program and the planning

and development of the program and the documentation of the program. So, each of those aspects seamlessly can connect with the National Quality Standard and each of the concepts.

PN3515

So the concepts around the program which is standard 1.1 that's covered within matters relevant to the contents, specific requirements and planning and development. Standard 1.2, which talks about practice. So that from the regulation it talks about planning and development of the program. So it talks about educators making ongoing observations of children and assessments of their individual strengths, needs and interests and then the assessment and planning cycle is also covered in turn. And that's standard 1.3 and that's also covered in the documentation of the program and the specific requirements of the program and in the matters relevant to the content of the program. So there's statements that are made in the law that existed in Queensland prior to 2012. Some of those statements are verbatim what the National Quality Standard requires today.

PN3516

MS ARRABALDE: So are you equating the provision of an educational program to the role of the Educational Leader?---I am suggesting that as there was always a requirement to have a significant program there has always been a requirement for somebody to do that work and in the outside school hours care setting the person who did that work was the coordinator or the assistant coordinator, but there was always a requirement to have an effective cycle of planning and the design and implementation of a program that involved leading and collaborating with educators and, in fact, the planning and development of the program in the regulation prior to 2012 says that it must involve the parents, children and staff - so other educators as appropriate and other professionals. So I am suggesting that somebody had to make that requirement in the law be realised in services and, therefore there was educational leadership occurring.

PN3517

So I come from a long day care background. So I know that we have qualified educators and a number of those who perform a role where they implement a program. Is it just maybe - is it a symptom of working with unqualified staff that you perceive the role of implementing an educational program as equivalent for the role of an educational leader?---So I guess what you're suggesting - no, I don't think it's a symptom of having unqualified staff. I think what the educational leader role has clarified in the National law and has introduced is that what has been historical - so the work of educational leaders in regards to the program design implementation, mentoring, coaching, support, engaging educators in the design and delivery and sharing responsibility - I think the role of the educational leader as described in the National law has been described because its observations of past experience that have been documented and are now shared in the National law. So it's a history of what was known as good practise that has now been documented and articulated.

*** KYLIE ANN BRANNELLY

XXN MS ARRABALDE

PN3518

Sorry, I'll just try and think of a way to phrase this. So does an Educational Leader since 2012 have a different role to what they did before it was formalised in that NQS and the NQF?---I don't think they have a different role but I definitely believe that the work has improved because of the definition. So we have a clearer understanding. I don't think it's a new role.

PN3519

Thank you.

PN3520

DEPUTY PRESIDENT CLANCY: Yes, Ms Whish?

PN3521

MS WHISH: I don't have any questions.

PN3522

DEPUTY PRESIDENT CLANCY: All right. Thank you. Well, thank you very much for your evidence this morning and you're excused from further attendance Ms Brannelly, thank you?---Thank you.

<THE WITNESS WITHDREW

[11.51 AM]

PN3523

DEPUTY PRESIDENT CLANCY: All right. Now we have a video link to Melbourne next is that - all right - well, we'll step out while that is established.

SHORT ADJOURNMENT

[11.51 AM]

RESUMED

[12.01 PM]

PN3524

MS WHISH: Ms Tullberg, Sophie Whish here from Australian Business Lawyers and Advisors on behalf of ACA. I'm just going to have the Associate take your oath or affirmation and then I'll ask you some questions.

PN3525

MS TULLBERG: Okay.

PN3526

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

PN3527

MS TULLBERG: Sarah Elizabeth Tullberg, (address supplied).

<SARAH ELIZABETH TULLBERG, AFFIRMED

[12.01 PM]

EXAMINATION-IN-CHIEF BY MS WHISH

[12.01 PM]

*** SARAH ELIZABETH TULLBERG

XN MS WHISH

PN3528

MS WHISH: Ms Tullberg, could I get you to confirm your name and address again?---Sarah Elizabeth Tullberg, (address supplied).

PN3529

Thank you, and just make sure you speak up. It's a little bit quiet here in Sydney?---Okay. It's very loud in this room.

PN3530

Apologies, we'll try to speak softer?---No, no, don't you speak softly because it's hard to hear you too.

PN3531

Excellent. Have you provided a statement in these proceedings, Ms Tullberg?---Yes, I have.

PN3532

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

PN3533

Are there any changes that you would like to make to that statement?---There is one minor change to 103. I just want to clarify that it's only the Knox education leader that's paid under the Teachers Award, not the Wallaby educational leaders. I just want to make that clear.

PN3534

So we're at paragraph 103 of your statement and the change you would like to make, can you go to paragraph 103 in your copy of the statement there?---Yes. I just wanted to cross out where it says, "The Knox and Wallaby Centres", it should just say "The Knox educational leader is paid under the Teachers Award".

PN3535

Thank you. Subject to those changes, is your statement a true and correct record to the best of your knowledge?---Yes, it is.

PN3536

I seek to tender that statement.

PN3537

COMMISSIONER LEE: Thank you. I'll mark the statement of Sarah Tullberg dated 9 April 2019 as exhibit 35.

EXHIBIT #35 WITNESS STATEMENT OF SARAH ELIZABETH TULLBERG DATED 09/04/2019

CROSS-EXAMINATION BY MS SAUNDERS

[12.03 PM]

PN3538

MS SAUNDERS: Thank you, Ms Tullberg. You operate for centres, is that right?---I own one service and I'm the operations manager for another three, so yes, that's technically correct.

*** SARAH ELIZABETH TULLBERG

XXN MS SAUNDERS

PN3539

I understand. Across those four centres, the one you own and the three you operate, the directors there are permanent full-time employees?---Yes, they are.

PN3540

The second in charge permanent full-time?---Can you please speak up again please?

PN3541

Sorry. The second in charge employees are permanent full-time?---No, permanent part-time 37.5 hours a week.

PN3542

How many hours does a full - - -?---Actually, I'm sorry, I'll clarify that. The second in charge at Knox is full-time, yes. There is no second in charge at Epping because there are multiple directors, so they are part-time because they don't work - they don't work five days a week. Werribee is 37.5 hours a week, so technically permanent part-time but works five days and Greensborough is 37.5 hours a week, so technically permanent part-time.

PN3543

When you say technically permanent part-time, what do you mean? What's the difference between being technically permanent part-time and actually permanent part-time?---Well, they're not 38 hours per week, they're 37.5 hours per week. They work a seven and a half hour day, not a 38 hour week, so they don't work that extra half an hour to be classed as a full-time employee. They work 37.5 hours a week, but they still have the same entitlements as a full-time employee.

PN3544

Are they guaranteed that 37.5 hours a week?---Pardon?

PN3545

Are they guaranteed 37.5 hours a week?---Yes.

PN3546

Why don't you employ them at 38 hours?---Why do people, sorry?

PN3547

Why don't you employ them as full-time employees? They're working very close to full-time aren't they?---They are but that extra half an hour is just the difference between what day do we require them to work an extra half hour. That's the only reason we don't do 38 hours.

PN3548

It's also easier to change - - -?---It's easier to have them do - - -

PN3549

Sorry?--- - - - set days, seven and a half hours every day, where I can say we now need to specify one day where you need to work eight hours rather than you do seven and a half hours every day.

PN3550

It's also easier to change the rosters for part-time workers, isn't it?---We don't change our rosters for part-time employees unless we give them adequate notice.

PN3551

Yes, you - - -?---We're not in a position where we would employ someone for 37.5 hours a week, or up to 37.5 hours a week, and then decide to change them down to 22.5 hours. We're not an employer - I'm not an employer that does them to our staff, we're educators. The only time we look at changing rosters or educators is where their shift times change or where they request to change from say five days down to four, or increase from three days up to four, in which time we'd issue them a new contract.

PN3552

So you don't use minimum hours contracts, do you?---No, I don't.

PN3553

One of the reasons that - - -?---I have done previously under old employees - under old employees, but not under my current employer I don't, no.

PN3554

Part of the reason for that is that it's undesirable to have a lot of volatility in the roster, isn't it?---Have a lot of what on the roster, sorry, I didn't hear you.

PN3555

I might rephrase the question. It's better to have the same people working the same shifts every day, isn't it?---There's stability for children and the parents, it's better to have the same people working the same shifts each day of the same week where possible. Not necessarily the same shift every single week of the year, which is why we tend to do rotational rosters because that allows them some flexibility to be able to make their own appointments outside of their work hours.

*** SARAH ELIZABETH TULLBERG

XXN MS SAUNDERS

PN3556

Sure. Talking about those rosters, how do the rotational rosters work?---We set up a rotation generally in December for the next 12 months in consultation - we would try and set it so that they're per room. Obviously there's a consultation process that we go through when we look at which educators are going to be best suited to which room, who they work well with, what age groups they work well with. Are they going to change from the room they're currently in, which usually starts in about September the previous year. Then we set who's going to work in what room for the following year and everyone agrees on that, and then we look at which shifts are best for which of the educators. So are they someone who already has negotiated a set shift, so they get put on their set shifts. Then we look at who has already got set conditions on what shifts they can and can't work, so we fit those educators into the shifts within the rotational roster so that we have a balance people per room on early, middle and late shifts. Then we will put it out to the staff and say this is our proposed set roster for the year, is there anyone that has problems with the rotations and the shifts? If anyone does they come back, we try and jiggle it around a bit, hence why the process starts in September

because it can take a considerable amount of time to actually get a set roster done for the year. As you can probably appreciate with, you know, up to 49 permanent staff in a large service it can take quite a lot of time to actually get that roster set, which is why we try and get it done for the year, and then they know what weeks they're - what day they're working - or what weeks they're working, what shift and it's set for the year. The only time we then change it, if they're go on annual leave or if they're sick or you know that sort of stuff. Then we usually replace them with casuals. Does that explain it well enough for you?

PN3557

It does, thank you, it's very comprehensive. That rostering system works perfectly well for your centres?---It does, yes.

PN3558

Just out of interest, Ms Tullberg, would you ever change someone's shift without them agreeing?---No.

PN3559

You don't need the power to do that?---In what circumstances are you referring to?

PN3560

I'm just - - -?---Because there is a clause in the award that says we can - you can change someone's shift outside of seven days.

PN3561

With seven days' notice?---Yes, with seven days' notice. So are you referring to outside of that or within seven days?

PN3562

I'm just asking if you're - - -?---Because we don't change someone's shift within seven days or are referring to outside of seven days?

PN3563

No, no, I'm just asking what you actually need to do? Would you want to force someone - - -?---If it was - if it was before seven days, so if it was within the seven days period, if we wanted to change someone's shift then we would need to ask them and get their permission in writing, but we don't do that. If someone requests to change a shift, we don't force them to. We would ask them to try and negotiate with another staff member. There are occasions where that happens, most of the centres have a private Facebook group where they would communicate on that and there's a record of their consent to change their shifts with each other on that group. I don't have access of that with me today, but that's where the record of that would be kept.

*** SARAH ELIZABETH TULLBERG

XXN MS SAUNDERS

PN3564

No, that's all right?---We wouldn't force a staff member to change their shift within seven days, and we don't have need to change someone's roster within a seven day period at present. It would be nice to be able to give them some more

flexibility to be able to change it but it's not - we're not asking - I'm not asking to change the provisions of the seven day roster for a need to do to be nasty to staff.

PN3565

You only want to be able to do it when they want it. Is that right?---Correct. That's the reason that I'm looking at doing it, to reduce the amount of paperwork and burden for - to be able to benefit staff, so as I've put in my witness statement. So if a staff member actually wants to be able to change their shift it reduces - sorry, the lights just went out in here - reduces the amount of paperwork that's required of employees to maintain for our rostering, to allow staff to actually change their shifts.

PN3566

COMMISSIONER LEE: Ms Tullberg, it's Lee C, this will sound a little odd but if you wave your arms around above your head it's possible the lights will come back on. If you wave your arms above your head it's likely that the detectors will detect your movement and turn the lights back on?---There's one strip of lights over my head so as long as you can see me, I don't need to see the rest of the room.

PN3567

MS SAUNDERS: I think it's fine. I don't want to make this more stressful for you than it has to be. I want to ask you about a hypothetical situation, Ms Tullberg. I know most of part-time staff work effectively five days a week but just pretend for me you've got a part-time worker whose roster is Monday, Wednesday and Friday, those are the days that you set for them at the start of the year. On Tuesday one of your - want someone rostered to open the centre calls in sick at say 5.30, that's something that can happen?---M'mm.

PN3568

Would you think it's reasonable to call that part-time worker and tell them that they have to - they have to, not asking them to agree, they have to come in on Tuesday instead of their Friday shift?---No, it's not their rostered day. If they want - if they had expressed that they were willing to come in on that day.

PN3569

But it would be fair to force them, would it?---No.

PN3570

I just want to ask you about - - -?---I don't think it would be fair to change their shift at an hour's notice.

PN3571

You could do it with some notice, a week might be reasonable?---I would say with some consultation. Maybe three or four days notice would be reasonable.

*** SARAH ELIZABETH TULLBERG

XXN MS SAUNDERS

PN3572

Thank you very much. I want to ask you about the span of ordinary hours within the award. Your centres are currently open either 6.30 to 6.30 or 7 to 6.30 at night. That's right?---Correct.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

PN3595

Would you - you wouldn't necessarily roster someone to stay after the centre closed just in case a parent was late, would you?---No.

*** SARAH ELIZABETH TULLBERG

XXN MS SAUNDERS

PN3596

That's not really practical is it?---It's not.

PN3597

Most parents do try their best to pick their children up on time?---Most.

PN3598

But - - -?---There are some that are habitual late collectors.

PN3599

There's always going to be some habitual - some repeat offenders?---There are.

PN3600

It doesn't really matter when the centre closes, there's always going to be some repeat offenders, aren't there?---Well, it depends where they work and where they live too.

PN3601

Sure. But it's not necessarily a feature of the time the centre closes. It's some parents are less reliable than others?---Well, it could also be that if the service closed later they would actually be able to make it back on time too. The ones that I'm referring to would be once specific family in the Werribee service that is usually about 15 minutes later when they are late and if the service was closing at 7 o'clock, they would be able to make it back from the city in time.

PN3602

Yes, but you can't - that's one family?---Because of their work finish times.

PN3603

That's one family, you can't be sure there wouldn't be people who would be later - be late even if the centres closed at seven?---No, there's never any guarantees in life, but that's the one I was referring to when there was an habitual late collector.

PN3604

How many teachers are employed in each of your centres?---Just let me refer back. Teachers as in bachelor trained teachers?

PN3605

Yes, people - - -?---Or do you mean educators?

PN3606

No, I mean trained teachers?---Trained teachers. Epping has two currently, Greensborough has two, Werribee has one and Knox has one.

PN3607

Are those people all technically part-time?---Knox - she does work full-time.

PN3608

Work full-time or - - -?---Does work 38 hours a week. I'm pretty sure her contract states 38 hours a week as well.

*** SARAH ELIZABETH TULLBERG

XXN MS SAUNDERS

PN3609

She's paid slightly above award?---Epping is part-time. Eppings are both part-time, Greensborough's is full-time and (indistinct) is technically part-time, so the other two are both technically 37.5, well not technically, they are 37.5 hours a week.

PN3610

The teachers tend to be rostered in the middle of the day when the most children are there?---Correct, they are.

PN3611

You're always going to - - -?---They're all on set shifts.

PN3612

I am terribly sorry to keep interrupting you. You're always going to roster teachers in the middle of the day aren't you?---Yes.

PN3613

I have nothing further.

CROSS-EXAMINATION BY MR BULL

[12.22 PM]

PN3614

MR BULL: Ms Tullberg, it's Stephen Bull from United Voice, an official of United Voice and I'm going to ask you a few questions, principally about claims we have in this award review concerning allowances for the responsible person, educational leader and some matters concerning the shutdown and laundry allowance and so forth. I hope I also won't interrupt you. Just quickly, you manage three centres and you own one?---Correct.

PN3615

Do you have a common payroll or human service system for the four centres?---I use the same program but they're not linked. Is that what you mean? I use the same program but they're not on the same database.

PN3616

So do you have a payroll person or an HR person who manages the back house function of these four centres?---That's me.

PN3617

That's you. Right, sorry to hear that. There are a number of allowances currently in the Children's Services Award. Are you aware of any of those allowances?---Yes.

PN3618

For example, there's a first aid allowance that you have to pay for employees classified below the level 3. Do you pay that to any of your employees?---No. Because all my diplomas - all my staff have first aid.

*** SARAH ELIZABETH TULLBERG

XXN MR BULL

PN3619

All these allowances involve payments of amounts of money. Do you ever pay any of the allowances? I'm not saying whether you're not paying them, I'm just asking you as a matter of fact. Do you pay your employees occasionally money allowances required to be paid under the Children's Services Award?---Travel allowance would be the only one.

PN3620

That'll be a payment when an employee obviously is directed to travel and you pay a certain amount of travel allowance?---Correct.

PN3621

Your systems are able to cope with that?---Yes.

PN3622

You've got a relatively large workforce?---Round about 200.

PN3623

Thank you for that. I was trying to add up all the numbers. Obviously this is like any industry or sector, there are changes. The pay run is not the same every week. Do you pay fortnightly or weekly?---Fortnightly.

PN3624

Obviously within a cycle they are going to have to be variations to the payroll. That's correct?---Correct.

PN3625

That's unfortunately a task that falls to you?---Not completely. The directors have access to the payroll system as well and they do the majority of the work. I just double check it and then approve it before the finance manager pays it.

PN3626

So there's also a finance manager who assists you?---Yes, she actually - she uploads the ABA files and pays them.

PN3627

So you've got a dedicated person to deal with finances and that within that includes payroll and payments of money to employees?---It's uploading an ABA file to a bank account, yes.

PN3628

But you check it and the finance manager checks it?---Well, she doesn't check it, she just uploads the actual files to the bank.

PN3629

So she presses the button?---And then she also - what I've seen, so our payroll summary matches the actual total amount of the ABA file.

*** SARAH ELIZABETH TULLBERG

XXN MR BULL

PN3630

If you had to pay - paying a weekly allowance for educational leaders would not be particularly complex in light of the systems you have, would it? It would be -

putting aside the issue of whether you'd want to make the additional payment, it wouldn't be that complex to pay an additional amount to a person designated as an educational leader would it, in terms of your systems?---It would just depend on whether that person was - how many hours a week they worked, whether this allowance was per week or per hour allowance.

PN3631

Do you have any - do you have employees who you pay more than the award to?---Yes.

PN3632

So obviously it's not just ticking a box, you're a level 4. You've had to make ad hoc adjustments to what you pay people because you pay some people more than the legal minimum. That's correct?---That's correct but that's set up in their pay templates, so it's not something that needs to be adjusted every fortnight.

PN3633

But educational leaders, you don't appoint them for a fortnight do you?---No.

PN3634

They're quite long term-ish designations. You'd agree with that?---Correct.

PN3635

An educational leader is designated as the education leader for a significant period, not just for a fortnight or a month?---Correct.

PN3636

So in effect if you had to pay an additional amount it's like paying an above award payment, it's just changing the numbers within your system for that employee. You'd agree with that proposition?---Yes.

PN3637

In relation to the responsible person, you try and - tell me if you agree with what I'm putting to you. Across your four centres you try and have for most of the time, and it's usually the centre director, as the responsible person. Is that correct?---Yes.

PN3638

So if you were - and are your centre directors paid on the award or are they paid in excess of the award?---They're paid in excess.

PN3639

Are you able to tell us how much in excess of the award they're paid?---I would probably like to get a confidentiality clause over that so that they're not being able to be identified on the transcript as to how much they get paid.

PN3640

DEPUTY PRESIDENT CLANCY: It's sort of in the same territory as yesterday, so - - -

*** SARAH ELIZABETH TULLBERG

XXN MR BULL

PN3641

MR BULL: Perhaps (indistinct) assist. I don't know what you mean by yesterday?---I'm happy to disclose how much they get paid if that's - - -

PN3642

DEPUTY PRESIDENT CLANCY: Well, we had a discussion about someone's wage rate yesterday, which presented the same question about confidentiality.

PN3643

MR BULL: I know.

PN3644

DEPUTY PRESIDENT CLANCY: So we're back in that territory again, that's all I'm saying. So Ms Saunders dealt with that by asking if they were paid over a certain amount of money.

PN3645

MR BULL: I think we came to - it was 70 - - -

PN3646

MS SAUNDERS: It's (indistinct) so it'll be a bit more.

PN3647

MR BULL: It'll be a different number. There was a rough indication. Can you give us a rough indication and we don't want to know - is it more than 5000 above the award for directors, a year?---Well, actually I'm not 100 per cent sure what a level 6.9 total annual salary is. If someone can clarify that for me as an annual salary, I can tell you how - roughly how much that is.

PN3648

My friend may correct me as she's doing the arithmetic but the highest salary under the Children's Services Award is \$69,503.20 per year?---So 69 would be probably 15,000 over the award.

PN3649

So it's \$15,000 above 69,000-odd?---Yes.

PN3650

So it's a significant increment above the award minimum?---About 10,000 over.

PN3651

That you pay your directors?---Correct, yes.

PN3652

I notice you have teachers and so forth. It's a fairly high quality service you run with an emphasis on education provided by a qualified and dedicated teachers and educators. That's a reasonable summary?---Correct.

*** SARAH ELIZABETH TULLBERG

XXN MR BULL

PN3653

That's one of the reasons why you pay [REDACTED] above the award?---To our service directors, yes.

PN3654

You raised issues about the administration but most of the people who are responsible leaders are in this bracket of people who are paid [REDACTED] above the award. Is that correct?---They are either level 6, level 5 or level 4 employees.

PN3655

Do you pay levels 5 more?---People in day to day charge, is that what you mean?

PN3656

Yes?---Or do you mean the nominated supervisors?

PN3657

Responsible person. You understand the nature of that role?---Well, the responsible person can be a person in day to day charge.

PN3658

Correct?---Or it can be a nominated supervisor, or it can be an approved provider.

PN3659

Well the responsible person is a requirement of the national law that there be a designated responsible person present on the premises whenever the service is operating?---That's correct.

PN3660

It doesn't need to be a director or what might be termed a senior employee. It can be a relatively junior employee. What I'm putting to you is that in the centre you own and the three you manage, that role most of the time is performed by persons at the more senior level. Is that correct?---That's correct, yes. Whenever there is a nominated supervisor present, which is a senior director, it is filled by a centre director at a level 6.

PN3661

Those persons - sorry. Those persons tend to be paid up to \$15,000 above the award minimum?---Yes.

PN3662

Do you realise you wouldn't - -No, not minimum. The highest one is 15,000 above award.

PN3663

You've just disappeared?---Sorry, let me do my dance again. I'm back.

*** SARAH ELIZABETH TULLBERG

XXN MR BULL

PN3664

You're back. We just couldn't see you. What I'm putting to you I suppose is you wouldn't need to pay the senior people the allowance were our claims successful because it would be absorbed within your above award payments. So this may not be an additional administrative task. How many staff do you pay the

responsible person allowance to that you pay the award minimum to. Can you tell us that?---There is no current responsible person allowance, so we currently don't pay anybody.

PN3665

No, I think you misunderstood my question. People who you designate as a responsible person during your operating hours, do you ever designate people as a responsible person who you just pay the award minimum to?---At say a level 4 or a level 5? Yes.

PN3666

That would occur?---For minimal hours say at opening or closing when there is no director or potential 2IC at the service.

PN3667

That's a planned thing - sorry?---So it may be an hour, an hour and a half, two hours per day.

PN3668

That's an hour - that's a known responsibility in advance and it's incorporated into the roster?---Yes.

PN3669

Because you the director there during core hours when it's busy and you get the more junior staff member to open up the service. That's how you generally operate?---Yes.

PN3670

So it would be particularly complex incorporating for that employee an additional hour and a half of altering their pay per day would it, in terms of your systems?---Unless they were on - unless they were sick or annual leave, it would be an actual calculation based on very single day they worked. So it would be more complex than you probably think it may be.

*** SARAH ELIZABETH TULLBERG

XXN MR BULL

PN3671

It would be complex but you'd be able to do it with your current systems?---Be able to do it but it would be difficult because the way we manage it it's the person who - the person who's responsible is the person - is the most qualified person in the oldest room at the time, until the next most senior person comes in. So say the director arrived at 7 o'clock in the morning one day and didn't arrive until 7.30 the next day, it would be a change every single day on the shift times for that responsible person in the morning. It wouldn't necessarily mean that they started at 6.15 because they opened the centre 15 minutes before the centre actually opens, and they're a responsible person from 6.15 to 7 one day, and then 6.15 to 7.30 the next day. It would be a day to day change of their allowance every single day. The award - sorry, the regulations actually don't put any responsibility onto the responsible person. There's no charges or anything that can actually be placed onto the person, it just stated we actually need to have one. There's no fines that

can be imposed on the responsible person like there can be on approved provider or nominated supervisor.

PN3672

But if there were an allowance, that would incentivise you in some respects to streamline the rostering of the responsible person, wouldn't it?---Not necessarily.

PN3673

Well you've just indicated - - -?---It just adds another complexity to having to roster and more paperwork for employers.

PN3674

Look just moving on just a quick question. You don't mention in your statement. Do you pay the laundry allowance - I'm talking about the four centres you're involved in?---No, we don't because we have a washing machine and an iron for all our current employees and they know they have access to it if they choose to take it up.

PN3675

Do you have a washing machine and iron dedicated to the staff in each centre or is that the general one which - - -?---It's a general one, so the washing machine, dryer and an iron, and they know that if they want to use it they can - they can choose any time to put their clothes through.

PN3676

The laundry facilities also used for the centres to launder their linen and the other materials?---Yes.

PN3677

The machines do get busy at certain times?---At certain times of the day.

PN3678

It's not uncommon for educators and childcare to basically have to have a fresh uniform every day?---Most days.

PN3679

Most days. It'd be an odd day that you could wear what you're wearing one day the next day?---I can't answer for what they do. I don't go around sniffing them to see whether they've got fresh clothes every day.

PN3680

Fair enough. Do you enforce a uniform policy at your centres?---Yes, we do.

PN3681

So you require a uniform to be worn?---At Wallaby we do, yes. Not at Knox, I don't require a uniform. My staff have chosen to wear a uniform then they've paid for it themselves but I don't require it.

*** SARAH ELIZABETH TULLBERG

XXN MR BULL

PN3682

So you do require it at one centre though, at Wallaby do you or - - -?---At the Wallaby centres, yes, and it's supplied and paid for, for them.

PN3683

Can you turn to paragraph 95 of your statement, that's page 15?---1-5, sorry, you said 1-5.

PN3684

That's okay, take your time. The movement's helpful, you know, it's keeping the light going?---1-5. Page 15 did you say?

PN3685

Yes, page 15?---What was the paragraph number?

PN3686

96?---96.

PN3687

Sorry?---Okay, I'm with you now.

PN3688

The four centres that you're involved with, a good practice model it appears where you place more senior staff as the responsible person. I think you'd agreed to that proposition?---Correct.

PN3689

But you'd agree that the award doesn't require you to do that?---No, it doesn't.

PN3690

So you've said levels 4, 5 and 6, we're going to discuss this?---Level 4, 5 and 6 have classifications in there which do sort of cover off the same areas as responsible people.

PN3691

But a responsible person can be a level 3, that's possible isn't it?---It is technically possible, yes.

PN3692

The essence of being a responsible person is that you have to - - -?---As long as they have - - -

PN3693

Sorry?---As long as they have sufficient experience, they could be a level 3, yes.

PN3694

You need to be present on the premises, that's what a responsible - that's the crux of being a responsible person. You'd agree with that?---Being present?

PN3695

On the premises, yes?---They need to be present, yes.

*** SARAH ELIZABETH TULLBERG

XXN MR BULL

PN3696

But that's the essence of being the responsible person, they are there and they're the senior person on the premises at a particular time?---Well, they are the contact person for parents.

PN3697

Their identity is displayed and known. Do you display at any particular time in each of your centres who's the responsible person?---Yes, there is a requirement for it to be displayed, yes.

PN3698

A not insignificant feature of the role is they will be known to parents who have their children in your care at the time, that's correct?---Yes.

PN3699

That brings with it inevitable sort of activities and responsibilities that one level they have to interact with the parents in relation to the children. You'd agree with that?---I wouldn't say anymore than any other room leader would.

PN3700

Well if there's - - -?---Room leaders all interact with parents.

PN3701

If something happens to the child, if a parent turns - if something happens to the child it's the responsible person who will probably make the telephone call to the parent. Would you agree with that proposition?---When the - during the core business hours it'd be the director, I would agree with that.

PN3702

The director will be the responsible person?---Yes.

PN3703

When the director leaves another person - - -?---If the director was at lunch it would be the room leader, it may not be - it may actually not be the responsible person at the time. Say for instance if the director went out for lunch, the responsible person would be the kindergarten teacher. If - - -

PN3704

If a - sorry?--- - - - an incident happened in the toddler room it wouldn't be the kindergarten teacher that would ring the parent, it would be the room leader in the toddler room, so that person would be the responsible person at the time. So it's not always going to be the responsible person.

PN3705

Would the responsible person have some role in the management of the incident?---Maybe, during that time. They may or may not, it depends on the circumstances. They may - if it was the nominated supervisor 100 per cent they would.

*** SARAH ELIZABETH TULLBERG

XXN MR BULL

PN3706

But the sort of scenario you've indicated, it's sort of a cascading level of seniority, and that generally the responsible person will be the most senior person on the premises at the time. Do you agree with that?---Yes.

PN3707

Inevitably, won't they have some involvement of any incident beyond the bog standard involving one of the children you're looking after?---Not always. As I said, as I just explained, if a kindergarten teacher is involved in running the program of the kinder room and an incident happens during lunch time in an under 3 room, and those staff are quite capable of managing the incident and calling a parent, and the director's only gone for half an hour and is going to be back and can then deal with any department reports or anything else that needs to happen when she returns, then the kindergarten teacher would not get involved in the incident.

PN3708

Let's look at another situation. A parent or someone purporting to be a parent turns up earlier than expected and wants to take their child home at 2 o'clock rather than 3.30. It's not expected, they just turn up and they want to take their child with them, because they got off work early for some reason. The responsible person would have some involvement in ensuring that the child was going home with the right person, you'd agree with that proposition?---Parents all have to sign in and out their own children. They have key code access to the service. As long as the parent's been identified by a staff member and knows who that parent is, again I wouldn't necessarily say that the responsible person at the time is the person who identifies that parent. I see where you're going. In general, yes, the responsible person would be the person that would deal with an incident in the service but it's not always going to be the case.

PN3709

Thanks for that answer. You've looked at some of - you've extracted some of the - what are called indicative duties in terms of the award classification system within your statement. A level 6 is a director and they're responsible for the overall management and administration of the service?---Yes.

PN3710

That doesn't necessarily require that person to be present on the premises; you'd agree with that?---If the nominated supervisor is not present at the time then someone else needs to be stepped up into their position. Not like - nominated is the responsible person in charge on the day. Is that what you mean?

PN3711

No, not quite?---So they're entitled to have their annual leave and sick leave.

PN3712

I'm just looking at the descriptions of duties and a level 6 is responsible for the overall management and administration of the service, and I'll perhaps put it to you in bits. You can do some management of a service not on the premises. Do you agree with that?---Yes.

*** SARAH ELIZABETH TULLBERG

XXN MR BULL

PN3713

You can even do some - -?---But our service directors are employed to work at the site. They don't work at home.

PN3714

No. But on the face you can be responsible for some of the overall management of a service when you're not physically present on the premises?---Technically you could.

PN3715

Thank you?---It's not something that's in - it's not something that we do in any services I'm involved in.

PN3716

You've chosen to have a model where you appoint well qualified and quite senior people as the educational leader in the four centres you're involved with; that's correct?---That's correct.

PN3717

And that's in acknowledgement of the importance of the work that these people do?---Yes.

PN3718

It's some acknowledgement of the sophistication and complexity of the role; do you agree with that proposition?---Yes.

PN3719

And in a broad sense it's an acknowledgement of the value that they bring to your service?---Yes.

PN3720

Have you gone through the process of assessment by the regulation authority recently?---Not this year. I can't remember when they actually were. I think Epping might've been at the start of 2018 or the end of 2017. It's been a little while, but they all have gone through assessment and rating, and Werribee would've been 15 months after it opened. So it's only been open three years, so about 18 months ago.

PN3721

These assessments are processes that you're quite heavily involved in?---Involved in with the services, yes.

PN3722

And it'll involve an assessor and often spending three days on the assessment?---Two.

*** SARAH ELIZABETH TULLBERG

XXN MR BULL

PN3723

Two. And obviously the results of the assessment are significant?---Well, they're publicised on ACECQA. I don't know how significant they are to parents. That's

debatable. Obviously everyone would like to be rated as an exceeding or excellent service, but it's not always the case.

PN3724

But the point is an integral part of these assessments is the educational program that the service provides; you'd agree with that?---Yes.

PN3725

And also an integral - - -?---It's one of the seven quality areas.

PN3726

Yes. And an integral part of the assessment is tied to the work that educational leaders are intended to do?---It is part of it, yes.

PN3727

Okay. Just briefly - - -?---Part of quality area 7.

PN3728

Sorry. Area 7, that's correct. All the services you're involved with essentially stay open all of the year; is that correct?---Stay open - what was - sorry, the end part?

PN3729

They operate all year?---Yes, we only close on public holidays.

PN3730

So - - -?---It's open for 52 weeks a year.

PN3731

- - -you don't have any sort of Christmas/New Year shutdown?---No.

PN3732

So were the - and you don't shut down at other public holidays or school holiday periods?---Only public holidays.

PN3733

So - - -?---We're closed on public holidays. We're open school holidays and open 52 weeks a year.

PN3734

So were the award to be varied to basically restrict shut downs to a two week period over Christmas that wouldn't affect the way you operate your business at all, would it?---No, it wouldn't.

*** SARAH ELIZABETH TULLBERG

XXN MR BULL

PN3735

Just in relation to training if you direct an employee to undertake a course because you think that your services require that particular skill do you think it's appropriate that you as the employer pay for the course the employee is going to go on?---If an employer directs an employee to undergo training I think it's appropriate for them to pay for the training. If an employee requests the training I

think it should be negotiated between the employer and the employee as to the value of the training.

PN3736

And talking about the - - -?---Personally I pay for my staff's training, so I don't have an issue with paying for training.

PN3737

And in terms of the training time, if you're directing the employee to do the particular course, should that be work time?---Again, if the employer is directing the staff - the educator undergo the training then it should be paid training. If the employee is requesting the training then I think that should be negotiated.

PN3738

Thanks very much, and sorry to have taken your time, Ms Tullberg?---That's okay.

PN3739

That's all I want to ask you.

PN3740

MS WHISH: No questions.

PN3741

MS ARRABALDE: Just one.

PN3742

DEPUTY PRESIDENT CLANCY: Yes. Thank you.

CROSS-EXAMINATION BY MS ARRABALDE

[12.51 PM]

PN3743

MS ARRABALDE: Hi Ms Tullberg, my name is Elizabeth Arrabalde and I'm appearing as an individual in this matter. I've just got a question for you with regards to the responsible person role. You were asked questions about potential issues relating to a particular child and how would the responsible person who is not the director deal with that. I've just got a question for you. Like, say for example if it was a centre wide issue that affects the whole centre, not a particular child, and it was a time sensitive issue, who would unify the staff response in the absence of the director? So, for example, if you had a swarm of bees in your playground, they've just descended on there and causing a risk to everybody because you've got your windows open, who would deal with that?---The responsible person at the time.

PN3744

Thank you.

PN3745

DEPUTY PRESIDENT CLANCY: Anything in re-examination?

*** SARAH ELIZABETH TULLBERG

XXN MS ARRABALDE

RE-EXAMINATION BY MS WHISH

[12.52 AM]

PN3746

MS WHISH: Just one question. Ms Tullberg, Ms Whish here. Mr Bull spoke to you about the value and quality that responsible persons and educational leaders bring to your service. Could you explain whether any other staff members bring value and quality to your service?

PN3747

MR BULL: I don't want to interrupt my friend, but I think I only addressed the issue of value to the education leader role, so I don't know whether it's arising in relation to the responsible person role.

PN3748

MS WHISH: I'll withdraw that and ask again. Ms Tullberg, you spoke about the value and quality that an educational leader would bring to your service. Are you able to explain whether any other staff members bring value or quality to your service?---All educators bring quality and value to a service. Without educators we wouldn't have a service. So from the trainee, who's completing their certificate III, who changes the child who has come in and then has diarrhoea and ends up having to go home to get changed, and then get sick, right the way through to the director, the centre manager who then deals with the parent who comes to collect their child, who's irate because their child is now sick, and they have to take time off work and it's our fault that their child is sick, not because they have a child and they have to take time off, so every single educator that works in the service brings value, and I think both myself and my employer values every single person that works in our businesses.

PN3749

Thank you.

PN3750

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

<THE WITNESS WITHDREW

[12.54 PM]

PN3751

DEPUTY PRESIDENT CLANCY: What's the proposal from here? We're at 1 o'clock. We've got Ms Mahony. Are there some time issues with hearing from Ms Mahony now?

PN3752

*** SARAH ELIZABETH TULLBERG

XXN MS ARRABALDE

*** SARAH ELIZABETH TULLBERG

RXN MS WHISH

MS SAUNDERS: I think so, your Honour. We've got Ms Frend arranged for 2. I understand the time estimate for her is about half an hour which is consistent with how long the IEU witnesses are taking. And I suspect Ms Mahony can be slotted

in after that given it's by - no, it's by video link rather than phone, I'm sorry. I'm not sure if that causes a difficulty.

PN3753

MS WHISH: Perhaps I could get in touch with - and it's Mr Mahony for the record.

PN3754

DEPUTY PRESIDENT CLANCY: It's Mr Mahony, sorry.

PN3755

MS WHISH: Everyone will be quite surprised when he shows up later. He is already at the Fair Work Commission in Adelaide and I understand there are video link facilities. If those could be made available later this afternoon I could contact Mr Mahony and let him know that there'll be some delay to his evidence being heard.

PN3756

MS SAUNDERS: Yes. I just think my estimate is about the same as it was with Ms Tullberg. I assume Mr Bull's is about the same. That's an hour, so - - -

PN3757

DEPUTY PRESIDENT CLANCY: We'll just have to establish whether we can keep the video link to Adelaide. But assume we can that suggests we would hear from Ms Frend at 2, Mr Mahony at 3. Would the parties' intention then be to hear from either Ms Llewellyn or Ms Hands today?

PN3758

MS SAUNDERS: I see those witnesses have been moved to tomorrow.

PN3759

DEPUTY PRESIDENT CLANCY: They have been moved?

PN3760

MS SAUNDERS: Yes.

PN3761

DEPUTY PRESIDENT CLANCY: Okay. All right. Subject to what the requirements are of the link - I'm told the room is available, the link should be fine to restore at a later time this afternoon, so it's a question of whether Mr Mahony can be available at 3 o'clock our time, which would be 2.30 Adelaide time I think.

PN3762

MS WHISH: I have a feeling he will be. I'll just contact him to make sure.

PN3763

DEPUTY PRESIDENT CLANCY: Thank you. We'll adjourn now till 2 o'clock.

LUNCHEON ADJOURNMENT [12.57 PM]

RESUMED [2.04 PM]

PN3764

MS SAUNDERS: I call Ms Frend.

PN3765

DEPUTY PRESIDENT CLANCY: Thank you.

PN3766

THE ASSOCIATE: Ms Frend, could you please state your full name and address.

PN3767

MS FREND: Julie Ann Frend, (address supplied).

<JULIE ANNE FREND, AFFIRMED

[2.05 PM]

EXAMINATION-IN-CHIEF BY MS SAUNDERS

[2.05 PM]

PN3768

MS SAUNDERS: Thank you, Ms Frend. Can I just get you to say your full name for the record, please?---Julie Anne Frend.

PN3769

Your address?---(Address supplied)

PN3770

You have prepared a statement in these proceedings, haven't you?---Yes, I have.

PN3771

Dated 15 March 2019?---No - the date of birth?

PN3772

No, no, sorry, the statement is dated 15 March 2019?---I'll just check. I'm just trying to find the statement date.

PN3773

It should be on the last page?---Yes, that's right.

PN3774

Are there any corrections you want to make to that statement?---No, thank you.

PN3775

Is everything in that statement true and correct to the best of your knowledge?---Yes, it is.

PN3776

I tender the statement.

PN3777

DEPUTY PRESIDENT CLANCY: Thank you. I'll mark the statement of Julie Frend, dated 15 March 2019, as exhibit 37.

*** JULIE ANNE FREND

XN MS SAUNDERS

EXHIBIT #37 STATEMENT OF JULIE FREND DATED 15/03/2019

PN3778

MS SAUNDERS: Nothing further, your Honour.

CROSS-EXAMINATION BY MR ARNDT

[2.07 PM]

PN3779

MR ARNDT: Good afternoon, Ms Friend. My name is Julian Arndt. I'm a solicitor representing some employers in this proceeding. Can you hear me okay?---Yes, thank you, Julian.

PN3780

I have some questions for you. Hopefully it won't be too long. I just want to start with a point of definition. When we're talking about educators and teachers - when I talk about educators, I'm talking about someone who has direct contact with the children, so someone who is on the floor but they have a relevant certificate or diploma. Is that how you use the term "educator"?---Yes, that's right.

PN3781

Then when I talk about a teacher, they're also engaged on the floor but they've got a teaching degree instead?---Yes.

PN3782

That's how you use the term "teacher"?---Yes, that's right.

PN3783

If at any stage it's unclear, please just ask?---Thank you.

PN3784

Now, your role is as a director. That's correct?---Yes, that's right.

PN3785

And you don't engage in teaching?---No, not directly.

PN3786

You used to be a director/teacher, didn't you?---Yes, that's right.

PN3787

You did that from - at least what I can see from paragraph 3 of your statement - April 2010 to January 2018?---That's right.

PN3788

It seems to me like you built that up. You started one day a week directing in 2010 and it gradually got more and more and more until now you are full-time director?---That's right.

PN3789

Who was directing when you were teaching in that period?---I was directing indirectly at that time. I was still directing, but I was also holding a teaching position.

*** JULIE ANNE FRIEND

XXN MR ARNDT

PN3790

Right, okay. I've gone on your web site. It says you have 16 well-trained staff at Gunnedah Baptist. Is that correct?---That's correct.

PN3791

How many of those staff are educators or teachers? How many of them are on the floor with the kids?---Some of those staff are employed casually; so two of them are only on-call educators and three of those staff work three days a week. The other staff all work full-time, five days a week.

PN3792

Sorry, perhaps it wasn't clear enough. How many of them are on the floor with the kids? Is that all of those staff or do you have a cook or an admin person or something else?---No, they're all on the floor with the children.

PN3793

How many of them are teachers; those who have teaching degrees?---Including myself, there are three - - -

PN3794

Let's - sorry, Ms Frend, to cut across you - just talk about the people who are on the floor?---Three have teaching degrees.

PN3795

How many of them are educators?---I regard them all as educators, so the rest of them - all the others, excluding myself - would be educators. They're all qualified in some way.

PN3796

So that's around 13 staff who are on the floor but don't have a teaching degree?---Yes. They've either got a certificate III or a diploma.

PN3797

Who is the assistant manager?---We don't have an assistant manager.

PN3798

Do you have a second in command?---Yes, that is our educational leader.

PN3799

Do they have a teaching degree?---Yes, she does.

PN3800

Are they the responsible person when you're absent?---She is, along with the other two teachers who have degrees.

PN3801

So you don't use any non-teacher as a responsible person?---No.

*** JULIE ANNE FREND

XXN MR ARNDT

PN3802

Can we go to section 3 - or paragraph 3 of your statement, rather. Now, I make it 18 years in the industry. By any estimation that's a lot of experience. You were in the industry nine years before you started directing. Is that correct?---That's right.

PN3803

Since 2005, you have had a teaching degree?---Yes, that's right.

PN3804

That's the last qualification you received?---I have been - gosh, I've gone mental. I've had a mental - we all receive our accreditations through the department, through NESAs. Sorry, it will come to me. It's just a - - -

PN3805

No worries at all.

PN3806

DEPUTY PRESIDENT CLANCY: Is that paragraph 9?---It's just a statement saying that we are regarded by the department as efficient teacher. It's not a - - -

PN3807

MR ARNDT: If I take you to paragraph 9, is that what you're talking about?---Yes, that's right.

PN3808

I thank the Deputy President for that. Can we go back to paragraph 4 and the 2005 Bachelor of Teaching?---Yes.

PN3809

What did you learn about leadership in your degree?---You actually learn a lot about how to conduct meetings and to resolve disputes; how to see things from a different point of view, how to role model. So it is - yes, it is a section of the course. I wouldn't say it's a massive section of the course, but there are parts of the course that cover that.

PN3810

Can you remember what subjects that might have been included in?---No, I'm sorry, I can't.

PN3811

It's fair to say though that you've learnt a great deal about the industry since 2005?---Definitely. We're always doing training.

PN3812

Have you learnt how to be a leader since 2005?---Yes, I've been involved in quite a few courses, but also you learn practically as you go.

PN3813

Just on that, learning practically as you go, I imagine much of that learning has happened since you started as teacher/director in 2010?---Yes, that's right.

*** JULIE ANNE FRENCH

XXN MR ARNDT

PN3814

That developed over time, particularly since you transitioned from being a teacher/director with the four days' teaching and one day directing until all the way into two days' directing to three days and now to five days' directing?---Yes. It in fact started before then because you can see how the previous director conducted things, as well.

PN3815

Again, that's a value of experience, isn't it?---Yes.

PN3816

I want to put to you, if you go to 6.2 of your statement - - -?---Mm-hm.

PN3817

And I guess you have to read paragraph 6, as well. When you say:

PN3818

My qualifications and experience assist me to perform the following duties -

PN3819

and in respect of 6.2, "Providing leadership to staff", isn't it fair to say that it's actually your experience that assists you in providing leadership to staff and it's not your qualification?---No, I would disagree with that because I think the fact that you've gone to university and studied also flags that you're serious about the profession.

PN3820

Flags to who?---To the staff that you're working with.

PN3821

So you're saying the fact that you've done a teaching degree flags to them that you're serious about the profession and that enables you to - - -?---Yes.

PN3822

That assists you to provide leadership to them?---Yes, and to be taken more seriously because they understand I know what I'm talking about.

PN3823

Do people without teaching degrees know what they're talking about?---To their level, yes, definitely.

PN3824

When you say "to their level" - and I want to be specific about this, and we'll come back to it - do directors without teaching degrees know what they're talking about?---Well, I've never actually had experience - - -

PN3825

MS SAUNDERS: I object?---So I can't - - -

*** JULIE ANNE FREND

XXN MR ARNDT

PN3826

I object to that question. "Know what they're talking about" is far too broad.

PN3827

DEPUTY PRESIDENT CLANCY: Entirely vague. I agree.

PN3828

MR ARNDT: I'll move on.

PN3829

Now, again you can disagree with me. Can I take you to 6.7. You say that your qualifications and experience assists you to perform your duties, "Being responsible for the daily supervision of staff." Again, can I put to you that it's actually your experience in your development and your years as a director which allow you that and not your qualification?---No, my qualification actually brings to light the regulations that we need to follow, so I think it actually comes under that umbrella, as well.

PN3830

When you say the regulations that you need to follow, what are you talking about?---Well, they are all governed by the Early Childhood Regs and the National Law.

PN3831

The National Law was in place in its current form when you did your degree?---Yes.

PN3832

That's not true, is it?---I'll just check the date on that. I actually haven't got the regs - the National Law with me, I'm sorry.

PN3833

When is your understanding of when the National Quality Framework came into place?---I've just got the Becoming, Belonging book here and that's when it came into place. That was 2009.

PN3834

Didn't you do your degree in 2005?---Yes, but I didn't take over - sorry, maybe I have - 2010, that was when I became a director. I was actually a teacher role before then.

PN3835

You gave some evidence that your course covered the regulations?---Yes.

PN3836

But I put to you that that's not case because the regulations now weren't in place when you did your course. That's fair, isn't it?---That's fair, yes. However, I have been following them ever since I became director - in the directing role.

PN3837

That's your responsibility as director, isn't it?---That's right.

*** JULIE ANNE FREND

XXN MR ARNDT

PN3838

Now, the same would apply to the National Quality Standard. That wasn't in place when you did your university degree, was it?---No, but I suppose it's part of the degree in that you need to keep up to date with regulations and adapt to those changes.

PN3839

The degree finished in 2005, didn't it? You're not continuing on that degree?---As a proactive teacher you still need to keep up to date with all the changes in earlier childhood education.

PN3840

Again, that's part of your responsibilities as a director. It's not really anything to do with your qualification, is it?---To maintain your qualification you need to show that you're proactive with your training. As part of our NESAs qualification we need to show that we are engaged in self-development training.

PN3841

That may be the case and I will be specific about this. When I'm talking about your qualification, I'm talking about your degree. There is no ongoing requirement for you to do anything to maintain that qualification. You're not going to lose the degree. You have that degree, don't you?---You do, but to maintain your proficient teacher - that's the word I was trying to think of before. To maintain your proficient teacher qualification you need to show that you are continually training.

PN3842

To be clear, I won't be asking you questions about your proficient teacher qualification. I'm only interested in your degree?---Well, that's part of how we have to maintain our degree, so to me it's locked together.

PN3843

I need to get a clarification on that. You're not saying that to maintain your 2005 teaching degree you're required to do anything else, are you?---I am. As with teachers in public schools, if they learn the teaching degree they still need to show that they have taught even one day per year to maintain their qualification and, as part of our early childhood teaching degree, we have to show that we have ongoing professional development to maintain our qualification.

PN3844

Isn't that more about accreditation rather than your degree?---It's maintaining the qualification, but I suppose it's how you interpret that.

PN3845

I take you to 13.7?---Yes.

PN3846

When you talk about qualifications there, what are you talking about; the second word of that paragraph?---It says:

*** JULIE ANNE FREND

XXN MR ARNDT

PN3847

My qualifications allow me to be aware of the regulations, their operation and how to employ best practices in relation to them.

PN3848

Is that what you're referring to, Julian?

PN3849

Which qualifications are you talking about?---The teaching degree.

PN3850

The 2005 teaching degree?---Yes.

PN3851

Without wanting to rake over old ground, the relevant regulations weren't around in 2005, were they?---No, so that's the exact point, but I was just saying you need to be updated and aware of the changes in the industry. My qualification would have brought me that understanding.

PN3852

Are you aware of what you would learn in a diploma course or cert III in relation to the relevant regulations?---Yes, I actually - that's the way I studied. I started doing the certificate III and then to the diploma, and then to the degree, so I am aware of the three different sections.

PN3853

But also currently? If you did a cert III or a diploma now, you know what you would learn about the regulations?---Only indirectly through the students that we have offered work experience to.

PN3854

Do you know if they learn about the relevant regulations?---They learn basically about it, but not to the degree that people who have their degrees do.

PN3855

But they do learn about the current regulations; the National Quality Framework, the National Law?---That has actually only come in quite recently. Quite a few of the students we've had in probably the last two years weren't aware of those at all, which we were surprised about, but TAFE seem to have caught up with them recently. They are aware of the regulations, but only with the ones that are specific to their situation. They don't have a comprehensive knowledge.

PN3856

I take you to 13.12. The paragraph says:

PN3857

Parents of children within the preschool are more confident in my ability to run an educational organisation knowing that I have a thorough understanding of early childhood education through by teaching degree.

*** JULIE ANNE FREND

XXN MR ARNDT

PN3858

?---Yes.

PN3859

Do you tell parents about your degree when you first meet them?---They are all displayed on the walls in the foyer when people walk in, so they're very easy for people to see.

PN3860

You don't advertise them on your web site though, do you?---No, don't need to. We're a small country town.

PN3861

Just one second. Can I take you to 14?---Yes.

PN3862

Do you have the Early Years Learning Framework in front of you?---Yes, I do.

PN3863

Are you able to identify what part of that document requires you or your service to employ a director with a teaching degree?---Not in that document, but I actually have a copy of the regs that state that. I probably could if I had time to look through it, but I rely more on the regs.

PN3864

I don't want to give you a test on the regs, but is it your understanding that you're required to have a teaching degree to be a director?---No, that's not true.

PN3865

Can you clarify what 14 means in terms of - with the sentence starting "Specifically" and I'll read it out for the benefit of transcripts:

PN3866

Specifically, because of the Early Years Learning Framework we are required to employ qualified staff, it would not be appropriate for the preschool to employ a director to guide teaching staff who do not possess at least equal training.

PN3867

Is that a requirement?---No, it's not a requirement. It's something that we choose to do because we believe that that qualification helps to boost parent confidence and staff confidence.

PN3868

Just one moment?---Mm-hm.

PN3869

Thank you very much for listening to my questions and answering them. Someone may have some more questions for you. Thank you?---Thank you, Julian.

*** JULIE ANNE FREND

XXN MR ARNDT

PN3870

DEPUTY PRESIDENT CLANCY: Any questions?

PN3871

MS WHISH: No.

PN3872

DEPUTY PRESIDENT CLANCY: Anything - - -

PN3873

MS SAUNDERS: Nothing further.

PN3874

DEPUTY PRESIDENT CLANCY: Ms Frend, thank you for your evidence this afternoon. You're excused from further attendance and may step down?---Thank you.

<THE WITNESS WITHDREW

[2.27 PM]

PN3875

DEPUTY PRESIDENT CLANCY: With Mr Mahony, he is still in Adelaide?

PN3876

MS WHISH: He is.

PN3877

DEPUTY PRESIDENT CLANCY: Right. Could we go to him now or is he expecting us at 3.00?

PN3878

MS WHISH: We could try now. He is expecting 2.30 his time, 3.00 our time.

PN3879

DEPUTY PRESIDENT CLANCY: Yes.

PN3880

MS WHISH: But I think he would enjoy being called on a little earlier.

PN3881

DEPUTY PRESIDENT CLANCY: Call on earlier. All right.

PN3882

MR ARNDT: I might just say Mr Mahony has a hearing loop.

PN3883

DEPUTY PRESIDENT CLANCY: Yes.

PN3884

MR ARNDT: It may be relevant to how we set things up, I don't know.

*** JULIE ANNE FREND

XXN MR ARNDT

PN3885

DEPUTY PRESIDENT CLANCY: All right.

PN3886

MR BULL: He has got difficulty with hearing?

PN3887

MS WHISH: Yes, and it should be accommodated for with the hearing loop in Adelaide, but, if there are any issues, that might be why he's having difficulty hearing anybody.

PN3888

MR BULL: Thanks for that.

PN3889

DEPUTY PRESIDENT CLANCY: All right. We will step outside. We can then establish the line and get Mr Mahony in court, and make sure all the technology is ready to go. Thank you.

SHORT ADJOURNMENT

[2.58 PM]

RESUMED

[2.41 PM]

PN3890

MS WHISH: Mr Mahony, Ms Whish here. I'll just have the Associate go through your affirmation with you and then I'll ask you some questions.

PN3891

MR MAHONY: Okay.

PN3892

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

PN3893

MR MAHONY: Kerry Joseph Mahony, (address supplied).

<KERRY JOSEPH MAHONY, AFFIRMED

[2.42 PM]

EXAMINATION-IN-CHIEF BY MS WHISH

[2.42 PM]

PN3894

MS WHISH: Mr Mahony, could I get you to state your full name and address, again?---Kerry Joseph Mahony, (address supplied).

PN3895

Thank you, and have you provided a statement in these proceedings?---I have.

PN3896

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

*** KERRY JOSEPH MAHONY

XN MS WHISH

PN3897

And do you want to make any changes to that statement?---No.

PN3898

Thank you. Is your statement then a true and correct record, to the best of your knowledge?---To the best of my knowledge, yes.

PN3899

Thank you. I seek to tender that statement now.

PN3900

DEPUTY PRESIDENT CLANCY: Thank you. I'll mark the statement of Kerry Joseph Mahony, dated 11 April 2019 as exhibit 38

**EXHIBIT #38 STATEMENT OF MR KERRY JOSEPH MAHONY
DATED 11/04/2019**

PN3901

MS WHISH: Mr Mahony, you will now be asked some questions from the union representatives.

CROSS-EXAMINATION BY MS SAUNDERS

[2.44 PM]

PN3902

MS SAUNDERS: Mr Mahony, you operate two long day care centres, is that right?---Correct.

PN3903

Yes, and you, yourself, don't have any educational qualifications?---Not in childcare.

PN3904

You're an accountant by trade?---Well, I'm a manager by profession and trade, yes.

PN3905

Yes. You have an economics degree?---I have an economics degree, that's true.

PN3906

And you're a certified professional accountant?---Have been, yes.

PN3907

How many staff do you employ across your two centres?---I believe that we have 35 staff in our centres.

PN3908

A number of them are part-time employees?---Yes, a number of them are part-time employees.

PN3909

All right. I can see you're looking for the paragraph. Just go to 23 – 21, really, where it starts?---I'm sorry, I missed that.

*** KERRY JOSEPH MAHONY

XXN MS SAUNDERS

PN3910

That's all right. Just go to paragraph 23. I can see you're looking for it?---Paragraph 23?

PN3911

Yes?---Yes.

PN3912

Predominantly, your staff are young women?---Yes, they are.

PN3913

Young mothers?---Many of them are young mothers.

PN3914

They need flexibility in their work?---They certainly do.

PN3915

They also need some certainty about their working hours?---They certainly need to be able to establish working hours that work for them, anyhow.

PN3916

Yes, and to keep them relatively stable?---Indeed. We do try very hard to give them a stable situation, yes.

PN3917

Do you use, for your part-time employees, do you use maximum hours contracts?---No.

PN3918

Have you heard of that concept before?---Say what the concept is again?

PN3919

Maximum hours contracts. Sorry, minimum hours contracts?---Is that where you might guarantee somebody a minimum number of hours per week, or something like that?---Yes.

PN3920

We work – yes, we do in fact include in their contract, a statement as to the minimum hours that we will guarantee them in the event of a downturn in the business.

PN3921

And you usually roster them more than that, don't you?---Definitely.

PN3922

When the centres need more staff?---When the centres need more staff we would offer them, firstly, to the employees that we have so that we can extend their hours, because we prefer to have people work full-time. That suits everything in the business, best. So we strive for that first. But if our employees have got personal reasons for not being able to do so, then we look further afield.

*** KERRY JOSEPH MAHONY

XXN MS SAUNDERS

PN3923

You don't currently hire – I just want to ask you about directors at your centres. None of your directors are currently qualified teachers, are they?---That's correct.

PN3924

Do you have a copy of the Children's Services Award with you?---I do.

PN3925

Can I just get you to go to page 55 of that?---I have page 55.

PN3926

You should see down the bottom of that, a bold heading, B.1.10. If you can't, let me know. There's a problem with some of the copies?---Let me just make sure I've just the right award. Are you talking about the Children's Services Award 2010?

PN3927

I am. Try page 56?---Page 56, perhaps? Now what am I looking for?

PN3928

You should see, "B.1.10, Level 6 Director"?---Yes, I have that.

PN3929

Great. And I just want you to go over the page. You should see a heading, "Indicative duties"?---"Indicative duties", is that what you're speaking of?

PN3930

Yes, that's right. Have you read this before, Mr Mahony?---I have, yes.

PN3931

So, you see that one of the duties is supervising the implementation of developmentally appropriate programs for children. That's talking about educational programs, isn't it?---Yes, indeed.

PN3932

Your directors are diploma qualified, is that right?---They do what?

PN3933

They have diplomas?---They have the what?

PN3934

Diplomas?---The requirements?

PN3935

No, what do they actually have, Mr Mahony, what qualifications do your directors have?---Oh, excuse me. Yes, they hold a diploma in childcare services.

PN3936

Yes, and they use the skills they've gained through completing that diploma - - - ?---Indeed they do.

*** KERRY JOSEPH MAHONY

XXN MS SAUNDERS

PN3937

Particularly in education, to supervise the implementation of the education program, don't they?---Correct.

PN3938

If you did hire a degree qualified teacher, they would use the skills they had achieved through their teaching degree to supervise the implementation of the education program, wouldn't they?---Well, of course.

PN3939

Yes. And that's an important part of the director's role? It's not all of it, but it's an important part of the role, isn't it?---There are many important aspects. They've got quite a load to carry, but yes, that's an important part of it.

PN3940

I just want to ask you about the ordinary hours of work. Are you familiar with the ACA's claim to extend the ordinary hours of work in the Children's Services Award?---As I understand it they're seeking to increase the last hour of the day, so that from 6.30 from 7.30 becomes part of the normal spread.

PN3941

Yes, so you could require workers to work until 7.30 without paying them overtime, is that right?---Correct.

PN3942

And you support that claim for a few reasons. One of them is, you say that it would make it cheaper for you to keep your centres open for longer, wouldn't it?---Well, I think the first thing to understand is that in that hour we may have outside of the current customer base, people who would want care for their children because of their own work requirements, but who we can't currently attract because we are in a position where the extra overtime hours would have to be actually paid and, frankly, I think in any of the working conditions that we've got at the moment, we need to understand that increasing wages and increasing overtime could affect our fees and so we're reluctant to do that.

PN3943

You haven't done any formal costing on that, have you?---No, I don't have any formal costing on it. I'm just aware of the general concern with wages as a percentage of turnover.

PN3944

The shift ending at 7.30, that would be your closing shift?---That would be our closing if we decided to go that way, yes.

PN3945

So it would be two staff?---Yes, we'd have to have two staff, for certain.

PN3946

They would be being paid award wages?---They would.

*** KERRY JOSEPH MAHONY

XXN MS SAUNDERS

PN3947

That would be a total of, if you're open till 7.30 now, it would be a total of two hours of overtime, wouldn't it?---Yes, indeed.

PN3948

About \$50?---Would it? Yes, okay. I haven't done the sums.

PN3949

Certainly. And you haven't done any business case analysis of the market?---I've had no need to because up until now my centres, particularly my larger centre, has had very high occupancy levels. So the only reason for me to investigate going any further would be if the impact of all the centres that are being built around me started to impact on my occupancy.

PN3950

So that's a - - -?---We have a - - -

PN3951

That's a no?---We have a very – sorry, excuse me.

PN3952

That's a no, Mr Mahony?---That's a no?

PN3953

One of the - - -?---What, in terms of the number of centres that are being built around me?

PN3954

No, the answer to my question. You haven't done a market analysis? You don't know how much demand is out there, do you?---Correct.

PN3955

One of your centres, the smaller centre, it currently closes at 5.30, doesn't it?---It does.

PN3956

You could open it until 6.30 now without paying any additional overtime, couldn't you?---I could, if in fact that particular clientele was attracted to that. You know, we have a different clientele go to the smaller centre and they are predominantly people who are seeking school ready arrangements for the nearby schools, and so are not so much worried about their working arrangements.

PN3957

So there's no demand in that area for late childcare?---We don't believe so. Frankly, we are at the moment, considering increasing it by one hour which is still within the normal spread of hours, but that will be experimental and we'll be interested to see how that changes the occupancy level.

*** KERRY JOSEPH MAHONY

XXN MS SAUNDERS

PN3958

What about late pickups, Mr Mahony? Sorry, what about late pickups, Mr Mahony?---Well, look, late pickups at the moment is not a serious problem for us. It can be, from time to time. At the moment it is not a serious problem for us. It does seem to depend on the particular group of parents that we have at any one time and their particular work commitments. But from time to time it can become a problem and it's for – not for large numbers of parents, but for some.

PN3959

You're not currently requiring staff to stay back?---Only occasionally.

PN3960

Very occasionally, at the moment?---Yes.

PN3961

You wouldn't roster staff to work past the centre's closing time, whatever it was, just in case of late pickups, would you?---No, I do not.

PN3962

I just want to ask you some questions about the ACA's claim in respect of rosters. Could you just explain your understanding of what that claim is?---My understanding of the claim on the rosters is that they are seeking to have the fixed roster type changes made possible, without all of the stuff that goes on, by having an – where the change is originated by an employee request, by having that outside the need for us to have it fixed inside the seven day period.

PN3963

And do you understand that to be only when the employee requests the roster change?---That's my understanding, yes.

PN3964

And that's the claim you're here to support?---That's the claim I'm supporting, yes.

PN3965

Do you roster your centres at minimum ratios?---No. I do not.

PN3966

You have a buffer in case something happens?---I do.

PN3967

Yes. Some things come up. One of the most regular changes is someone's sick?---Absolutely, or they have a child that's sick in the family, or some such predicament, yes.

PN3968

Yes, it's fact of life for you as an employer. You have to plan for it, don't you?---It's absolutely a fact of life and it happens virtually every day.

*** KERRY JOSEPH MAHONY

XXN MS SAUNDERS

PN3969

When people call in sick it's usually at very short notice, isn't it?---Absolutely. Often it's just in the morning, just before opening time or whatever it might be,

because perhaps the night before, they think they'll be okay but they find on the morning, they're not.

PN3970

And so they can ring you, or whoever the person it is they contact, at say, 5.30 in the morning?---Yes. Yes, they would ring the director, some time early, hopefully before start time.

PN3971

You have casual staff on your books to cover absences?---As best as possible, we do. It depends a lot on how many regular staff we've got away on holidays, and how many casual staff we've got rostered to cover them. But as best we can, we try to bring casuals in first.

PN3972

If you can't find a casual you might ask one of the other staff to come in?---Well, it'll be one of two things. Either the director will make some arrangement for themselves to come in, or they will contact another staff member and see if we can organise something that works for them, as well.

PN3973

You wouldn't force someone who wasn't rostered to come in?---Oh, gosh, no. There's no coercion. We're a very teamy(sic) group of people and we work together closely and respect each other's needs.

PN3974

And you don't need the power to that, do you?---I'm not aware of having any such power, but I wouldn't use it if I did.

PN3975

Nothing further.

CROSS-EXAMINATION BY MR BULL

[2.58 PM]

PN3976

MR BULL: Mr Mahony, my name is Steven Bull. I'm an official from United Voice and I'm going to ask you some questions about principally the claims we have in the review of this award. And that relates to (indistinct) claims for responsible person, educational leader, and some matters concerning training and laundry allowances, and so forth. So, if you have some trouble hearing me or if there's an issue, just tell me. Now you're the approved provider for the two centres that you operate?---I'm the approved provider, indeed, yes.

PN3977

And you are able to be the responsible person if you're on the premises of either of those centres?---Certainly.

PN3978

Do you perform that role?---I haven't had to, to date, but I could if I had to.

*** KERRY JOSEPH MAHONY

XXN MR BULL

PN3979

Principally, you ensure the directors are the responsible person at the two centres you operate?---I certainly do.

PN3980

Is there any reason why you don't assume that role, yourself?---Well, a lot of it depends on the actual times that I come to work. And, you know, I've got a wider role and a more flexible one, and two centres to consider. And I prefer to have the responsible person, someone who's there in the normal working time as, you know, as an obligation to the staff and to the proper running of the place.

PN3981

Is the fact that you don't perform the function an indication that the role carries with it real responsibility and has duties and so forth?---To be honest with you I think that the responsibility ultimately rests with me anyhow so I'm not in any way a person that shirks responsibility or tries to walk away from it so I think it's a reasonable responsibility to expect of a person that's - whoever it might be and I would not ask it of my directors if I wasn't prepared to do it myself.

PN3982

So you generally - you only step in to be the responsible person if you absolutely have to?---If I had to, yes.

PN3983

Okay. Just, quickly - Glendore basically operates 52 weeks a year?---Glendore they call it.

PN3984

Glendore, sorry?---But, yes 52 weeks a year. Yes, that's correct.

PN3985

And the Brooklyn Park operates 50 weeks a year?---Correct.

PN3986

So Brooklyn Park has what - shuts down for two weeks over the Christmas/New Year period?---That's true.

PN3987

So if the award were to change to effectively only allow an operator to shut down for the two-week period over the Christmas/New Year holiday that wouldn't affect you in any particular way, would it?---Not in any way.

PN3988

Okay. Now, you've got - you're saying you've got very high occupancy in your centres?---I have in one of my centres high occupancy. The other centre has very low occupancy.

PN3989

So which one has high occupancy?---My major centre - the Glendore one is running at about 88 per cent occupancy.

*** KERRY JOSEPH MAHONY

XXN MR BULL

PN3990

Okay. And the other one is less so?---The other one's running at about 35, 34 per cent occupancy.

PN3991

When you compute occupancy is that an indication of the percentage of your licensed places that are actually filled by a child? Or is it a calculation of the percentage of your places that are paid for by the parent or guardian?---Well, just to explain it I keep records of the daily attendance of children to my centres and I take that as a percentage of the number of licensed places that I have. So it's a straight out calculation of attendance over license capacity.

PN3992

But do you if for some reason or other a parent or guardian has booked their child into your centre and the child doesn't turn up, do you still charge the parent? Is that the case?---Yes, that is so if it's not an organised sick day or something of that order, yes indeed. Yes.

PN3993

Okay. Does that happen often?---It does. It happens every day to some degree. It might be three or four children or something of that order, yes.

PN3994

So each day you'd - this affects ratios or it makes the burden of complying with the ratio requirements a bit easier. Every day - you'd be three or four children down but you'd still be receiving the fees from the parents?---Yes.

PN3995

Now you've been operating Glendore for almost 20 years?---Just a bit over, I think, yes.

PN3996

And you would have been in the period when you didn't need to necessarily have qualifications to operate a childcare centre?---Correct.

PN3997

Were you more actively involved in the provision of education and care in those days?---Actively involved myself personally? To a lesser extent my wife was running the centres for the early part of that period, yes.

PN3998

But there was nothing that precluded you from stepping in and essentially performing the role of an educator?---Well, frankly I never did that but my wife used to. Yes.

PN3999

But you could have? Did you hear what I said, Mr Mahony? You could have stepped in before the National - - -?---I could have. Excuse me.

*** KERRY JOSEPH MAHONY

XXN MR BULL

PN4000

Yes, sorry?---Yes, I could have stepped in I'm sure and met the requirements, yes.

PN4001

And one of the innovations of the National Quality Framework after 2012 you couldn't do that, could you?---No. And frankly we welcome the change towards professional qualifications.

PN4002

And it was a significant change?---Certainly was. It has - one of the things it did do, of course, particularly with the ratio requirements it's forced us into more expensive childcare but I think it has enhanced the quality.

PN4003

I'll just say all your directors are diploma qualified and excellent at their jobs. You could agree with that statement?---Absolutely. I have excellent staff at all levels.

PN4004

So have you got two directors? Or do you have more than two?---I have two directors, that's correct.

PN4005

Okay. And do you pay those two persons more than you have to pay them under the award?---No.

PN4006

Okay. So you pay them on the award?---I do.

PN4007

You've done a calculation. Have you got your statement in front of you?---Yes.

PN4008

You've done a calculation at paragraph 91. Is that assuming - like when you get - -?---Yes, I have it now, thank you.

PN4009

You've done a calculation for director and non-director. Is that in terms of a common roster cycle? Or is that particular staff person being the responsible person and paid the allowance fee for the totality of your operating hours?---What that is is the allowance that was proposed by the union, multiplied by 1.20 to pick up some of the overhead costs involved to come up with such a cost if the director was, in fact, paid that margin.

PN4010

But you understand that the director wouldn't necessarily be paid it all the time if she's not on the premises?---Well, in my case I think that's doubtful, because in fact the director tries to take that responsible person role all of the time that they're there. So that's a pretty large part of the day.

*** KERRY JOSEPH MAHONY

XXN MR BULL

PN4011

So that the figures you have quoted include a component for what you determined as on-costs?---Yes, it includes the oncost which is an estimate I admit but I have tried to use a conservative estimate of 1.20.

PN4012

And that's an amount you could afford to pay but you'd prefer not to. Is that a reasonable statement?---Would you mind repeating that?

PN4013

That's an amount you could pay but you'd prefer not to?---I could pay them what?

PN4014

You could pay the dollar amounts indicated in paragraph 91?---Dollar amounts of 396.72 is what I've suggested would be the cost but that would be less the 20 per cent loading. Is that what you're saying?

PN4015

No, I didn't ask that, sir. I'll perhaps withdraw the question?---Thank you.

PN4016

Now, in relation to the Educational Leader role you understand that it's a requirement under the National law that you have to designate in writing one of your employees as an educational leader?---Indeed.

PN4017

And you tend to designate someone who has been an assistant director and paid at the level five?---Yes, I do that for a number of reasons but this person has the authority, and the experience and has the freedom to move across the centres which I think adds to the value of the role that they play as Education Leader.

PN4018

So the same person is designated as the Educational Leader for both of the centres you own and operate?---Yes, indeed.

PN4019

Okay. Is that a recognition of the fact that the role involves some complexity in specialisation?---I think it is. It is an important role and, of course, it's in my opinion part of the description that an assistant director has of their work that they're required of. So - and I think they have got the experience and the background to do it and I value the role. So I do think that that's the right person in my case.

PN4020

So one of the assistant directors at one of your centres is also the Educational Leader at the other centre?---The assistant director of one of my centres forms the role of educational leader at both centres.

*** KERRY JOSEPH MAHONY

XXN MR BULL

PN4021

And that person necessarily is doing an additional task in virtue of being the educational leader at the second centre at which she isn't the assistant director.

You'd agree with that?---I think that's true, largely, although there's always been a role for the assistant director and the director to make sure that the educational program they're working on in each room is highly - you know - high quality and working for the children involved.

PN4022

But this employee who performs this role at the two centres is not paid any more than a level five is required to be paid under the award?---That's correct. Because I believe the award in fact covers that additional work that related to the educational role.

PN4023

Okay. It's your practise to basically pay for training. That's a reasonable summary of your evidence?---Yes, fairly well. Well, I don't - in terms of training we're saying?

PN4024

Yes?---Let me just explain the training in this way. I paid for the CPR and first aid training but not for the person's time, for example. I pay the course. I organise the course. Let's say we run it on a Saturday. I leave it to my employees to decide that they will volunteer to come and get the first aid equivalents and I don't pay them for their time. But I do pay for the courses. Similarly, with the professional development programs I pay for the courses and if they happen to fall during the week then I don't dock the person their pay but if it's out of hours then that person needs to volunteer their time. But where, in fact, I've got employees that are required to attend a course or to attend, say, a meeting where we're doing some training for everybody but I require them to do that I pay for both the training and for their attendance.

PN4025

Thank you for that, Mr Mahony. You don't - do you pay the laundry allowance to your employees in your centres?---I choose to do that. I do have two laundries and two sets of facilities and if, I suppose, employees decided to use those for what they require then I would not be paying them the allowance but they choose not to at this stage so I pay them the allowance and I'm very keen to have them appear in their uniform. So I am happy to pay the - in my case I'm happy to pay the allowance, although it is a significant sum of money on our costs each year.

PN4026

You recognise the utility of paying the allowance because it facilitates your employees?---In that particular case I do.

*** KERRY JOSEPH MAHONY

XXN MR BULL

PN4027

Having clean and laundered uniforms every day. You say in relation to hats and sunscreen that you already provide it. You do what we're asking to be inserted into the award. You provide hats and sunscreen?---We do indeed, yes. I do that for a number of reasons. One of them of course is that I need to provide adequate protection for my employees while they're out in the sun. And the second one is I

need them to demonstrate clearly to the children that we all do this when we're out in that sort of condition.

PN4028

So if there was a clarification of a requirement to provide hats and sunscreen that wouldn't affect the way you operate your centres?---It would make no difference in our particular case.

PN4029

I'm just looking at paragraph 109 of your statement and this is talking about how non-contact time that - particularly the middle sentence. "The overall plan is developed by the Director in consultation with the Educational Leader and the room leaders." Now, is that an indication that the Educational Leader has a role of bringing it altogether so to speak?---Certainly. I value the Educational Leader's role and the - you know - the leaderships that that person can offer and I would expect that person to have a role in working with the room leaders and helping us develop a uniform educational standard throughout the centre.

PN4030

Okay. But there's real work that the Educational Leader brings to this process of developing the - - -?---Definitely.

PN4031

- - -educational program?---Definitely.

PN4032

Do you provide uniform programs at the two centres you run?---We have a program where overall we, as a management group we input to what we'd like to see happening and the kind of general outcomes and some of the features of our educational program and then, secondly, we get the Director working with each group. We have room meetings, the educational leader attends the room meetings as well and we try to evolve not only with the room leader but with the staff in that room at these meetings, the content of what we're trying to do and the general thrust of our educational and programming effort.

PN4033

I'll just quickly - both Glendore operates for 52 weeks a year?---Correct.

PN4034

And the other one operates for 50 weeks a year?---Correct.

PN4035

We're seeking to insert or modify provision in the award which would have the effect of effectively only allowing an operator to close down for two weeks over the Christmas/New Year period?---Yes.

*** KERRY JOSEPH MAHONY

XXN MR BULL

PN4036

Such a provision would not affect either of your services in any way would it? Because that reflects what you do?---Look that's in my particular case. I guess it

would be very different if we were closed down for a longer period of time. I may have a different view but that's the way it works for us essentially, yes.

PN4037

Look, thanks very much for your time. Those are the only questions I have for you, Mr Mahony?---Thank you.

PN4038

MS SAUNDERS: No questions.

PN4039

MS ARRABALDE: No further questions thank you.

PN4040

DEPUTY PRESIDENT CLANCY: Thank you. Anything?

PN4041

MS WHISH: No, thank you.

PN4042

DEPUTY PRESIDENT CLANCY: Mr Mahony, thank you for your evidence today. Thank you also for being flexible with the Commission in terms of your attendance there at Adelaide and the swapping of the times. It is appreciated. You're now excused?---Thank you very much.

<THE WITNESS WITHDREW

[3.17 PM]

PN4043

MS SAUNDERS: I think that's it for today, your Honour.

PN4044

DEPUTY PRESIDENT CLANCY: All right. So that means tomorrow we've got Ms Llewellyn, Ms Hans and Ms - - -

PN4045

MS SAUNDERS: Mravunac. I think. We'll confirm that in the morning. I think perhaps a 10 o'clock start and we'll start with Ms Mravunac.

PN4046

DEPUTY PRESIDENT CLANCY: All right. Are we confident we'll finish by lunch time?

PN4047

MS SAUNDERS: I am. I understand Mr Bull has a commitment. So I imagine - - -

PN4048

MR BULL: I am too.

PN4049

MS SAUNDERS: - - -he's - - -

PN4050

MR BULL: I've got something at 2.15 with Commissioner Bissett.

PN4051

MS SAUNDERS: Even more confident.

PN4052

DEPUTY PRESIDENT CLANCY: Any reason why we can't start at 9.30?

PN4053

MS SAUNDERS: No, I'm happy to do that.

PN4054

MR BULL: I'm happy. It doesn't worry me.

PN4055

MS SAUNDERS: The difficulty is our witness has unsurprisingly for a childcare worker, family commitments. She has to drop her children off. It makes 9.30 a little difficult.

PN4056

DEPUTY PRESIDENT CLANCY: Okay.

PN4057

MS SAUNDERS: Yes. Okay - we can - one of the ACA witnesses can come in at 9.30. Ms Mravunac, once she's here can wait outside.

PN4058

DEPUTY PRESIDENT CLANCY: All right. Thank you. Well, we'll start at 9.30 and with one of the ACA witnesses. Thank you. We'll adjourn.

ADJOURNED UNTIL THURSDAY, 09 MAY 2019

[3.19 PM]

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