



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

1056934

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

**AM2018/18
AM2018/20**

s.156 - 4 yearly review of modern awards

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

Sydney

9.36 AM, THURSDAY, 9 MAY 2019

Continued from 8/05/2019

PN4059

DEPUTY PRESIDENT CLANCY: Yes, good morning, Ms Whish.

PN4060

MS WHISH: Good morning. I might just note that in Melbourne this morning we have Ms Llewellyn, but also accompanying her is Paul Mondo, the President of the Australian Childcare Alliance and he will be watching via video link as I understand, Ms Llewellyn and the next witness to come.

PN4061

DEPUTY PRESIDENT CLANCY: As long as he's inactive in his watching.

PN4062

MS WHISH: He understands his role, yes.

PN4063

DEPUTY PRESIDENT CLANCY: Do you want to deal firstly or at some stage - I understand the survey material that was called for from Mr Fraser, I have a copy of - all the parties have a copy of that.

PN4064

MS WHISH: Yes.

PN4065

DEPUTY PRESIDENT CLANCY: Procedurally, what would you like to do?

PN4066

MS SAUNDERS: I have a copy of it. I've had that copy for about 10 minutes.

PN4067

DEPUTY PRESIDENT CLANCY: I wouldn't expect you've gone through it. But just process wise, is there - and maybe have a think about it during the course of the morning, whether - if at some stage it arises, that you need to ask questions about it or if you believe it should come with some sort of an accompanying witness statement that then you can consider.

PN4068

MS SAUNDERS: I think that's probably going to be the case, having skimmed it, it is unsurprisingly, not of tremendous use. It's an (indistinct) with mixed results. It depends on what ACA intends to do with it. If it's sought to be tendered, I probably just need some time to read it properly and consider it. But I think that can be dealt with after the end of the hearing. We can agree a process amongst ourselves.

PN4069

DEPUTY PRESIDENT CLANCY: Right.

PN4070

MS SAUNDERS: I don't anticipate needing to ask Mr Fraser any questions.

PN4071

DEPUTY PRESIDENT CLANCY: Thanks. Well, we'll deal with it then when we've completed the evidence this morning. Thank you. Thank you. Yes.

PN4072

MS WHISH: Ms Llewellyn, Sophie Whish here from ACA.

PN4073

MS LLEWELLYN: Okay.

PN4074

MS WHISH: Can you hear me fine?

PN4075

MS LLEWELLYN: Yes.

PN4076

MS WHISH: You're a little quiet in Melbourne, so if I could just get you to speak up, that would be wonderful.

PN4077

MS LLEWELLYN: Is that better?

PN4078

MS WHISH: Much better. I'll just have the Associate take your oath and then I'll ask you some questions.

PN4079

MS LLEWELLYN: Sure.

PN4080

THE ASSOCIATE: Ms Llewellyn, please state your full name and address.

PN4081

MS LLEWELLYN: Nicole Louise Llewellyn (address supplied).

<NICOLE LOUISE LLEWELLYN, SWORN [9.39 AM]

EXAMINATION-IN-CHIEF BY MS WHISH [9.39 AM]

PN4082

MS WHISH: Ms Llewellyn, could you state your name and address again for the record?---Yes, Nicole Louise Llewellyn, (address supplied).

PN4083

Have you provided a statement in these proceedings?---Yes.

PN4084

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

*** NICOLE LOUISE LLEWELLYN

XN MS WHISH

PN4085

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

PN4086

Then is your statement a correct and true record to the best of your knowledge?---Yes, it is.

PN4087

I seek to tender that statement.

PN4088

DEPUTY PRESIDENT CLANCY: I've just got one question about the statement. If you turn to page 10 and 11, on my version at least, paragraph 72 ends and then at the top of page 11 it looks like a paragraph that starts mid-sentence which I'm assuming might be paragraph 73. I'm not sure how that's supposed to read.

PN4089

MS WHISH: It looks to be a formatting error. But you're correct, it doesn't make sense for what would have been paragraph 73. It doesn't make a lot of sense having a half sentence there on its own.

PN4090

DEPUTY PRESIDENT CLANCY: Well, we'll stand down and perhaps if you can just work out what that is supposed to be. Then we'll come back in and I'll receive it into evidence. Thanks.

PN4091

MS WHISH: Thank you.

<THE WITNESS WITHDREW [9.41 AM]

SHORT ADJOURNMENT [9.41 AM]

RESUMED [9.47 AM]

<NICOLE LOUISE LLEWELLYN, RECALLED [9.47 AM]

EXAMINATION-IN-CHIEF BY MS WHISH, CONTINUING [9.47 AM]

PN4092

DEPUTY PRESIDENT CLANCY: Thank you.

PN4093

MS WHISH: Your Honour, we've located what appears to be a missing portion of paragraph 73 and in fact the numbering of 73.

PN4094

DEPUTY PRESIDENT CLANCY: Yes.

PN4095

MS WHISH: The parties are content if I read out what would have been the first sentence and paragraph number 73 to Ms Llewellyn.

*** NICOLE LOUISE LLEWELLYN

XN MS WHISH

PN4096

DEPUTY PRESIDENT CLANCY: Yes.

PN4097

MS WHISH: And she confirms that that is what she intended to say for that paragraph.

PN4098

DEPUTY PRESIDENT CLANCY: Thank you.

PN4099

MS WHISH: Ms Llewellyn, could I confirm that paragraph 73 said the words "Although I try to have my management team as a back-up, if my staff are unavailable it..."?---Yes, that's correct.

PN4100

And it would continue on, on page 11?---Yes.

PN4101

Thank you.

PN4102

DEPUTY PRESIDENT CLANCY: Would you just read that again for us please, Ms Whish?

PN4103

MS WHISH: Of course. Paragraph 73 "Although I try to have my management team as a back-up, if my staff are unavailable it becomes very hard..."

PN4104

DEPUTY PRESIDENT CLANCY: Thank you.

PN4105

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

PN4106

Thank you. I'll tender that statement now.

PN4107

DEPUTY PRESIDENT CLANCY: Thank you. I'll mark the statement of Nicole Louise Llewellyn which is dated 9 April 2019 as exhibit 39.

**EXHIBIT #39 STATEMENT OF NICOLE LOUISE LLEWELLYN
DATED 9/04/2019**

PN4108

Thank you.

*** NICOLE LOUISE LLEWELLYN

XN MS WHISH

CROSS-EXAMINATION BY MS SAUNDERS

[9.49 AM]

PN4109

MS SAUNDERS: Ms Llewellyn, if you have any difficulty hearing me at any point, please just let me know?---Thank you. I will do.

PN4110

Yes. You have a Bachelor's degree in Human Resources and Industrial Relations, is that right?---Yes.

PN4111

You also have a Certificate III in early childhood education?---Yes.

PN4112

You're currently completing a Diploma of Early Childhood Education?---Correct.

PN4113

Are you doing that in part so you can count towards the ratios at your Centre? Step in as an educator?---Yes.

PN4114

And in part, to increase your skills as an educator?---Correct.

PN4115

You use the skills that you're currently learning in your Diploma in your day to day work, don't you?---I do.

PN4116

Including your work as a director?---Yes.

PN4117

You also use the skills that you gained in your Bachelor's degree in your work as a director?---Yes.

PN4118

People with different Bachelor's degrees to you might have different skills?---Yes.

PN4119

They would also use them, if they were the director?---Yes.

PN4120

For example, a qualified teacher would use their teaching skills if they were a director?---Yes.

PN4121

You're currently the director of your Centre?---I am.

PN4122

That's not likely to change, is it?---No.

*** NICOLE LOUISE LLEWELLYN

XXN MS SAUNDERS

PN4123

You're a franchisee, is that right?---Correct.

PN4124

Of the Cool Kids franchise, you operate one Centre under that name?---Yes, that's right.

PN4125

You rely on Cool Kids for employment policies?---Yes.

PN4126

Advice on award coverage, that kind of thing?---Yes.

PN4127

I see. Your Centre has 130 approved places?---Correct.

PN4128

You're currently at 100 per cent occupancy?---Yes.

PN4129

That doesn't mean that there's 130 kids there all day every day, does it?---No.

PN4130

Most of the kids are there in the middle of the day?---Generally, yes.

PN4131

Between about 8.30 and 4.30?---Mostly, yes.

PN4132

That's when you roster your early childhood teachers to work, isn't it?---Teachers? Yes.

PN4133

I'm just talking about teachers for the moment. We'll come to educators. But teachers - you're always going to need in the middle of the day when most of the kids are there?---Yes, rostered 9.00 till 5.00.

PN4134

Yes, because they're there to specifically deliver the educational program?---Yes.

PN4135

It would be a waste of - sorry, I'll withdraw that. They're paid more than the educators?---Correct.

PN4136

It wouldn't be efficient to roster them to open or close the Centre?---Correct.

PN4137

You have eight full time staff?---Correct.

*** NICOLE LOUISE LLEWELLYN

XXN MS SAUNDERS

PN4138

Does that include the teachers?---Yes.

PN4139

The rest of the workers are part time?---Yes.

PN4140

You do have a casual pool?---No, I don't.

PN4141

You don't, I'm sorry. 37 part time workers?---Yes.

PN4142

That's right. You've made a deliberate decision not to hire casual staff, haven't you?---I have.

PN4143

Part of that is about providing consistency of care?---Correct.

PN4144

It's important that the children see the same people as much as possible when they arrive?---Yes.

PN4145

A lot of volatility in staff rosters is undesirable from that perspective, isn't it?---Yes.

PN4146

With your part time staff, do they work on minimum hours contracts?---Yes, minimum of two days per week, 15 hours.

PN4147

So, they're all guaranteed a minimum of 15 hours?---Correct.

PN4148

But you usually roster them much more than that?---Yes.

PN4149

How close to full time do most of them work?---It varies across all the part time staff. Some choose to do two days. They choose to do three, four and then there's some that choose to do five.

PN4150

But the minimum hours contract means that you can - if you absolutely have to, cut them back to 15 hours?---Yes.

PN4151

When those part time workers start, you don't give them a fixed roster that they'll work permanently, do you?---Not initially, no.

*** NICOLE LOUISE LLEWELLYN

XXN MS SAUNDERS

PN4152

No. Do you roster week to week?---Yes.

PN4153

On a rotating shift basis?---Not a rotating shift, no.

PN4154

People generally do work the same shifts?---Yes.

PN4155

Do you have the same people opening and closing the Centre every day?---Yes, they do that for a three month period, school term and then those that are on open, close for the next school term.

PN4156

Sure. Why do you swap them?---To give them a better work life balance.

PN4157

Sure. Because those early shifts and late shifts they can be disruptive to people's family life?---Yes and can become very tiring being on open for a whole year.

PN4158

Yes. Same with close, finishing at 6.30?---Exactly.

PN4159

6.30 is quite a late finish?---Yes.

PN4160

7.30 would be quite a late finish, as well, wouldn't it?---Yes.

PN4161

It would be, in your view, even more tiring?---Same, I would say. 6.30 is quite late. It's usually middle of dinner, after dinner.

PN4162

7.30 you've completely missed dinner with your family at least, haven't you?---Yes, totally.

PN4163

Most of your workers are female?---Yes.

PN4164

Almost all of them, in fact?---I've got two men.

PN4165

Most of them have families?---50 per cent, yes.

PN4166

Quite young families a lot of them?---Majority, yes.

*** NICOLE LOUISE LLEWELLYN

XXN MS SAUNDERS

PN4167

You pay your staff award wages?---I do.

PN4168

I just want to talk to you about the two ACA claims. The first one is about the span of hours in the award. Is it your understand of that claim that the ACA want to change the ordinary hours in the award to finishing at 7.30 rather than 6.30 at night?---Yes.

PN4169

The point of that is so you can roster educators on to work to finish later without paying them overtime?---Correct.

PN4170

Can I just get you to have a look at paragraph 37 of your statement?---Yes.

PN4171

You've done some calculations. So part of the reason you support this claim is because it would make it cheaper for you to keep your Centre open till 7 o'clock; that's right?---Yes.

PN4172

There might be some parents who would like that?---Yes.

PN4173

You've done some calculations that if you did that at the moment under the award, you'd have to roster two employees to close?---Yes.

PN4174

For that, that would cost \$40.12 in their wages including overtime?---Yes.

PN4175

Have you worked out how much that would cost if you did that five days a week every week of the year?---No, I haven't.

PN4176

If I told you it would be \$10 400, that would be right? Sounds about right?---Hm-mm.

PN4177

You would need to, if you opened at the moment, cover that with the fees that parents pay?---Correct.

PN4178

That's \$4.48 a child?---Yes.

PN4179

Overtime would be the only significant additional cost if you kept your Centre open later?---Yes.

*** NICOLE LOUISE LLEWELLYN

XXN MS SAUNDERS

PN4180

You'd have to keep the lights on for another half an hour, but that wouldn't make a difference, would it?---Marginally.

PN4181

Very marginally I would suggest. So, if you use the entire fee, you'd need 10 kids a day to cover that overtime cost?---Yes.

PN4182

You say it's not financially viable now. You don't have 10 kids to fill that spot?---Through to 7 o'clock? Yes.

PN4183

Yes, there's not that level of interest?---No.

PN4184

Seven is quite late for children under five, isn't it?---It is.

PN4185

In fact, particularly the - I mean, you cater for kids from zero - babies up till pre-school age. Is that right?---Yes.

PN4186

There's really very few children left by even 6.30?---Yes.

PN4187

So, if the claim succeeds, you could roster people till seven. You'd still have to pay them, that's right?---Correct.

PN4188

But just at ordinary time?---Yes.

PN4189

Have you calculated what that would cost?---No. I would change their shifts and it would be rather than a 10.30 to 6.30 shift, it would be 11.00 to 7.00.

PN4190

Sure. But you'd still have to roster someone to cover their shift at the start. If you're open longer you might need more staff cover?---The close person would just do a later shift.

PN4191

Sure?---And I wouldn't need any extra staff.

PN4192

But that component of the shift, it would now cost you \$26.74, that half an hour?---Yes.

PN4193

You'd save \$15 a day?---Yes.

*** NICOLE LOUISE LLEWELLYN

XXN MS SAUNDERS

PN4194

It would cost you - it would still cost you money. It would cost you \$7000 a year to cover that half an hour?---Yes.

PN4195

The overwhelming overtime cost that's preventing you from operating the Centre until 7 o'clock at night is at most, \$3000 a year?---Yes.

PN4196

[REDACTED]

PN4201

You didn't start at 100 per cent occupancy. You might just get the person in the gallery to stand up and the lights should stand back on. Hopefully. Great.

PN4202

2017 is when you opened your Centre?---2016.

PN4203

2016. It too you about a year and a half to build up to 100 per cent occupancy?---Over two years.

PN4204

Yes. [REDACTED]---Yes.

PN4205

[REDACTED]

PN4206

[REDACTED]

PN4208

I just want to talk to you about late pick-ups. You wouldn't roster someone to stay back after the Centre closed just in case a parent was late, would you?---No. I don't.

PN4209

That wouldn't be an efficient use of staff, would it?---No.

PN4210

Whatever the opening hours are, there's always a risk that someone is going to be late, isn't there?---Yes.

PN4211

You charge a late fee?---Yes.

PN4212

That's \$35 for every 15 minutes?---Correct.

PN4213

That's well above any overtime cost, isn't it?---Yes.

PN4214

Can I move to the second ACA claim now. This is about rostering and notice for changes of roster. Could you just explain to the Commission what you understand that claim to be?---That there's seven days' notice required currently for a change in roster. The request is to reduce that.

PN4215

In what circumstances?---Under certain circumstances.

PN4216

In what circumstances?---I'm not sure off the top of my head, sorry.

PN4217

That's all right. It's just what you - you don't need to check your statement. I'll take you through it. Would that be with employee agreement?---Yes.

PN4218

And only then?---Yes.

PN4219

You don't want to force people to change their shifts at less than seven days' notice?---No.

PN4220

Can you just have a look at paragraph 77 of your statement? You talk there about sometimes having to choose between complying with the ratios and complying with the awards. You say "If I have to make a choice I comply with the ratios". That's right?---Correct.

*** NICOLE LOUISE LLEWELLYN

XXN MS SAUNDERS

PN4221

So, in your view, there's some circumstances where you've had to do something that doesn't comply with the award?---Not that I'm aware of.

PN4222

Just go back a page to the examples at paragraph 69 and 70?---Yes.

PN4223

Those are the examples where you think you haven't complied with the award?---Yes.

PN4224

In all of those examples, you've had to - someone's been sick or sort of sick or had a funeral at the last minute?---Yes.

PN4225

And you've had to ask employees to change their shift?---Yes.

PN4226

And they've agreed?---Yes.

PN4227

It's not that you've had to force someone to come in?---No.

PN4228

When you say at 75 that it would be fantastic if I was able to not give my staff members seven days' notice, you just mean it would be fantastic if these situations where employees agreed to change their shift were permitted by the award?---Yes, correct.

PN4229

If the award already allowed you to do that, it wouldn't need to be changed, would it?---No.

PN4230

Thank you. I have nothing further.

PN4231

DEPUTY PRESIDENT CLANCY: Thank you. Mr Bull.

CROSS-EXAMINATION BY MR BULL

[10.04 AM]

PN4232

MR BULL: Ms Llewellyn, my name is Stephen Bull. I'm an official from United Voice. I'm going to ask you a few questions principally about claims for allowance claims in relation to the laundry allowances, sunscreen and so forth and shutdowns. I might just ask you a few generally questions. My friend - you indicated to my friend, as you do in your statement, that you - - -

*** NICOLE LOUISE LLEWELLYN

XXN MR BULL

PN4233

DEPUTY PRESIDENT CLANCY: Sorry, Mr Bull. Ms Saunders, did you want to tender that?

PN4234

MS SAUNDERS: Yes, I'm sorry, I did.

PN4235

DEPUTY PRESIDENT CLANCY: I'll mark the [REDACTED] as exhibit 40.

EXHIBIT #40 [REDACTED]

PN4236

MS SAUNDERS: Thank you.

PN4237

DEPUTY PRESIDENT CLANCY: Sorry, Mr Bull.

PN4238

MR BULL: Ms Llewellyn, you've indicated in your statement and you've confirmed it when my friend asked you some questions that you operate Centres as a franchisee?---Yes.

PN4239

One of the reasons you've gone down that route is that you get assistance from the franchisor in relation to all aspects of running your business?---Yes.

PN4240

That's from administration, dealing with regulation?---Yes.

PN4241

And essentially, you get - you don't have to do it yourself because it's already been done for you. That's a reasonable summary of the relationship?---Yes.

PN4242

In that context, if there were to be changes to the award, the fact that you are a franchisee, with a franchisor doing all the hard work in relation to regulation and administration, that would alleviate the burden of change in relation to any variation of the award. You'd agree with that proposition?---Yes. I'd still have to implement within my service though, of course.

PN4243

But some of the leg-work would be done for you?---Not the implementation.

PN4244

No. Obviously, you need to put it into practice, but you're given fairly comprehensive guides about how to do that?---Yes.

*** NICOLE LOUISE LLEWELLYN

XXN MR BULL

PN4245

Does the franchisor provide you with quite comprehensive material in relation to compliance with the National Quality Framework?---Yes.

PN4246

Have you been assessed by the rating authority in child care? Has your Centre been assessed, rather?---Yes, in 2017.

PN4247

How did the assessment go?---Sorry, what was that?

PN4248

How were you assessed? What was the - can you just give us a summary of how the assessment went?---Yes, so we were just over 12 months old and we were marked as working towards.

PN4249

Just a question about occupancy, you have - your Centre is quite large by the standards of long day care; you'd agree with that?---Yes.

PN4250

Now, parents essentially book space for their children in your Centre?---Yes.

PN4251

And there's obviously - parents want stability. They want to know that there's a place for their child over quite an extended period. That's correct?---Yes.

PN4252

If the child doesn't turn up or doesn't attend for any reason, you still charge the parents fees, don't you?---We do, yes.

PN4253

What percentage - can you tell us per day, would be no shows where you still obtain a fee from the parent?---If they provide us with two weeks' notice for annual leave, it's 50 per cent. If it is the day before or the day of or less than two weeks, it's 100 per cent.

PN4254

Are you able to tell us roughly what percentage of the nominal places fall into that category?---Of the 100 per cent or the 50 per cent?

PN4255

Well, maybe just - if you could do both, in terms of just how many are essentially - how many places are you charging a fee for when the child is not attending?---So out of 130 places, we may have four a day that are sick, two a day that are annual leave.

PN4256

If you go to paragraph 82 of your statement?---Yes.

*** NICOLE LOUISE LLEWELLYN

XXN MR BULL

PN4257

You indicate - can you just read the statement?---"The awards fail to recognise the intricacies between the different state regulations and therefore the different operational requirements that we need to be able to run a profitable and successful business."

PN4258

Could you explain to the Commission what you mean by that statement?---Just across Australia there are inconsistencies in, for example, ratios from state to state.

PN4259

But you only operate - sorry?---Yes, and I only do operate in Victoria, only one Centre.

PN4260

So those inconsistencies don't affect the administration or profitability of your Centre, do they?---No.

PN4261

The National Quality Framework is principally a uniform national law that applies to all states and territories in Australia. You'd agree with that proposition?---Yes.

PN4262

By making that statement, are you also indicating that the award should reflect the related regulation of the sector it covers?---Yes, definitely.

PN4263

So, it's desirable that the industrial instrument reflects what are critical regulations governing the sector which the industrial instrument covers. You'd agree with that proposition?---Yes.

PN4264

Could you turn to paragraph 85 of your statement?---Yes.

PN4265

You are the responsible person for the Mill Park Centre when you're on the premises?---Correct.

PN4266

You say that's usually a few hours a day?---Where I'm not there.

PN4267

When you're not there, sorry?---Yes.

PN4268

That's five days a week?---Yes.

PN4269

You're there every day that that Centre is operating?---Correct.

*** NICOLE LOUISE LLEWELLYN

XXN MR BULL

PN4270

But for two hours or so, every day?---Yes.

PN4271

You're not an employee, are you? You're an owner of the Centre?---Yes, I'm the owner and the approved provider.

PN4272

So, if the Commission were to agree and insert some sort of allowance in relation to employees being responsible persons, you would have a minimum cost burden, because you assume that responsibility yourself. You'd agree with that proposition?---Yes.

PN4273

When you say that you're already remunerated for being the responsible person, because you receive a salary, that's not completely correct, because you don't receive a salary, do you?---Yes, I do.

PN4274

Sorry, I withdraw that?---Yes.

PN4275

But you also, as the owner of the business, take earnings from the company?---Yes, I pay myself a wage, yes.

PN4276

Right. And that's significantly above the award minimum that you're obliged to pay a Centre director?---Yes.

PN4277

That extra remuneration that you pay yourself, that is in part - well, it's your right as I suppose as a business owner, but do you believe that you're entitled to additional remuneration because of the responsibility you take on as for amongst other things, the responsible person?---As overall as the owner and the approved provider, there are obviously responsibilities that are on my shoulders as the business owner and the risk that comes with managing the business and I remunerate myself accordingly, yes.

PN4278

But you'd agree that in a very real sense, some of those responsibilities crystallise by virtue of you being under the regulations, the deemed or designated responsible person?---Yes.

PN4279

And so some of the remuneration which you pay yourself reflects the fact that you have that legal role at your centre?---Yes, as the approved provider. Correct.

*** NICOLE LOUISE LLEWELLYN

XXN MR BULL

PN4280

You've indicated that when another employee is the responsible person they're remunerated for being responsible. Does that mean you pay an additional

payment than you're obliged to under the award?---They're paid as a Level 4 and under that classification that already encompasses the responsibilities that they take on as a room leader and the responsible person first thing in the morning.

PN4281

Well, how do the classifications of a Level 4 include being responsible for what goes on, on the entire premises of a centre?---Yes, so the responsibilities are consistent with being a room leader, which is what they are, and I'm always on call if needed in three minutes from the centre.

PN4282

But a room leader is quite different to being responsible for an entire centre. You'd agree with that proposition?---I would say a room leader at 6.30 in the morning who only has 10 children compared to a room leader at 9.30 in the morning that has 16 children is different.

PN4283

That's a reasonable statement but it's still - if you're alone with four children that's significant responsibility early in the morning?---Two educate - so that's two educators with four children.

PN4284

Do you agree that one of the danger periods are the beginning and the end of the day in your sector at times?---I'd say you've - I - my risk is the whole day. Anything can happen at any point in the day.

PN4285

That's a prudent way to view it, but in a practical sense there's some danger at the beginning and the end because that's when the children are coming and going. You'd agree with that proposition?---Somewhat.

PN4286

And the beginnings and the ends are also when staffing can be at its lowest?---Yes, correct.

PN4287

And there's the natural I suppose inclination of children where they're coming somewhere and they're leaving so there's some inherent disruption at the beginning and the end of the day. You'd agree with that proposition?---Yes.

PN4288

So there is a certain additional level of responsibility for the responsible person at those periods of the day. You'd agree with that?---Somewhat.

PN4289

Can you look at the award? Have you got a copy of the Children's Services Award with you?---I do, yes.

*** NICOLE LOUISE LLEWELLYN

XXN MR BULL

PN4290

Can you turn to - it likely is page 54, it could be page 55. What I'm asking you to look at is the indicative duties for a Level 4. It's B1.6?---Yes.

PN4291

Now just have a quick read. Have you got the indicative duties in front of you?---Yes I do and it's also in my statement at 89 as well. We've put them in there too.

PN4292

Okay. You'd agree that a Level 4 is a person who is responsible but ultimately supervised by an assistant director or a director?---Yes.

PN4293

So what duties and responsibilities they perform in accordance with their indicative duties are under the broad supervision of a more senior member of staff. That's a good summary of the way they are presumed to operate according to the award?---Sorry, say that again?

PN4294

Well, a Level 4 is an employee who functions under supervision from an assistant director or a director. You'd agree with that?---Yes.

PN4295

So responsibility effectively for an entire centre is intrinsically not part of their indicative duties. You'd agree with that?---To somewhat extent. In B1.6 it does say 'responsible in consultation with the assistant director' and they are always in consultation with me.

PN4296

But if you're not present and they're alone in the centre, an incident happens which needs to be dealt with quickly, they're not effectively going to have an opportunity to consult with you, are they?---No, however they would make the same decision whether I'm onsite or not onsite.

PN4297

But they're not being supervised are they?---Not directly if I'm not onsite, no.

PN4298

They're being asked to take responsibility on their own shoulders quite independently?---Yes.

PN4299

In relation to the educational leader role, are you aware that there's no prescription in the national law as to what level within the award can fulfil that role?--- Yes.

PN4300

So you choose to designate in your service directors, Level 6s, as educational leaders?---No, I have a separate educational leader who's paid as a Level 5 full-time off the floor.

*** NICOLE LOUISE LLEWELLYN

XXN MR BULL

PN4301

I apologise about that. So you choose to have your educational leader devoted entirely to being the educational leader?---Absolutely.

PN4302

And that's an acknowledgement of the importance and complexity of the role?---And also the size of my service and the service that the educators and the families require.

PN4303

So it takes - there's a significant amount of time and work involved in adequately performing the function of an educational leader within your service such that you have a Level 5 doing it as a full-time position?---Yes.

PN4304

And that's in a sense a role that you've invented because you've assessed the requirements of an educational leader and you think it's in your interest for a variety of reasons to have a dedicated person doing it full-time?---Absolutely.

PN4305

There's no requirement - if you look at the duties of a Level 5 it doesn't say they can be a full-time educational leader, does it?---No it doesn't.

PN4306

Now just in relation to the issue of the laundry allowance, you don't pay the laundry allowance do you?---No.

PN4307

You provide your staff with two polo shirts?---Yes.

PN4308

That's all staff?---All the staff, yes.

PN4309

So for a full-time staff member who works five days a week they get two polo shirts?---Yes.

PN4310

And a casual gets the same entitlement?---I don't have any casuals.

PN4311

Sorry?---Part-timers also get the same, yes.

PN4312

Okay, but a part-timer may work three or four days a week?---Yes. Correct.

PN4313

So the full-timer who's working five days a week, you're requiring this employee to turn up each day in a polo shirt?---Yes.

*** NICOLE LOUISE LLEWELLYN

XXN MR BULL

PN4314

One which you've issued and you've issued two of them?---Yes.

PN4315

You'd agree that as with most work clothing, maybe more so in childcare, that you need to launder the clothing every day? You need a fresh shirt each morning you start work, you'd agree with that proposition?---Yes.

PN4316

So if you issue two shirts and the employee's working five days a week, how do you think the employee is turning up in a fresh shirt on Wednesday, Thursday and Friday?---They would need to launder it.

PN4317

And you'd agree they'd need to launder it - well, they'd need to do some polo shirts more than twice a week or at least twice a week?---Yes.

PN4318

Potentially three times a week?---Yes.

PN4319

You said you've got a large centre?---Yes.

PN4320

You haven't got dedicated laundry facilities for your staff?---No, we do have two washers and dryers onsite though that they are able to use.

PN4321

And those washers and dryers are there because principally there's some need to use them for linen and other items that are used in your childcare business?---Yes.

PN4322

That those facilities are principally for the use of the business?---Yes.

PN4323

And when the centres get busy the washing machine can be running several cycles for the business?---Most afternoons, yes.

PN4324

And the business wash, so to speak, takes place during the working day?---Yes.

PN4325

So it's not inconceivable that an employee may have difficulty getting access to the washing machine during the working day to launder their two or one of their polo shirts. You'd agree with that?---No, definitely get access at - the machine takes 35 minutes on a wash cycle, 40 minutes on a dry cycle and we generally wash four loads of washing a day between the two. There's definitely opportune time for them to wash their uniform if needed.

*** NICOLE LOUISE LLEWELLYN

XXN MR BULL

PN4326

In terms of ratios, are you familiar with the term 'under the roof'?---I am.

PN4327

And that, for the benefit of the tribunal and others, you can have ratios per room?---Yes.

PN4328

Or you can have them under the roof?---Yes.

PN4329

Which means that you can essentially - if you're down in one room in terms of children, that you've rostered a number of staff in anticipation of a greater number, you can count those staff in relation to the ratio requirements in a more populated room?---Yes.

PN4330

So that gives you greater flexibility in relation to rostering, doesn't it?---It does.

PN4331

And you can comply with your ratio requirements with significantly lower staffing levels because you don't have to keep precise ratios in relation to each room?---You could.

PN4332

But you don't?---No.

PN4333

Now in relation to hats and sunscreen, you say you do provide sunscreen and hats?---Yes.

PN4334

So if the award were to be clarified that that's a requirement, that wouldn't affect the operation of your business?---No it wouldn't.

PN4335

Just briefly in relation to shutdowns, your centre operates all year?---Correct.

PN4336

So if there were to be some change in the award that would limit the ability of employers to direct employees to take leave at the Christmas, New Year period for only two weeks that wouldn't affect the operation of your business?---No it wouldn't.

PN4337

Just generally in relation to the issue of taking leave and so forth, you'd agree that an employer will obviously try and accommodate an employee's request for leave?---Absolutely.

*** NICOLE LOUISE LLEWELLYN

XXN MR BULL

PN4338

But it is a matter which there is some responsibility for the employer to manage?---Yes.

PN4339

And if a person chooses to take all their leave in June that means they're probably going to be working in early January?---Correct.

PN4340

And that's a management responsibility, that's a fact for any person who employs people?---Yes.

PN4341

If you could turn to paragraph 102, 103 of your statement?---Yes.

PN4342

Now in part the decision you've made to have your educational leader as a full-time position and not on the floor is an acknowledgement of the amount of preparation and, for want of a better term, non-contact time that is part of being an educational leader. You'd agree with that?---Yes, I've put a higher level of value on that for my service. Yes.

PN4343

So the educational leader needs significant preparation time, quiet time, to prepare materials and so forth to fulfil the role of educational leader?---To do their role well in a large centre, yes.

PN4344

And you've also indicated that for other employees who are responsible for preparing programs, you aim to give them four hours off the floor per week?---Correct.

PN4345

You're aware that the award only requires two hours?---Yes.

PN4346

Per week?---Yes.

PN4347

So the fact that you've got a full-time educational leader and you aim to give your employees involved in educational programs four hours per week is an acknowledgement that two hours per week is likely not enough. You'd agree with that?---Yes, it can be.

PN4348

All right, well, we're only talking about your experience. You would say two hours non-contact time a week for an employee involved in educational programs is not enough?---I give a minimum of two hours a week. I aim for four but sometimes depending on staffing numbers they may only get two.

*** NICOLE LOUISE LLEWELLYN

XXN MR BULL

PN4349

And this is in the context of you having a full-time educational leader?---Yes.

PN4350

You still think more than two hours is desirable and appropriate?---Yes.

PN4351

Thanks very much, Ms Llewellyn, they're the only questions I have. Thanks.

PN4352

DEPUTY PRESIDENT CLANCY: Any questions, Ms Shaw?

PN4353

MS SHAW: No questions, thank you.

PN4354

DEPUTY PRESIDENT CLANCY: Ms Arrabalde?

PN4355

MS ARRABALDE: Yes please.

PN4356

DEPUTY PRESIDENT CLANCY: Thank you.

CROSS-EXAMINATION BY MS ARRABALDE

[10.31 AM]

PN4357

MS ARRABALDE: Hi Ms Llewellyn. My name is Isabelle Arrabalde and I'm appearing as an individual in this matter. I've just got a couple of questions to ask you about the role of the responsible person. So at clause 89 you say that your room leaders are paid at Level 4 and one of the room leaders is the responsible person. So this person gets paid the same as all the other room leaders?---Correct.

PN4358

And is that fair?---I think it's - yes, for consistency. Yes.

PN4359

So just nobody would get paid it because no one else gets paid it at the moment?---That's right. They're all consistent - - -

PN4360

Or gets paid any extra. Yes, and does your centre assign any responsibility to the role of educator - sorry, to the role of responsible person?---Sorry, what was that?

PN4361

Does your centre give any responsibility to the responsible person?---What do you mean by that?

*** NICOLE LOUISE LLEWELLYN

XXN MS ARRABALDE

PN4362

Do they have any - so if the responsible person is the room leader do they do anything different to any of the other room leaders that are working there at the

time?---No, they still manager their team, they still manage people, they still care and educate the children.

PN4363

So the responsible person doesn't have a role at your centre?---It's required when I'm not there as the approved provider.

PN4364

Okay, so at clause 91 you talk about when you're sick and you have other people fill in as the responsible person. So who would be in charge in this instance?---Every one of the room leaders.

PN4365

So a responsible person would be in charge, and wouldn't they have a role when they're the responsible person? Wouldn't there be any extra duties involved in that?---Not generally, no. They'd still - like I said they'd still be managing people, which they do every day. They'd still be ensuring the care and education of the children, ensuring the safety of the service.

PN4366

So what happens if first thing in the morning a staff member has called in sick, would the responsible person have to deal with potentially being understaffed first thing in the morning?---No.

PN4367

So they would - you would assume - I assume you'd have a responsible person there first thing in the morning and then if - - -?---I do.

PN4368

If you have two staff members and the other one doesn't turn up or is sick, so the responsible person would have to deal with the situation then?---No. All the staff contact me if they're unwell and unable to come in. If a person's on open and they're unable to come in then I will get coverage for them or I will do the shift myself.

PN4369

But do the staff who come in to cover for the staff who are not there come straight away?---They can.

PN4370

Or in time?---Yes.

PN4371

Always?---Definitely. Yes, and if they don't then I'm there.

PN4372

So you're never in a situation where you might have somebody, the responsible person potentially have to deal with a situation where you don't have adequate staff and the children are arriving?---No, never.

*** NICOLE LOUISE LLEWELLYN

XXN MS ARRABALDE

PN4373

Okay, so what happens if you have your staff arrive in the morning and they do their daily inspection of the playground and they find say like drug paraphernalia in your playground, who would deal with that?---That's part of their opening checklist and they would deal with that depending on what it is and the circumstances, they would dispose of it in the appropriate manner as per policy or they could contact me if it's of more serious nature.

PN4374

But who would deal with that immediately? Would the responsible person have anything to do with that?---Both of the staff on open would deal with it.

PN4375

But the responsible person would have the ultimate responsibility for that?---That - I would say they would have joint responsibility.

PN4376

So at your centre the responsible person doesn't actually make any independent decisions?---No, they work as a team.

PN4377

Thank you. I would also like to ask you some questions about your educational leader?---Yes.

PN4378

So at clause 93 you talk about your educational leader being employed full-time. How many hours would that be?---Thirty eight.

PN4379

So in the 38 hours that she works per week what kind of role does she have, what does she do?---She supports the educators to do their program planning. She is a mentor. She does room inspections. She ensures that the program plans are up-to-date, that the observations and learning stories are educational and of a high level, and any training that may need - she may need to do with the staff to ensure that their observations are - to name a few things.

PN4380

Okay, so the role of an educational leader is different to simply designing and implementing an educational program?---Definitely.

PN4381

And you believe that the role of the educational leader is significant?---It's important to an organise - important to a centre and to ensure its success, yes.

*** NICOLE LOUISE LLEWELLYN

XXN MS ARRABALDE

PN4382

And at clause 96 you talk about people who might have multiple roles within a centre. Considering your educational leader has a full-time job simply being the educational leader, if someone like a director takes on the role of being educational leader in addition to their director duties, don't you think that should be paid?---I couldn't comment because I've never run by that structure.

PN4383

But you do agree that the role of educational leader is significant and involves significant time and is a different job to simply being an educator?---Definitely, yes.

PN4384

Thank you.

PN4385

DEPUTY PRESIDENT CLANCY: Thank you. Anything arising?

RE-EXAMINATION BY MS WHISH

[10.37 AM]

PN4386

MS WHISH: Ms Llewellyn, I just have one question for you. Mr Bull asked about your educational leader being classified at a Level 5 under the Children's Services Award. Can you explain why you have classified your educational leader as a Level 5?---Because that's a diploma qualified with additional duties.

PN4387

Thank you.

PN4388

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

<THE WITNESS WITHDREW

[10.37 AM]

PN4389

MS SAUNDERS: Yes, the next witness is Ms Mravunac. She's just being collected.

PN4390

DEPUTY PRESIDENT CLANCY: Thank you.

PN4391

MS SAUNDERS: I'm sorry, a minor issue with the reply statement that my friend has just raised. Yes, I call Ms Mravunac.

PN4392

DEPUTY PRESIDENT CLANCY: Thank you.

PN4393

THE ASSOCIATE: Ms Mravunac, please state your full name and address?

PN4394

MS A MRAVUNAC: My name is Ana Mravunac. Address is (address supplied).

<ANA MRAVUNAC, AFFIRMED

[10.39 AM]

*** NICOLE LOUISE LLEWELLYN

RXN MS WHISH

PN4395

MS SAUNDERS: Ms Mravunac, could you state your full name for the record please?---Ana Mravunac.

PN4396

I'm terribly sorry, and your address?---(Address supplied)

PN4397

You've prepared two statements in these proceedings?---Yes I have.

PN4398

Do you have the first statement from 15 March in front of you?---I do.

PN4399

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

PN4400

I tender the statement.

PN4401

DEPUTY PRESIDENT CLANCY: Thank you. I'll mark the statement of Ana Mravunac that is dated 15 March as exhibit 41.

**EXHIBIT #41 WITNESS STATEMENT OF ANA MRAVUNAC
DATED 15 MARCH**

PN4402

MS SAUNDERS: And you've also prepared a statement in reply dated 29 April 2019?---Yes.

PN4403

And do you have that with you?---Yes I do.

PN4404

Before I deal with that, your Honours, Commissioner, there's parts of that statement that are no longer pressed. If I can go to paragraph 5.

PN4405

DEPUTY PRESIDENT CLANCY: Five?

PN4406

MS SAUNDERS: Yes.

*** NICOLE LOUISE LLEWELLYN

RXN MS WHISH

*** ANA MRAVUNAC

XN MS SAUNDERS

PN4407

DEPUTY PRESIDENT CLANCY: Yes.

PN4408

MS SAUNDERS: The first sentence should just be removed.

PN4409

DEPUTY PRESIDENT CLANCY: Yes.

PN4410

MS SAUNDERS: The paragraph 6, the first sentence.

PN4411

DEPUTY PRESIDENT CLANCY: Yes.

PN4412

MS SAUNDERS: Paragraph 7.

PN4413

DEPUTY PRESIDENT CLANCY: The first sentence in - - -

PN4414

MS SAUNDERS: The first sentence.

PN4415

DEPUTY PRESIDENT CLANCY: Yes.

PN4416

MS SAUNDERS: And the third sentence and the words 'once again'.

PN4417

DEPUTY PRESIDENT CLANCY: Yes.

PN4418

MS SAUNDERS: Paragraph 8 in its entirety.

PN4419

DEPUTY PRESIDENT CLANCY: Yes.

PN4420

MS SAUNDERS: And paragraph 9 the first sentence. The reason being the Smylie statement is not in.

PN4421

Could I get you to have a look at paragraph 9?---Yes. Of the first?

PN4422

Of your reply statement?---Yes. Yes.

PN4423

In the second sentence there when you say 'Whilst I agree other directors may not have these qualifications' what do you mean by 'these qualifications'?---The ECT qualification.

*** ANA MRAVUNAC

XN MS SAUNDERS

PN4424

Thank you. I tender the statement - I'm terribly sorry. Is everything in that statement true and correct to the best of your knowledge?---Yes.

PN4425

Yes, I tender the statement.

PN4426

DEPUTY PRESIDENT CLANCY: Thank you. I will mark the statement in reply of Ana Mravunac dated 29 April 2019 as exhibit 42.

**EXHIBIT #42 STATEMENT IN REPLY OF ANA MRAVUNAC
DATED 29/04/2019 WITH AMENDMENTS**

PN4427

MS SAUNDERS: Thank you, I have nothing further.

PN4428

DEPUTY PRESIDENT CLANCY: Thank you.

CROSS-EXAMINATION BY MR ARNDT

[10.43 AM]

PN4429

MR ARNDT: Good morning, Ms Mravunac. My name is Julian Arndt. I'm a solicitor working for or representing some employers in these proceedings and I have a few questions for you?---Okay.

PN4430

You're the director at San Marino?---Correct.

PN4431

Is that correct?---Yes.

PN4432

I'm going to ask you some questions about your staff there. I understand you're the only teacher?---Yes.

PN4433

And you actually teach?---Yes I do now.

PN4434

You deliver an educational program?---Yes.

PN4435

You're also the teacher for the purposes of satisfying the ratios?---Correct.

PN4436

How many other employees are at the centre?---There's six of us - or seven if you include the casual part-timer.

*** ANA MRAVUNAC

XXN MR ARNDT

PN4437

And so apart from you?---Yes.

PN4438

Does everyone else have Cert IIIs or diplomas?---Yes.

PN4439

And you call those people educators?---Yes.

PN4440

If I use the word 'educator' that's what I mean?---Yes.

PN4441

So that would mean that apart from you, all the people in your centre who might undertake the role of responsible person, they're all educators?---Yes.

PN4442

As in they've got Cert IIIs or diplomas?---Correct.

PN4443

And you're not the educational leader?---No I'm not.

PN4444

So I'd also understand that the educational leader would have a Cert III or diploma?---Yes.

PN4445

Now you started in the industry in the year 2000?---Yes, 2000. Two thousand - yes, 2000.

PN4446

And you got your Bachelor's degree in 2002?---Yes.

PN4447

Can I take you to eight of your first statement?---Mm-hm.

PN4448

You say that your 'tertiary teaching qualifications and experience allow you to fulfil the following duties to a higher degree of competency'. I just want to clarify what do you mean by 'higher'? Do you mean - and I'll just finish the question before you answer?---Yes.

PN4449

Do you mean higher for you than if you didn't have the degree?---I think as an ECT there are higher expectations of you. So in that sense, yes, it's of a higher quality or an expectation that I would fulfil these roles.

*** ANA MRAVUNAC

XXN MR ARNDT

PN4450

Perhaps I'll rephrase the question. Do you mean that generally? Do you mean that ECTs with Bachelor degrees are more competent in the things that you've

listed or do you mean it for you, you perform these things to a higher degree of competency because you have a degree as opposed to having a diploma or a certificate?---Well, I could probably only speak for myself when it comes to this. I'd probably be - you know, I think that I can perform these at a higher - - -

PN4451

That's fair enough?---Yes.

PN4452

Can I take you to 8.4?---Yes.

PN4453

And you say there that it's your job or you're required to ensure that the centre is accountable for state, national regulations and law?---Mm-hm.

PN4454

It's true that the National Quality Standard wasn't around when you did your degree?---Mm-hm.

PN4455

And the framework wasn't in place yet?---Mm-hm.

PN4456

That came later?---Yes.

PN4457

Can I take you to 8.10. What's a Net Promoter Score?---That's something that G8 send out to the families to give us feedback and then there's a score associated with parents' feedback, you know, where you can improve or what the feedback is.

PN4458

So can I put to you something that - and this is based on my research as to what that is, and you can disagree, agree or say you don't know?---Yes.

PN4459

So my understanding is the Net Promoter Score measures customer experience and predicts business growth, this proven metric transformed the business - I withdraw that. This metric provides core measurement for customer experience, management programs around the world. Is that what you understand it to be?---There's a lot of words there but basically it seems like or sounds like, yes.

PN4460

But you didn't learn about that in your degree though, did you?---No.

PN4461

How does your degree assist you with encouraging family input into the Net Promoter Score?---Well, specifically to that it probably wouldn't.

*** ANA MRAVUNAC

XXN MR ARNDT

PN4462

Okay, what's the Quality Improvement Plan that you're talking about at 8.10?---That's the ACECQA accreditation document that you need to supply when you're doing assessment rating.

PN4463

And again that's not something that you would have specifically dealt with in your degree?---No, not during that time.

PN4464

Now can I take you to 8.13. As I read 8.8 and 8.13, 8.13 is a subparagraph of eight?---Yes.

PN4465

So you kind of have to read them together and as I read them together I understand the effect of your evidence at eight and 8.13 is that your tertiary qualifications and experience allow you to a higher degree of competency to be available to work contact time in the rooms as required. Now you don't mean that your degrees allows you to be more available, do you?---No.

PN4466

You're not any more available because you have a degree than if you - - ?---No.

PN4467

You develop programming for the centre now, don't you?---Yes.

PN4468

And you make sure that programming is implemented?---Yes.

PN4469

You make decisions about the educational direction of the centre?---(No audible reply)

PN4470

You make sure that educational program is planned properly?---Yes.

PN4471

It's assessed properly?---Yes.

PN4472

And you have the final say in any decision about the educational program, don't you?---Yes, correct.

PN4473

It's fair to say you've got the best background in programming in the centre in your opinion?---Yes.

PN4474

And your evidence is that the staff look to you for leadership in respect of programming; that's your evidence?---Yes.

*** ANA MRAVUNAC

XXN MR ARNDT

PN4475

In your view do you build and promote a positive organisational culture at the centre?---I would say so, yes.

PN4476

Do you build a professional learning community?---I would hope so, yes.

PN4477

It's your role as director, isn't it?---Yes.

PN4478

Can I take you to 11 and 12 of your statement and I'll just let you read it for a moment?---Yes. Okay.

PN4479

You mentor the educational leader in the centre?---Sorry?

PN4480

You mentor the educational leader?---Yes I do.

PN4481

You answer their questions, you assist them, give them direction in respect of programming?---Correct. Yes.

PN4482

And ultimately you're responsible for educational programming?---Correct.

PN4483

It's a fair summation of your evidence, isn't it, that while you don't have the title of educational leader you're the driving force?---Yes.

PN4484

Behind educational leadership at the centre?---Yes.

PN4485

You're also the responsible person at the centre when you're present?---Yes I am.

PN4486

But you're not present at the centre all the time, are you?---No.

PN4487

And when you aren't at the centre, other people are responsible persons?---Correct.

PN4488

Do you ever get calls from those people when you're not at the centre?---I do.

*** ANA MRAVUNAC

XXN MR ARNDT

PN4489

How often?---That's a hard question. Sometimes - some weeks or some days it's more, others it's not. When I'm - for example if I'm on leave I might get a phone

call once or twice in my leave. On any given week I might get a phone call in the morning or afternoon if someone has called in sick or there's a parent issue or anything like that. So it varies. Sometimes it's one a week, sometimes it's - it can be five.

PN4490

So just to go back to the example you said if someone has called in sick, do they call you because they need your assistance to do something?---They call me to tell me that someone is away and, you know, what the next step is. Whether it is to find a casual, whether I will cover on the floor, because I will step out onto the floor if it's viable for me to do so rather than organise a casual, for that consistency of care.

PN4491

And so is it just a matter of giving you the heads up or do you sometimes - - - ?---Yes.

PN4492

Sometimes do you have to do something, maybe - - -?---Sometimes I will need to make phone calls for casuals or - - -

PN4493

So either to find other staff members?---Yes. Yes.

PN4494

Or yourself to come in?---Yes.

PN4495

Which I guess is finding yourself to come in and work?---Yes. Yes, that's right.

PN4496

If there's anything serious happens they'll call you as well?---A hundred per cent yes.

PN4497

And that's your expectation?---Yes.

PN4498

So it's probably fair to say that when you're not at the centre even though you're not technically the responsible person, they're going to call you before making any decisions about the centre?---Yes.

PN4499

They're not going to deal with a complaint without you?---No.

PN4500

They wouldn't implement a change to your policies or anything like that?---No.

*** ANA MRAVUNAC

XXN MR ARNDT

PN4501

And they wouldn't have a meeting with a parent, would they?---Not a formal meeting. They may have an informal meeting if a parent has asked a question regarding their child's day. But not a formal meeting, no.

PN4502

But you go to all meetings?---Yes.

PN4503

With parents?---Yes.

PN4504

Do you?---Yes.

PN4505

All your staff are required to ensure a safe environment is maintained?---Correct.

PN4506

Regardless of their role?---Yes.

PN4507

That's the most important thing isn't it?---Yes.

PN4508

I'll just take you back to eight. That's your duties as director, what's outlined at eight. Is that right?---Sorry?

PN4509

What's outlined at eight and the subparagraphs?---Yes.

PN4510

They're your duties as director aren't they?---Yes. Yes.

PN4511

And all your duties as a responsible person are included in that list aren't they?---Yes.

PN4512

Just one moment. Thank you very much, that's all my questions?---Thank you.

PN4513

DEPUTY PRESIDENT CLANCY: Ms Arrabalde?

PN4514

MS ARRABALDE: Nothing.

PN4515

DEPUTY PRESIDENT CLANCY: Yes, Mr Bull? Yes. No, Ms Arrabalde doesn't have any so it's - - -

CROSS-EXAMINATION BY MR BULL

[10.54 AM]

*** ANA MRAVUNAC

XXN MR BULL

PN4516

MR BULL: Okay, just briefly one or two questions.

PN4517

Ms Mravunac, is that - - -?---Close enough.

PN4518

Close enough. Sorry about that. You're the director at your centre?---I am.

PN4519

And you currently don't - you're not the designated educational leader?---No I'm not.

PN4520

But you have been?---I have, yes.

PN4521

And that was a position which carried with it some duties and responsibility and work?---Well, yes.

PN4522

And currently as director you are effectively supervising the person who's the designated educational leader in your sector - in your centre, rather?---Yes.

PN4523

And I think you've indicated that you take some time to mentor?---Yes.

PN4524

And develop this person?---Yes.

PN4525

Because of your qualifications and experience?---Correct.

PN4526

The person you've designated benefits from your skills and expertise?---Yes.

PN4527

And that's an indication that being an effective educational leader does involve work in addition to duties that that person would do according to their award classification?---Yes.

PN4528

You'd agree with that proposition?---Yes I would.

PN4529

Okay, thank you.

PN4530

MS SAUNDERS: I've no re-examination.

*** ANA MRAVUNAC

XXN MR BULL

PN4531

DEPUTY PRESIDENT CLANCY: Thank you.

PN4532

Thank you, Ms Mravunac, for your evidence. You can step down from the witness box?---Okay. Thank you.

PN4533

And you're excused from further attendance?---Thank you.

<THE WITNESS WITHDREW

[10.56 AM]

PN4534

DEPUTY PRESIDENT CLANCY: So we understand the next witness is by phone. We can step outside and wait for the line to be established. Thank you.

SHORT ADJOURNMENT

[10.56 AM]

RESUMED

[11.05 AM]

PN4535

MS WHISH: Ms Hands, it's Sophie Whish, here, on behalf of the Australian Childcare Alliance, can you hear me?

PN4536

MS HANDS: I can hear you.

PN4537

MS WHISH: Thank you. If at any time you can't hear me or anyone else asking you questions, please just let us know?

PN4538

MS HANDS: Okay, thank you.

PN4539

MS WHISH: The Associate will now go through your oath with you and then I'll ask you some questions.

PN4540

MS HANDS: Okay.

<ALEXANDRA HANDS, SWORN

[11.05 AM]

EXAMINATION-IN-CHIEF BY MS WHISH

[11.05 AM]

PN4541

DEPUTY PRESIDENT CLANCY: Could I just remind everybody that when someone is being sworn in or making an affirmation that there should be silence in the courtroom, thank you. Thank you, yes, Ms Whish?

*** ALEXANDRA HANDS

XN MS WHISH

PN4542

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

PN4543

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

PN4544

And do you have a copy of that statement in front of you?---I do.

PN4545

Are there any changes you would like to make to that statement?---No.

PN4546

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

PN4547

I seek to tender that statement.

PN4548

DEPUTY PRESIDENT CLANCY: Thank you. I'll mark the witness statement of Alexandra Hands, dated 12 March 2019 as exhibit 43.

**EXHIBIT #43 STATEMENT OF ALEXANDRA HANDS DATED
12/03/2019**

PN4549

MS WHISH: Ms Hands, you'll now be asked some questions from union representatives?---Thank you.

CROSS-EXAMINATION BY MS SAUNDERS

[11.07 AM]

PN4550

MS SAUNDERS: Good morning, Ms Hands. My name is Saunders, I'm from the Independent Education Union. If you have any difficulty hearing me at any point, please just let us know?---Thank you.

PN4551

I see in your statement that you have an advanced certificate in early childhood education?---That's correct.

PN4552

And an advanced certificate, that's now known as a certificate IV, is that right?---I really don't know that there is even an equivalent, so it's very old. It would be, you know, 43 years ago that I got the certificate and, of course, it's – everything, all the diplomas have all changed.

PN4553

Of course. Is it, as you understand it, between a certificate III and a diploma?---It would be equivalent to an approved, you know, diploma.

*** ALEXANDRA HANDS

XXN MS SAUNDERS

PN4554

And when did you get that qualification?---Forty-three years ago.

PN4555

Forty-three years ago, sure?---Yes.

PN4556

You operate two long day care centres?---That's correct.

PN4557

One's in Unley, which is in the Adelaide CBD?---That's correct.

PN4558

Opening hours, 7 a.m. to 6.30 p.m.?---Yes.

PN4559

And you have 55 children?---Yes.

PN4560

Sixteen staff at the Unley centre?---Yes.

PN4561

And three of those are early childhood teachers?---Yes.

PN4562

Are they full-time?---No.

PN4563

I see. So you have enough teachers to keep you at the ratio level, but not above?---We have one full-time teacher, and two part-time teachers.

PN4564

What hours do the part-time teachers work?---8.30 till – well, it changes, various on the roster, but usually 8.30 till 5.30 - - -

PN4565

How many days a week?---Or 8.00 till 5.00.

PN4566

Sorry, how many days a week?---Three. Three.

PN4567

Three, thank you. And are most of the staff at Unley, part-time?---No, we have some full-time. We have eight full-time.

PN4568

And the rest are part-time?---Yes.

PN4569

And then there's the Daws Road Centre?---Yes.

*** ALEXANDRA HANDS

XXN MS SAUNDERS

PN4570

That's about 30 minutes away from the CBD?---That's correct.

PN4571

And that operates, 6.30 to 6.30?---That's correct.

PN4572

It's authorised for 60 children?---Yes.

PN4573

And do you have two full-time teachers there?---Yes.

PN4574

And another 20 staff?---Yes.

PN4575

Your part-time staff, Ms Hands, are they employed on minimum hours contracts?---No.

PN4576

You're familiar with that term, though?---Yes. Yes.

PN4577

It's fairly clear?---We don't – yes. No.

PN4578

Why don't you use those contracts?---Yes, just don't have the need to. Like, everybody works, yes, 35 to 38 hours a week.

PN4579

Sure. I probably should have asked, first. What do you understand minimum hours contracts to mean?---What I understand is that they can sign up for a minimum of 15 hours per week.

PN4580

And then they usually work much more than that, closer to - - -?---That's right.

PN4581

It just gives centres - - -?---We just go by the award.

PN4582

Sure. The minimum hours contracts just gives centres the ability to drop people's hours if they need to?---Yes.

PN4583

Thank you. Have you - - -?---But we go – we've never had that problem.

PN4584

Yes. You just go by the award standard, instead?---Yes.

*** ALEXANDRA HANDS

XXN MS SAUNDERS

PN4585

You pay award rates, mostly?---I do. There are a few staff that are above award wages.

PN4586

Part of the reason you've increased some staff's wages is to retain them?---That's correct.

PN4587

There's a shortage of suitable, qualified early childcare workers in Adelaide?---There is.

PN4588

Higher wages help you retain staff?---Well, the positions that they were offered at other centres included above award wage, so I met that to retain them.

PN4589

Yes, and good working conditions also help you retain staff, don't they?---Hang on, I'm sorry. Sorry.

PN4590

Sorry, Ms Hands, are you getting some background noise?---There is. It should stop in a second, sorry.

PN4591

No worries. I guess - - -?---Yes.

PN4592

Are you on a cruise ship?---I am.

PN4593

We'll just wait for the - - -?---The other side of the cruise ship was – we had no 4G to pick up - - -

PN4594

No worries?---In the – the room, yes, so - - -

PN4595

Okay?---I can still hear you, if you can hear me.

PN4596

I think we'll press on if the Bench is - - -?---It's all – yes, it's finished now.

PN4597

Thank you?---It's finished now.

PN4598

DEPUTY PRESIDENT CLANCY: As long as it's not a call for the life boats.

*** ALEXANDRA HANDS

XXN MS SAUNDERS

PN4599

MS SAUNDERS: We'll get you through this as quickly as possible if there is. Good conditions help you retain staff?---Yes. I've got lots of long term staff, so – yes.

PN4600

And part of – sorry, I should make the question clearer. Part of what makes people want to stay with you, is not just wages but good working conditions?---Well, they've got the good working conditions because they've stayed with me for a long time.

PN4601

Yes, and that's important for your business, having stability in your staffing?---Yes.

PN4602

It's important for the children, as well?---Yes.

PN4603

It helps you provide continuity of care?---Yes.

PN4604

I just want to ask you about the ACA's hours of work claim?---Mm-hm.

PN4605

You understand the span of hours in the ordinary award is currently 6.30 to 6.30?---I do.

PN4606

And that the ACA wants to expand that to 7.30 at night?---That's correct.

PN4607

At your centre, you currently run staggered shifts across the day?---We do.

PN4608

And there's an opening shift that starts at 6.30?---That's correct.

PN4609

And then the closing shift, which ends at 6.30 at night?---That's correct.

PN4610

You rotate the closing shift?---We do.

PN4611

How frequently?---Every day.

PN4612

Okay?---So, yes, usually the person that closes on a Monday will close every Monday. The same person that closes every Tuesday, will close every Tuesday, so that it's a different person.

*** ALEXANDRA HANDS

XXN MS SAUNDERS

PN4613

Yes, you don't want to have someone working close all week, do you?---No.

PN4614

It's bad for their work/life balance?---That's correct.

PN4615

Because 6.30 is quite a late finish?---Well, yes. Most people are working past 6.30.

PN4616

No. It's not standard working hours, is it?---Mm-hm.

PN4617

Sorry, I didn't quite catch that?---Sorry. It is – yes, well, it is for me.

PN4618

Sure. Most of your staff are female?---Yes.

PN4619

Any of them quite young?---Well, the youngest is 20.

PN4620

A lot of them have families of their own?---Nearly all of them have families of their own.

PN4621

A lot of those families have very young children, don't they?---No, most of mine have teenagers.

PN4622

Part of the reason you support the ACA claim is that it would make it cheaper for you to roster your workers later at night?---Not – well, it – no, part of the claim is to help the parents when they need to finish their work, so that they can then come and collect their children a bit later.

PN4623

Because you could keep the centre open later?---Well, then I could keep – if I kept the centre open then I would be paying more, which would then put up the fees.

PN4624

But you wouldn't pay your staff overtime, would you? You wouldn't have to if the claim was approved, I know?---That's correct, I wouldn't have to if the award was till 7.30.

PN4625

So it would make it cheaper for you to ask your staff to work later?---Yes.

*** ALEXANDRA HANDS

XXN MS SAUNDERS

PN4626

Can you just have a look at paragraph 39 of your statement where you've done some costings?---Yes.

PN4627

That's for - - -?---That's correct.

PN4628

So that's currently what you would pay if you rostered someone to finish at 7.30 at night?---Mm-hm.

PN4629

You understand you could currently roster someone to start at 11.30 and finish at 7.30, but you'd have to pay overtime rates for that last hour?---That's correct.

PN4630

Sure. You wouldn't roster anyone to work past the closing time of the centre, just in case a parent was late, would you?---No.

PN4631

It's not an efficient way to roster staff?---No.

PN4632

Parents aren't late, that frequently?---One or two times a week. Well, depending on which centre and, you know, what circumstances. It's not something that you take into the – you know, take into consideration when you're doing your rostering.

PN4633

That's right. And they're not as much as an hour late, all the time, are they?---No.

PN4634

It's usually more between one and 15 minutes?---Yes. Sometimes, you know, it can go up to the half an hour, but usually it's the 15 minutes.

PN4635

Sure. Have you worked out how much it would cost you per year to keep the centre open till 7.30 at night?---No, I have not.

PN4636

If I told you, at \$80 it would cost you \$20,000 a year for that hour - - -?---That would probably be correct.

PN4637

But that's the full wage component. That includes their ordinary hours, as well, doesn't it?---To – for – can you rephrase that?

PN4638

Yes. So, if you rostered someone 11.30 till 7.30, you'd still have to pay them for the eight hours, wouldn't you?---Yes.

*** ALEXANDRA HANDS

XXN MS SAUNDERS

PN4639

Yes, so the only additional cost is the hour at half time, the overtime component?---Yes.

PN4640

Have you worked out how much of your costings - - -?---No.

PN4641

No. If I told you it was \$27, that sounds about right?---Per?

PN4642

Per day?---Day?

PN4643

Yes?---That would probably be correct.

PN4644

So if you did that all day, every day, it's an additional \$7,000 a year to pay overtime?---That would be correct, yes.

PN4645

You don't have all 55 of your children there at 6.30, do you?---No.

PN4646

Most of the children are there in the middle of the day?---Correct.

PN4647

It tapers off after about 3 o'clock in the afternoon?---No, 5.30, 6.00.

PN4648

Sure. You have your teachers rostered in the middle of the day?---Yes.

PN4649

Because their role is to specifically deliver an educational program?---Yes.

PN4650

They're more expensive than the educators?---They are.

PN4651

It's most efficient to have them rostered when the most children are there?---Yes.

PN4652

And even if you were open till 7.30, you would still roster teachers in the middle of the day, wouldn't you?---No, our teacher closes the centre, one night a week, both teachers at different nights, so I have no even considered that. But I would have to have a look at that.

PN4653

You haven't given that thought before?---No.

*** ALEXANDRA HANDS

XXN MS SAUNDERS

PN4654

You usually roster your teachers, apart from those two nights a week, you usually roster your teachers in the middle of the day?---Well, they will do an 8.00 to 5.00 shift, or a – you know, 9.00 till 5.30, 6.00.

PN4655

And that wouldn't change, would it?---No. Well - - -

PN4656

Can I ask you now about the ACA - - -?---They could be - - -

PN4657

Sorry?---They could be given the option to do a later shift if they prefer.

PN4658

But you wouldn't - - -?---Some of them actually quite like doing it.

PN4659

You wouldn't make them do it though, would you?---I wouldn't make anyone do anything.

PN4660

That does take me to the next ACA claim about rostering, changing the notice period for altering someone's roster. Can you just explain to me what you understand that claim to be?---That they are finding it very difficult to give seven days' notice with the rostering.

PN4661

What do you understand the change sought to the award to be?---I'm not – I'm not – well, I'll - - -

PN4662

Sorry, don't answer that?---Yes.

PN4663

I'll withdraw the question. I'll ask it in a less confusing way?---Right.

PN4664

What's your current understanding of what the Children's Services Award requires if you want to change a permanent worker's roster?---Okay, well, I'm not really sure about that. What we do, I can tell you what we do - - -

PN4665

Do you have any understanding of what the Children's Services Award requires?---Of course I do.

PN4666

Just talk to us about that understanding. It's not a test. It doesn't matter if you're technically wrong. I just - - -?---We have to give seven days' - - -

*** ALEXANDRA HANDS

XXN MS SAUNDERS

PN4667

Want to know what your currently think it is?---Seven days' notice, and then any changes, by mutual consent.

PN4668

Are there any other exceptions to that?---Not that I'm aware of.

PN4669

And you understand that ACA wants to change that rostering requirement?---Yes.

PN4670

And you support that change, that's why you're giving evidence?---I do.

PN4671

What do you want to change it to?---Like, the week – you know, during that week for the next week, and you know, up until the Friday of – before the following week. I might have a staff come to me on a Thursday and say, next Tuesday I've got to take my child to a dentist. And straight away, we have to change it. But we're not really giving seven days' notice.

PN4672

I see, so it's when employees request changes?---A lot of the time, yes.

PN4673

Is that the change you want, to be able to accommodate that?---Yes. Yes, to accommodate all of it. Sometimes they'll make the changes – well, like, they'll ring me and say, I've got to go to an appointment on Friday, I have asked so-and-so to work. We're going to swap shifts. Is that okay?

PN4674

So both employees have agreed?---And they do it, themselves.

PN4675

Yes, so - - -?---Yes, they do it, themselves.

PN4676

And you think the award doesn't currently permit that?---Well, with seven – if I have to give seven days' notice then – then that is not what's happening, because it gets changed constantly.

PN4677

Do you want to be able to change an employee's shifts without their agreement?---No. If I had to, I would - - -

PN4678

Well, is it a yes or a not, Ms Hands?---Yes, if I had to.

PN4679

All right, so the situation is this. Your employees work - - -?---Just to make - - -

*** ALEXANDRA HANDS

XXN MS SAUNDERS

PN4680

Sorry, I didn't mean to interrupt?---I was just going to say, if I had to, to make the centre legal, then I would have to.

PN4681

You roster above ratios, where you can?---Yes.

PN4682

But often, you're at the minimum ratio level?---No, I wouldn't say that we're at the minimum ratio level, at all. Most of the time we exceed that.

PN4683

Because there's always a risk that someone's going to call in sick, unexpectedly?---Or be late.

PN4684

Yes. You need to build in a buffer?---That's correct.

PN4685

And your employees work rotating shifts? We talked about this before?---(No audible reply)

PN4686

Sorry, do your employees work rotating shifts? Their start and finish times might change, week to week?---Yes.

PN4687

You release their roster, usually a week in advance?---Yes.

PN4688

You tell them what shifts they will working for the next week?---And any considerations that they have requested.

PN4689

Yes, of course. Usually the part-time workers, they will work the same days?---No. No, not always, no.

PN4690

So their days can change, week to week?---Yes.

PN4691

And their start and finish times will change, week to week?---Yes.

PN4692

You try and do that on a Monday, the week before?---Yes, the Friday, the – like, you know, eight days before, ten days before the Friday.

PN4693

Sure. Okay. Sometimes you're not able to?---Well, we do it but it can change.

*** ALEXANDRA HANDS

XXN MS SAUNDERS

PN4694

Okay, so sometimes you might tell an employee, say, the Wednesday before the next week, that you've had to change their shifts?---Yes, or ask them, is it okay if you work, da-da-da to da-da-da, next Thursday, to - - -

PN4695

And what would you do if they said no, I can't do that, I've got an appointment?---Well, that's fine. And we find someone else who can.

PN4696

Okay. You don't need to have the power to force them to work that shift, do you?---Well, if someone was consistently not being able to do anything but work on a shift that they were told ten days ago, and not – but then other people have to change for their shifts, that doesn't seem very fair either.

PN4697

That's not quite what I asked. You don't need the ability to – ten days is a different thing – you don't need the ability to force someone to change their shifts, with three days' notice, do you?---Well, legally, I might.

PN4698

Your staff are pretty accommodating when you ask them to change?---Very, yes.

PN4699

Your management team can also step in to fill gaps?---Yes.

PN4700

Do you have casual employees?---We do.

PN4701

That's another way you can fill gaps if they're created?---Yes.

PN4702

And that's, in practice, what you do?---Yes.

PN4703

And you've never operated below the legally required ratios, have you?---No.

PN4704

I just want to ask you about a hypothetical, Ms Hands. There's a couple of propositions I just need you to assume to have happened, and then I'll ask you a question. Say, you've got a part-time worker. You've given them their roster the Friday before, you know, ten days before. You've told them they're working Monday, Tuesday and Wednesday?---Yes.

PN4705

The week comes along, that worker works on Monday, we get to Tuesday morning. Another person is rostered to open the centre at 6.30. Is this making sense, so far?---Yes.

*** ALEXANDRA HANDS

XXN MS SAUNDERS

PN4706

That worker falls ill and they call you to let you know they won't be able to work at 5.30 in the morning?---Mm-hm.

PN4707

Do you think it's reasonable to call that first part-time worker, who's not rostered to work on Tuesday, do you think it's reasonable to call them at 5.30 in the morning and tell them - not ask them, tell them that they have to change their shift; they have to come in that day at 6.30?---I don't think we would do it like that.

PN4708

Do you think - - -?---We would say, "Are you available to come in."

PN4709

I'm not asking what you - - -?---Even if it was law, we would still ask. We wouldn't - - -

PN4710

I'm not asking you what you would do. I'm asking if you think it would be fair to do what I just put to you?---Well, someone has got to do it. Someone has got to be there.

PN4711

You think that's reasonable?---We've got to comply by the law.

PN4712

You understand your staff have lives of their own outside the centre?---We have to comply by the law.

PN4713

That's not my question, Ms Hands. You understand your staff have lives of their own outside the centre?---I do.

PN4714

They have got families of their own?---I do, but we have to comply by the law.

PN4715

You can't predict when someone is going to call in sick?---No, I cannot.

PN4716

Do you think it's reasonable to require your employees to be on call every day of the week just in case you need them?---They're not all on call. They all help each other and they support each other.

PN4717

That's not what I asked, Ms Hands?---And they - - -

PN4718

That's not what I asked?---Can you repeat the question, please.

*** ALEXANDRA HANDS

XXN MS SAUNDERS

PN4719

DEPUTY PRESIDENT CLANCY: I think, Ms Saunders, you're making the proposition that if there is no one else available to her, can she direct the person. That's how I understand the proposition.

PN4720

MS SAUNDERS: It's broader than that, Deputy President, because the ACA claim goes further - - -

PN4721

DEPUTY PRESIDENT CLANCY: I know what the ACA claim - her evidence is she will ring up her employees.

PN4722

MS SAUNDERS: Yes.

PN4723

DEPUTY PRESIDENT CLANCY: Now, if you want to say, you know, "At large is that fair?" that's a different question to, "Having gone through all your employees, you come down to the last one and you've got to actually direct one of your employees." That's a slightly different proposition. I mean, that's how I'm interpreting the evidence.

PN4724

MS SAUNDERS: Her evidence is she thinks it would be fair to do it as a last resort. I accept that, but that's not the extent of the claim. That's not what I - - -

PN4725

DEPUTY PRESIDENT CLANCY: Well, you can make submissions on the claim, but her evidence - anyway, that's how I'm interpreting her evidence.

PN4726

MS SAUNDERS: I understand. This goes less to the need for the claim and to more whether it's a fair and reasonable minimum safety net of conditions.

PN4727

DEPUTY PRESIDENT CLANCY: Yes, and you will no doubt make submissions on that.

PN4728

MS SAUNDERS: Yes.

PN4729

Ms Hands, would you pay your staff any more if you did require them to be permanently on call?---Why would - I don't know where you're going with that question.

PN4730

Sorry, you would?---No, I said I don't understand your question.

*** ALEXANDRA HANDS

XXN MS SAUNDERS

PN4731

Okay. When I say "on call" I mean required to - I accept you would only do it as a last resort, but required to at no notice come in and work. Does that make sense?---At no notice come in to work.

PN4732

Yes, you call them - - -?---And open the centre at 6 o'clock in the morning.

PN4733

Whatever you ask them to do. You call them, they have to show up?---Yes, right.

PN4734

So you accept that being on call like that would be - could be very inconvenient for a person?---Well, I wouldn't use someone or ask someone if I thought it was inconvenient to them. We know our staff personally and so therefore we know their family circumstances, and that would be who we would call. We also have people who say, "Give me a call if you need."

PN4735

Okay, but you can't speak for every operator in Australia, can you?---No. I cannot, no.

PN4736

You're a highly rated service. Is that right?---We are.

PN4737

That's not true of every child care operator in Australia, is it?---I don't know the statistics.

PN4738

I think what your evidence is - correct me if this is wrong - that you would not abuse a power to call someone in at no notice. Is that right?---That's correct.

PN4739

You understand it could be abused though, don't you?

PN4740

COMMISSIONER LEE: I've got a problem with that question?---Well, I don't know - I have no idea. I have no idea. I don't know anyone that would abuse it, so - - -

PN4741

MS SAUNDERS: You haven't really considered this in very much detail, have you, Ms Hands?---No.

PN4742

No?---But if they're rostered on, then they're required to come, anyway, you know, in a roster with seven days' notice. That's the whole point of being able to change, that we don't have seven days' notice.

*** ALEXANDRA HANDS

XXN MS SAUNDERS

PN4743

Your main concern is facilitating employees' requests. Is that right?---Yes, we have a lot of that and also a lot of families, you know, may change their bookings at short notice, too.

PN4744

I have nothing further.

PN4745

MR BULL: I will be quite brief, Deputy President.

CROSS-EXAMINATION BY MR BULL

[11.36 AM]

PN4746

MR BULL: Ms Hands, can you hear me?---Yes, I can.

PN4747

My name is Stephen Bull. I'm an official of United Voice. I'm going to ask you some fairly general questions and I'll try and be quick. You're the approved provider for the centres that you operate?---That's correct.

PN4748

You operate two centres and you're licensed to take between the two about 115 children?---Yes.

PN4749

These centres are owned by a company?---Yes.

PN4750

And you're a director of the company?---Yes.

PN4751

Your husband and sister-in-law are also directors of the company?---Yes.

PN4752

Who are the shareholders of the company?---The same.

PN4753

Okay. The three directors are also the shareholders?---That's correct.

PN4754

Just briefly, you have listed mortgage payments. The Unley Early Learning Centre is on rented premises?---That's correct.

PN4755

The Daws Road Centre is on a property that you own, but it's mortgaged?---That's correct.

*** ALEXANDRA HANDS

XXN MR BULL

PN4756

At paragraph 24 under "Operating costs" you listed mortgage repayments as an operating cost, which it is, but you would agree that in the context of buying a property which you own effectively one-third of, it's also an investment in some respect?---Yes, but it is also an expense that I have to cover.

PN4757

But the expectation with having a mortgage is that eventually it's paid off and you'll have an unencumbered property?---That's correct.

PN4758

Now, just in relation to, I suppose - your service is licensed for 115 places. Parents, in seeking child care arrangements for their children, want stability and certainty. You would agree with that?---Yes.

PN4759

So they want to be able to book into a centre and have a place for their child?---That's right.

PN4760

It's not uncommon for a child to be sick or for some reason the child doesn't attend at a time when it's scheduled to attend. That does occur?---Yes.

PN4761

Can you tell us whether - do you charge the parents if the child doesn't attend?---Yes.

PN4762

So you charge them the full fee that should have been paid?---Without two weeks' notice, yes.

PN4763

Without 10 days' notice?---Yes.

PN4764

Okay?---Yes. That's because of our rostering.

PN4765

So under 10, no notice, you charge the full fee?---No, half fee - if they give two weeks' notice, they get half fee.

PN4766

Okay. It's 14 days?---Yes - or two weeks, yes.

PN4767

So if they give you two weeks' notice, you only charge them half the fee. If they don't give you two weeks' notice, you charge them 100 per cent of the fee?---That's correct.

*** ALEXANDRA HANDS

XXN MR BULL

PN4768

Can you give us some idea of on a daily basis what number of places fall into this bracket of you charging a fee that you're not actually - you don't have a child on the premises?---One or two.

PN4769

Is that consistently one or two a day?---Yes. Sometimes none.

PN4770

Okay. Are you familiar with the concept "under the roof" in relation to ratios?---Yes.

PN4771

Perhaps for the benefit of the tribunal, that refers to a method of calculating ratios where you don't go room by room but you look at the total number of staff under the roof, so to speak, and that gives you a bit of flexibility to attribute staff to - if one room, for example, is over ratio, that staff member can count towards another room where notionally you're under ratio. That's a summary of that methodology? You would agree with that?---Yes.

PN4772

You don't refer to that in your statement, do you?---I don't do it.

PN4773

Now, in relation to your two centres do you apply the "under the roof" or the "by room" ratio methodology?---By room.

PN4774

So you do it by room?---Yes.

PN4775

But you are familiar that many providers - - -

PN4776

DEPUTY PRESIDENT CLANCY: She is not going to know that.

PN4777

MR BULL: I beg your pardon?

PN4778

DEPUTY PRESIDENT CLANCY: How is she going to know that?

PN4779

MR BULL: Okay. I withdraw that.

PN4780

DEPUTY PRESIDENT CLANCY: You can ask her the question, but - - -

PN4781

MR BULL: I have withdrawn it, so - - -

*** ALEXANDRA HANDS

XXN MR BULL

PN4782

DEPUTY PRESIDENT CLANCY: Well, really - - -

PN4783

MR BULL: You are aware that the under the roof methodology is available?---I have heard the terminology and I understand how it would be worked out, but I don't use it.

PN4784

Just a general question - and you're involved in your professional association?---I am.

PN4785

You're aware that some providers do apply the under the roof way of calculating ratios?---Probably like early morning and late afternoon would be where most of the under the roof ratios are applied.

PN4786

And the point about the facility to manage ratios by the under the roof method actually gives you an additional margin of safety, so to speak, in terms of maintaining ratios?---I can't see how that would actually give you much benefit at all, unless you had more than two or three under twos away.

PN4787

But it can potentially - - -?---I really don't think there is - - -

PN4788

It can assist you - - -?---There's not much - there wouldn't be much benefit.

PN4789

But there would be some - - -?---To anybody.

PN4790

There would be some benefit, wouldn't there?---I doubt that.

PN4791

The point is that there are two ways you can ameliorate the burden of ratios. The first one is that not all your places - although you're being paid for the staff, you're not actually - you're not taking care of a child, therefore the ratio requires - - - ?---But if only one - - -

PN4792

I beg your pardon?---But if only one or two children were away, then that's not going to have any bearing on your ratios.

PN4793

Well, it has some bearing. Obviously the bigger the number, the bigger the bearing, but it has some bearing. You agree with that?---Yes.

*** ALEXANDRA HANDS

XXN MR BULL

PN4794

Okay. The other one is the possible facility to use the under the roof methodology?---I know of it.

PN4795

Okay. Just briefly, the Unley Road centre operates 52 weeks a year?---That's correct.

PN4796

So you don't shut down at any time during the year?---No.

PN4797

The Daws Road Early Learning Centre, you're not clear in your statement. Does that operate all year or does it have a brief shutdown?---No, it was operates all year.

PN4798

Okay. So if the award were to be varied to effectively restrict employers to a two-week shutdown over the Christmas/New Year period, that would not affect your operation?---No.

PN4799

Do you pay the laundry allowance?---Yes.

PN4800

Okay. So you believe it's important to pay that allowance to ensure your staff have laundered and clean clothing every day?---Or they can choose to wash it there and leave it there. We supply the uniform.

PN4801

Yes, but you've just said you pay the laundry allowance?---If they want to take it home or they can leave it there.

PN4802

Do you pay the laundry allowance to your staff?---I don't have anyone at the moment who gets paid the laundry allowance, but I would pay it if they wanted to take it home.

PN4803

So if an employee said, "Look, I don't have time to wash my clothing at work. I'm doing it at home", you would pay them a laundry allowance?---Yes, but they don't wash their individual clothes.

PN4804

So there is no facility for them at your centres to wash their work clothing on the premises?--- Yes, there is, but they don't have to wash their own clothes.

PN4805

Okay. You do it for them, do you?---Yes, well, they can leave it there and get it washed there.

*** ALEXANDRA HANDS

XXN MR BULL

PN4806

So in the general - - -?---They don't have to do it.

PN4807

- - - laundry run, you will do - - -?---In the general laundry, yes.

PN4808

Okay. But if they choose not to use that facility which you provide, you will pay the laundry allowance?---Yes.

PN4809

The incorporation of, let's call it, a laundry run for the staff and your acknowledgment that you pay the allowance, you do that because you know it's difficult and it's important for staff to maintain - have a fresh uniform every day before they start work?---For hygiene, yes.

PN4810

Okay. Now, as the approved provider - you have got two premises. Are you the responsible person when you're on one premises at any particular time?---Yes.

PN4811

So you take it upon yourself to assume the role as the responsible person when you're on premises?---Yes.

PN4812

Which of the centres do you usually do that for?---Daws Road.

PN4813

Okay. You assume that responsibility yourself because it's an acknowledgment that it's an important role?---No, because I open the centre.

PN4814

But that's important, isn't it?---Yes, but I'm the responsible person on duty when I open the centre.

PN4815

If you stay on the centre for most of the day, you continue to be the responsible person. Is that correct?---No, the director would take over when she got there, but we would work in conjunction with each other.

PN4816

You display who is the responsible person on the premises?---Yes, we do.

PN4817

You maintain a record of who the responsible person is on the premises?---Yes.

PN4818

You're aware that the responsible person, because their name will be displayed - where is the name of the responsible person displayed?---In the foyer.

*** ALEXANDRA HANDS

XXN MR BULL

PN4819

So this is in both centres?---That's correct.

PN4820

So if a parent walks in with a problem, potentially the first thing they see to assist them solve the problem will be the name of the responsible person. Is that correct?---They will see a name and they will also see a person.

PN4821

You've got a piece of paper or cardboard with the face of the person and their name?---No, we have a whiteboard, but the person would be there in the entrance; in the reception.

PN4822

But you agree that the - - -?---To help them.

PN4823

Sorry. You agree that by designating someone as responsible person at some time does potentially bring with it responsibilities and duties?---Yes.

PN4824

You have got designated educational leaders in each centre?---We have.

PN4825

Those persons are important for the maintenance of your ratings and the general quality of the service you provide. You would agree with that?---Yes.

PN4826

So it's more than just a sort of - it's not a superficial requirement of the regulations to have an educational leader, is it?---I think we were already doing it, but we've now got a title and they've got some good resources to help with those duties.

PN4827

What they bring to your services is important?---Yes.

PN4828

They add value, for want of a better term?---Yes.

PN4829

Nothing further.

PN4830

DEPUTY PRESIDENT CLANCY: Ms Shaw?

PN4831

MS SHAW: No questions.

PN4832

DEPUTY PRESIDENT CLANCY: Ms Arrabalde.

*** ALEXANDRA HANDS

XXN MR BULL

PN4833

MS E ARRABALDE: No, no questions.

PN4834

DEPUTY PRESIDENT CLANCY: Thank you. Anything in re-examination?

PN4835

MS WHISH: No, there isn't.

PN4836

DEPUTY PRESIDENT CLANCY: Ms Hands, thank you for your evidence this morning. You're now excused from further attendance. Thank you for being on call at various times?---Thank you.

<THE WITNESS WITHDREW

[11.50 AM]

PN4837

DEPUTY PRESIDENT CLANCY: So does that complete the evidence?

PN4838

MS SAUNDERS: It does, your Honour.

PN4839

DEPUTY PRESIDENT CLANCY: All right. Thank you. Any housekeeping matters? We have got the matter of Mr Fraser's survey material. How do you want to approach that, Ms Saunders?

PN4840

MS SAUNDERS: If I assume that ACA wish to tender it - I have skimmed it again and don't anticipate I need to ask Mr Fraser questions, but it should be authenticated with a short statement from him just saying what it is and when it was put together, largely because that's not apparent from the documents. Aside from that, I think it can be dealt with without coming back, subject to my friend's view.

PN4841

There is a minor housekeeping matter to do with the transcript. Because of the reasonably quick turnaround between now and putting in these submissions on evidentiary findings, we've had some discussions and we would request that the transcript be ordered as urgently as possibly, putting it a little higher, but as quickly as it reasonably can be.

PN4842

DEPUTY PRESIDENT CLANCY: Yes.

*** ALEXANDRA HANDS

XXN MR BULL

PN4843

MS SAUNDERS: That will also allow two other matters to be progressed. There are confidentiality orders at the moment over some of ACA's material. That will allow ABL to identify what, if any, portions of the transcript need to be redacted and which parts of that court order are pressed long term. Secondly, deal with any

self-incrimination privilege issues that it may wish to press in respect of its witnesses.

PN4844

DEPUTY PRESIDENT CLANCY: Yes, all right. Mr Arndt or Ms Whish?

PN4845

MR ARNDT: In terms of the transcript, we're content with that course. Perhaps I might confirm with the other parties and the Bench as to whether we would seek to put Mr Fraser's material into evidence. We will confirm that during the course of today. If it is the case that it does go into evidence, we can comply with the request of Ms Saunders in relation to putting a statement on to attest to the truth of those or to attest to - - -

PN4846

DEPUTY PRESIDENT CLANCY: That, and the context of it, yes.

PN4847

MR ARNDT: But we'll confirm that in the course of today.

PN4848

DEPUTY PRESIDENT CLANCY: All right. That request you make today might be that it be received into evidence?

PN4849

MR ARNDT: Potentially. Just in terms of the transcript that Ms Saunders went to, as I said, we would agree with that. I guess for our purposes we would just seek to ensure that it doesn't go on the web site until those matters can be addressed.

PN4850

DEPUTY PRESIDENT CLANCY: Yes, all right. Just to round out our discussion about the directions the other day, those directions will be made and that will require the submissions in the form that are described in the draft directions that we circulated be filed no later than 4 pm on Monday, 27 May, with the further hearing for the purpose of closing oral submissions on Wednesday, 5 June, at 10 am.

PN4851

MS SAUNDERS: Yes, your Honour.

PN4852

DEPUTY PRESIDENT CLANCY: All right. We will advise the parties of the timing around the transcript and then those other matters related to the transcript can be dealt with. We will wait to hear from Mr Arndt and Ms Whish in relation to the survey material and how that is to be treated, and those directions will be issued. If there's nothing further will adjourn now and the Bench thanks the parties for their assistance over the last four days. Thank you.

ADJOURNED UNTIL WEDNESDAY, 05 JUNE 2019

[11.54 AM]

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