



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

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

s.156 - 4 yearly review of modern awards

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

Melbourne

10.09 AM, WEDNESDAY, 2 NOVEMBER 2016

Continued from 21/10/2016

PN8639

VICE PRESIDENT CATANZARITI: Thank you. We'll do some housekeeping. Have you had any discussions about the timetable of submissions, Ms Gale?

PN8640

MS GALE: We have commenced those discussions, your Honour. There are so many parties involved that we haven't yet been able to get a clear response from many but we're working on that and would expect to be able to put a consent position probably by early next week.

PN8641

VICE PRESIDENT CATANZARITI: Thank you. We'll go the first witness.

PN8642

MS GALE: Thank you, your Honour. The NTEU calls Dr Camille Nurka.

PN8643

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

PN8644

DR NURKA: Camille Nurka, (address supplied).

<CAMILLE NURKA, AFFIRMED [10.11 AM]

EXAMINATION-IN-CHIEF BY MS GALE [10.11 AM]

PN8645

MR PILL: Dr Nurka, could you state your name and address again for the record please?---Yes, Camille Nurka, (address supplied), Mount Waverley.

PN8646

And did you prepare a statement for these proceedings?---Yes.

PN8647

And do you have a copy of that with you?---I forgot. Thank you. Yes.

PN8648

Do you recognise that as the statement you prepared?---Yes, I do.

PN8649

And is it true and correct?---Yes.

PN8650

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

PN8651

I tender that.

*** CAMILLE NURKA

XN MS GALE

PN8652

VICE PRESIDENT CATANZARITI: Exhibit AR.

**EXHIBIT #AR STATEMENT OF CAMILLE NURKA DATED
10/08/16**

PN8653

MS GALE: No further questions.

PN8654

VICE PRESIDENT CATANZARITI: Thank you. Mr Pill.

PN8655

MR PILL: Thank you, your Honour.

CROSS-EXAMINATION BY MR PILL

[10.11 AM]

PN8656

MR PILL: Dr Nurka, I represent a number of universities, commonly called Group of Eight in these proceedings, which includes some of your former employers, including, for example, the University of Melbourne and the University of New South Wales. I just need to ask you some questions about some of the matters that you've given evidence about. So, I'll ask some questions about your academic employment firstly and, in particular, looking at when you've been engaged as a sessional lecturer or tutor. Now, you've given evidence that you've worked as a casual since March 2000 and you've listed some universities. Now, it's not the case, is it, that you've worked continuously since 2000?---Yes, that's right. It hasn't been continuous.

PN8657

And if we quickly step through it, in 2000 you were actually employed from March to July to be a tutor in one subject?---Yes.

PN8658

And then, as I read your CV, there was nothing in 2001. In 2002, in July to December, you again were a tutor in one subject?---Yes.

PN8659

And then putting aside some guest lectures that were done to some schools, and others, your next engagement as a lecturer or a tutor, is this right, that then occurred in 2008?---If it's in my CV, which I will look to now, then, yes.

PN8660

Is it attachment CN1?---Yes.

PN8661

And so, for example, if we go to the bottom of page 3, it's got Nurka statement page 25 annotated as well and at the bottom of that page we have your tutoring in 2002 and then we have some guest lectures and then your next engagement as a tutor is in March 2008?---Yes.

*** CAMILLE NURKA

XXN MR PILL

PN8662

Now, in terms of lecturing, it's fair to say, isn't it, that your lecturing was predominantly at the University of Melbourne?---Yes.

PN8663

And that occurred predominantly between 2008 and 2010?---Yes. Hang on, 2008 to 2012, I thought.

PN8664

So, if we look, for example, on that same page, page 3?---Yes.

PN8665

There is some 2012 and I'll come to that. I just want to understand the extent to which you've actually engaged in lecturing as a sessional?---Sure.

PN8666

Based on what's written there, if I take them in turn, 2008 to 2010, you lectured in one subject in one semester in 2008?---I've lectured in so many, I forget. Okay, so 2008 I did the future of sex and gender.

PN8667

Is that one subject?---Yes.

PN8668

Yes. So, there's one subject and that, on its face, was in the second semester, July to December; is that right?---Yes. So, I taught that subject - did I teach it twice, no three times, eight, nine, 10. Yes, so I would have taught it one semester per year, yes.

PN8669

Yes. So, your lecturing experience at the University of Melbourne, and I'll come to 2012, was the same subject in semester 2 for three consecutive years?---Yes.

PN8670

And then in 2011, there's no lecturing and tutoring?---Yes, hang on. Yes - no, I lectured in sex, gender and power, which I thought I had on there. This is embarrassing. Okay - - -

PN8671

VICE PRESIDENT CATANZARITI: Page 2 of your CV?---2012, that's critical. Okay. No, I was a subject coordinator, which is lecturer, from 2010 to 2012 in sex, gender and power, which is on page 2. So, I lectured in that for three consecutive years but one semester per year.

PN8672

MR PILL: Yes, all right. So, in broad summary then, there's two subjects and you've taught each of those three times in the second semester of each year. In the case of the first subject, 2008 to 2010 and in the case of certain subject 2010 to 2012?---Yes.

*** CAMILLE NURKA

XXN MR PILL

PN8673

And during what we might call semester 1, you weren't engaged in tutoring or lecturing in each of those years?---I can't remember whether I did one in semester 1 or one in semester 2 or whether I taught them both in the same semester. I can't remember. I'd have to look at Melbourne University records.

PN8674

That's just on the basis of your own CV, which I presume you prepared?---Yes.

PN8675

Yes. The reference is July to December in each

PN8676

instance?---Yes, okay.

PN8677

Does that refresh your memory?---Yes, yes. Look I just - CVs are something you prepare along the way and I don't have it lodged firmly in my brain.

PN8678

And after your Melbourne experience in 2012, is this right, that to the extent that there's lecturing since then and it's at La Trobe?---Yes.

PN8679

And that's a pathway course; is that right?---Yes, yes.

PN8680

And so that's not actually part of the Bachelor degree on offer at the university?---No. No, it wasn't.

PN8681

It's essentially to prospective students who are hoping to be accepted for enrolment in a university degree course at the La Trobe; is that right?---Yes, yes.

PN8682

Now, in addition to your engagements at various universities over that period, it's the case now, isn't it, that you also run your own business?---Yes.

PN8683

Copyediting and copywriting?---Yes.

PN8684

Can I just hand you a document? Now, Dr Nurka, do you recognise the - - - ?---Yes, that's from my website.

PN8685

Now, how long have you been undertaking copywriting or copyediting?---On and off for a number of years. I don't know, maybe since 2007 but, yes, I became fully qualified in 2010, I think it was, when I got my diploma from RMIT.

*** CAMILLE NURKA

XXN MR PILL

PN8686

And for the purposes of this business, you've obviously maintained a computer?---Yes.

PN8687

And access to the World Wide Web?---Yes.

PN8688

And you've, indeed established your own, or had someone establish, a website for you, which you maintain?---Yes, yes.

PN8689

VICE PRESIDENT CATANZARITI: Are you tendering that, Mr Pill?

PN8690

MR PILL: I will, your Honour.

PN8691

VICE PRESIDENT CATANZARITI: It will be exhibit 16.

EXHIBIT #16 CAMILLE NURKA - COPYEDITOR: CORPORATE WRITER

PN8692

MR PILL: And obviously you've been able to undertake some work, if I can call it that, associated with this business, including at times where you had sessional engagements with universities?---Yes, yes.

PN8693

Now, outside of your business and outside of your university engagements, have you been employed

PN8694

elsewhere?---I'm trying to think. I have recently done some reception work but I haven't - but I'm not employed by a university at the moment. I don't think so. I think it's mainly just been my academic work and my copyediting business.

PN8695

And during, what I might call your early engagements, so 2000 through 2002 and '03, you were also undertaking a PhD at the time; is that right?---Yes. So, I got my PhD in 2003.

PN8696

Now, you've given evidence about the number of policies and your statement goes on for some pages. Can I take you to page 2 where you've extracted a list of dot points and documents from the University of Melbourne website?---Yes.

*** CAMILLE NURKA

XXN MR PILL

PN8697

Now, is that something you did at the time you prepared your statement or is it something that you did at the time that you were actually employed at the

University of Melbourne?---Okay. So, I provided these dot points for the statement.

PN8698

Yes?---While I was at the University of Melbourne, I would have referred to some of these policies in my work there, both as a tutor and as a lecturer.

PN8699

I take it from your answer that you accept that you don't have to read every one of these policies and, indeed, you didn't read every one of these policies during your six years at the University of Melbourne?---No.

PN8700

So, you accept that?---I accept that, yes.

PN8701

And do you also accept that there are some policies that might be called key policies or core policies?---Yes.

PN8702

For example, discrimination, harassment and bullying, occupational health and safety, intellectual property and privacy and responsible conduct or a code of conduct. And do you accept that they're might what be called core policies that you are expected and required to be familiar with?---Yes.

PN8703

And you can compare those with other policies that are essentially just a reference that are there if you need to look at something and, indeed, in your employment. There may be ones that logically you'd never have to look at?---Yes, probably.

PN8704

Now, these policies are all available online?---Yes.

PN8705

And they were at the time?---Yes.

PN8706

Well, are you aware that there's currently a policy program being undertaken at the University of Melbourne to reduce the number of policies by approximately 80 per cent?---No.

PN8707

Now, in terms of matters that arise under the policy, do you accept that in addition to having access to this material on the web, there's also various supports available within the university to enable staff or students to obtain advice?---Yes.

PN8708

You accept that. And so to use the example that you've given over the page about a discrimination and harassment policy, if you were confronted with a discrimination or harassment issue, you'd contact HR?---Yes.

PN8709

And there's also contact officers that are available to staff?---Yes.

PN8710

And, similarly, if you were confronted with a safety issue you could logically pick up the phone OH&S adviser?---Yes.

PN8711

And in addition to those dedicated support functions, you also have essentially access to other staff in the faculty?---Yes.

PN8712

Now, when there's changes in policy at the University of Melbourne of any substance, staff are notified of those changes?---Say that again.

PN8713

Staff are notified of those changes where they're significant?---In policy?

PN8714

Yes?---I don't know. I'm trying to think if I get - if I got emails regarding changes in policy but, nevertheless, when an issue crops up in the course of your teaching, you're kind of obliged to look it up or to speak to somebody to find out how you need to approach that situation. So, if the policy is changed and you're unaware of whether it has changed or not, you're going to come across that anyway in the course of your work.

PN8715

Yes?---So, you will be re-referring to the policy in your teaching because the policy is there to address issues that will crop up in your teaching, otherwise there wouldn't be policy.

PN8716

Well, with respect, if I look at the list, and I won't do it, but I could point to about half these policies that may not crop up in the course of your teaching. Parental leave procedure, I'd probably only need to look at that if I'm confronting that particular circumstance in my life?---Sure, and the debtors one, I mean I'm not going to need that, am I, but - - -

PN8717

The environmental policy?---But they're - the policies that I do need to look at actually carry considerable weight, so you do actually have to think very carefully about how you phrase emails to students, for example, or how you're going to engage with your students and how you engage with your colleagues to address those issues that come up. So, an issue might be, for example, that a student has queried a mark, as happens a lot at Melbourne University. So, that might be something where you have to think carefully about how you engage with students in that particular situation and that requires - yes, that requires board, as well as reading it. So, you know, this procedural stuff is kind of important and can be very time-consuming.

*** CAMILLE NURKA

XXN MR PILL

PN8718

DEPUTY PRESIDENT KOVACIC: Dr Nurka, your answer to those questions suggest that the approach in terms of looking at the policies is on an as needs basis?---Yes. Yes, it is but also, no. So, in order to answer your question, I would say yes, there is an as needs basis there, but at the same time there are things that you want to find out before you start teaching at a new university as well.

PN8719

So, because casuals are often not teaching at the same university and, as you can see from my CV and my answers earlier where I got confused about what was in my CV, one of the reasons I got confused is because I've worked at so many different universities and it's very hard to keep track of where you've worked and what you've done sometimes. So, because of this situation where casuals are flexible workers, who work in different universities, there is an expectation to an extent that at every new university you start, you've got to start fresh. So, you've got to familiarise yourself at the beginning with some policy and then, of course, as the teaching progresses, there will be policies that crop up that - - -

PN8720

DEPUTY PRESIDENT KOVACIC: There would be a degree of commonality among policies going to code of conduct for academic staff and issues like that. There'd be some core elements of those which would be, you know, perhaps worded slightly differently depending on the institution but, in essence, would be largely the same?---I'm not sure about that because, for example, different universities have different policies around late submission of assignments, things like that. They have different policies around assessment.

PN8721

So, for example, some universities might encourage you if you identify plagiarism in an essay, or if an essay - if you identify that the essay is a failed grade and doesn't meet the standard, some universities will say, okay, we'll give that student a chance to resubmit but you have to - you then have to figure out, okay, what are the steps I need to take now? Do I talk to the student first? Do I talk to my colleagues first? That sort of thing. So, I'm pretty sure that that - like, in my experience, those sorts of attitudes to how do you treat a failed essay or how do you treat plagiarism, they're not always - they're not always the same at each university. That's just from my experience.

PN8722

DEPUTY PRESIDENT KOVACIC: But in terms of things such as responsible conduct, responsible conduct of staff, which you refer to at Melbourne uni, sort of the conduct expectations across institutions would be fairly similar though there might be some elements of difference which, at their core, they'd be very common?---Yes, yes.

PN8723

MR PILL: And you'd accept, Dr Nurka, that's also true of policies such as discrimination, sexual harassment and even matters like privacy where there's common elements across the sector?---Yes.

*** CAMILLE NURKA

XXN MR PILL

PN8724

And so if I take you, for example, to CN2, you've attached some policies from the University of Melbourne and the first one, which is the discrimination, sexual harassment and bullying procedure. Now, you've attached that?---Yes.

PN8725

Is there a particular reason you've attached that procedure?---There's not - there's no particular reason. It's more that it's a general guideline that one really should be aware of in order to address any of those messy issues that may come up in the course of teaching.

PN8726

Yes?---Because teaching can be - - -

PN8727

Well, it's not just teaching, Dr Nurka, it's in the employment and whilst I appreciate your previous response to the question about whether you have been employed elsewhere, compliance with discrimination and sexual harassment policies is common in employment in

PN8728

Australia?---Okay. Well, there you go. So, that's - my memory is crap, so that's why it's important for me to refer back to policies when I encounter them or when I feel I should make myself familiar with them.

PN8729

Well, Dr Nurka, before I leave this procedure, can I take you to paragraph 6 of your statement and you say many of these policy documents themselves link to further policies legislation in university resources and then you specifically give this example of CN2. And if I turn to CN2, and mine's got Nurka statement page 38, there's related documents and it lists, as does your statement at paragraph 6 - so, it's got Nurka statement page 38 on the bottom but it mirrors what you've extracted into clause 6.

PN8730

Now, the documents that are listed there, things like legislation, do you accept that you've never been directed, nor were you expected to read, all of the related documents. That they're listed for ease of navigation or a reference should someone require them; do you accept

PN8731

that?---Yes.

PN8732

Did you go into each of the related documents there and read them or familiarise yourself with them?---On page 38? Sorry, which page are you directing me to?

PN8733

Well, I can do it by reference to your statement?---Yes, okay.

*** CAMILLE NURKA

XXN MR PILL

PN8734

My friend's telling me it's CN3 but it's CN2 in the version that was provided to me but if you look at paragraph 6 of your statement?---Yes.

PN8735

You've given evidence about related documents and these appear at the end of the bullying - discrimination and sexual harassment and bullying procedure?---Yes. In the attachment, yes. Yes, okay.

PN8736

And so I'll put the question to you again, you weren't directed or required or, indeed, expected to read all of the related documents. They're essentially listed there for ease of navigation and reference?---Yes.

PN8737

And then I asked you whether you'd gone into and read those related documents?---As I say, when I - I don't necessarily read all the policy documents. It's the ones that are most closely related to my teaching practice.

PN8738

VICE PRESIDENT CATANZARITI: Mr Pill, are you asking about - for the record, in our version of events the responsible conduct of State policy is referred to in page 4 and is your question about the relevant legislation when that was referred to on page 38? Is that what you're asking whether the witness actually read - - -

PN8739

MR PILL: I was asking by reference by reference to paragraph 6 of the witness statement, which references not the responsible conduct policy but the policy on discrimination and sexual harassment and bullying procedure?---Because this policy - I'm sorry.

PN8740

Just one moment?---I apologise.

PN8741

DEPUTY PRESIDENT KOVACIC: I think your reference to page 38 should be page 35.

*** CAMILLE NURKA

XXN MR PILL

PN8742

MR PILL: Well, unfortunately, we seem to have a battle of statements, I'm sorry. If the Bench could bear with me for one second. I apologise to the Bench, the consequence of the redactions that were made and various erasures of the statements that were provided, I'm sorry, your Honours and Commissioner. The reference is a reference to text which appears, as the Senior Deputy President said, on page 35, the heading related documents and this forms part of the discrimination and sexual harassment and bullying proceeding, MBF1230, and, your Honour, the witness has given evidence to the effect that there is voluminous material by reference to related procedures, or related documents, and I was just testing the extent to which there was an expectation that they'd be read and

whether they'd, in fact, been read. Now, Dr Nurka, before the question from the Bench, you gave an indication that you looked at those that are most relevant to your teaching. Does that include the discrimination and sexual harassment and bullying policy?---Yes, because discrimination - discrimination is important in terms of - like being able to identify it in terms of my subject matter in gender studies.

PN8743

Yes, and you'd accept that - well, can I ask you - I'll re-ask you the question?---M'mm.

PN8744

Did you go into and read these related documents that you've chosen to reference in your witness statement?---Okay. So - - -

PN8745

VICE PRESIDENT CATANZARITI: Could we just make this very precise, rather than an okay answer?---Yes, okay.

PN8746

What we're referring to is, in paragraph 6 there are 21 related documents. What you're being asked about is, did you go and look at the 21 related documents referred to in paragraph 6?---Right, no. No, I haven't looked at all of the 21 documents.

PN8747

MR PILL: Thank you, your Honour. Now, you gave an example before of where a student queries their examination

PN8748

mark?---Yes.

PN8749

Is that a matter that would typically be referred or dealt with by the subject or the unit coordinator?---Yes, yes. Yes, it would. Well, in consultation - in consultation.

PN8750

Yes. So, if I can put it this way, you've worn different sessional hats along your journey?---Yes.

PN8751

On occasions you've been engaged specifically as a tutor to tutor in one subject, whereas at part of your time at the University of Melbourne you were a subject coordinator responsible for the curriculum and the administration of that subject?---Yes.

PN8752

And in that latter case where you're the unit subject coordinator responsible for the curriculum and administration, you receive additional payments for

PN8753

that?---I don't know what that falls under, administration maybe.

PN8754

Well, I'll put it to you that at the University of Melbourne it falls under administration?---Then, yes. If it falls under administration, hours for administration.

PN8755

Can I take you to CN9?---Yes.

PN8756

And the cover page is page 82 and then what we have is upside down and we have the first page of a four page document. Do you see that?---Yes. Yes, that's the employment contract.

PN8757

Yes. Can I take you to the second page?---Yes.

PN8758

And there's a table of duties?---Yes.

PN8759

And is this right, that you were engaged to undertake 20 hours of what's called lecture significant at a rate of \$213.93 per hour?---Yes.

PN8760

Resulting in a total on the right-hand side of 279 and then you'll also see under "Other Academic Activity (PhD)" 140 hours at a rate of 48.82?---M'mm.

PN8761

Now, it's the case, isn't it, that that 140 hours included both pre-semester administration, during semester administration and post-semester administration associated with your duties, including as a unit coordinator or subject coordinator?---Yes. So, that's other academic activity which - I guess, the question now is how much gets stuffed into that other academic activity category.

PN8762

Well, if you turn the page you'll see this is in respect of your undergraduate work in sex, gender, power and we have 140 hours basically constituted by the references there to the pre-semester administration of 60 hours, the during semester administration of 60 hours, and the post semester administration, another 20 hours. And the question I put to you was that it included the work that you were doing as a subject co-ordinator?---Yes. Okay.

*** CAMILLE NURKA

XXN MR PILL

PN8763

And in the course of those subject co-ordination duties where you're developing the curriculum or you're refining the curriculum from the previous year or previous two years, some of the issues that you've referred to as being things

you'd look to the policy about, they arise whilst you're doing those activities?---They do.

PN8764

You can put that document to one side for the moment. You've also given evidence, and this appears at paragraph 10 of your statement, about student support policy in particular, and your reference to student support policy being particularly time consuming?---Yes, student support.

PN8765

Yes. Now it's attached to your statement, so I'll just find the reference in your version. It's page 46?---Page 46.

PN8766

Do you have that document there?---Yes.

PN8767

Yes. Now is this right, that this is a procedure that identifies a range of support services that are available within the university to students?---Yes.

PN8768

And as it states at 1.3, students may also contact specialist support services directly or be referred to those services by professional or academic staff, and then there's a list of the services that are available to them?---Yes.

PN8769

Now it's the case, isn't it, that if a student came to you with a particular issue or a particular problem you could spend many hours going and researching into what each of these services can provide and potentially do a lot of the legwork for the student and direct them to a specific service, but you'd also accept that you could refer the students to this procedure or indeed, refer the students to support services representatives. Do you accept that?---No, because referring students to procedure doesn't work. Students respond much more positively when you speak to them yourself and when you – I mean, because part of your job as a teacher is to synthesise this information or, you know, content course information and help the students think through it, but there's also this kind of pastoral care element. And understanding – like, being able to provide students with phone numbers and being able to tell them exactly what those services can give them, in a face to face context is much better for them because that's – they won't go and look it up themselves, basically. Yes, so that's kind of part of what we do but a lot of that pastoral care kind of work or labour is not paid and that's why we're here today.

PN8770

Well, Dr Nurka let's just break that down a little bit. Do you accept that the university has people who are specifically employed in the student support space to be support services representatives? You refer to them in your statement?---Sorry, say that again for me please?

*** CAMILLE NURKA

XXN MR PILL

PN8771

So you refer, for example, in your statement, "I have met with support services representatives"?---Yes.

PN8772

So the university has people who are specifically employed - - -?---Yes.

PN8773

To provide student support services - - -?---Yes.

PN8774

And to provide the sorts of pastoral care that you've just referred to?---Yes. So I have met with disability liaison people before and I – yes, I have familiarised myself with counselling services for the students.

PN8775

And Dr Nurka, these include people who are qualified chaplains, people who are qualified financial advisors, people who are aware in depth of the supports that are available to students?---Yes.

PN8776

Do you agree with that?---Yes.

PN8777

And as a lecturer on duty you've chosen to approach your role in a particular way in relation to support services?---Yes.

PN8778

A very hands-on way to do a lot of the digging yourself?---Yes.

PN8779

Do you accept that if a student presented you with – for example, if they mentioned that they were having financial difficulties in relation to their housing, you could just refer them to the student services representative, or indeed contact the student services representative and say, can you contact this student?---Yes.

PN8780

Now you've gone on to provide some codes of conduct at other universities and at paragraph 11(b) you've given evidence about another one of my clients, the University of New South Wales, and you've attached the code of conduct. Now at the University of New South Wales you were provided with an offer of employment form, or you were provided with an offer of employment form? I'll provide a copy to you?---Yes. I don't know. I taught there a couple of years ago.

PN8781

I'd ask that the witness be handed the document. Can I ask you to turn to page 3 of that document, just at the bottom there, is that your signature?---Yes.

PN8782

And over the page, page 4, it says, "Employee's signature", that's also your signature?---Yes.

*** CAMILLE NURKA

XXN MR PILL

PN8783

Yes. I tender that document.

PN8784

VICE PRESIDENT CATANZARITI: Seventeen.

EXHIBIT #17 OFFER OF EMPLOYMENT FORM - UNI OF NSW

PN8785

MR PILL: Now, Dr Nurka, can I take you to the last page, page 4. And it's entitled, "Cash staff checklist"?---Yes.

PN8786

And you'll see, "This activity is to be completed by a supervisor or appropriate delegate", and "Important policies and procedures". And there's reference to a limited number of policies and procedures including the one that you've attached, which is the UNSW code of conduct?---Yes.

PN8787

And then some other, what might be called, core policies, OH&S, emergency procedures, equity (indistinct), a process for making complaints, conflict of interest and intellectual property policies?---Yes.

PN8788

And do you accept that on its face the information that's referred to in that checklist, including those what I've identified as important policies and procedures, were provided to you by the supervisor?---Yes.

PN8789

Now this appointment relates to tutoring in – if I can take you back to the first page, tutoring in one subject, is that right?---Yes.

PN8790

In March 2013, the first semester?---Yes.

PN8791

And on its face, it included 12 tutes, together with 4 repeat tutes across a 12-week period. Is that right?---Yes, if that's what it says, that's correct.

PN8792

Now you recently had some employment at the University of New South Wales as a non-academic staff member, casual professional staff member?---Yes. Yes, yes.

PN8793

This is as recently as August 2016?---Yes. In my copy editing role.

PN8794

Can I hand you another document then. Do you recognise that document?---Yes.

*** CAMILLE NURKA

XXN MR PILL

PN8795

That's your signature on the front page - - -?---Yes.

PN8796

Where it says, "Employment declaration"?---Yes.

PN8797

I tender that document.

PN8798

VICE PRESIDENT CATANZARITI: Exhibit 18.

**EXHIBIT #18 EMPLOYMENT OF CASUAL PROFESSIONAL
STAFF - UNI OF NSW**

PN8799

MR PILL: Now Dr Nurka, again I'll take you to the back page, "Casual staff checklist". On its face, we've got the same document - - -?---Yes.

PN8800

- - - that I took you to in the previous engagement?---Yes.

PN8801

And again, you've signed at the bottom?---Yes.

PN8802

Confirming that the information as outlined in the above checklist has been provided?---Yes.

PN8803

Now it's the case at the University of New South Wales that you were, putting aside this more recent non-academic appointment, that you were essentially employed for – to tutor only for one session and you haven't been engaged since that time?---Yes, that's correct.

PN8804

Now in addition to the resources that are available to you, you have also undertaken some induction training at some of these universities that you've been employed at?---Yes.

PN8805

And that includes at UNSW?---I can't remember, probably.

PN8806

What about the University of Melbourne, do you remember there?---Yes, I would have at the University of Melbourne.

PN8807

I take it from your answer you can't recall the - - -?---I can't remember, I'm sorry, but I think I did – I think – look, I think I had inductions at all of the universities I've worked at. I think I have.

*** CAMILLE NURKA

XXN MR PILL

PN8808

Yes. And if I take the University of Melbourne and the University of New South Wales as examples, there is also an on-line orientation available to start?---Okay. I didn't know that.

PN8809

You're not aware? Okay. Can you recall whether at the University of Melbourne, given that you seem to recall that slightly better than the others, the length of the induction?---I think inductions usually go for one to two hours, and I – look, I'm sorry, I can't speak specifically to any particular university because I seriously don't remember.

PN8810

Okay.

PN8811

DEPUTY PRESIDENT KOVACIC: So what happened when you were recently engaged by University of New South Wales, given that was August of this year?---What happened?

PN8812

Yes, in terms of an induction. That's fairly recent?

PN8813

MR PILL: It's very much professional staff appointments so - - -

PN8814

DEPUTY PRESIDENT KOVACIC: I accept that. I accept that?---I apologise, your Honour. I can't – I can't remember. The one I do remember is UWS, that's the one I remember most clearly for some reason. Would you like me to tell you about that?

PN8815

When was that? It might be helpful, yes?---Yes, okay. So I was employed at UWS to teach in two subjects. I can't – I think it was in the same semester. Maybe it was different semesters. Anyway, two subjects. And the induction there was – I think it was about one to two hours and they covered – that's where we signed our contracts. That doesn't always happen in inductions, by the way, but that's where we signed our contracts and we were also – we discussed – actually, we did discuss some policy, like classroom conduct – what else did we discuss? Well, you know, sometimes they're filled up with academics who love to talk and don't tell you very much. So you know, sometimes the usefulness of inductions -
- -

PN8816

(Indistinct) – I think Mr Pill might have some questions that might be a little bit more focused?---Yes, okay.

*** CAMILLE NURKA

XXN MR PILL

PN8817

MR PILL: Thank you, your Honour. Now Dr Nurka, can I take you to paragraph 18 of your statement?---Sorry?

PN8818

Can I take you to paragraph 18 of your statement?---Paragraph 18. Okay. You give evidence at paragraph 18 that it's a requirement for the employee to have knowledge of the subject matter?---Yes.

PN8819

And it's the case, isn't it, that to undertake the sessional tutoring that you did, that you were hired – in lecturing, that you were hired or engaged because you have knowledge of the subject matter, the relevant skills and experience for the appointment?---Yes.

PN8820

Have you, in any of your time at the University of Melbourne, been involved in appointing other sessional staff, for example, tutors, in the subjects (indistinct) the subject co-ordinator?---No.

PN8821

Okay. Do you accept that where you were engaged as a sessional or a casual academic staff member to perform a particular task, tutoring into gender, sex and power, for example, that you're being engaged because the staff member has the relevant knowledge? You're hardly like to engage an academic in engineering to come in and teach into that subject?---Actually, the way the university system works at the moment, mm – I don't know. Maybe this is a separate issue but certainly you can be called in to teach a program that you know nothing about. That has happened.

PN8822

So it's happened to you, has it?---No, it hasn't happened to me but I - - -

PN8823

Perhaps I'll stick with your experience then?---Yes, sorry, okay. I'll - - -

PN8824

Do you accept that on each time you've been engaged to be a casual tutor or a casual lecturer - - -?---Yes.

PN8825

That that's been because you've had the requisite skills, knowledge and experience to teach into that particular subject area?---Yes.

PN8826

And that's an assessment that's made at the time of the engagement?---Yes.

PN8827

And so for example, again, if I take UNSW, where you were engaged as a sessional tutor for the one session - - -?---Yes.

*** CAMILLE NURKA

XXN MR PILL

PN8828

To teach and tutoring to one subject, you'd accept that they had no expectation or requirement that by the end of that semester you had developed further knowledge and experience to use at the University of New South Wales?---Sorry, say that again please?

PN8829

So I'm using UNSW as an example of where you were engaged by the university to tutor into one subject for one session - - -?---Yes.

PN8830

And the university employed you because you had the relevant skills, experience and knowledge, and the question that I put to you is you accept that the university had no expectation or requirement that at the end of that session, the end of the semester, that you would have increased your knowledge and experience to enable you to have further employment at the University of New South Wales?---I'm confused by that question, I'm sorry. So are you asking me, did the university expect me to increase my knowledge during my teaching periods so that it could then employ me further?

PN8831

Yes?---Okay. I don't know what the university expected of me. What I can say is that for casual academics there is never any expectation of further employment because we're casual, right? So I'm not quite sure – I'm still not entirely sure what you're doing with this question but I guess what I would like to say is that for me to be an expert in my field, I need to develop knowledge not just as I'm teaching a curriculum, not just as I'm teaching a subject, but I need to build this knowledge outside of classes that I'm teaching, which then gets drawn back into my teaching. So you need to – this is what this is about. It's being able to separate preparation time. So if we think of preparation as dedicated to the content of a subject and we think about sort of knowledge development as related to the kind of, what would you call it, the context, the context within which the content of a subject gets developed, then that doesn't fall under preparation hours, okay? That's contextual. It doesn't fall under preparation hours.

PN8832

I'll come back to preparation hours, Dr Nurka. I'll perhaps put it more directly to you?---Yes.

PN8833

We're in this proceeding that the NTEU are seeking, if I use UNSW as an example, that the university of New South Wales paid you an additional allowance for you to essentially read(?) more broadly so that you would then essentially, in your words, continue to be an expert in your field, or in my words, to take your expertise and to go and be employed somewhere else. You're aware that the NTEU are seeking an allowance, including in the circumstances of your employment at the University of New South Wales – are you aware of that?---Sorry?

*** CAMILLE NURKA

XXN MR PILL

PN8834

Are you aware of that?---Of what? Say that again, please?

PN8835

Are you aware that in these proceedings the NTEU are seeking that the Commission insert an allowance into the Modern Award - - -?---Yes.

PN8836

That would provide additional payments in circumstances such as those of your one engagement for one session to tutor in one subject at the University of New South Wales ?---Yes.

PN8837

Now at the time that you were engaged as a skilled expert in the field you're paid a wage that incorporates preparation time, as you mention?---I'm not paid a wage.

PN8838

Well, you're paid - - -?---It's a contract. It's not a – I don't know. Is there a difference for – like, to me – my understanding of waged academics is that they are paid for the whole year.

PN8839

We won't get bogged down in nomenclature. You're paid a salary, you're paid an amount of money?---Yes.

PN8840

Can I, as an example, put to you a document that relates to your employment at the university of Melbourne. Now what I've provided to you, Dr Nurka, is the collective agreement, or the enterprise agreement that was in place for your time in 2010, 11 and 12?---Yes.

PN8841

It's to the complete agreement, I should indicate to you. And to the Bench, it is the decision that approved the agreement, the table of contents and then you'll see the page numbers at the bottom. It's an extract from the enterprise agreement. And I'd ask that you turn to page numbered 74?---Yes.

PN8842

And there's a table of types of lecturing and associated working time assumed, do you see that?---Yes.

PN8843

And if I – there's obviously a number of columns that are related to particular dates in time and wage increases, salary increases. That's either by reference to the last column which was after the last increase on March 2012 – now do you accept that at the University of Melbourne that when you were engaged to undertake, for example, a developed lecture or a specialised lecture, that in addition to the hour of delivery - - -?---Yes.

*** CAMILLE NURKA

XXN MR PILL

PN8844

You were paid essentially an amount by reference to a number of hours associated working time?---I was. It was inadequate but I was.

PN8845

And so for example, a specialised lecture, you receive a rate of \$286.17 for that lecture?---Yes.

PN8846

And you'll see at 2 point - - -?---well, for one hour delivery of lecture. So the lecture could be two hours, but yes.

PN8847

So for each hour of delivery - - -?---So for each hour of delivery, yes.

PN8848

So perhaps clarify for me. If it's a developed lecture, two hour delivery, does that mean there's - - -?---Eight hours - - -

PN8849

A total payment of eight hours?---Associated working time, yes.

PN8850

Thank you. And that associated working time includes an amount assumed in relation to preparation?---Yes.

PN8851

And some student consultation?---It's – no, I think – I thought student consultation was a separate - - -

PN8852

If I take you back to 2.2.1 on page 73 - - -?---Page 73. If it's not separate it should be.

PN8853

I'll step you through it?---Yes.

PN8854

Associated non-contact duties in the nature of preparation and reasonably contemporaneous student consultation?---Contemporaneous student consultation? Okay. That - - -

*** CAMILLE NURKA

XXN MR PILL

PN8855

So that if a student in a tute asked you various questions and so forth, you don't get extra money for that?---Okay. Yes, sorry. When you said student consultation, I thought you meant student – because there's different types of student consultation. So there's student consultation in the tutorial. Like where they ask you something at the end of the tutorial, they come up to you, "Hey, Dr Nurka, can you just explain this thing for me?" "Okay, this is what", you know, "We've been talking about", blah, blah, blah, blah, blah. And then there's student

– other, what I normally think of as student consultation, which is allocated hours that you - - -

PN8856

Yes?---Yes, have for students to meet with you to discuss their essays and so on.

PN8857

Now Dr Nurka, when you're preparing for a tutorial - - -?---Yes.

PN8858

You would look at the reading materials for that subject?---Yes.

PN8859

And you would look at any particular questions that have been set for the tute?---Yes.

PN8860

And when you're preparing a lecture, delivering a lecture, it might be one that's predominantly been prepared by somebody else, or it might be one that's predominantly been prepared by you, but you would look at the relevant readings?---Yes.

PN8861

And do you accept that in undertaking those activities it does contribute to your knowledge of the discipline?---Okay, so in developing a curriculum, so you're saying if I develop a curriculum myself, that that goes into me developing knowledge of my field?

PN8862

In preparing for - - -?---Yes.

PN8863

A tutorial or in preparing for a lecture, the activities that you undertake - - - ?---Yes.

PN8864

Contribute to your knowledge of the discipline?---Yes.

PN8865

Now in terms of curriculum development, if I look at you again as an example at UNSW when you went and you did tutoring in one subject for one semester, were you responsible for developing the curriculum?---No.

PN8866

Okay. And is that in contrast where you were the subject co-ordinator?---Yes.

PN8867

And if you're not the subject co-ordinator but you're engaged to deliver some lectures, do you develop the curriculum or are you teaching within the curriculum that's been set by the subject?---Yes, okay, I'm teaching within the curriculum.

*** CAMILLE NURKA

XXN MR PILL

PN8868

In relation to all of your sessional engagements other than when you were the subject co-ordinator, were you responsible for the delivery of the curriculum?---No. No, I wouldn't have been, sorry. As a tutor, no.

PN8869

But in relation to when you were the subject co-ordinator and we've gone to your contract that related to that, in addition to delivery you were also paid an amount that the University of Melbourne called "admin", and in your case it was 140 hours for that particular subject?---Yes.

PN8870

I don't expect you to be able to speak to the detail but do you accept that that general proposition of incorporated hours for each lecture or tute that you've delivered, has also been a feature at all of the other universities that you've been employed at, other than the university of Melbourne?---Incorporated – are you talking about – sorry, are you talking about preparation time incorporated into the teaching time?

PN8871

Into the rate that you're paid?---Into the rate for the teaching time. Because – hang on, I'm confused, because what – like, we're paid for teaching hours, right? We're paid a rate for face to face teaching hours. And then we have preparation hours on top of that. So what are you asking me?

PN8872

I'll ask it slightly differently. Putting aside the University of Melbourne, and I've just taken you to their enterprise agreement - - -?---Yes.

PN8873

When you've been engaged to undertake tutoring at other universities, the rate that you've been paid - - -?---Yes.

PN8874

Is a rate that includes the hour of delivery and some assumed preparation time?---Yes. Yes, it does.

PN8875

VICE PRESIDENT CATANZARITI: Do you want to tender the University of Melbourne collective agreement extracts?

PN8876

MR PILL: Yes, your Honour, thank you.

PN8877

VICE PRESIDENT CATANZARITI: Exhibit 19.

**EXHIBIT #19 EXTRACT FROM THE UNIVERSITY OF
MELBOURNE COLLECTIVE AGREEMENT 2010**

*** CAMILLE NURKA

XXN MR PILL

PN8878

MR PILL: You mentioned reading more broadly for context?---Yes.

PN8879

And I'm paraphrasing. Having done so, you'd accept that there are benefits that result to you from that in terms of your employability at other universities?---Yes. Okay, yes. I'll accept that.

PN8880

And your general standing as an expert in your field?---Yes.

PN8881

And that those benefits extend beyond, if I use my UNSW example again, extend beyond what you UNSW required of you, which was to come in and deliver one tute each week and four repeat tutes for one subject in one semester?---No, it doesn't extend beyond that. It informs that teaching.

PN8882

Yes, well, the work that you'd done up to the point where you were engaged as skilled professional, skilled academic informs that teaching and indeed, you've said that that was why you were engaged to undertake those tutes?---Yes. That was why, yes, but you know, knowledge doesn't just fall out of the sky. Like, you have to develop it and in order to continue to be an expert and to – to use that expertise in the classroom you do need to academic work outside of the classroom that feeds back into classroom teaching.

PN8883

Yes, including in this case, my unit subject example at another university?---Including teaching at – conducted at another university, sure, but like, you can't – you can't compartmentalise the kind of knowledge that you gain over a period of time teaching at different universities. Of course it's going to accumulate. So yes, it's not – I don't think it's something you can – you can sort of say, "I got this knowledge here and that knowledge there". It's a continuing process.

PN8884

Yes. And I think paragraph 28 – just a couple of discrete questions about some of the things that you've said at 28 and following. You refer to being a member of the editorial board of the journal of gender studies?---Yes. Yes.

PN8885

How did it come about that you became a member of the editorial board of the journal of gender studies?---They – the journal was seeking a – they were – they put out a – they were – they were seeking board members so I applied.

PN8886

Okay?---Yes.

*** CAMILLE NURKA

XXN MR PILL

PN8887

And in what capacity did you apply?---In what capacity?

PN8888

Yes?---As – well, I probably would have been – yes, I would have been casually teaching at the time, so as a casual academic.

PN8889

Did any university require or direct you to apply?---No.

PN8890

Or did any university, indeed, require or direct you to be a member of an editorial board?---No.

PN8891

Do you accept that a typical sessional engagement is to deliver lectures and tutorials?---Yes.

PN8892

And so at 29 where you reference writing academic articles and spending at least eight hours extra a week on research and writing, you're undertaking that to enable you to publish academic articles?---Yes.

PN8893

Now you reference at paragraph 30, "attendance at conferences"?---Yes.

PN8894

Do you accept that your sessional university employers have not directed or required you to attend conferences?---No. But it is part of the community of – see, there's a way of doing academia and being in academia that involves – that involves knowledge work, if we can call it that, that feeds back into the classroom, that you get from being involved in these kind of community activities, such as conferences, attending conferences, giving papers at conferences, liaising with your colleagues, being – you know, publishing in journals, getting to know journal editors, getting to know other people's publications in those journals. All of this networking kind of stuff does feed back into your – your capacity to teach because you become exposed to ideas that are changing your field through these activities. So that, for example, in gender studies, you know, there might be – we could say that there's been this recent term in feminist philosophy towards materialism or towards emotions. Now how do I know that? And how do I know, to tell my students that this is what's going on, to give them extra context to read the things that I'm asking them to read? I know this because I'm actively engaged in my community.

PN8895

And it contributes to your overall level of expertise and standing?---It contributes to my overall level of expertise, yes.

*** CAMILLE NURKA

XXN MR PILL

PN8896

And all those activities that you mentioned, you know, journal editors, writing articles, publishing in your field, do you accept that whilst they contribute to your overall expertise, they're not specifically what the university has engaged you – for example, the UNSW to do, to deliver 12 one hour tutorials?---Yes. I don't

know – I don't know how to put this in any other way, except to say that I know you're trying to compartmentalise information and knowledge as though it were separate, that we have these two separate realms of kind of community built knowledge, and knowledge that you develop through picking readings for your students in a curriculum or whatever, but they're not separate – that's what I'm trying to say, they're not separate. We can't – I don't think we can treat them as separate. And I don't think that the expectation under the employment agreement treats it as separate either. I think that expertise is more fluid than that. Now I sound like an arts academic.

PN8897

Now I just want to move onto something else, and that's the evidence you give about IT and technology. Now you give evidence that you can't stretch your working hours to those times that you're in your office on campus. Typically in your employment, what hours have you spent in your office on campus?---I don't know. I couldn't tell you. I honestly can't remember. But I – I would say that I spend more hours out of the office than I do in the office. But particularly if - - -

PN8898

You're not there 9.00 to 5.00, Monday to Friday?---No. Yes, because it's a flexible work arrangement.

PN8899

And is it fair to say that outside of the delivery of the lecture or delivery of the tute, that you've determined effectively where and when you're going to undertake the relevant duties, whether they be preparation, or your course materials, for example?---Yes, except for student consultations.

PN8900

Okay?---You really need to have an office for those. And actually - - -

PN8901

Well, that - - -?---Sorry.

PN8902

Yes - - -?---Yes.

PN8903

May I take you to paragraph 40 and 41. You give evidence of your experience again of one my clients, UNSW, when you were living in the Blue Mountains?---Yes. Yes. Yes.

PN8904

A beautiful part of the world. Now nevertheless, it is the case that UNSW, they had available to you, standard office based equipment, including computer equipment?---Yes.

*** CAMILLE NURKA

XXN MR PILL

PN8905

There were work spaces specifically available for sessional staff?---Shared work spaces.

Yes, shared work spaces but there's a number of desks and a number of computers?---Yes.

PN8906

And you could also essentially be allocated one, for example, across several days of the week – "Dr Nurka, you have this work station, Monday, Tuesday, Wednesday", are you aware of that?---Nope.

PN8907

Okay. So you're not aware of it? Do you disagree that that was available to you, or you just don't know?---No, I just didn't know. I don't disagree.

PN8908

No? And the university provided stationary and general office supplies?---Yes. Yes.

PN8909

Now as I read your evidence, given the geography of where you were, your preference was generally to work from home?---Yes.

PN8910

Whilst you obviously accept that you replied for and were appointed to a position at the UNSW – was it the Kensington Campus, is that where you were?---Yes. Yes.

PN8911

Now at 42 you say, "As a casual employee it is not uncommon to have concurrent employment with two or more employers. It is essential to use my home PC or laptop in order to ensure that I have ready access to all my work"?---Yes, because it's centralised.

PN8912

Yes. But you accept – we've already heard evidence that you have another online copy editing business?---Yes.

PN8913

Do you accept that you would have had a computer anyway, and you indeed have a computer, anyway?---Yes.

PN8914

And internet?---Yes.

PN8915

And indeed, to run what on its face, is effectively an online portal for clients or potential customers, you would need quality computer equipment and internet access?---Yes.

*** CAMILLE NURKA

XXN MR PILL

PN8916

And do you claim in your tax return, tax deductions for home office expenses?---Yes.

PN8917

And where you have these concurrent employments with more than two employers, given the proceedings that we've got here, which of your employers do you say should be paying for your home internet?---Yes, I see your point. That's a quandary and I don't know how I would address that.

PN8918

Do you accept that at the universities that you've been employed at there's also been policies and procedures for employers to claim expenses? Are you aware of that?---Yes.

PN8919

Have you ever sought to claim any expenses in relation to your IT work or computer equipment?---From the university? No.

PN8920

If the university of New South Wales had directed you to be on campus - - - ?---Yes.

PN8921

And to only undertake your duties on campus, would you have been happy with that arrangement?---Yes – there are certain benefits, I guess, from being flexible, as a casual worker so in that circumstance where I was living in the Blue Mountains and working in Sydney, over a - you know, like, two days a week, then – I don't know, actually.

PN8922

Well - - -?---I'm sorry, I don't know the answer to that question.

PN8923

Dr Nurka, you voted with your feet, effectively, didn't you?---Yes. I'm kind of like, yes, like – I do like working flexibly from home but the office is also appealing for other reasons.

PN8924

Well, how much time did you spend in the office at UNSW?---Probably not that much time. It would have been, you know, what I was required to for student consultations.

PN8925

And I take it from that there were dedicated times, were there, at which students could consult with you on campus?---Yes, but again I think it was a shared office. I don't – like, I don't think I got my own office. So yes, that's – yes, I'm pretty sure I met with students, actually, in other locations, because of the shared nature of it so – yes.

*** CAMILLE NURKA

XXN MR PILL

PN8926

And there are other facilities available at universities like, you - - -?---Cafes - - -

PN8927

Cafes, libraries, meeting rooms, all of those - - -?---Yes.

PN8928

Things are available at Kensington Campus?---Yes.

PN8929

Just bear with me, Dr Nurka. I've no further questions.

PN8930

VICE PRESIDENT CATANZARITI: Thank you. Ms Gale?

RE-EXAMINATION BY MS GALE

[11.32 AM]

PN8931

MS GALE: Dr Nurka, have any of the universities you've worked for, any of your supervisors or any induction or otherwise, has anyone advised you that you should be applying for reimbursement of information technology expenses?---No.

PN8932

No further questions.

PN8933

VICE PRESIDENT CATANZARITI: Thank you, you're excused.

<THE WITNESS WITHDREW

[11.33 AM]

PN8934

VICE PRESIDENT CATANZARITI: The Commission will take a short adjournment.

SHORT ADJOURNMENT

[11.33 AM]

RESUMED

[12.02 PM]

PN8935

MR PILL: Your Honour, if I may, just before the next witness takes the stand, just deal with one minor housekeeping issue that's relevant to the witness and it relates to a statement that we filed electronically, mid last week of Professor Woodin(?). Whilst it was well understood that this would occur, and I understand it's not opposed, I just wish to formally file that in hard copy and seek leave to do so. I'm anticipating that some matters in these statements will be put to the witness.

PN8936

VICE PRESIDENT CATANZARITI: Yes, thank you.

*** CAMILLE NURKA

RXN MS GALE

PN8937

MR PILL: Thank you, your Honour.

PN8938

MR McALPINE: I'd like to call Associate Professor Graham Hepworth.

<GRAHAM HEPWORTH, SWORN [12.04 PM]

EXAMINATION-IN-CHIEF BY MR MCALPINE [12.04 PM]

PN8939

MR McALPINE: Can you please state your name and address once more for the record, please?---Graham Hepworth, (address supplied).

PN8940

And have you prepared a statement in these proceedings?---I have.

PN8941

Do you have that statement with you?---I do.

PN8942

Have you recently re-read that statement?---Yes.

PN8943

Do you say the statement is true and correct?---

PN8944

I do.

PN8945

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

PN8946

Thank you, no further questions.

PN8947

VICE PRESIDENT CATANZARITI: Exhibit AS.

**EXHIBIT #AS STATEMENT OF GRAHAM HEPWORTH DATED
26/08/16**

CROSS-EXAMINATION BY MR PILL [12.05 PM]

PN8948

MR PILL: Thank you. Associate Professor Hepworth, I'm representing a number of universities commonly referred to as the group of 8, in these proceedings, including your current employer. I see you're not here in that capacity, you're here in the capacity as an expert witness, you understand that?---Yes.

*** GRAHAM HEPWORTH

XN MR MCALPINE

*** GRAHAM HEPWORTH

XXN MR PILL

PN8949

Now can I just ask you a couple of questions about the process for producing your report. Attached to the report there is an email with a brief and on its face you were sent a request with the brief at 2.28 pm on Friday, 26 August, is that right?---Yes.

PN8950

And perhaps a little unreasonably on its face, it asked you to provide a copy of your report by no later than 4 pm on Friday, 26 August, so that day, so you were generously given an hour and a half, on its face, is that right?---I don't remember when I provided the report.

PN8951

All right. I could indicate to you it was filed in the Commission on Sunday, electronically. Do you recall whether you provided the report on the Saturday, or the Sunday?---It would have been the Friday.

PN8952

On the Friday. And so after receiving the brief, how long did you spend considering the survey before preparing the report?---Well, I can't remember the exact sequence of events but I knew that it was coming and had spent, as far as I remember, a couple of days looking at all the documents.

PN8953

Right, ahead of receiving the - - -?---Yes.

PN8954

Friday, 2.28 pm email?---If the gap between receiving it and doing the report was that short, I would have spent time previous to that and I remember reading through all the documents so – so yes, from what I remember it was a couple of days.

PN8955

All right, so you'd had the documents for a couple of days before the Friday email?---Yes.

PN8956

Okay?---As far as I recall.

PN8957

Now can I just ask you to turn to the brief, so this is the letter of 26 August 2016, addressed to you – and take you to paragraph 5. In terms of the scope of your expert report, and I'll just get you to confirm it doesn't go to the representativeness of the survey results - - -?---No, that's right.

PN8958

It doesn't go to the validity of the process that was used in relation to the gathering of the information?---No, not as stated here, specifically.

*** GRAHAM HEPWORTH

XXN MR PILL

PN8959

If I could put it in the positive, what it goes to is essentially one issue which appears at paragraph 5, and I'm reading from the letter. "Your expert opinion is only required as to the appropriateness and clarity of the questions and of the structure of the survey for trying to elicit genuine and useful responses, as opposed to another purpose such as, for example, to elicit responses with a particular slant"---I tried to address those things.

PN8960

Yes, and it's the case, isn't it, that your report on its face, that's the extent of the issues that it addresses in relation to the survey?---That was my intention.

PN8961

I also take it that you weren't involved in preparing the survey?---No.

PN8962

You didn't design the questions or have any input?---No.

PN8963

VICE PRESIDENT CATANZARITI: Mr Pill, before you go on, just before you go on, could you just clarify the sequence? How did the documents get to you in the first place? You said in answer to a question from Mr Pill, that you got the documents before the letter – was there a telephone conversation? What communication existed before you got the letter?---I had met with the union representatives and had email and I think, some phone correspondence.

PN8964

Well, we might get that email produced.

PN8965

DEPUTY PRESIDENT KOVACIC: So can I just perhaps a further question. What was the nature of the conversations that you had with the people that you met with prior to your letter of 26 August?---It concerned the survey and it dealt with the aspects that were covered in the brief and other more general aspects of the survey.

PN8966

So was the tenor of the conversations consistent with the nature of the brief or did it go into matters of perhaps more substance?---It was centred on the brief that was here but in any – it's always advantageous to hear the general background of the survey and aspects relating to other matters and so I was trying to gain as much background as I could and so there were a few other things covered.

PN8967

Okay, so can you give us a sense of what those other things might have been?---Yes, the process for emailing union members and non-union members, and the – how the response went and what period of time the survey was conducted over, and those sorts of things.

*** GRAHAM HEPWORTH

XXN MR PILL

PN8968

So procedural sort of issues?---Yes.

PN8969

Thank you. Mr Pill?

PN8970

MR PILL: Thank you. Now the difference in not being involved in preparing the survey or designing the survey or having input, I also take it that you weren't involved in considering the responses to the survey?---No.

PN8971

All right, any analysis that was done?---No.

PN8972

You're an academic. Did you, yourself, complete the survey?---No, I didn't.

PN8973

Were you aware of the existence of the survey?---I don't think so.

PN8974

Now in the brief, you're following on from the sentence that I took you to. It says, "Without derogating from the generality of that request, your opinion in particular is sought on these matters in relation to the questions about academic working hours", and then it's got in brackets, "Questions 41, 42, 43, 44, 45" – "and for general/professional staff working hours and additional hours worked in excess of ordinary working hours", which identifies Questions 52, 53 and 54. In preparing or considering your report did you review a hard copy of the questionnaire or did you have access to the online environment in which the questionnaire was provided to potential respondents?---It was either a hard copy or a scanned copy provided.

PN8975

Yes?---But not the original online copy.

PN8976

Yes, and on its face they're not numbered?---No.

PN8977

How did you know which ones you were being referred to for the purposes of your report?---Well, I was able to work it out by the wording of the questions.

PN8978

By the subject matter?---Yes, that's right.

PN8979

Right?---And it was quite clear with a little bit of work, which ones it was referring to although I might have had that pointed out to me. But either way it was able to be worked out even though the question numbers weren't listed.

PN8980

VICE PRESIDENT CATANZARITI: Did you say you physically met with the union?---Yes.

*** GRAHAM HEPWORTH

XXN MR PILL

PN8981

And that was before you got the briefing?---Yes.

PN8982

So did they present to you the survey at the meeting?---I think so. I think that was the – yes, I either got a hard copy then or a scanned copy subsequently.

PN8983

And is your best recollection that that's when they may have pointed out to you where those questions are?---Probably, because they were pertinent questions, so I think so but I don't really recall.

PN8984

MR PILL: All right. And just to make sure we're all on the same page, literally and metaphorically, can I take you to page 26 of the survey. And starting at the top there, if you're a full time staff member, is that the question that you understood to be question 41?---Yes.

PN8985

And so can you just explain to the Commission, in your report when you've given evidence about questions about academic working hours, which questions are you giving your evidence about, or which questions does your report go to? Can you just step through those pages and - - -?---Well, it goes – I made particular comments on those questions but I was - - -

PN8986

Just notify which questions, Associate Professor Hepworth, just so that we're clear as to what your evidence relates to. So that's question 41?---Yes. And 42 and three which would be the other two on page 26 and 27.

PN8987

So 42 is, "As best you can, please estimate how many hours you spend on each of the following activities in an average teaching week to meet work and performance requirements expected of you by your employer", is that right?---Yes.

PN8988

And 43 is the question which appears at the top of page 27?---Yes, that's how I understood it. I don't have the numbers in front of me but yes.

PN8989

Okay, and then 44 and 45 are the two questions that appear at the bottom of page 27, is that right? So 44 is, "In an average working year", and 45, "Do you have any comments you wish to make about working hours?"?---I don't have those numbers but I - - -

PN8990

No, I appreciate that. And that's really the purpose behind my questions?---Sure. I think I can remember those numbers and those – where they are.

*** GRAHAM HEPWORTH

XXN MR PILL

PN8991

And if you go over to page 28, this would effectively be 46, so not one of the specifically identified questions but is it a question that you specifically gave your opinion on?---I made general comments about the survey which cover questions other than these.

PN8992

Yes?---And I guess, because of the nature of my brief and so they certainly cover these in general and other questions that are not listed here.

PN8993

Okay, and to the extent that you were asked to focus particularly on questions about academic working hours, did that include the question on page 28, as well, or is that just part of that general consideration of the survey that you mentioned?---That would have been part of my general appraisal.

PN8994

Okay, and in terms of the general/professional staff working hours in questions 52, 53 and 54, putting aside the numbers, which were the specific questions that you particularly focused on as requested in the brief?---I didn't focus on any specific questions that were around the 50's.

PN8995

Okay, so you're - - -?---That I recall.

PN8996

Without derogating from the general comment that you made about the survey, your particular focus was on the questions concerning academic working hours which appear on pages 26 and 27?---Yes. Although in my report I may have spent a reasonable proportion of it on those general things, so it's not as if these questions were the only matters of substance.

PN8997

Yes. So you didn't focus on those to the exclusion of other questions?---No.

PN8998

Okay. Now I'd like to take you back to page 26?---Sure.

PN8999

Now could I ask, before I ask you some specific questions, have the NTEU provided you with a copy of Professor Woodin's report filed in these proceedings?---Yes.

PN9000

And you've had the opportunity to read that?---I have.

PN9001

Yes, okay. Now in terms of what – is question 41, the top one there, you'd accept that on its face it is limited to full time staff members and doesn't accommodate part time staff members?---That's what it says.

*** GRAHAM HEPWORTH

XXN MR PILL

PN9002

Yes. And would you agree with this, it requires an estimate by the staff member of the average hours they spend on university work but does not include a definition of "university work"?---That's correct.

PN9003

Yes. And do you accept that if there was clarity around the concept of university work that that would be a less ambiguous question and more likely to elicit comparable responses across the respondents?---I would take "university work" as being fairly well understood by the respondents, being – in that most people have a pretty good idea when they're doing work that's required by their employer and this is a fairly intelligent audience, so I didn't see great ambiguities with it.

PN9004

Okay, but you accept that a definition of "university work" would have removed that potential for ambiguity?---Yes, if there was a potential for ambiguity, yes. Any definition is going to help that but - - -

PN9005

Yes, both in relation to whether the work or a particular activity is university work, but also given your response that you've just given previously, whether it was work that's required by the employer or part of a discretionary effort by the employee?---I'm not – sorry, I'm not clear on what you're saying.

PN9006

Well, the answer you gave when I asked you about whether there should be a definition of "university work" or that that would remove ambiguity, your answer was to the effect that staff would generally have a clear idea of what work is required by their employer. So you're actually - - -?---I'm sorry, I said that they'd have a good understanding of what was university work, not – that's a separate issue from "what's required".

PN9007

All right.

PN9008

VICE PRESIDENT CATANZARITI: Sorry, can I – I'm not sure I understand the distinction between – if I understood your response correctly, there is a distinction between university work and what is required by the university?---Well, the way I would understand it is that if I'm, say, doing some research that my employer has not specifically instructed me to do, that falls within my working definition then that would be clearly university work. But I'm not going to be disadvantaged in a tangible sense if I don't do it. So that's how I would draw the distinction there, that I would know that I was undertaking university work but whether it's required or not is a bigger framework, or a separate issue.

*** GRAHAM HEPWORTH

XXN MR PILL

PN9009

MR PILL: Yes. Perhaps, and it will be flushed out, Senior Deputy President, but given we've touched on it, do you accept that as an academic staff member that part of what you do is work that you're specifically directed to do?---(No audible reply).

PN9010

You just need to verbalise your answers for the transcript, say, "yes", rather than nod?---Sorry. Yes.

PN9011

And then there might be work that you're not directed to do but you believe there's an expectation on you to perform?---The whole sort of requirement and expectation is very ill defined when it comes to – in my experience, when it comes to university work, so I'm not trying to clarify the distinction here but to say that – I don't want to highlight that I would – in relation to this question that I believe people answering it would know clearly what's university work, even if what's required or expected is a bit harder to define.

PN9012

Yes, and in addition to what's required, what's directed and what's expected, there might also be work that I'd call university work, that I choose in my discretion to do or to passionately pursue, but it's part of my academic work in a general sense?---Absolutely.

PN9013

And therefore seen as part of the university work in a general sense?---Sure. Yes.

Now the question calls for an average. Perhaps assume for the purposes of my question that academics don't generally record their time and aren't generally monitored in terms of the time that they've spent working. If you can - - -?---That would be the case.

PN9014

Yes. All right, well, you don't even need to assume it then. Based on your experience what this calls for is essentially an estimate or a perception from the staff member answering the question, do you accept that?---Yes.

PN9015

And when we talk about average, do you accept that in a survey where the respondent has variable work commitments across the year and variable hours across a year that they're devoting to their activity, that their estimated or reported average could well depart from a true average if their time had been reported across the 52 weeks of the year?---Yes, as any employer working variable hours at different times could be.

PN9016

Yes?---Yes.

*** GRAHAM HEPWORTH

XXN MR PILL

PN9017

And particularly if they're not recorded in any quantitative sense?---Sure. Yes.

PN9018

Now Professor Woodin will give evidence that one feature of this question which is atypical of surveys and he compares it, for example, to the ABS survey and the HILDA survey for which he's the director, is that it calls for an estimate in bands that are set out, rather than to identify a number that the staff member profits. Do you agree that in your experience that that is atypical of the survey asking for an estimate of hours?---No, I don't agree that it's atypical. I agree that it's less precise.

PN9019

Yes?---But there are many questions on official surveys and otherwise that use bands. As far as I know, the income question on the ABS sensors has bands.

PN9020

Yes?---And so it's a standard survey technique to do so but it will inevitably give a less precise estimate of an average.

PN9021

Yes. Now do you also accept that when you look down the bands that are given that they predominantly fall above 38?---I can't disagree with that.

PN9022

Yes. It's a mathematical truism?---Sure.

PN9023

And Professor Woodin will give evidence that one consequence of that is, it could have the effect of leading respondents, the fact that there are bands rather than asking the open question, to estimate. Do you agree with that?---No, I don't. I don't – I think they are chosen to give meaningful and realistic bands that the respondents are going to have the options of choosing, which is what you do in any survey, and given the intelligence of the audience that I would not accept that it's leading them to choose the larger possibilities. In the same way that an income question that goes very high, I can't imagine that using – leading a lower income person to choose that just because they're there.

PN9024

All right. Let me explore that in two ways. If you compare it with income, obviously income varies almost invariably a definite number that is known to the individual employee function of their payslips, and an function ultimately of their group certificates or whatever we call them these days?---It can be worked out, yes.

PN9025

Yes, as opposed to an estimate of hours on average that I spend across a year, where they're not recorded or set, do you accept that?---I accept the difference.

*** GRAHAM HEPWORTH

XXN MR PILL

PN9026

Yes. And Professor Woodin's evidence will be that in this specific case, inclusion of a number of high-ended hours categories might lead respondents to believe that long hours are the norm, which may in turn influence the way that they answer.

Do you accept that that's a possibility?---It's a possibility but I don't believe it's a probability.

PN9027

Okay. Now the next question, or the next two questions, on their face, they use different language. So we've now gone from, "an average of time you spend on university work", to now "how many hours you've worked in a normal working week"?---That's what the wording is, yes.

PN9028

Yes. Is it a general principle of survey design that you should use consistent terminology and language where you're trying to elicit the same information?---Yes.

PN9029

Are you aware of why there's a change in terminology?---Having not designed the survey, no, I'm not aware.

PN9030

Okay?---But I would guess it's because it's – they are trying to ask two different things. The first one looks like it's trying to get people to average across the year and the second one is trying to look at a more typical week. That would be my guess but I don't know.

PN9031

Yes, so you're reading into the hours that you're working in a normal working week is more likely to elicit the hours that you work in a typical week rather than a true average across the year?---That's how I would have interpreted it, yes.

PN9032

Now that language then feeds into a third formulation which is actually the question, which is to "estimate how many hours you spend on" – now it then breaks it down by activities but I'll come back to that – "in an average teaching week", so again do you accept that we've got a third terminology that's been adopted?---Yes, except that that is followed by the non-teaching week and so it's really a splitting of the two, rather than a third group of terminologies.

PN9033

Yes, together with the reintroduction of the word, "average"?---Yes.

PN9034

Yes. You'd accept, just pausing there, that if you were designing the survey you wouldn't have used changes in the terminology in the sort that we see here?---That's right, yes, it could be better. It could have been better designed.

*** GRAHAM HEPWORTH

XXN MR PILL

PN9035

Now the other point is that tacked on the end of question 42 is a qualifier, "to meet the work and performance requirements expected of you by your employer". Now do you accept, given the sequence of the questions and given the language in the questions, that that qualifier at the end may well not have been taken into

consideration by all respondents?---Do you mean that they might have just read the first part of the question? Sorry, is that what you're asking?

PN9036

That as a function of both the question 41, being essentially the hours that they spend on university work, so the sequencing of the question together with the fact that this qualification appears at the end, that some staff responding, perhaps the majority of staff responding, may not have taken into account that they were to make some assessment of whether "the work and performance requirements expected of you by your employer" was taken into account by them in answering that question 42?---Yes. Yes, I accept that some could have done that, yes.

PN9037

And more likely, they are going to just answer based upon their estimate of how long they have spent undertaking the activities that are identified, whether they fall within this bracket of, "to meet the work and performance requirements expected of you by your employer"?---Yes, I would expect them to answer along those lines.

PN9038

And so as a consequence, and this is Professor Woodin's opinion and I'm paraphrasing, I'm not quoting him, that these questions would not provide reliable data on expected or required hours. They might provide an estimate from each employee as to the hours that they've spent working on university activities. Do you accept that?---Yes, I agree with his view there.

PN9039

And that estimate would be whether or not they're part of those directed or required, or expected or discretionary activities that are being undertaken by the academic staff member?---Well, I'd imagine that that would be a reason for making that difficult to define and therefore the actual hours would be easier to estimate and therefore would be more likely to be what is being estimated.

PN9040

Yes, and do you accept that when we actually look at some of the detail that's in – and this is in the fine print, if I look for example at research and scholarship related activities, and it says, "including, for example", and the end there, "creative or artistic activities", in brackets, "if required as part of work" – now can I ask you as an expert in survey design, that qualification at the end, "if required as part of the work", do you read that as applying to creative or artistic activities, or the entirety of the examples there?---It looks to me like it applies to creative or artistic activities but there's ambiguity there.

*** GRAHAM HEPWORTH

XXN MR PILL

PN9041

Yes, and you'd accept that even putting aside that ambiguity and let's assume for the moment it is created by artistic activities, that there is certainly scope for ambiguity and debate in academia for a particular academic as to whether a particular creative or an artistic activity is part of work?---Well, I – yes, I'm not in – my job doesn't involve creative or artistic activities but I would again take the

view that most people know when they're doing work that is part of their duties or not, most of the time.

PN9042

And whilst it's referenced to part of work, it does sort of fall under this umbrella question of, "to meet the work and performance requirements expected of you by your employer", but again it's unlikely, isn't it, that if I was a survey respondent reading the fine print that I'm likely to import that extra qualification, I'm just going to look at what I do?---The question is – we all, in my view, we all work for a variety of motives and so when we're meeting the work and performance that's requiring and it's expected we also may be doing it because we want to do a good job or because we're meeting a deadline or whatever. And so in the end I agree with the assertion that it's going to lead to what people actually do in terms of hours.

PN9043

Yes?---And that those other motivations can be somewhat ill defined and that - - -

PN9044

And those motivations could include beyond meeting the expectations of your current level or role in academic employment to promotion, so to meet the standards that might be expected if you wanted to be promoted to a more senior academic role?---Absolutely. But if they were additional to that they would still be clearly defined as university work.

PN9045

I understand that you're including in university work, essentially anything that's done by the academic, wherein – well, in their capacity as an academic. Is that what you're saying?---No, that I'm – I'm saying that the academic does have a good understanding of when they're working and when they're not.

PN9046

Yes. But as I've understood all your evidence, thus far, in terms of the portion of that that is specifically to meet the work and performance requirements of your employer, that that's essentially a subset of what's likely to be reported?---Yes, but in the sense of, it might be parallel with other motivations?---Yes, there may be some overlap, so there's a duty that I do which is required that also has other benefits for me, and then there's other duties that have benefits for me that aren't actually part of the required or expected duties that I have chosen to do as a self-directed academic?---Yes, I wouldn't have a problem with that, except to say that the requirements are there may be – I mean, the university will always want academics to achieve as highly as possible and so what is exactly a requirement is difficult to define.

PN9047

Yes, and it'd be fair to say too that most academics want to achieve as highly as possible, do you accept that?---Sure.

*** GRAHAM HEPWORTH

XXN MR PILL

PN9048

Now in your report you've given evidence that – and I'm reading at the second paragraph under, there's a heading, "Expert's opinion" – the second paragraph starts with the wording, "The survey questions did not reflect a desire to elicit particular responses", and I'll come back to that. "Sections of the survey for which the responses consisted of a level of agreement contain a mix of negatively phrased and positively phrased statements and a mix of favourable and unfavourable statements in regard to working hours". Now if I pause there, can I take you back to page 28 – this is the question, "Do you agree or disagree with the following statements?" So these are the sorts of questions as I understand your report, that you're referring to where there are responses consisting of a level of agreement, is that right?---Sure, yes.

PN9049

Yes. And on a space – this is the section of the report that deals with academic hours, and the next page, 29, moves onto general and professional staff, and so this is the question that deals with questions about level of agreement on hours for academic staff. Can you just take a moment and look at the questions that are asked down the left-hand column. Do you accept that having read them with the possible exception of the second one, they are all negatively framed questions?---Sure.

PN9050

Do you accept that?---Yes.

PN9051

And do you also accept that they carry with them an implicit negative connotation about working hours?---Yes, four out of the five are phrased in that direction.

PN9052

Yes. And they also presuppose, essentially, excess hours, in various ways?---The word, "excess hours", is not used.

PN9053

No, I accept that?---But – well, I don't know – I don't – so I wouldn't – it's talking about a number of hours, number of hours – yes, well I don't know whether they will have understood it as excess hours. If they're working excess hours, I suppose they would. But I'd agree with the negative phrasing of four out of the five questions.

PN9054

Yes?---But I should say that once you get into opinions they're – most questions are going to be – most statements are going to be directed one way or the other - -
-

PN9055

Yes?---So that it elicits an opinion which can be a "strongly disagree", so it's – there'll always be a – and usually going in one direction or the other but - the statement.

*** GRAHAM HEPWORTH

XXN MR PILL

PN9056

Yes. I take it from your report though, Associate Professor Hepworth, and your evidence is that a mix of negatively phrased and positively phrased statements and a mix of favourable and unfavourable statements in regard to working hours is preferable and to be desired in a survey to elicit the best responses, rather than those that might be slanted in a particular direction?---Yes, I agree with that and I should point out that there are other parts of the survey, such as page 32, where it's in the other direction where the majority of the questions are positively phrased. So my judgment there was a survey-wide judgement that overall – now I didn't count every question, of course, but there were some sections where the statements were – there were more statements that were positively phrased and some sections where they were more negatively phrased. So on page 32, if you count them up you will see that the majority are positively phrased, and similarly, when the survey, right at the start of the survey when there's a whole lot of opinions there, are mostly positively phrased.

PN9057

Yes?---So - - -

PN9058

And can I take you to 32?---Yes.

PN9059

So as I've understood your evidence, your expert report is essentially based on that survey-wide comparison of positively and negatively phrased questions?---Yes.

PN9060

Rather than specifically about the working hours questions that we've just taken you to on page 28?---Yes, I tried to get an overall impression as to whether the survey was fair.

PN9061

Yes?---And – or whether it was trying to push people in a certain direction.

PN9062

Yes. And it's the case, isn't it, that a survey can generally be balanced or fair, but a section of it might be unfortunately atypical and hence, steer people to a particular direction?---Yes, it – a particular section could be more weighted.

PN9063

Yes?---The statements could be more weighted in one direction.

PN9064

And so if I use – even if I use your example, with respect, on page 32 - - -?---Yes.

*** GRAHAM HEPWORTH

XXN MR PILL

PN9065

On my quick scan through them, the one or two that might have a direct relationship or bearing on hours appear part way down. "In the past five years that volume of work that I am expected to perform has increased"; "In the past five years the complexity of work that I'm expected to perform has increased" –

I'll break it into two questions. You'd accept that page 32 doesn't really go to hours of work?---No, it's not specifically on that topic.

PN9066

And to the extent that it does, those two examples that I took you to, they're both negatively phrased questions?---That sort of requires a more detailed look at it but yes, on face value, that sounds right.

PN9067

And Professor Woodin will give evidence that generally, other parts, so the non-hours parts, are more neutrally framed and far less problematic than the sections relating to working hours, do you agree with that?---Yes, the – I guess they're neutral because a lot of them are – quite a few of them are factual where there's not really an opinion given so - - -

PN9068

Yes?---So that leaves less scope for people being pushed in a certain direction.

PN9069

Yes, and when you say "factual", you're referring to the staff estimating their hours? Is that what you're referring to? So questions 41, 42, 43, that we went through?---Yes. By "factual" I was particularly referring to how many years have you been employed as a researcher, which is fairly easy to work out in most – well, maybe not but it is on a continuum to some extent, but I would like to draw the distinction between opinions and estimates that – Professor Woodin refers to these questions 42 and 43 as "opinions", and they are better described as "estimates".

PN9070

Perhaps for the benefit of the Bench, as well, he stats, "I agree that most of the questions about hours are listing quantitative information but the information being sought at Q42 and Q43 is still only opinions". So do you want to comment on that?---Yes, well, I'm disagreeing that they're opinions. They're estimates and they may be not very precise.

PN9071

Yes?---But they're not opinions in the sense that we generally understand opinions, like agreeing or disagreeing with something so - - -

PN9072

Yes, I understand the distinction you draw?---Yes.

PN9073

And in terms of questions outside of the hours questions, can I take you to page 3, for example, so page 3 of the questionnaire Professor Woodin has identified some other questions which, on their face, he is describing as problematic, so I just want to put those to you and give you the opportunity to - - -?---Sure.

*** GRAHAM HEPWORTH

XXN MR PILL

PN9074

So on page 3 at the top, the second – sorry, none of this is numbered but the second question appearing there, "Excessive reliance on casual staff is unfair on the casuals and puts pressure on workloads of other staff". Now Professor Woodin will give evidence that this is a very badly worded item, "excessive" is pejorative and hence it would be difficult for respondents to disagree and the respondents are clearly being led towards agreeing with this statement, do you agree with that?---Yes, I agree that it's a poorly worded question. The term, "unfair", I don't think is unfair, but "excessive", yes, it's a sort of a – it'd be hard to disagree with, with that statement.

PN9075

And the other criticism is the double-barrelled nature of it. It's seeking opinions on two separate concepts, whether casual employment, or in this case, excessive casual employment, is unfair on the casual staff member and then whether the casual employment puts pressure on the workloads of other staff, presumably non casual staff, and it doesn't allow for the respondent who might agree with the first part of the statement but not the second part, to meaningfully answer this question. Do you accept that?---Absolutely. That's right. And there are other questions like that. It's not a perfect questionnaire and that one has two questions embedded in it.

PN9076

And similarly in relation to – you described generally the questions that appear on pages 8 and 9 of the survey, has given rise to similar problems, not all double-barrelled issues, in fact, most aren't, but if I take you to some examples, his evidence and his opinion is that these questions overall about the higher education sector are not neutrally worded, they're generally slanted towards the perception that university education should be funded by government and that universities in Australia are under too much financial pressure to raise income from students and other sources. Do you agree with that?---Yes, I haven't done a detailed count on this question but I would accept that they're more phrased one way than the other, it's – some parts of the question there are.

PN9077

And so for example, on page 9, looking at perhaps the last two items, his criticisms are, one, lack of clarity, so the concept of being under sourced, and does that mean professional staff don't receive enough material support or does it mean that there aren't enough staff? And secondly, the last item there, on its face, contains pejorative language, "insecure", more likely to have the effect of eliciting more agreement, do you accept that?---Yes, on the first one, again I would say that most employees, whether they can specify the exact source, know when they're under-resourced, so whether it be lack of other staff or lack of materials, that's something that most employees understand very acutely. So I guess I'm not concurring with that criticism - - -

PN9078

Can I just interrupt you there?---Yes.

*** GRAHAM HEPWORTH

XXN MR PILL

PN9079

You're answering it from the perspective of the individual, are you, rather than a judgment about across the higher educational sector?---Yes, I was, and you're right, the statement is a general one. But what I'm saying is that I think people have a pretty good idea what under-resourcing means, even though it can have a variety of sources. So I'm not sure that that's a badly worded question. The second one, I agree that perhaps just leaving out the first phrase and just saying, "casual contracts are affecting the quality", would be a better wording there.

PN9080

Yes, thank you. And lastly, can I take you back to your report and towards the end you referenced that "some questions relied on certain assumptions for clarity which may be entirely legitimate but are difficult to verify". Do you see that there?---Yes.

PN9081

I just wanted you to clarify for the Full Bench what you're meaning when you say, "That are difficult to verify"?---I believe that it would be difficult to verify that people filling in the questionnaire were spending their hours at work to meet their work and performance requirements. So I believe that they could estimate their hours of work and that they knew what work was, but whether that was – whether that was for meeting work and performance requirements or whether it was to gain promotion or meet a deadline or - all those other things that we've talked about, are difficult to actually – to include in that and so it assumes that it's the worker performance that's actually driving the – the performance requirements that are actually driving the number of hours spent. So that's the assumption that I'm saying is there and difficult to verify. So that was the – what was behind my critique of that question.

PN9082

Yes. And you're not in a position to say whether to in fact say whether that assumption is correct or incorrect?---That's right, and Professor Woodin states that it's incorrect and his evidence and – I'm just saying, well, we can't really know.

PN9083

Right. I've no further questions.

PN9084

VICE PRESIDENT CATANZARITI: Thank you. Mr McAlpine, no further questions?

PN9085

MR McALPINE: No questions in re-examination.

PN9086

VICE PRESIDENT CATANZARITI: Thank you. You're excused?---Thank you, your Honour.

<THE WITNESS WITHDREW

[12.56 PM]

*** GRAHAM HEPWORTH

XXN MR PILL

PN9087

VICE PRESIDENT CATANZARITI: The Commission will adjourn till two o'clock.

LUNCHEON ADJOURNMENT [12.56 PM]

RESUMED [2.03 PM]

PN9088

THE ASSOCIATE: Please state your full name and address.

PN9089

MR WARD: David Michael Ward, (address supplied).

<DAVID MICHAEL WARD, AFFIRMED [2.04 PM]

EXAMINATION-IN-CHIEF BY MR PILL [2.04 PM]

PN9090

MR PILL: Mr Ward, can you hear me okay here in Melbourne?---Yes, I can.

PN9091

Can you state your name and work address again for the record, please?---David Michael Ward, High Street Kensington NSW 2052.

PN9092

You are the vice president of human resources at UNSW?---That's correct.

PN9093

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

PN9094

Have you got a copy of that statement with you?---I do.

PN9095

Have you read that statement recently?---I have.

PN9096

It is a statement dated on page 9, 6 June 2016 with nine pages and one attachment, DW1?---That's right.

PN9097

Is your statement true and correct?---Yes, it is.

PN9098

I tender that statement.

PN9099

VICE PRESIDENT CATANZARITI: Exhibit 20.

EXHIBIT #20 STATEMENT OF DAVID WARD DATED 06/06/2016

*** DAVID MICHAEL WARD

XN MR PILL

PN9100

MR PILL: Mr Ward, I would just like to ask you to identify a couple of documents for the Commission which are in the Commission room in Sydney, I'll take you to them in turn. At paragraph 19 of your statement you give evidence about clauses from the 2015 professional staff PA. Can I ask that the witness be provided with a copy of the UNSW Australia Professional Staff Enterprise Agreement 2015?---Yes, I have a copy.

PN9101

Can you identify that document to the Commission, please?---It's a copy of the UNSW Australia Professional Staff Enterprise Agreement 2015 and the document that I've been provided with is a subset of the agreement covering clauses 22, 23, 24 and a little bit of 25.

PN9102

Can I ask that the witness be provided with a copy of the entire agreement which is available in the Commission. Can I ask that you hand back the extract?---Yes, I now have a copy of the full agreement.

PN9103

Does it run to 86 numbered pages with a single page undertaking at the back?---Yes, it does.

PN9104

Is it the document that you refer to in paragraph 19 of your statement?---Yes, that's right.

PN9105

I tender that document.

PN9106

VICE PRESIDENT CATANZARITI: Exhibit 21.

**EXHIBIT #21 UNSW AUSTRALIA (PROFESSIONAL STAFF)
ENTERPRISE AGREEMENT 2015**

PN9107

MR PILL: Mr Ward, there is a second document that I would like to ask you about which should be in the Commission, it is a single landscape page entitled on the left-hand side "Extra hours claimed". If the witness can be provided with a copy of that document. Mr Ward, do you recognise that document?---Yes, I do.

PN9108

Can you tell the Commission what it is?---So, it's a claim form which is used by our professional staff and it's a claim form whereby either full-time staff claim overtime payments or where part-time staff claim additional hours.

PN9109

At UNSW where is this form to be found?---It's available on the HR website. We have a section within the website which incorporates all of our forms.

*** DAVID MICHAEL WARD

XN MR PILL

PN9110

What is it used for?---It's used for claiming overtime where professional staff claim overtime and also in the case of part-time staff where they work additional hours but not in excess of 35 hours in a week.

PN9111

If I'm a professional staff member and I work overtime, can you just tell the Commission how I go about claiming a payment?---You complete this form with the relevant date and times worked; you submit it to your supervisor who then endorses the claim and it's countersigned by the head of school or delegate.

PN9112

Is this done on line, hard copy?---This is a hard copy form; it gets then submitted to the HR team which process it through the normal pay cycle.

PN9113

Yes, thank you, no further questions.

PN9114

VICE PRESIDENT CATANZARITI: Do you want to tender that document?

PN9115

MR PILL: Sorry, thank you, Your Honour.

PN9116

VICE PRESIDENT CATANZARITI: Exhibit 22.

EXHIBIT #22 UNI OF NSW EXTRA HOURS CLAIM

CROSS-EXAMINATION BY MS GALE

[2.05 PM]

PN9117

MS GALE: Mr Ward, can you hear me?---Yes, I can.

PN9118

I am Belinda Gale from the NTEU and I've got a few questions for you?---No problem.

PN9119

Can I ask you to turn to paragraph 13 of your statement?---Yes.

PN9120

You say that the matters you have set out "below" in relation to UNSW are typical of the Go8 universities and at least the larger non-Go8 universities. How big a net is "larger"?---I think in my statement I talk about a number of the universities that I have regular contact with, so these are some of the city basin universities, particularly UTS, Macquarie University, a net sort of outside of Sydney but within the Sydney basin, so Wollongong, Newcastle, so they would be the larger universities that I refer to.

*** DAVID MICHAEL WARD

XXN MS GALE

PN9121

You then in subsequent paragraphs give some detail about enterprise bargaining claims and responses and outcomes at UNSW. Are you saying that those claims and responses and outcomes at UNSW are typical of that range of universities?---That's right, yes.

PN9122

I just wanted to clarify - you said there "The matters set out below" and so they seem to be very UNSW specific. Do you know how many professional staff are employed at UNSW?---We have approximately just over 3,000 - 3,200 or so continuing in fixed term professional staff.

PN9123

And then some casuals?---And then a number of casuals, yes.

PN9124

At UNSW you use the expression "professional staff"?---That's right.

PN9125

You are familiar also with the expression "general staff"?---Yes, I am.

PN9126

Is there any difference between the group you are describing as professional staff in the UNSW agreement and the group that the award, for example, would relate to in terms of general staff?---No, there's no difference.

PN9127

Can I ask you to turn to the professional staff agreement that was presented to you a minute ago and to go, in particular, to clause 23.2 "flexible working arrangements"?---Yes.

PN9128

I will just clarify: this is the arrangement that you're referring to in your statement when you say the professional staff at UNSW have access to flexible work time - or flexitime hours?---Yes, that's right. I'm just going to the particular clause in my statement that you're referring to.

PN9129

Clause 20?---Yes, that's right.

PN9130

Am I right in understanding that if people sign up to the flexible working arrangements' provision, is that done individually, can individuals opt in and out or is it done by work area?---No, it's done individually, so an individual elects whether to work flexible working hours or not. I mean it's obviously the case that workers also have such an arrangement in place, but that's only an opt in arrangement.

*** DAVID MICHAEL WARD

XXN MS GALE

PN9131

So if a work area has such an arrangement in place then an individual in that work area can still elect to participate in that arrangement or not to, is that right?---That's right, they could just work standard hours.

PN9132

At 23.2 subclause (c) it deals with what will happen in terms of ensuring people take their flexitime?---Yes, that's right.

PN9133

And it provides that you can't lose flexitime hours that you've accrued without having been given a reasonable opportunity to take those hours, is that your understanding of it?---Yes, that's right.

PN9134

So it is possible under this provision to lose flexitime hours?---Provided the employees had a reasonable opportunity to take it, yes.

PN9135

So if someone has accrued flexitime, been given a reasonably opportunity to take it but not taken it then the university can deduct those hours from the accrual?---That's right, yes.

PN9136

Do you have any information about how often that occurs, that hours are not taken?---So this was a matter of much discussion in the last round of enterprise bargaining negotiations. The result of those discussions was that the university agreed to put in a clause (c) as is set out there. I mean I don't have any specific knowledge as to the extent or otherwise that it occurs.

PN9137

Does the university take any active steps to ensure that it doesn't occur?---Sorry, do you mean active steps in terms of ensuring that the loss of the flexitime hours doesn't occur without reasonable opportunity?

PN9138

No, I suppose I'm asking you what provisions the university has in place to ensure that staff take up that reasonable opportunity and use their flexitime before it lapses?---Yes, I mean part of the training that we've done with line managers as a result of the new agreement is to draw their attention to this particular provision and emphasise that the application of a local flexitime arrangement which might deal with the loss of accrued hours can only operate where that reasonable opportunity has been afforded to the employee.

*** DAVID MICHAEL WARD

XXN MS GALE

PN9139

DEPUTY PRESIDENT KOVACIC: Mr Ward, it is Deputy President Kovacic here. Just a question: are you aware of any disputes having arisen around the operation of clause 23(c)?---I'm not aware of disputes that have ended up in the Commission. It has been a topic of some discussion which is why it was such a significant issue of discussion in the last round of bargaining negotiations. I can't in all honesty recall whether any of those issues that have been raised ended up in

the Commission or not, but it was certainly something that came up in a couple of areas.

PN9140

When you say it has been a topic of discussion, what do you mean by that? I mean clearly I understand that in the context of the last bargaining round, but what do you mean post that?---I think that there was one area in particular when the MCU were concerned that people may have been losing accrued flexitime without a genuine opportunity to take those hours, because the policy itself was being applied in a fairly rigid way.

PN9141

And that has been resolved?---Well, that has been resolved and part of that was to sort of put into the agreement the words there which I think the university would always have considered to be the appropriate way to deal with those situations anyway.

PN9142

That last little bit seems to suggest that that particular issue predates the negotiation of the enterprise agreement?---I mean it probably arose at around or shortly before the time negotiations commenced.

PN9143

So, post the agreement having been approved, are you aware of any disputes or issues relating to the operation of clause 23.2(c)?---No, I'm not.

PN9144

MS GALE: Do you have any idea of what proportion of your professional staff are on flexitime arrangements?---I don't have a specific number. I mean I would say that it's the large majority of the university's professional staff, at levels 1 to 9 would have access to such arrangements.

PN9145

The remainder presumably have access variably to paid overtime and TOIL arrangements?---That's right. I mean as do the people who work flexitime as well if they are required to work the additional hours.

PN9146

When you say "additional hours" do you mean hours outside the span?---That's right.

PN9147

Because you can work additional hours inside the flex span and get no overtime or TOIL penalties, is that right, you just get flexitime?---Yes, I mean - so it can be not as straightforward as an either/or - well, I suppose it is either/or - so in some circumstances where the university might direct a person to work and recognise that there won't be an opportunity to take - you know, as part of a flexitime arrangement then overtime would be applied.

*** DAVID MICHAEL WARD

XXN MS GALE

PN9148

You have talked about supervisors being instructed or advised to ensure people are taking their flexitime and to try to avoid the circumstance described in 23.2(c) occurring, does UNSW also instruct its supervisors about how to ensure that overtime and TOIL hours are claimed?---Yes, I mean we give that information to supervisors and it is also obviously part of the day-to-day advice that HR staff provide to supervisors.

PN9149

You were shown an extra hours' claim form, Exhibit 22?---Yes, that's right.

PN9150

That form you said is filled in if someone is claiming extra hours that they have worked. Presumably if someone is on a flexitime arrangement that bears some record kept of their hours worked as well, a timesheet?---Yes, whether it's a timesheet or some sort of diary or something like that, those records would be kept, yes.

PN9151

So for those staff who aren't on a flex-type arrangement, is there any record of their hours worked if they're not claiming additional hours?---So staff who aren't on a flexitime arrangement - - -

PN9152

Yes, do they keep timesheets or diaries or other records of hours worked?---I mean some of those staff would. Of course there's other staff who work just fixed hours, they might be on a counter from 9 am to 5 pm and that's their work hours, so I'm not sure in a situation like that whether there is also a record kept, I suspect not.

PN9153

Is it fair to say then that UNSW doesn't know how many extra hours have been worked by staff and not claimed?---Do you mean flexitime hours that are accrued or something else?

PN9154

Extra hours. If someone puts in a claim form then you know that they have worked those extra hours. If they don't put in a claim form you have no way of knowing whether extra hours have been worked or not?---Are you talking about outside of a flexitime arrangement whereby they might be tracking it, too?

PN9155

Yes?---I mean the way the UNSW would know would be through a flexitime arrangement where the hours are being sort of kept through some sort of record or through standard hours being worked and, if not, through some sort of overtime claim. I mean beyond that I don't think we would, no.

PN9156

VICE PRESIDENT CATANZARITI: Just to clarify: You said earlier that the large majority of staff are on these flexitime arrangements?---Yes.

*** DAVID MICHAEL WARD

XXN MS GALE

PN9157

So we are talking about the minority of staff who are not on flexitime there is no record of their hours if they are not otherwise scheduled?---So, if I can talk about that sort of minority group, as we call it just for a moment. I mean so many of those people would be on just standard hours, so we would know that they are working those standard hours or if they are keeping a timesheet then we would know that, too. I think Ms Gale's question was if they were working hours in addition to those standard hours and not claiming it or otherwise keeping a record then we would not know.

PN9158

MS GALE: Does UNSW have an induction program for new general staff, new professional staff?---Yes, we do.

PN9159

Does that induction program include educating people on these various hours' arrangements?---So, the induction program operates at a couple of different levels. One is at the university level where it is about ensuring that an individual knows about the university and how it operates and including sort of the fact that there is an enterprise agreement in place with various conditions within it. At the more local level that is where there would be induction around - you know - "Here's the flexitime system that we have in place" - some of those specifics around - "Here's how you claim an overtime - here's the form to use" and that sort of thing.

PN9160

You had about 500 staff in 2015 who claimed paid overtime, according to the data you've given us from Ms Tsagouris?---Yes.

PN9161

That is at paragraph 22. Would they be concentrated in particular areas of work or occupational groups?---Look, I really don't know the answer to that, I'm sorry.

PN9162

You have given some evidence about the extent to which UNSW provides information and communication technology resources for your staff including at paragraph 24 you talk about provision of computers, Wi-Fi across university campuses, printers, email accounts, access to the Intranet and other relevant systems and software and telephones including mobile telephones if required. Is it your evidence then that UNSW's casual staff are issued with mobile phones?---So, that would not be my evidence. Paragraph 24 covers the type of facilities we provide.

PN9163

So not all staff would get all those things?---No, that's right, although some staff would - sorry - all staff would get some of those things. For example, Wi-Fi access, email accounts, they would have access to computers, they would have access to printers. If there was a requirement to have access to other things they would get that as well, but not all staff get, for example, a mobile phone.

*** DAVID MICHAEL WARD

XXN MS GALE

PN9164

At paragraph 25 you talk about "shared office facilities, computers and printers for sessional academic staff". You say in some faculties and schools - that is actually the more common approach, isn't it? It is uncommon for sessional staff to have their own office with their own computer?---That's right.

PN9165

There has been evidence by others in these proceedings that it is impractical for academic staff to do all their work at campus. You suggest at paragraph 27 that if they don't do so that is simply a matter of individual choice. I put it to you that in fact it is inherent in the nature of the work that some academic work will be done away from people's work station on campus?---Are you talking about casual academics?

PN9166

I'm talking about casual and non-casual academics?---So, I think what I'm trying to say in paragraph 27 is that it is possible for an academic or a casual academic to undertake all of their activities at the university and that is as a result of the facilities that we do have available on campus.

PN9167

Your evidence is in fact about all staff. You talk about particularly for academics and you don't talk about casuals in particular, you're talking about all academics there, aren't you?---Yes.

PN9168

And in fact you're talking about professional staff as well?---Yes.

PN9169

We have had evidence from other witnesses that not all of their work can be performed at their office (if they have an office) or on campus if they are a casual that it is inherent in the nature of the work that some of it must be done elsewhere and I'm putting to you that proposition: that it is inherent in the nature - let's focus just on academic work for a start - that not all of it can be performed on campus?---So, I mean I think if I go through the types of academic work activity, the teaching is obviously done on campus, there's marking work, there's course preparation work, there's consultation with students, there's responding to queries. Those sort of things that are done either face to face or on line.

PN9170

Can I ask you this, Mr Ward: If an academic is attending a conference, are they at work?---Yes.

PN9171

Even if that conference is off campus?---Yes.

PN9172

If they are supervising students in a workplace setting, are they at work?---Sorry, in a workplace setting?

*** DAVID MICHAEL WARD

XXN MS GALE

PN9173

Yes, in a professional placement, for example?---Yes, in a psychology placement or something like that.

PN9174

Yes?---Yes.

PN9175

If they are engaged in field research they're off campus, they're still at work?---Yes.

PN9176

If they need access to books or journals or other resources they have in their home library in order to prepare for a lecture they're still at work?---To the extent that they can't bring those things into the workplace.

PN9177

And if an urgent student query arises at 10 o'clock at night and an academic in their exercise of professional judgment think it is best that that query be responded to immediately, is it your suggestion that they are exercising a choice not to come into campus in order to check that email and respond to it?---I'm not aware of particular situations where an email absolutely desperately needs to be responded to at 10 o'clock or else. I mean again that is where a judgment is being exercised that it is preferable to respond at that time rather than the following day.

PN9178

So that would be an instance of an exercise of professional judgment by an academic?---I mean I think you would have to understand the circumstances of the case and determine whether that was essential or not.

PN9179

But you wouldn't be second-guessing that yourself, would you, or asking HR to examine the circumstances of such cases. Isn't it the case that the university relies on its academic staff to exercise their professional judgment in relation to when and where such work is performed?---We certainly rely on our academic staff to exercise their professional judgment. I'm not sure that that is the same thing as the university agreeing that a particular query could only have been answered at home and could not have been dealt with the following day at work.

*** DAVID MICHAEL WARD

XXN MS GALE

PN9180

Isn't it also the case in relation to professional staff, particularly at more senior levels, that there would be times that people would check their work email in the evening or from home in order to ensure that an urgent matter had not arisen or if it had arisen that it was appropriately directed or dealt with?---So, again, I mean similarly the university leaves such decisions to senior staff to make professional judgments on, but I don't think that's the same as the university acknowledging that such a query could only have been dealt with at a particular point late in the evening and not the following day of work. In cases where there's emergency call-outs for instance, so if there was a fire on campus or something like that and

the university staff who are responsible for responding to emergencies are required to be contacted then all of those people are provided with university mobile telephones to ensure that they are contactable at that time.

PN9181

You said that - leaving aside the people who have call-out arrangements, which is a different question - that if senior professional staff exercise their professional judgment to deal with the matter you said that is a different question from whether the university accepts that they ought to have - or they had to deal with it then, have I understood your evidence correctly?---Yes, that's what I said, yes.

PN9182

If they do exercise their professional judgment and they do deal with it in the evening rather than waiting to return to campus the next morning, when they do that they're performing work, aren't they?---Yes.

PN9183

And the university accepts that work?---Yes.

PN9184

Could the witness be shown the bundle of documents headed "Code of conduct UNSW"?---Yes, I have the bundle.

PN9185

Mr Ward, have you seen this document before?---I've certainly seen the code of conduct before. I mean just looking through I think I'm familiar with the other documents.

PN9186

It is a bundle of documents. I was interested whether you had seen this particular bundle before?---Do you mean as a bundle?

PN9187

Yes?---Or each of the documents within the bundle?

PN9188

No, as a bundle?---I don't know that I have seen it as a bundle together.

PN9189

Could I ask that that document be marked.

PN9190

VICE PRESIDENT CATANZARITI: MFI45.

MFI #45 CODE OF CONDUCT UNSW

PN9191

MS GALE: If we can go through it piece by piece then, Mr Ward. You said you are familiar with the code of conduct, is it eight pages? I'm sorry, the first seven pages?---Yes, that's right.

*** DAVID MICHAEL WARD

XXN MS GALE

PN9192

This is the code of conduct which is mentioned in the checklist you've provided, the Attachment 1 to your statement. HR63 includes a checklist for casual staff where there's tick boxes for the staff member to sign off and the supervisor or delegate to sign off on whether the employee has been provided with these - or their activity?---Yes, that's the code of conduct referred to there, yes.

PN9193

Am I right in understanding that all casual staff at UNSW are expected to have been shown and understood the code of conduct?---So, I think the expectation in relation to casual staff is that the casual staff members' supervisor will have talked to them about the code of conduct and ensure that they are familiar with that.

PN9194

And the casual is required to sign off on that?---To sign off on the checklist that's been discussed with them, yes.

PN9195

Looking at that code of conduct, it includes links through to a large number of other documents, doesn't it?---Yes, it does.

PN9196

If we look at page 7 the summary there of the code of conduct policy has - under "Associated documents" it has got a list of the documents that go together with the code of conduct?---I'm not sure that each of those documents are linked from part of the code of conduct, but it is certainly in there as a list as "Associated documents", yes.

PN9197

Then turning through the bundle you've got the "Acceptable use of UNSW information and communication technology resources' policy"?---Yes.

PN9198

And that is a document that is linked to from page 2 of the code of conduct under the heading "Obligations", right at the bottom of page 2 there's a link there?---Yes.

PN9199

Looking at page 3 of the code of conduct there's a link there halfway down the page to the "Fraud and corruption prevention policy"?---Yes, that's right.

PN9200

And at the bottom of the page to the "Policy for making a complaint or reporting incidents of criminal corrupt conduct or maladministration or protected disclosure"?---Yes.

*** DAVID MICHAEL WARD

XXN MS GALE

PN9201

Great name for a policy. That is referred to again under the "protected disclosure" paragraph that follows, is that the policy that is found - no, I suspect that policy isn't here. Never mind that, let's move on to "Duty to observe standards: Staff and affiliates are required to" and in the "duty to observe standards" there there

are links to the equal opportunity policy and the workplace bullying policy?---Yes.

PN9202

And the occupational health and safety policy and procedures?---Yes.

PN9203

And the privacy management plan?---Yes.

PN9204

And the university's recordkeeping policy?---Yes, that's right, yes.

PN9205

And so on through the code of conduct there are links to a range of other policies and procedures and the attached policies and procedures are drawn from that list. Can I just check that the acceptable use of "UNSW information and communication technology resources policy" which starts at page 8 of the bundle, does that apply to casual staff?---Yes, it does.

PN9206

And the same at page 12 of the procedures that go with the policy?---Yes.

PN9207

At page 21 the "Intellectual property" policy, that applies to casual staff?---Yes, it does.

PN9208

At page 31, the "Fraud and corruption prevention" policy, does that apply to casual staff?---Yes, it does.

PN9209

At page 39, the "Equity and diversity" policy statement, does that apply to casual staff?---Yes, it does.

PN9210

At page 43, the "Anti-racism" policy, does that apply to casual staff?---Yes, it does.

PN9211

At page 45, the "Equal opportunity in education" policy statement, does that apply to casual staff?---Yes, it does.

PN9212

At page 47, the "Workplace bullying" policy, does that apply to casual staff?---Yes, it does.

PN9213

At page 50, the "Health and safety" policy, does that apply to casual staff?---Yes, it does.

*** DAVID MICHAEL WARD

XXN MS GALE

PN9214

At page 53 there's a list of health and safety procedures. One can assume that some of these will apply to people depending on their area of work, for example is it fair to say that the biosafety procedure would only apply to casual staff who work in areas where biosafety is an issue?---Yes, that's right.

PN9215

Whereas the "Alcohol and drugs procedure" would presumably apply to all staff?---That's right.

PN9216

And that is the procedure at page 55?---Yes.

PN9217

And then at page 57, the "Privacy management plan", does that apply to all staff?---Yes, it does.

PN9218

At page 77, the "Record-keeping" policy, does that apply to casual staff?---Yes, it does.

PN9219

Page 84, the "Conflict of interest" policy, does that apply to casual staff?---Yes, it does.

PN9220

Page 92, the "Paid outside work" policy, does that apply to casual staff?---It mainly has - well, it has application for non-casual staff.

PN9221

Can I ask you to look at 1.2.2, the reference to "casual or fractional", does that extend then to casual staff?---Where outside work affects their ability to do their job, yes.

PN9222

And those policies that I have asked you whether they apply to casual staff, they also apply to non-casual staff, don't they?---That's right, yes.

PN9223

When a full-time employee of the university familiarises herself/himself with the university's policies, that is part of their paid work activity, isn't it?---Well, not necessarily. A number of those policies would be referred to in our letter of offer that we send to employees or send to successful candidates who we would like to employ, so presumably they would read that in their own time as part of consideration of the offer of employment. The code of conduct is one example of that.

*** DAVID MICHAEL WARD

XXN MS GALE

PN9224

And when they consider the application of those policies in the course of their performing their duties and go back to check, they are at work, that is paid work,

isn't it?---Yes, if they are considering those policies within the course of their employment, yes.

PN9225

And if in considering the policies they spend time talking to other staff at the university seeking guidance on the policies that is paid time, isn't it?---You're talking about the full-time staff now?

PN9226

Yes?---Yes.

PN9227

So, if they ring up someone in HR and spend half an hour discussing with that person how a particular policy applies, that half hour is considered to be part of their paid work?---That's right.

PN9228

There has been evidence in these proceedings that across the whole higher education sector about 17 or 18 per cent of casual academics have employment outside the university in professional occupations or similar. Do you think that that 17 or 18 per cent figure would be any different for UNSW?---Look, I'm not aware of specific figures. Certainly there would be a significant proportion of our casual staff who would have employment outside of the sector, but I don't know what sort of numbers we're talking about.

PN9229

So when you talk at paragraph 34 of your statement about other casual academics staff who are industry practitioners currently practising in the area, you're not suggesting UNSW is atypical in that regard?---No, I would imagine we're typical of those larger universities.

PN9230

Can I ask you some questions about the cost estimates you provided at page 9 of your statement?---Yes.

PN9231

You asked Ms Tsgouris to prepare these figures for you?---Yes, that's right.

PN9232

Can I just clarify in relation to the figures in the first table where there's a figure calculated on the basis of the lower award rate and then the PhD point award rate, those are not cumulative, are they, they are actually alternatives?---That's right.

PN9233

So if all of the hours were paid at the \$30 rate it would be \$941,000?---That's right.

PN9234

If all of the hours paid at the PhD rate it would be the \$1,000,000 figure?---Yes, that's right, yes.

*** DAVID MICHAEL WARD

XXN MS GALE

PN9235

And is the same true of the second table, the "Discipline currency claim"?---Yes, that's right.

PN9236

Did you instruct Ms Tsagouris to exclude a proportion of the casual academic workforce to take account of those who held previous engagement with UNSW, that is people who have been employed in previous years?---No, I don't recall instructing her to do that.

PN9237

Did you instruct her to discount the figures that she calculated by the number of hours already paid for attending induction programs?---No.

PN9238

In relation to the "Discipline currency claim", did you instruct her to exclude a proportion of casual academic staff to take account of those who are industry practitioners currently practising in their professional area?---No, because we don't know the proportion of those.

PN9239

Did you instruct her to exclude a proportion of casual staff on the basis that some of your casual employees will work at more than one university?---No, because again we don't know those numbers.

PN9240

Did you instruct her to discount the total by the amount currently paid to casual staff for participating in staff development or attending conferences?---Sorry, you just broke up there right at the end.

PN9241

I'm sorry. Did you instruct Ms Tsagouris to discount the total by the amount that UNSW has paid to casual staff for participating in staff development or attending conferences?---No, I didn't.

PN9242

Does UNSW use any online tools such as Moodle or Blackboard to facilitate students engaging with their studies outside contact time?---Yes.

PN9243

And students and staff can access those systems from off campus?---Yes.

PN9244

Is it the practice of UNSW to provide or fund the cost of home internet connections for your staff?---No, it's not.

PN9245

Not for any of your staff?---Look, I can't say that we don't do it for any of our staff, but the normal practice would be that we don't fund that.

*** DAVID MICHAEL WARD

XXN MS GALE

PN9246

It is fair to say that nearly all the employees who use such connections or facilities pay for them themselves?---Yes, I think that's fair to say.

PN9247

And it is likely that they use them for private as well as work purposes?---Yes. Sorry, I probably should have answered that by saying I assume that a number - perhaps a large number use it for work purposes as well as private but I'm not specifically aware of what that number would be.

PN9248

Fixed term contract staff employed by the university, presumably you have a fair number of fixed term contract staff?---Yes.

PN9249

And a fair proportion of those staff would have second or subsequent fixed term contracts?---A fair proportion but again I don't know exactly what proportion.

PN9250

In relation to a fixed term contract staff who has a second or subsequent contract which commences at the end of the first contract, that is not where there's big gaps but where they basically move from one contract directly into the next, is it the university's practice to pay them out their accumulated entitlements at the end of the first contract or do you roll those over?---No, we would roll those over.

PN9251

Does UNSW have any data about the actual hours worked by academic staff?---No. We have workload models in place but obviously give - tie regulation to some aspects of academic work, for example face-to-face teaching hours but particularly around research time and how much time academics spend doing activities like that, we don't have academic staff for instance fill in timesheets or things like that.

PN9252

And in fact even in relation to teaching time you don't actually measure the time worked, do you, you only measure what has been allocated according to broad assumptions?---Yes, the workload allocation model is based on a set of broad assumptions which is about the work that is allocated to an individual.

PN9253

And both assumptions make estimates about what is a fair amount of time to allow for something rather than actually considering each specific lecture or tutorial and how much work might be involved in that?---Yes, I mean that's true to say, although - I mean I should emphasise that those workload allocation models are developed by general agreement of the staff within the work unit, so that obviously puts a very heavy level - fairness on to the models.

*** DAVID MICHAEL WARD

XXN MS GALE

PN9254

When the university appoints a part-time academic staff member what metrics do you bring to bear in order to work out what fraction of full time they are?---So, the

appointment would be based on a particular fraction of full-time work and then that fraction would flow into the workload allocation model. So, if somebody for instance was employed to work as a 60 per cent fractional full-time academic their teaching contact hours would be 60 per cent of that allocated to a full-time person.

PN9255

The teaching contact hours allocated to a full-time person can vary quite widely, can't they?---It can, yes.

PN9256

You have a 40/40/20 presumption in a lot of your schools and faculties, is that right?---I probably should say that's the starting point but, yes, that's right.

PN9257

But from that starting point there can be quite significant variations?---That's right.

PN9258

Can I ask you again in relation to a fractional employee, a part-time employee, how do you go about working out what fraction they should be paid at?---Yes, but I mean we're starting from the same starting point, if you like, of the 40/40/20 arrangement and basing it on that presumption.

PN9259

No further questions.

RE-EXAMINATION BY MR PILL

[3.05 PM]

PN9260

MR PILL: Mr Ward, it is a very limited question. You were asked about academic work allocation and you referenced academic workload models and the fact that there was general agreement. Are you aware under the workload models what role (if any) there is for individual discussion in the allocation of an academic staff member's workload for the prospective year?---That is a very important aspect of the allocation process. I mean each of the workload models is based on a set of rules, if you like, and assumptions and many of them sort of have these points/hours allocated to particular activities and aspects of workload. But I mean a really important part of that is the conversation between the supervisor and the staff members to talk about where particular focuses at work are going to be.

PN9261

I have no further questions.

PN9262

VICE PRESIDENT CATANZARITI: Thank you, Mr Ward, you are excused.

<THE WITNESS WITHDREW

[3.06 PM]

*** DAVID MICHAEL WARD

RXN MR PILL

PN9263

Over the luncheon break we received communication from the NTEU in relation to the emails in relation to Professor Hepworth. Are you proposing we tender those documents?

PN9264

MS GALE: I'm happy to tender that, Your Honour.

PN9265

VICE PRESIDENT CATANZARITI: I will mark those documents exhibit AT. If there is anything arising from those documents, Mr Pill, then you might let Ms Gale know.

**EXHIBIT #AT EMAIL CHAIN BETWEEN NTEU AND ASSOC
PROF GRAHAM HEPWORTH**

PN9266

MR PILL: Thank you.

PN9267

VICE PRESIDENT CATANZARITI: That concludes the evidence for today. The Commission is adjourned until tomorrow.

ADJOURNED UNTIL THURSDAY, 3 NOVEMBER 2016

[3.06 PM]

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