

**IN THE FAIR WORK COMMISSION
AT SYDNEY**

MATTER: AM2014/263; 2014/266
AM2018/18; AM2018/20

**REVIEW OF MODERN AWARDS – STAGE 4
EDUCATIONAL SERVICES (TEACHERS) AWARD 2010
CHILDREN’S SERVICES AWARD 2010**

IEU SUBMISSIONS IN REPLY

INTRODUCTION

1. These are the IEU’s submissions made in accordance with the directions issued by the Full Bench on 9 May 2019 setting out the factual findings the IEU says should be made in respect of this matter, and their foundation in the evidence.
2. Many of the matters below are either obvious propositions, or arise from a correct reading of the Awards and the various claims. Where necessary, references to the relevant parts of the evidence are footnoted.
3. In respect of the ACA witnesses, transcript references have been used over references to their written statements. Their prepared statements consist, relevantly, of wide statements of opinion and conclusion said to be in support of the two ACA claims. However, under cross examination, it became apparent that each had a limited understanding of both the Awards and the ACA claims themselves. In these unusual circumstances, their oral evidence should be preferred.

GENERAL FINDINGS

1. The National Law prescribes minimum staff ratios, being both:
 - a. the minimum number of educators that must be present at any given time, which can include teachers; and
 - b. the specific numbers of teachers who must be present (or in the case of smaller services, available) at any time,

relative to the number and ages of children present, which vary slightly state to state.

2. The overwhelming majority of teachers and educators employed in ECEC services are:
 - a. female;
 - b. low paid; and
 - c. members of what ACA describes as ‘working families’ who need support and flexibility.¹
3. There is a shortage of qualified and suitable teachers and educators in the ECEC sector, and services can find it difficult to both recruit and retain staff.²
4. These difficulties in recruiting and retaining suitable staff:
 - a. inhibits the ability of the services to provide continuity of care for the children;³
 - b. is bad for business, in that parents do not like to see high staff turnover;⁴
 - c. are in part caused by poor wages and conditions in the sector;⁵ and
 - d. will likely be exacerbated by further reductions in conditions.

¹ Transcript (6/5/19), P1097-P1099 [KARTHIKA VIKNARASAH]; Transcript (7/5/19), P1595-P1603 [JAE DEAN FRASER]; Transcript (7/5/19), P2203 - P2209 [KATY LOUISE PATON]; Transcript (7/5/19), P2492 - P2495 [PAMELA AVRIL MACLEAN]; Transcript (7/5/19), P2676 - P2680 [ANN MARIE CHEMELLO]; Transcript (7/5/19), P2926 - P2927 [KRISTEN CAROL MCPHAIL]; Transcript (8/5/19), P3912 – P3916 [KERRY JOSEPH MAHONY]; Transcript (9/5/19), P4163 - P4166 [NICOLE LOUISE LLEWELLYN]; Transcript (9/5/19), P4618 – P4621 [ALEXANDRA HANDS]

² Transcript (6/5/19), P1006 - P1009 [KARTHIKA VIKNARASAH]; Transcript (9/5/19), P4587 [ALEXANDRA HANDS]. See also the ACECQA submission of 15 March 2019, p.1.

³ Transcript (7/5/19), P2671 - P2672 [ANN MARIE CHEMELLO]; Transcript (9/5/19), P4602 - P4603 [ALEXANDRA HANDS]

⁴ Transcript (7/5/19), P2673 [ANN MARIE CHEMELLO]; Transcript (9/5/19), P4601 [ALEXANDRA HANDS]

⁵ Transcript (7/5/19), P2674 - P2676 [ANN MARIE CHEMELLO]; Transcript (9/5/19), P4588 [ALEXANDRA HANDS]

5. Many workers, particularly permanent part-time employees, in the for-profit ECEC industry:
 - a. are not currently advised of their permanent start and finish times on commencement;⁶
 - b. instead are rostered week to week, with varying volatility from service to service (in some cases, being provided with less than 7 days notice);⁷
 - c. in the case of part-time workers, are engaged on minimum hours contracts which purport to permit the employer to either:
 - i. not pay overtime rates for any hours worked in excess of the agreed hours; or
 - ii. in reality engage workers on close to full-time hours but reduce those hours of work at will.⁸
6. In at least some cases, permanent part-time staff are employed on contracts which do not even involve a minimum number of guaranteed hours.⁹
7. Some for-profit ECEC services do not pay overtime rates, whether by:
 - a. offering time off in lieu instead;¹⁰
 - b. incorporating an overtime component into above-award rates;¹¹ or

⁶ Transcript (7/5/2019), P2463 [PAMELA AVRIL MACLEAN]; Transcript (7/5/19), P2943 [KRISTEN CAROL MCPHAIL]; Transcript (9/5/19), P4686 [ALEXANDRA HANDS]; Transcript (9/5/19), P4691 [ALEXANDRA HANDS]

⁷ Transcript (6/5/2019), PN1107-1109 [KARTHIKA VIKNARASA]; Transcript (7/5/2019), P2107-2108 [KATY LOUISE PATON]; Transcript (9/5/19), P4151 - P4152 [NICOLE LOUISE LLEWELLYN]; Transcript (9/5/19), P4687 [ALEXANDRA HANDS]; Transcript (9/5/19), P4691 [ALEXANDRA HANDS]

⁸ Transcript (7/5/2019), P1661-1662, P2014 [JAE DEAN FRASER]; Transcript (7/5/19), P2939 - P2940 [KRISTEN CAROL MCPHAIL]; Transcript (7/5/19), P2943 [KRISTEN CAROL MCPHAIL]; Transcript (8/5/19), P3919 - P3921 [KERRY JOSEPH MAHONY]; Transcript (9/5/19), P4146 - P4150 [NICOLE LOUISE LLEWELLYN]; Transcript (8/5/2019) P3552-3533 [SARAH ELIZABETH TULLBERG]

⁹ Transcript (07/05/2019), PN2109-2113 [KATY LOUISE PATON]

¹⁰ Transcript (7/5/19), P2681 [ANN MARIE CHEMELLO]; Transcript (7/5/19), P2685 [ANN MARIE CHEMELLO]

¹¹ Transcript (7/5/19), P2683 - P2684 [ANN MARIE CHEMELLO]

■ [REDACTED] ■

IEU CLAIM 1 - CASUALS

8. Teachers are occasionally engaged by ECEC services on a casual basis.¹³
9. From time to time, there is a dispute about whether a casual teacher in an ECEC who is engaged for more than a quarter day but less than half a day is to be paid a quarter day or half a day, or some other amount.¹⁴

IEU CLAIM 2 - DIRECTORS

10. Some ECEC services appoint a qualified teacher as the director of the service.¹⁵
11. The role of Director is more senior to the role of a teacher in an ECEC service.¹⁶
12. Teachers who have been appointed as Directors:
 - a. administer the delivery of an educational program;¹⁷
 - b. oversee the work of other teachers and educators in the service, including by reviewing their development and delivery of educational programs;¹⁸

■ [REDACTED]

¹³ Statement of James, 15 March 2019, [32]-[33]. Transcript (7/5/19), P2900 - P2901 [KRISTEN CAROL MCPHAIL]

¹⁴ Statement of James, 15 March 2019, [32]-[33].

¹⁵ Statement of Lisa James (15/3/2019), Paragraphs 21 – 25; Statement of Ana Mravunac, 15 March 2019, Statement of Lindy Farrant, 14 March 2019.; Statement of Julie Friend, 15 March 2019; Transcript (6/5/19), P1412 - P1413 [ELIZABETH JEANNETTE ARRABALDE]; Statement of Fraser at [135].

¹⁶ Statement of Lindy Farrant (14/3/2019), [6], [11]; Statement of Julie Friend (15/3/2019) at [14]; Transcript (6/5/19), P1045 - P1049 [KARTHIKA VIKNARASAH]; Transcript (7/5/19), P1621 - P1622 [JAE DEAN FRASER]

¹⁷ Statement of Julie Friend (15/3/2019) at [6.1], [13.1], [13.2], [13.9]; Statement of Lindy Farrant (14/3/2019) at [7.1]; Statement of Ana Mravunac (15/3/2019) at [12]; Statement of Lisa James (15/3/2019) at [14]-[15]; Transcript (6/5/19), P1024 - P1025 [KARTHIKA VIKNARASAH]; Transcript (7/5/19), P1623 - P1658 [JAE DEAN FRASER]; Transcript (8/5/19), P3931-P3939 [KERRY JOSEPH MAHONY]; Transcript (7/5/2019), P2518-P2514 [PAMELA AVRIL MACLEAN]

¹⁸ Statement in Reply of Ana Mravunac (29/4/2019) at [6]; Statement of Ana Mravunac (15/3/2019), [8.3] [10]-[16];

Statement of Lindy Farrant (14/3/2019) at [7], [16]-[18], [23]-[30]; Statement of Lisa James (15/3/2019) at [15], [20]; ; Transcript (6/5/19), P941 - P949 [ALICIA ANNE WADE]; Transcript (7/5/19), P1623 - P1626 [JAE DEAN FRASER]; Transcript (7/5/19), P2512 - P2514 [PAMELA AVRIL MACLEAN]

- c. can, and from time to time do, directly deliver educational programs;¹⁹
 - d. can be, and from time to time are, counted toward a center's minimum ratios under the National Law;²⁰ and
 - e. use their professional skills as teachers in their day to day work.²¹
13. Directors, including teacher directors, are commonly paid a higher salary than that required by the Teachers Award (including the directors' allowance).²²
 14. Where teachers who are qualified as directors are paid award wages, the usual industry practice is to pay them in accordance with the Teachers Award.²³
 15. From time to time, there is a dispute about whether the Teachers Award or the Children's Services Award applies to teachers who have been appointed as Directors.²⁴
 16. If teachers appointed as Directors are paid under the Children's Services Award, this will almost always lead to the teacher being paid less than they would be if they were paid under the Teachers Award.²⁵

¹⁹ Statement of Ana Mravunac (15/3/2019) at [8.13], [9]; Statement of James at [29]; Transcript (6/5/19), P933 - P940 [ALICIA ANNE WADE]; Transcript (7/5/19), P1628 - P1630 [JAE DEAN FRASER]

²⁰ Statement of Ana Mravunac (15/3/2019) at [8.13]-[9]; Transcript (6/5/19), P1001 - P1002 [KARTHIKA VIKNARASAH]; Transcript (7/5/19), P1628 - P1630 [JAE DEAN FRASER]

²¹ Statement of Lindy Farrant (14/3/2019) at [7.3]-[7.8]; [8]-[10], [19]-[24]; Statement of Ana Mravunac (15/3/2019) at [8.5], [15], [17]; Statement in Reply of Ana Mravunac (29/4/2019) at [9]; Statement of Lindy Farrant (14/3/2019), at [12]-15], [19]-[27]; Statement of Lisa James (15/3/2019) at [13], [16]; Transcript (6/5/19), P941 - P949 [ALICIA ANNE WADE]; Transcript (6/5/19), P1028 - P1033 [KARTHIKA VIKNARASAH]; Transcript (6/5/19), P1417 - P1418 [ELIZABETH JEANNETTE ARRABALDE]; Transcript (7/5/19), P1637 - P1639 [JAE DEAN FRASER]; Transcript (7/5/19), P1642 - P1643 [JAE DEAN FRASER]; Transcript (7/5/19), P2522 - P2524 [PAMELA AVRIL MACLEAN]; Transcript (9/5/19), P4120 [NICOLE LOUISE LLEWELLYN]

²² Statement of Lisa James (15/3/2019), at [21]-[26]; Transcript (7/5/19), P2661 - P2662 [ANN MARIE CHEMELLO]; Transcript (7/5/19), P2898 [KRISTEN CAROL MCPHAIL]

²³ Statement of Lisa James (15/3/2019) at [6]-[12], [21]. See also Transcript (6/5/19), P1413 - P1418 [ELIZABETH JEANNETTE ARRABALDE]

²⁴ Statement in Reply of Ana Mravunac (29/4/2019) at [2]; Statement of Ana Mravunac (15/3/2019) at [4]-[5]; Statement of Lisa James (15/3/2019) at [27]-[31].

²⁵ Clause 14.1 of the Children's Services Award 2010; Clause 14.1 of the Educational Services (Teachers) Award 2010.

ACA CLAIM 1 – SPAN OF HOURS

17. There is no real demand for childcare centers to be open until 7.30pm at night.²⁶ For example, a 2016 survey conducted at two of Ms Tullberg's services – the closest thing to data contained in the evidence – 98.4% of respondent parents at one service and 100% at another responded 'very satisfied', 'satisfied' or 'neutral' to a question about the convenience of the current opening hours.²⁷ No ACA witness has performed any market testing, conducted a cost/benefit analysis, undertaken extensive calculations or otherwise given the matter any apparent serious thought.
18. The current potential additional (i.e. planned overtime) costs under either the Teachers Award or the Children's Services Award of rostering a worker to work until 7.30pm are minimal.²⁸ For example, in the case of Ms Llewellyn – the only witness about whose service there is financial information in evidence - the additional wage cost would represent less than 1% of the services' last net annual profit.²⁹
19. Late pickups are:
 - a. generally uncommon;³⁰ and

²⁶ Statement of Lisa James in Reply (15/4/2019) at [12]-[14], [16]-[18], [33]; Transcript (6/5/19), P1088 - P1089, P1379 [KARTHIKA VIKNARASAH]; Transcript (7/5/19), P2237 - P2238 [KATY LOUISE PATON]; Transcript (7/5/19), P2489 - P2491 [PAMELA AVRIL MACLEAN]; Transcript (7/5/19), P2696 - P2698 [ANN MARIE CHEMELLO]; Transcript (8/5/19), P3582 - P3583 [SARAH ELIZABETH TULLBERG] Transcript (8/5/19), P3954 – p397 [KERRY JOSEPH MAHONY]

²⁷ Exhibit 36

²⁸ Clause 4.1 and 23.3 of the Children's Services Award 2010; Clause 14.1 and B.4.1 of the Educational Services (Teachers) Award 2010.

²⁹ Transcript (9/5/19), P4170 - P4207 [NICOLE LOUISE LLEWELLYN]

³⁰ Transcript (6/5/19), P875 [ALICIA ANNE WADE]; Transcript (6/5/19), P1090 - P1092 [KARTHIKA VIKNARASAH]

Transcript (7/5/19), P1709 [JAE DEAN FRASER]; Transcript (7/5/19), P2181 - P2183, P2196 - 2197 [KATY LOUISE PATON]; Transcript (7/5/19), P2919 - P2920 [KRISTEN CAROL MCPHAIL]; Transcript (8/5/19), P3594 [SARAH ELIZABETH TULLBERG]; Transcript (8/5/19), P3958 - P3960 [KERRY JOSEPH MAHONY]

- b. where they do occur, involve parents arriving less than 15 minutes late, and no more than 30 minutes except in the most unusual circumstances.³¹
20. Employers do not, and would not in the future, roster ECEC workers to work significantly past closing time just in case a parent was late.³²
21. Current unplanned overtime costs:
 - a. are predominantly incurred in respect of late pickups;
 - b. can be, and often are, defrayed in whole or in part by late fees;
 - c. are minimal; and
 - d. would not in any event necessarily be reduced by the ACA's claim.³³
22. Teachers are almost always rostered in the middle of the day (8.30-4.30), when the most children are present at the service, because of the particular nature of their role as teachers.³⁴
23. Shifts finishing at 6.30pm:
 - a. can be difficult for employers to fill voluntarily;
 - b. have a detrimental impact on the work-life balance of ECEC workers;

³¹ Transcript (7/5/19), P1710 [JAE DEAN FRASER]; Transcript (9/5/19), P4633 - P4634 [ALEXANDRA HANDS]

³² Transcript (7/5/19), P2184 - P2185 [KATY LOUISE PATON]; Transcript (7/5/19), P2498 [PAMELA AVRIL MACLEAN]; Transcript (7/5/19), P2693 [ANN MARIE CHEMELLO]; Transcript (8/5/19), P3595 [SARAH ELIZABETH TULLBERG]; Transcript (8/5/19), P3961 [KERRY JOSEPH MAHONY]; Transcript (9/5/19), P4208 - P4010 [NICOLE LOUISE LLEWELLYN]; Transcript (9/5/19), P4630 - P4631 [ALEXANDRA HANDS]

³³ Statement of Lisa James in Reply (15/4/2019) at [25]; Transcript (7/5/19), P2189 - P2192 [KATY LOUISE PATON]; Transcript (9/5/19), P4211 - P4213 [NICOLE LOUISE LLEWELLYN]; Transcript (7/5/2019) PN1796 [JAE DEAN FRASER]

³⁴ Statement of Lisa James in Reply (15/4/2019) at [23], [30]; Transcript (7/5/19), P1704 - P1707 [JAE DEAN FRASER]; Transcript (8/5/19), P3610 [SARAH ELIZABETH TULLBERG]; Transcript (9/5/19), P4130 - P4133 [NICOLE LOUISE LLEWELLYN] Transcript (9/5/19), P4564 - P4565, p4648-P4655 [ALEXANDRA HANDS]

- c. are generally regarded as undesirable, and a 'late finish' compared to ordinary working hours.³⁵
24. An ordinary hours shift finishing at 7.30:
- a. would require an employee to start at 11.30am;
 - b. is significantly outside the usual hours that day workers work;
 - c. would cause disruption to many workers' lives, including their family and caring responsibilities; and
 - d. would likely be regarded as undesirable.³⁶
25. Many ECEC workers, in particular part-time workers, are effectively engaged as shiftworkers, in that their start and finish times and days of work rotate and are not properly fixed.³⁷
26. There is no evidence (or, indeed, argument) justifying an alteration to the shift loadings prescribed by either Award.

ACA CLAIM 2 – ROSTER CHANGES

27. Employers can, and do, maintain adequate staffing ratios in the face of unexpected absence by:
- a. employing, and rostering, sufficient staff to manage the risk of an employee requiring personal or other short-notice leave;³⁸

³⁵ Transcript (7/5/19), P1713 - P1715 [JAE DEAN FRASER]; Transcript (9/5/19), P4159 [NICOLE LOUISE LLEWELLYN]; Statement in Reply of Lisa James, LJ-7.

³⁶ Statement of Lisa James in Reply (15/4/2019) at [21], [28], [37]; Transcript (6/5/19), P1093- P1094, P1099 - P1103 [KARTHIKA VIKNARASAH]; Transcript (7/5/19), P2213 - P2216 [KATY LOUISE PATON]; Transcript (7/5/19), P2496 [PAMELA AVRIL MACLEAN]; Transcript (9/5/19), P4160 - P4162 [NICOLE LOUISE LLEWELLYN]

³⁷ See footnotes 6-9 above.

³⁸ Statement of Lisa James in Reply (15/4/2019) at [40]-[41]; ; Transcript (6/5/19), P1134 - P1151[KARTHIKA VIKNARASAH]; Transcript (7/5/19), P1677 - P1687 [JAE DEAN FRASER]; Transcript (7/5/19), P2271 - P2274 [KATY LOUISE PATON]; Transcript (8/5/19), P3965 - P3966 [KERRY JOSEPH MAHONY]; Transcript (9/5/19), P4681 - P4682 [ALEXANDRA HANDS]

- b. directly engaging a pool of casual employees;³⁹
 - c. utilizing agency casuals;⁴⁰
 - d. requesting that staff change their start and finish times;⁴¹
 - e. offering part-time staff additional shifts, up to eight hours of which under the Award may be paid at ordinary time rates;⁴²
 - f. offering part-time and full-time staff overtime;⁴³ and
 - g. using managerial staff to cover absences.⁴⁴
28. There is no evidence that any ECEC Center has, as a result of short notice staff absences or for any other reason, fallen under the minimum staffing ratios. One center came ‘close’ on one occasion due to a gastro outbreak, but was still able to operate.⁴⁵
29. Stable rostering patterns such that the same employees are present at the service at the same times on the same day:

³⁹ Statement of Lisa James in Reply (15/4/2019) at [40], [45]; Transcript (6/5/19), P896 - P898 [ALICIA ANNE WADE]; Transcript (6/5/19), P1145 [KARTHIKA VIKNARASAH]; Transcript (7/5/19), P1799 [JAE DEAN FRASER]; Transcript (7/5/19), P2287 - P2289 [KATY LOUISE PATON]; Transcript (7/5/19), P2705 -2715 [ANN MARIE CHEMELLO]; Transcript (7/5/19), P2979 [KRISTEN CAROL MCPHAIL]; Transcript (8/5/19), P3971 [KERRY JOSEPH MAHONY]; Transcript (9/5/19), P4700 - P4702 [ALEXANDRA HANDS]

⁴⁰ Statement of Lisa James in Reply (15/4/2019) at [40], [45]-[46]; Transcript (6/5/19), P1146 - P1147 [KARTHIKA VIKNARASAH]; Transcript (7/5/19), P1800 [JAE DEAN FRASER]

⁴¹ Statement of Lisa James in Reply (15/4/2019) at [40]-[45]; Transcript (6/5/19), P1139 - P1141 [KARTHIKA VIKNARASAH]; Transcript (7/5/19), P1794 - P1796 [JAE DEAN FRASER]; Transcript (7/5/19), P2256 [KATY LOUISE PATON]; Transcript (7/5/19), P2268-P2295 [KATY LOUISE PATON]; Transcript (7/5/19), P2716 - P2719 [ANN MARIE CHEMELLO]; Transcript (8/5/19), P3972 [KERRY JOSEPH MAHONY]; Transcript (9/5/19), P4698 [ALEXANDRA HANDS]

⁴² Transcript (6/5/19), P1142 [KARTHIKA VIKNARASAH]; Transcript (7/5/19), P1797 [JAE DEAN FRASER]; Transcript (7/5/19), P2285 [KATY LOUISE PATON]; Transcript (7/5/19), P2979 - P2981 [KRISTEN CAROL MCPHAIL]

⁴³ Transcript (7/5/19), P1798 [JAE DEAN FRASER]; Transcript (7/5/19), P2286 [KATY LOUISE PATON]

⁴⁴ Transcript (6/5/19), P1143 [KARTHIKA VIKNARASAH]; Transcript (7/5/19), P2291 - P2292 [KATY LOUISE PATON]

Transcript (7/5/19), P2705 [ANN MARIE CHEMELLO]; Transcript (8/5/19), P3972 [KERRY JOSEPH MAHONY]; Transcript (9/5/19), P4699 [ALEXANDRA HANDS]

⁴⁵ Transcript (7/5/2019), p2880 – P2882 [KATY LOUISE PATON]

- a. enable ECEC services to provide better continuity of care for children;⁴⁶
 - b. are particularly important in respect of teachers, to enable them to best deliver the educational program;⁴⁷
 - c. provide improved educational outcomes for children;⁴⁸
 - d. are preferred by parents and correspondingly provide a benefit to the business; and⁴⁹
 - e. provide greater stability and certainty for ECEC workers.⁵⁰
30. It is impossible to predict when an employee will require personal leave.
 31. When an employee takes personal leave, it is usually at very short notice.
 32. Of the ten ACA witnesses who gave evidence in respect of this claim, seven – Ms Viknarasah, Ms Maclean, Ms Chemello, Ms McPhail, Ms Tullberg, Mr Mahoney and Ms Llewellyn – did not in fact agree that they should be able to unilaterally change their employee’s hours and days of work at no, or short, notice.⁵¹
 33. The claim that these witnesses believed they were giving evidence in favour of – changing hours of work on a one-off basis by agreement – is currently permitted by the Awards. In the case of the Children’s Services Award, there

⁴⁶ Statement of Lisa James in Reply (15/4/2019) at [39]; Transcript (6/5/19), P1065 - P1069 [KARTHIKA VIKNARASAH]; Transcript (7/5/19), P1600 - P1602 [JAE DEAN FRASER]; Transcript (9/5/19), P4144 - P4145 [NICOLE LOUISE LLEWELLYN]

⁴⁷ Statement of Lisa James in Reply (15/4/2019) at [39].

⁴⁸ Statement of Lisa James in Reply (15/4/2019) at [39]; Transcript (6/5/19), P1065 - P1069 [KARTHIKA VIKNARASAH]; Transcript (8/5/19), P3555 [SARAH ELIZABETH TULLBERG]

⁴⁹ Transcript (8/5/19), P3555 [SARAH ELIZABETH TULLBERG]

⁵⁰ Statement of Lisa James in Reply (15/4/2019) at [42], [47]; Transcript (8/5/19), P3555 [SARAH ELIZABETH TULLBERG]; Transcript (7/5/2019) PN2248 [KATY LOUISE PATON]

⁵¹ Transcript (6/5/19), P1113 - P1115, P1172 – P1176 [KARTHIKA VIKNARASAH]; Transcript (7/5/19), P2482 - P2486 [PAMELA AVRIL MACLEAN; Transcript (7/5/19), P2708 - P2709 [ANN MARIE CHEMELLO]; Transcript (7/5/19), P2980 - P2986 [KRISTEN CAROL MCPHAIL]; Transcript (8/5/19), P3557 - P3558; P3568 - P3569 [SARAH ELIZABETH TULLBERG]; Transcript (8/5/19), P3973 - P3974 [KERRY JOSEPH MAHONY] Transcript (9/5/19), P4217 - P4219, P4228 - P4229 [NICOLE LOUISE LLEWELLYN]

is no evidence that the requirement to record this agreement in writing is unnecessarily onerous.

34. Their reactions to the proposition that they should, as employers, be able to force a person to change their hours with no notice – surprise, confusion, and usually adamant disagreement – should be taken as a reflection of community norms. Notably, even Ms Paton - who (belatedly) professed support for the ACA's claim – did not, as a person, consider it fair.⁵²

LUCY SAUNDERS

GREENWAY CHAMBERS

26 MAY 2019

⁵² Transcript (7/5/2019), P2303-2308 [KATY LOUISE PATON].