



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

COMMISSIONER THORNTON

C2023/6485

s.739 - Application to deal with a dispute

**National Tertiary Education Industry Union
and
Flinders University of South Australia
(C2023/6485)**

Flinders University Enterprise Agreement 2023 to 2026

Adelaide

11.00 AM, FRIDAY, 2 FEBRUARY 2024

Continued from 01/02/2024

PN868

THE COMMISSIONER: Good morning, everybody. I understand this morning we are starting with the respondent's evidentiary case. Mr Murdoch?

PN869

MR MURDOCH: Yes, that is so, Commissioner, and pursuant to the order of witnesses that I outlined yesterday we intend to call Dr Chevaun Haseldine first, and I call her now.

PN870

THE COMMISSIONER: Thank you. Dr Haseldine is in the courtroom or outside?

PN871

MR MURDOCH: She's outside in the breakout room. Just while you're associate is going to bring Dr Haseldine can I just note that I would seek to ask Dr Haseldine some limited additional questions.

PN872

THE COMMISSIONER: Yes.

PN873

MR MURDOCH: And they arise out of some questions that were asked of Dr Wyra in re-examination yesterday.

PN874

THE COMMISSIONER: Thank you. I don't have any difficulty with that. Thank you, Dr Haseldine. Is that I pronounce your name?

PN875

DR HASELDINE: Yes, Haseldine.

PN876

THE COMMISSIONER: Haseldine. Thank you. So my associate will now administer the oath or affirmation.

PN877

THE ASSOCIATE: Please state your full name and address.

PN878

DR HASELDINE: Chevaun Anne Haseldine, (address supplied).

<CHEVAUN ANNE HASELDINE, AFFIRMED [11.05 AM]

EXAMINATION-IN-CHIEF BY MR MURDOCH [11.05 AM]

PN879

MR MURDOCH: Take a seat. Dr Haseldine, could you give your full name to the Commission, please?---Chevaun Anne Haseldine.

*** CHEVAUN ANNE HASELDINE

XN MR MURDOCH

PN880

And what is your current occupation?---I'm a senior project officer at Flinders University.

PN881

And for how long have you been in that role for?---Two years.

PN882

Now, you have in front of you on the desk two folders. Could I ask you, please, to go to page 1149?---Yes.

PN883

And at page 1149 there's a copy of a witness statement given by yourself?---Yes.

PN884

And that witness statement has 11 annexures; is that correct?---Yes.

PN885

Are the contents of that witness statement true and correct to the best of your knowledge and belief?---Yes.

PN886

In the annexures to that witness statement you have included at annexures 10 and 11, and they start at page 1236 - - -?---Yes.

PN887

- - - you've included there some details in respect of what's been extracted from the system of the academic workload for Dr Wyra for 2022 at CH10. And then if you go over, please, you will also see you've got some details in respect of Dr Wyra at CH11 for 2023; is that correct?---Yes.

PN888

Now, in respect of both 2022 and 2023, dealing first with 2022, in respect of the topics EDUC9733 and EDUC8731 there is an allocation to Dr Wyra of WAU for being topic coordinator, is there not?---Yes, there is, correct.

PN889

Does the topic coordinator WAU include an allocation for finalising grades?---Yes, that's part of topic coordination for finalising grades.

PN890

Yes. Then in respect of 2023 for EDUC8731 - - -?---Yes.

PN891

- - - EDU9735 - - -?---Yes.

PN892

- - - EDU9736 - - -?---Yes.

*** CHEVAUN ANNE HASELDINE

XN MR MURDOCH

PN893

- - - and EDUC9732, has Dr Wyrta being recorded as receiving an allocation for being topic coordinator?---Yes, for all of those.

PN894

And again did that topic coordinator designation and allocation include as part of the WAU an allocation for finalising grades?---Yes.

PN895

For the purposes of my next question I would like you to assume - I don't suggest that you know this from your own knowledge - I would like to ask you to assume that for those topics that I have just taken you to that Dr Wyrta did not finalise the grades for those topics?---Mm-hm.

PN896

And that was as a result of her being on leave. Okay?---Okay.

PN897

Are you able to say whether there were any adjustments made to her WAU for those topics in respect of the WAU allocated for finalising grades as a result of her taking leave?---No, no adjustment has been made. The full allocation is still there.

PN898

Thank you. Yes, that's the evidence-in-chief of - - -

PN899

THE COMMISSIONER: Perhaps we should also put the statement into evidence.

PN900

MR MURDOCH: Yes, of course, thank you. I tender that statement.

PN901

THE COMMISSIONER: Thank you.

EXHIBIT #R1 STATEMENT OF CHEVAUN HASELDINE THAT COMMENCES AT PAGE 1149 OF THE DIGITAL COURT BOOK AND CONCLUDES ON PAGE 1253 TOGETHER WITH 11 ANNEXURES

PN902

MR MURDOCH: And that's the evidence-in-chief of this witness. May it please the Commission.

PN903

THE COMMISSIONER: Thank you, Mr Murdoch. Ms Buchecker.

CROSS-EXAMINATION BY MS BUCHECKER

[11.10 AM]

*** CHEVAUN ANNE HASELDINE

XXN MS BUCHECKER

PN904

MS BUCHECKER: Hello, Dr Haseldine. I wonder if I could take you to page 1150 of the court book, and that's the statement that you have provided for these proceedings. And at paragraph 8 you express your familiarity with the work of Professor Menz in developing the WAU model; is that correct?---I worked for Professor Menz, yes, but I was not involved in developing the workload model.

PN905

Are you familiar with the methodology underpinning the WAU model?---I am aware of the formulas that are used, but I was not involved in any of developing of that.

PN906

Do you know how to use those formulas?---We have an app that uses those formulas, yes.

PN907

But do you understand the algorithm that sits underneath the app?---I understand a base level of it, yes.

PN908

Okay. If I can take you then to paragraph 17 of your statement, which is on page 1151, and at paragraph 15 you say:

PN909

The WAU model is not hours-based, and WAUs do not equate to hours of work.

PN910

Can you explain what you mean by that?---Yes. Our college uses a load-based model we use to student enrolments to allocate WAUs in our college.

PN911

Okay. Can I take you then to page 1099 of the court book?---1099?

PN912

Yes. Now, I realise you won't be familiar with this document, but it is relevant to the questions that I am going to ask you. So I would like to give you a moment. I will give you the context. It's a dispute response letter made on behalf of the university, and the authority to make that response was delegated to Professor Menz by the Vice-Chancellor in his capacity as the expert on the WAU model. Now, I would like you if you would to read paragraph 3 at the bottom of page 1099, and the top paragraph at 1100 over the page, and I will give you a moment. Are you ready? Yes. Now, the algorithms that are contained in the CAPSW workload model in the present form are the same algorithms that were developed by Professor Menz and are the algorithms upon which he based this response. There's been no change to the algorithm, has there?---(Audio malfunction) sure.

*** CHEVAUN ANNE HASELDINE

XXN MS BUCHECKER

PN913

Can you explain to me how your statement that WAUs have no connection to hours can be reconciled with this very clear statement from the senior manager

authorised to make it on behalf of the dean's people and resources, how that can be reconciled with the assertion that there is no connection between WAU and hours?

PN914

MR MURDOCH: I object to that. That 28 April 2021 is not this witness's letter. So it's an unfair question.

PN915

THE COMMISSIONER: She's had the opportunity to read the letter. Can the question be put, Ms Buchecker, without the context of the letter?

PN916

MS BUCHECKER: It can. I will re-put the question, Commissioner. In April 2021 Professor Menz advised the union that one WAU equals 57.5 hours, and 30 WAU equals 1725 hours, and he advised the union of that on behalf of the dean's people and resources of which your dean was one at the time and was privy to that conversation I'm assuming.

PN917

MR MURDOCH: I object. I object to that.

PN918

MS BUCHECKER: All right, I will take that.

PN919

THE COMMISSIONER: Ms Buchecker, I think - - -

PN920

MS BUCHECKER: Yes, that was a statement. That was a statement.

PN921

THE COMMISSIONER: In any event my invitation was to if you're going to ask the question ask the question to the witness about what is within her knowledge and understanding of the operation of the model, because she has put forward in her statement that she's responsible for the administration of the workload equalisation model.

PN922

MS BUCHECKER: Yes, Commissioner. She has also said that there is no connection between WAUs and hours, and that's what I am trying to understand.

PN923

THE COMMISSIONER: And perhaps that might be the question to articulate that in oral evidence.

PN924

MS BUCHECKER: Yes. Are you aware of the enterprise agreement and the provisions around academic workloads?---I'm aware of it, but I don't know it. Off the top of my head, no.

*** CHEVAUN ANNE HASELDINE

XXN MS BUCHECKER

PN925

Okay. Can I take you to page 563 of the court book?---Mm-hm.

PN926

Setting aside for the moment that there is some dispute between the parties about the actual numbers, I am just wondering if you can walk us through that form with my guidance. First of all can you confirm that this is the university's workload data form, it is the form that it uses to show the staff summary and the underpinning detail of workload; is that correct?---Yes, that's the screenshot of a (indistinct) report.

PN927

Can you explain what 30 means in the expected WAU column?---That's what a full-time equivalent staff member's expected WAU is.

PN928

Okay. We are still at page 563, and I would ask you to look at the final top corner of the summary where it gives a percentage of total WAU. Can you explain how that percentage is calculated?---I assume it's just the total WAU divided by the expected WAU.

PN929

Yes, okay. And then in that case would it be fair to say that the total WAU represented there, setting aside any contestation over the numbers, is 54.5 per cent over a total workload?---From what I'm seeing on here, yes, but I have no - there's no evidence of what timing this report is. At this point in time, yes, that's what - when that screenshot was taken, but there's no evidence as to when that screenshot was taken on this page.

PN930

Sure.

PN931

THE COMMISSIONER: Ms Buchecker, if you don't mind I would just like to, seeing as you're on the topic, ask the witness, what your understanding of the term 'expected WAU' means? In this context do you know what 'expected' means?---That's what we would expect the person to work.

PN932

On what basis is it expected, the workload model?---Well, 30 WAUs is what we expect a full-time staff member to work.

PN933

Okay. Thank you.

PN934

MS BUCHECKER: Can I now take you to 1157 of the court book?---Sorry, Ms Buchecker, I missed that page number.

*** CHEVAUN ANNE HASELDINE

XXN MS BUCHECKER

PN935

1157?---Thank you.

PN936

And we see at paragraph 53(b) that you have made some adjustments, some recent adjustments to the 2022 WAU figures for Dr Rogers. Can you confirm when you made those adjustments, thereabouts?---I don't have the exact date, but it was done late, very late last year.

PN937

So in 2023 for the 2022 workload?---Yes.

PN938

And what was the impetus for that adjustment?---Well, it was to look at to see if we had actually adjusted Bev's workload as it should have been done at the beginning of the year, what it would be more reflective of.

PN939

And would you normally do that at the end of a following year for the workload of a previous year?---Yes, because workloads are draft until the end of the year. So if we believe that someone's workload hasn't been done correctly, yes.

PN940

This is a 2022 workload though, and it wasn't adjusted until the end of 23?---I wasn't made aware that it needed to be adjusted until then.

PN941

So given that the 2022 workload sat at 46.36 WAU according to the information provided to Dr Rogers, what would have been the process in the college for triggering the kind of review that you did a year later at the end of the following year?---So normally the academics themselves if they have a high WAU would come to me and we would look at it, but in this case Bev did not come to me to have her WAUs looked at or discussed.

PN942

And who allocates WAUs at that level of overload?---Sorry, I don't understand.

PN943

If I work for Flinders University and I expect to get 30 WAU who is it that gives me 46.36?---There's lots of factors in that. The computer generates the initial WAU, which is as I've explained in my witness statement somewhere that once the TPD and the Deputy TPD decide that topic, that topic is put into the computer system and the whole teaching is allocated, and until that academic with their TPD, so the TPD or Deputy TPD has the authority to determine who will do the teaching, then it's looked at.

PN944

Is it correct to say that the Dean (People and Resources) has governance responsibility for workload in the college?---Overall, but they delegate that to the TPD and Deputy TPDs.

*** CHEVAUN ANNE HASELDINE

XXN MS BUCHECKER

PN945

THE COMMISSIONER: Are you saying that in addition to your answer to the effect that the Deputy TPD and the TPDs are responsible for allocating topics is what I understand?---Correct.

PN946

In addition they have a responsibility to look at each academic's overall workload?---Correct.

PN947

MS BUCHECKER: Can I now take you back to 53(b), and you have adjusted the figures for Dr Rogers in 2022 from 46.36 to 41.34. Now, although we don't accept the adjustment, because in evidence there is information to the contrary that I won't trouble you with here, if we're looking at the adjustment nevertheless is it your evidence that the 2022 WAU figures for Dr Rogers when adjusted at the end of 2023 show 41.34 WAU?---Do you mean 2022?

PN948

2022 adjusted by you in 2023, at the end of?---Yes, 41.34.

PN949

Right. So we can take that 41.34 as the base level of the potential overload given that there's some contestation over the numbers. That was the bottom of the range of potential overloads for Dr Rogers in 2022, because, correct me if I'm wrong, but you did say there's some level of equalisation over a given year, but that would have been well and truly equalised and the dust settled by the end of 23, wouldn't it?---Sorry, I don't understand what you - - -

PN950

Well, by the end of 2023 you would well and truly have known what the 2022 final workload was for Dr Rogers. So we can say 41.34 as your evidence of the 2022 workload for Dr Rogers?---From the - yes, from the knowledge I have. I don't have exact knowledge without Dr Rogers speaking to me or what she did actually teach. This is just assumptions I've made on what I do know.

PN951

Yes.

PN952

THE COMMISSIONER: Meaning what data is available to you about what Dr Rogers - - -?---Yes, and that has not taken into any account service, because that's not my jurisdiction. I'm just looking at it from the teaching perspective.

PN953

MS BUCHECKER: So in fact it could be higher if the service - - -?---Or it could be higher.

PN954

- - - if it was higher?---Yes.

*** CHEVAUN ANNE HASELDINE

XXN MS BUCHECKER

PN955

THE COMMISSIONER: Can you explain to me how it could possibly be lower if your - because you can only test the veracity of the teaching WAU?---And I've also assumed that she did all this teaching. I don't have that knowledge that she did or didn't do any of the teaching.

PN956

If there's a process that involves you assessing, or auditing for lack of a better term, the overall WAU at the end of an academic year for example in order for preparation for the next year, then is there a process where you do confirm the veracity of the data you're relying on, whether people actually did or did not teach certain topics?---That would rely on the TPD or the Deputy TPD coming to me and saying, 'We just realised that this person didn't do that teaching.' So, yes, that can happen. I'm not saying it happened with these, but overall it can happen with an individual academic, yes.

PN957

It is not a process where you're responsible for checking with the TPDs about which academics did what work in the teaching sphere?---I would rely on the TPDs and the Deputy TPDs to come to me if they were made aware that someone wasn't doing some teaching that needed to be changed. There is one area actually where we can check, which is the casual - we can see if casuals taught into a topic, and that does - has happened across the board where we find out that an academic was allocated teaching, but we also paid a casual to do that teaching. So that is a system that we can check.

PN958

And then you would make adjustments - - -?---Yes, make adjustments to the workload, remove it from the academic's workload if a casual was paid to teach it.

PN959

So is it fair to say that in circumstances where a TPD or a Deputy TPD did not come to you and say, 'So and so didn't teach this topic', that you operate on the basis that they did?---Yes.

PN960

Okay. Thank you. Sorry, Ms Buchecker.

PN961

MS BUCHECKER: Thank you. Can I now take you to page 571 of the court book, and you will see there that that is the 2023 workload for Dr Rogers, and can you please confirm again that that is the university's workload form?---Yes.

PN962

Thank you. You will see here that Dr Rogers has a WAU allocation for 2023 of 52.49, and that the form describes that as 174.97 per cent of a full-time load?---Yes.

*** CHEVAUN ANNE HASELDINE

XXN MS BUCHECKER

PN963

Now, if we go to your statement again on page 1157 at 53(a) you have adjusted that allocation to 42.06. Can you confirm that that was also adjusted at the end of 2023?---Yes.

PN964

Given that 2023 work is over we can take that as a suitably adjusted figure?---Yes.

PN965

Thank you.

PN966

THE COMMISSIONER: Because again in reference to page 571 this is a point in time capture and we don't know when that point in time is; is that right?---Yes, I don't know what the point in time that capture was.

PN967

Thank you.

PN968

MS BUCHECKER: But presumably workloads are reconciled at the end of each year in some form; is that correct?---The document - the workload is live until the - that can update every day. So, yes, it is drafted until the end of the year.

PN969

Yes. And is there anyone responsible in the college for doing a cross check between the reconciliation at the end of each year, and the university's obligation to 1725 annual hours of work for an academic?---The responsibility of that is for the TPDs and Deputy TPDs to make sure that their staff are working within a 30 workload, 30 WAU workload.

PN970

And if that fails and they don't and they can't because they're not able to adjust what happens then?---They will be speaking - if their TPD or Deputy TPD can't sort it out they need to go and speak with the Dean P&R.

PN971

Thank you. Now, if I can take you to page 1150 where in your statement at 9 you say, and I'm quoting here:

PN972

Clause 67.23 is intended to ensure that a staff member who takes on a greater workload in one year receives appropriate relief in subsequent years.

PN973

?---Yes.

*** CHEVAUN ANNE HASELDINE

XXN MS BUCHECKER

PN974

Can you show how this relief was provided to Dr Rogers in 2023, given that on your revised calculations her 2022 workload allocation was 11.34 WAUs over the expected 30, and for 2023 her workload was nevertheless 12.06 over the expected

30, and these are your calculations, not the ones that Dr Rogers has put forward?---This was not done for Bev. This is done when an academic comes to us and speaks to us, and then we do the allocation for being over workload.

PN975

So the duty of care and responsibility for workloads has been allocated to the staff member to resolve on their own behalf?---With their TPD and Deputy TPD.

PN976

Interesting. Can you describe how that workload relief mechanism in clause 67.23 has been applied in practical terms in the college; are you aware of it having been applied?---Yes, there is quite a number of academics who comes to us through their TPD and Deputy TPD where they - for various reasons we couldn't bring them down the year before and we give them an allocation of what they were over for the current year. Through discussions with their TPD and Deputy TPD we do allocate that.

PN977

So to some extent it's based on the assertiveness of the staff member and their willingness to come forward?---It's based on if they think their WAU allocation was over what they thought they were capable of working, yes.

PN978

Over what they were capable of working or over - - -?---Okay. So in my statement I say that I have a number of staff members who may sit above 30 and they are happy and do not believe they are overworked. So it's up to the individual academic.

PN979

THE COMMISSIONER: There's just a regular reference to 30 as the expected?---Expected, yes.

PN980

I might come back to that in a minute. Sorry, Ms Buchecker.

PN981

MS BUCHECKER: I think, Commissioner, it's an important point, and I think if we can go to the workload model, and I just have to find what page it is on. At 1164, the workload model is accepted by the college as the instrument for the allocation of workload, and at 1164 at the top it says:

PN982

The model represents an academic staff member's full-time equivalent workload as 30 workload allocation units.

PN983

So it's not some kind of amorphous guidance figure. It's the number of WAUs that's identified in the workload model as a full-time load, isn't it?---Expected, yes.

*** CHEVAUN ANNE HASELDINE

XXN MS BUCHECKER

PN984

And I am not going to ask you to express a view about people's apparent happiness or not with their workload, because I think that would be unfair, but I think it does give us pause for thought further on in these proceedings. Can we confirm that there is no management person that reviews load and reviews what the TPDs are doing and make sure that there are safe and reasonable workloads being applied in the college?

PN985

THE COMMISSIONER: (Indistinct) knowledge.

PN986

MS BUCHECKER: Excuse me?

PN987

THE COMMISSIONER: Sorry, I am just clarifying that the witness can only be asked - - -

PN988

MS BUCHECKER: To the extent of your knowledge of course?---It remains with the TPD and Deputy TPD to my knowledge to manage the staff in their area.

PN989

THE COMMISSIONER: So to your knowledge there's nobody more senior looking regularly at workloads?---No.

PN990

MS BUCHECKER: So couldn't it be assumed - and maybe this is a question for management, but not for you, and if you don't feel comfortable answering it please don't. But in your capacity as an administrator of this workload is it apparent to you that management can continue to send out individual workloads through its app that are over 30 WAU, and that those stand unless staff complain?---I don't think I can answer that.

PN991

Okay, that's fair enough. My final question is if somebody has been absent on sick leave and they have an allocation for a particular body of work that they are unable to complete, is it correct that that appears in the workload form as a leave allocation?---Two separate things there. A leave allocation is added, and if I am made aware that that staff member is no longer doing that role because they are on leave then I will remove it. But if I'm not made aware it still stands in their workload, and so it is doubling up, but normally the TPD Deputy would make me aware.

*** CHEVAUN ANNE HASELDINE

XXN MS BUCHECKER

PN992

THE COMMISSIONER: But you would be informed that that person has taken leave so you would - - -?---Not necessarily. To take a step back, if someone is planning to take carer's or long service leave at the beginning of the year we make allocations, but if it's unknown sick leave I might not even be aware that person has taken that leave. So it's differences between the type of leave.

PN993

MS BUCHECKER: Okay. Thank you, I have got no further questions.

PN994

THE COMMISSIONER: I do have some questions if that's suitable. You refer to I think in your witness statement somewhere about - paragraph 8, 'Based on discussions with Professor Menz.' So Professor Menz is still employed at the university?---No.

PN995

But you have had discussions - are these discussions discussions you had while Professor Menz was employed at the university?---Yes.

PN996

And to your knowledge when did Professor Menz cease to work for the university?---I don't know the exact date, but it was the end of 2021.

PN997

And Professor Menz - perhaps I won't ask you that, that might be outside of your knowledge. I also had a question with respect to paragraph 16 of your statement. You've gone to your best efforts to explain the complexity of this arrangement. I am still looking to understand better how the workload model that is load-based, and I understand the allocation of teaching load and load-based, how that is then managed with what you say in paragraph 17:

PN998

The workload model is not hours based. WAUs do not equate to hours of work or an expectation as to hours of work, but a staff member allocated more than WAUs is not expected to work more than 1725 hours a year.

PN999

So that confirms to me that you understand the 1725 hour requirement. How do you manage allocating load with also the requirement - well, the expectation that academic employees full-time won't work more than 1725 hours. I am trying to understand, given you're the person who manages the workload model in effect, what processes are in place to reconcile the allocation of load with the 1725 hours, and is there one and does that play into your role in any way?---It doesn't play into my role in any way. That's more of a supervisor role, Dean P&R role. We don't micromanage, we don't look at how many hours a staff member is working. We don't from my knowledge, and it's certainly not my area, it's more of a supervisor management role. That's really all I can comment on. We don't micromanage or check what hours the staff members are working.

*** CHEVAUN ANNE HASELDINE

XXN MS BUCHECKER

PN1000

And so can you explain to me then further to what's in your statement when you say that you have responsibility for the administration of the college's workload equalisation model, what that means for you on a day to day basis in your job?---Yes. So I obviously work very closely with the TPDs, Deputy TPDs, so I get the - back in, like the previous year we start preparing workloads for the next

year. We get - we know service roles generally, we know research, and so then the Deputy TPDs will tell me what topics they have in their area. So then we work out what topics a staff member is given, and then we put it into the computer system and that's where - it's mentioned in my statement somewhere, I don't know which paragraph - where the computer will allocate all the teaching to that person, and then we work with the TPDs or Deputy TPDs to determine how much teaching that person can do to try and get them to the expected 30 WAUs. But then in day to day I work - most of the Deputy TPDs that manage workloads come to me very regularly to see how their staff are going. I produce reports for them, so if they need to go and talk to their staff to get them down, allocate them to a casual. So I don't have any authority to remove teaching or add teaching unless a TPD or a Deputy TPD has told me it can, because I don't - I'm not the person who has the oversight of who's teaching what. That's what the Deputy or the TPD is for. I just then go and put that into the computer from what the TPD or the Deputy TPD has told me. Does that answer your question, or do you need a bit more?

PN1001

And so I imagine you would interact mostly with the workload allocation model at the beginning and end of each semester perhaps, or - - -?---Yes, but it is yearly. But, yes, that's definitely my peak times, yes.

PN1002

And in between you would be putting in data that makes the adjustments for leave, or if someone discontinues a topic, or you would obviously interact with it again at (indistinct) time because you then know the amount of students engaged in a topic, and so you put that data into the system?---I do the adjustments, yes.

PN1003

And then that's why people come to you and ask for reports because they can look at the fluctuating WAU?---Yes.

PN1004

One thing I have struggled to understand is how the research component works. Is that something that you know well that you might be able to explain to me?---So a lot of the research is done by the computer. I don't really have a lot of input into the research. But in summary the easiest way to explain the research is for each level of academic, A, B, C, D, E, they have expectations which are determined from a central university research team, and then it's based on the last three years average of how much income, how many publications they have had, how many PhD students they have had complete, and that's all computer generated. I don't play around with that. And then a certain WAU allocation is generated based on how many publications, income, et cetera, they average over the last three years.

*** CHEVAUN ANNE HASELDINE

XXN MS BUCHECKER

PN1005

You might not be able to answer this, but do you think it's fair to say that the input of that data in allocating future WAUs, would it be the case that someone who's been particularly successful at research, been successful in getting grants, had a

number of successful PhD students complete that kind of thing, is likely to be allocated more WAU because the university wants to see more work done by that person in that regard?---Correct. The more successful a researcher is the more WAUs that will be generated.

PN1006

And presumably then - I understand your evidence to be that the system is designed to work out an apportionment of workload, and so you would then expect if someone was getting a higher WAU allocation for research that they would put more of their role into that, more of their time into that?---Yes, but it is - there is a cap on research, because we still need balance staff to also teach.

PN1007

Teach, yes. So there's a cap on how high a WAU can be in research?---Yes.

PN1008

But for example if someone had been successful at doing that in the past, you know, getting revenue into the university and increasing the profile of the university, the formula would encourage perhaps the highest WAU or a higher WAU for that research work - - -?---Correct.

PN1009

- - - because of their past success, and the expectation would be they would do more of their work and spend more of their time doing that research work?---Correct.

PN1010

Thank you. Sorry, Mr Murdoch, I asked those questions now in the event that you want to do any re-examination about those topics.

PN1011

MR MURDOCH: No, Commissioner.

PN1012

THE COMMISSIONER: No re-examination?

PN1013

MR MURDOCH: I have got no re-examination.

PN1014

THE COMMISSIONER: Okay. Thank you, Dr Haseldine, your evidence is concluded, so you can step down from the witness box and you're welcome to stay in the courtroom if you choose to.

<THE WITNESS WITHDREW

[11.41 AM]

PN1015

Thank you, Mr Murdoch.

*** CHEVAUN ANNE HASELDINE

XXN MS BUCHECKER

PN1016

MR MURDOCH: Yes, thank you, Commissioner. The next witness for the respondent is Professor Pablo Munguia, and I call him now.

PN1017

THE COMMISSIONER: Thank you, Professor, my associate will now administer the oath or affirmation.

PN1018

THE ASSOCIATE: Please state your full name and address.

PN1019

PROFESSOR MUNGUIA: Pablo Munguia Matute. And home address?

PN1020

THE ASSOCIATE: You can use your work address.

PN1021

PROFESSOR MUNGUIA: Flinders University, Bedford Park.

<PABLO MUNGUIA MATUTE, AFFIRMED [11.43 AM]

EXAMINATION-IN-CHIEF BY MR MURDOCH [11.43 AM]

PN1022

THE COMMISSIONER: Thank you, Professor, please take a seat. I apologise, but it would really assist me if you could tell me exactly how to pronounce your last name?---It's Munguia; strong 'g' silent 'u'.

PN1023

Thank you so much for that. Mr Murdoch.

PN1024

MR MURDOCH: Yes, thank you, Commissioner. Professor, can you give your full name to the Commission, please?---Pablo Munguia Matute.

PN1025

What's your current occupation?---I am Dean, Education for the College of Education, Psychology and Social Work.

PN1026

And you've been in that role since about when?---July 2022.

PN1027

You've got a folder in front of you there. If you could please go to page 1289?---Yes.

PN1028

And at page 1289 there ought to be a copy of your witness statement for the purpose of these proceedings?---Yes.

*** PABLO MUNGUIA MATUTE

XN MR MURDOCH

PN1029

That witness statement contains four attachments, PM1 to PM4, correct?---Correct.

PN1030

And are the contents of that witness statement true and correct to the best of your knowledge and belief?---Yes, they are.

PN1031

Could I tender the statement with the annexures, Commissioner.

**EXHIBIT #R2 STATEMENT OF PABLO MUNGUIA CONTAINED
IN THE DIGITAL COURT BOOK AT PAGES 1289 TO 1300
TOGETHER WITH FOUR ANNEXURES**

PN1032

And that is the evidence-in-chief of the professor. May it please the Commission.

PN1033

THE COMMISSIONER: Thank you, Mr Murdoch. Ms Buchecker.

CROSS-EXAMINATION BY MS BUCHECKER

[11.46 AM]

PN1034

MS BUCHECKER: Thank you, Commissioner. Hello, Professor Munguia. You have before you two court books full of documents that we will be asking you to refer to in these proceedings. I would ask you first to go to the court book at page 1291, which is your statement, and at 13 you say that the workload methodology is not granular. Is that correct?---Correct.

PN1035

At page 1308 we see the 2023 workload model that's attached to your statement. If I can take you to that page.

PN1036

THE COMMISSIONER: So it's page 14 of the model itself, but it's on page 1308 of the digital court book?

PN1037

MS BUCHECKER: Yes, page 1308. Now, you will see there at sections 12.2 and 12.3 the algorithms that underpin topic coordination and topic teaching. Are you familiar with those algorithms?---Not really.

PN1038

And yet your evidence says that the methodology is not granular. Can you explain how you can determine it's not granular when you're not familiar with the algorithm?---I'm familiar with the formulas themselves, but the elements within not necessarily.

*** PABLO MUNGUIA MATUTE

XXN MS BUCHECKER

PN1039

Can you explain to me the difference between the formula and the algorithm?---The formula outlines how to calculate workload.

PN1040

Yes?---The elements within don't actually compact granular area as such.

PN1041

But it would surely take an understanding of the algorithm to be able to say that it's not granular, and I think if we look at that formula a little more closely we will see that it's a very sophisticated formula, wouldn't you agree?---Yes.

PN1042

And in terms of load it actually calculates to the power of one student, doesn't it? It actually increases, and you will see over on page 1309 some visual examples of the extent to which it actually accommodates student load and activity. Is that correct?---Yes.

PN1043

So in what capacity and in what way is it not granular?---The workload assumes the work that's supposed to be done, but it's not necessarily looking at the exact activity itself.

PN1044

Yes, it's an interesting conversation. Have you been in the sector for a long time?---Yes.

PN1045

Are you familiar with the old 40/40/20 way of allocating workload, where 40 per cent was teaching, 40 per cent was research, 20 per cent was service; yes?---Yes.

PN1046

That wasn't granular, because there was a high degree of liberty within those percentages to allocate load. I'm trying to understand how something as detailed as this algorithm could simultaneously be declared to be not granular, because it seems to be?---The granularity is not against the number of hours worked.

PN1047

Okay. So that takes us to page 1291 of your statement where at paragraph 13 you do make the comment that you have just repeated, that WAUs don't directly correlate to hours, or an expectation of the number of hours that should be worked. So are you saying that 30 WAU is disconnected from the 1725 hours a year that is a full-time load for academic staff as set out in the enterprise agreement?---The 30 WAUs reflect how much allocation should be done in broad terms to the outputs are expected for a given person.

PN1048

I am just trying to understand how you see that connection to the 1725 annual hours that are a full-time load for an academic staff member. What's the cross check between those two things?---Can you rephrase the question.

*** PABLO MUNGUIA MATUTE

XXN MS BUCHECKER

PN1049

If somebody is allocated 30 WAUs per year, if there isn't some granularity to that methodology how is it possible to connect that WAU model with the university's obligation to comply with the 1725 hours a year for a full-time academic?---The WAUs look at how should the outputs be allocated across the year. How you achieve that, you know, it's up to the individual person.

PN1050

Okay. So what is then the alternative instrument that shows compliance with 1725 hours if the WAU model is not that instrument?---I don't know, that's not in my remit.

PN1051

You are in the senior leadership team at the college; is that correct?---Correct.

PN1052

So to your knowledge there is no other instrument that measures the compliance with a number of full-time hours. The WAU model is the model?---The way we operate is looking after performance and outputs. So the WAU model allows us to understand and identify how the allocation of the work should be distributed across individuals here.

PN1053

That confuses me a little, because wouldn't performance and output be a matter for performance, development and review, rather than the allocation of workload? I mean there's obviously some intersect, but if the university has an obligation to limit the hours of work to 1725 then performance and output aren't really relevant to that. It's actually about what the employer asks of its staff, is it not?---Within - yes, within reason, but at the end of the day we need to produce output.

PN1054

Of course, we are all expected to in our work, but I think that's a different proposition, with respect. Can I take you to page 1099 of the court book, and this will be a document that you haven't seen before, so I will give you some time to read it. You may be familiar with it, I'm not sure. It's at 1099, and the paragraphs that are relevant to this conversation are the final paragraph at 3 on page 1099, and then the first paragraph on the following page, and I will just give you a moment?---Yes.

PN1055

Can you see there that the university has formally advised the NTEU of a direct correlation between WAUs and hours?---Yes.

PN1056

Have you ever been informed of that in your college?---The second - the second states, 'The courses not required of the model must use hours as a base.'

*** PABLO MUNGUIA MATUTE

XXN MS BUCHECKER

PN1057

That's right, it doesn't. It just requires a connection between whatever unit of measure is used in hours, and you will see in the second paragraph over the page there's been a very clear link between WAUs and hours, has there not?---(No audible reply)

PN1058

I am interested. If there's a different interpretation of that paragraph then I'm open to hearing it?---Yes, I can see how you interpret it that way.

PN1059

Thank you. Now, if we can go to page 1291, and we're moving back to your statement, and 1291 at paragraph 15. Are you there?---Yes.

PN1060

You say there that the lack of a direct connection between hours of work and WAUs is evident from the methodology for allocating WAUs for research?---Correct.

PN1061

And you illustrate this by saying that staff are allocated no time for research that isn't accepted for publication, even though a significant amount of time could have been spent on that work, and that the time allocated for publications and grants may have no correlation to the work being performed in the current year. Is that a correct sort of summary of what you were saying there? I've used a lot of your words, I'm assuming it is?---The output is what's being measured.

PN1062

Yes, but not the time taken to do the work?---Correct.

PN1063

So there may be some aspects of a researcher's work that don't ever receive a workload allocation?---If it doesn't get disseminated or published or shared.

PN1064

So if I write three substantial grant applications in a year and I only win one, the inputs required to put those grant applications together are not given a workload allocation unless the grant is successful?---We look at the work done over a period of years to accommodate for that.

PN1065

But do you accommodate the inputs or only the outputs?---We accommodate the trajectory of the individual.

PN1066

Yes, in terms of their outputs. So those two grant applications that I wrote that were unsuccessful, even though they were highly meritorious, they were in a competitive environment and I failed to get the money, I won't get a workload allocation for those, because they won't register as an output; is that correct?---I don't know. I don't work in research.

*** PABLO MUNGUIA MATUTE

XXN MS BUCHECKER

PN1067

You have given evidence to that effect. So I'm presuming you are reasonably familiar?---We look after research outputs themselves, so you get the grant, it gets recognised for the following year.

PN1068

That's right, but the grants that weren't won don't get recognised; is that correct?---They can get recognised at some level, but in terms of work, a number of hours, not necessarily.

PN1069

That's right. Because your evidence says that they don't get any time allocation. So if I was to submit four articles for publication and two were accepted I would get a workload allocation at some point in the future for the two that were accepted, but not for the two that failed?---Correct.

PN1070

So I wrote them on behalf of the university in an attempt to publish them, but I don't get a time allocation for that because I was not successful; is that correct?---Yes, but it requires to understand the trajectory of an individual.

PN1071

Yes, it does, and we will come to that. We will come to that. Can you explain how that unaccounted for work fits into the university's obligation to limit hours of work to 1725 hours a year?---When engaging with an academic early in the year you start talking about and discussing what do you want to achieve for that given year.

PN1072

Yes?---And that allows you to decide where to put effort into.

PN1073

Effort or workload allocation?---Sorry?

PN1074

Effort or workload allocation?---What's the difference?

PN1075

There's a significant difference, because we have just established in the evidence that I can put in a lot of effort writing a grant application and not get a workload allocation for it. So I'm trying to understand the difference between effort and recognition of the hours of work that I'm giving in the delivery of that effort?---You would recognise the effort in those discussions.

PN1076

So it's thank you very much, but you don't get an allocation?---It's the other way around. For example you can also say if you get a grant, and then you need to change the workload for that given year, that needs to be changed, the number of - the workload against the given task. So for example teach less because you now have duties to perform against the grant.

PN1077

Because you have actually successfully achieved the grant, but not the other two that you spent a lot of time writing. So you don't get any allocation for them, because they failed?---The lack of success does not - does not signify lack of effort, the lack of work against it.

PN1078

We're in furious agreement on that. What I'm trying to understand is, is it a thank you very much for the effort, or is there some recognition in the workload allocation for that effort that wasn't successful, and I put it to you that there isn't because there's nothing to show that there is, and in fact your words show there is not. So can we assume that that effort might be regarded as developmental and all sorts of other things, but it doesn't get a workload allocation?---No, because it's not granular.

PN1079

It's still work done though, and I'm still trying to understand, and you are in the senior leadership of the college, and so there's a degree of responsibility here. 1725 annual hours a year, some way of measuring compliance with that, a granular algorithm for teaching and topic coordination, and what appears to be a fundamentally flawed method for the allocation of research time. Now, I want to walk through this a little bit more, because it is relevant. Drs Wyra and Skrzypiec are accomplished researchers; is that correct? Are you familiar with their research?---I'm familiar with Grace's research.

PN1080

And are you familiar with the fact that their positions have been disestablished?---Yes.

PN1081

And that they are coming to the end of their employment with the university?---Yes.

PN1082

Given that you have explained that research is allocated based on a retrospective analysis of outputs, when could Dr Skrzypiec be expected to receive her workload allocation for all of the effort that she's put in in 2023 given that she is not going to be employed by the university any more? Has she given all of that effort with no compensation?---I don't know.

PN1083

Well, when would she - if she was staying when would she receive an allocation for her outputs from 2023?---I don't know.

PN1084

Would it be in 2024 or 25, or would it have already happened?---I don't know.

*** PABLO MUNGUIA MATUTE

XXN MS BUCHECKER

PN1085

Well, you've given evidence to the effect that you do understand the machinations of research allocations, and you've given evidence that it's based on a

retrospective analysis of outputs. So I put it to you that the only logical conclusion from that is that if Dr Skrzypiec had stayed with the university she would be eligible for an allocation in 2024 or 2025 based on her excellent research outputs in 2023. Would that be a correct interpretation of what you've given in evidence?---Yes.

PN1086

And so upon her departure from the university can we assume that she won't ever be compensated for that effort because she's gone?---Perhaps. I don't know.

PN1087

Can I take you to page 1079 of the court book, and this is a prior dispute workload deed of settlement that you may have seen in your capacity as a leader in the college. It was distributed to all of the college leaders, but it may have actually predated your time there, I'm not sure. Are you familiar with that document?---No.

PN1088

Okay. It's a deed of settlement that informed the review and amendment of all of the workload models, because there was demonstrable non-compliance with the enterprise agreement that was operational at the time.

PN1089

MR MURDOCH: It's a deed. That's what it is. There's nothing in this document that says the (indistinct) of it just - - -

PN1090

MS BUCHECKER: If you could just bear with me, Mr Murdoch, I am coming to that, and you will find that there is actually a binding obligation arising from that, but it's a narrative that needs to be walked through.

PN1091

THE COMMISSIONER: But I think we need to keep in mind that this witness said he's not familiar with this document.

PN1092

MS BUCHECKER: Yes, okay. I am assuming you're familiar with the enterprise agreement?---Yes.

PN1093

Can I then take you to page 245, and at the top of 245 at clause 67.13 you will see that the terms of that deed have been imported into the enterprise agreement, such that:

PN1094

The research workload allocation will provide sufficient time to reasonably carry out the activities detailed in the agreed research plan.

*** PABLO MUNGUIA MATUTE

XXN MS BUCHECKER

PN1095

What do you understand that to mean?---I think the emphasis is reasonably. So I can take an hour to produce an (indistinct). Someone else can produce more than that, and it's understanding what reason it's within reason.

PN1096

Yes, and I agree, and I think there's always a reasonable norm for those kinds of calculations. I am more interested in the issue of inputs, because if I have a research plan that says I am going to apply for two grants and write four publications this year, then the plan must now provide sufficient time for me to carry out the activities detailed in the agreed research plan. There's been a significant shift. The allocation of research on the basis of a retrospective analysis of outputs is no longer permitted, and it seems as if the college has been slow to catch up with that new term in the enterprise agreement which has been in force now for nine months - eight months. So again I'm still trying to understand how your understanding of how research is allocated matches with this term of the enterprise agreement, and I know that you're not the dean of research, and I have only taken you to this because you have used research allocation as a substantial rationale for the evidence that you've provided. But there is a significant disconnection between what you have described, which is the old method of allocating research, and the new method that's now required by the enterprise agreement that came into force in July 2023.

PN1097

THE COMMISSIONER: Ms Buchecker, I think we need to focus on questions.

PN1098

MS BUCHECKER: Yes.

PN1099

THE COMMISSIONER: You're putting a lot of submission type propositions.

PN1100

MS BUCHECKER: Yes. Sorry.

PN1101

THE COMMISSIONER: So it would be helpful if you draw out what you can from the witness.

PN1102

MS BUCHECKER: Yes, okay. If I can just take you back to your statement now at 1293. You say at paragraph 17 - sorry, I will give you time to get there. Okay?---1293?

PN1103

Yes, 1293 at 17. You say there that there's no expectation for staff to work more than 1725 hours a year. Is that correct?---Correct.

*** PABLO MUNGUIA MATUTE

XXN MS BUCHECKER

PN1104

What happens if a staff member is allocated 35 WAU in a year; are they still expected to complete their work in 1725 hours a year?---The expectation is that

academic would engage in conversations with the Dean P&C, or their supervisor or the Deputy TPD or the TPD to manage that workload.

PN1105

THE COMMISSIONER: I just want you to clarify your answer. Are you saying yes or no to that question? I mean I'm not trying to limit the other comments you made?---If the workload allocation model in terms of units identifies a number greater than 30 then it is expected that the individual engage in conversations with other supervisors or their unit managers to bring that down.

PN1106

MS BUCHECKER: And does the dean leadership of the college have a mechanism for looking at what the app is spitting out in terms of workloads and identifying areas where there's overload and actually taking the initiative to remediate that?---That's within the Dean P&C remit.

PN1107

So there would be an overall governance responsibility for that. Can I take you - -
-

PN1108

THE COMMISSIONER: Was that question?

PN1109

MS BUCHECKER: It had a sort of an uplift at the end. Sorry, I will reframe it. Is there an overall governance responsibility for the management of workloads at the senior leadership level?---If a pattern ensues that requires attention beyond the Dean (People and Resources), yes.

PN1110

Okay. Can I just take you - just one final question - to a section of the enterprise agreement that is found on page 244. It says at 67.6 that:

PN1111

If during the life of the agreement the average workload increases for a particular cohort the Dean (People and Resources) - - -

PN1112

And I realise you're not that person.

PN1113

- - - will analyse those reasons, and then devise management strategies - at 67.7 - to ensure safe and reasonable workloads.

PN1114

As a member of the senior leadership team in CEPSW are you aware of any conversations amongst the leadership team to the effect of that provision of the agreement? It's basically saying is there somewhere that's looking a bit overloaded and what do we do about it?---Yes, and 67.6 points out that it's a Dean (People and Resources) in consultation with the vice-president - - -

*** PABLO MUNGUIA MATUTE

XXN MS BUCHECKER

PN1115

Yes?---So the remaining executive may be consulted if needed.

PN1116

Yes, and at 67.7 there's a broader management obligation which would rest with the broader leadership. And my question is have you been involved in any such conversations in your time as dean of education?---I've had discussions.

PN1117

Have those discussions led to strategies for amelioration?---Yes. So for example we may have subjects, topics of teaching that may have a huge amount of WAUs allocated against them, but they have (indistinct) students. So it's understanding how to manage those topics so that we can actually minimise the workload against that.

PN1118

Okay. Thank you. I have got no further questions.

PN1119

THE COMMISSIONER: Thank you. I just have some brief questions. In paragraph 11 of your statement you say while you do have some involvement in determining workloads for those that you're supervising - can I just ask, you've mentioned other employees that you've supervised. Are they academics?---Yes.

PN1120

Can you tell me then what role you've had in determining workloads for those people?---We converse on what they want to achieve for a given year, for example teach a particular subject, apply for a grant, redesign a course, et cetera, look at service activities, et cetera, to progress our careers. So that's the conversation, what exactly do you want to be working in.

PN1121

And then how does that translate to workload, the (indistinct) steps?---So the next steps would be if for example service - so each individual would get automatically 1.5 WAUs against service, and the individual happens to be involved in many communities or many service roles within the university. Then it would be the question of people why do you want to be spending so much time in that space, because it's going to consume too much time. Let's try and manage that, and look at it more from an individual's career progression as well.

PN1122

And then once that discussion is had is it then that there's some level of agreement that comes out of that between you and the academic you're supervising?---Yes.

*** PABLO MUNGUIA MATUTE

XXN MS BUCHECKER

PN1123

And then what happens to then translate what you've agreed into WAUs?---WAUs again allow us to understand the proportion of time allocated or work effort allocated to given tasks. And so if for example the agreement is that we are going to spend a large time in service, then that individual needs to go and talk to a Deputy TPD or their teaching program director to adjust things. But that

would require an understanding of what the outputs are going to be expected for that space so they can actually achieve something.

PN1124

And given that there's different expectations around research and teaching and service, how does that all come together in the end for that individual person? So let's say they want to spend more time in service and you as a supervisor say, 'Well, okay, I can understand that's a career progression, or what have you, or it's contributing to the university. that means you will need to have a look at your teaching load with your TPD or your Deputy TPD.' They then have a separate conversation I assume to your understanding. Then how does that come together for WAU allocation in the end, and if they get a separate agreement with the TPD about the teaching load they might want to - it seems that their research allocation isn't necessarily negotiated, it's just allocated based on the formula?---Yes, and again this process can take several months, so (indistinct) that we start, you know, engaging in those conversations to figure out exactly how it can happen, because it could be that the teaching program director may say, 'Well actually we do need you to teach these classes.' So, you know, let's go back to the drawing board and then identify how exactly I can manage both the aspirations of the individual with the other aspects and requirements that we have in terms of teaching, et cetera, et cetera.

PN1125

So then what to your understanding happens once those conversations have occurred in the different areas of responsibility, what then happens to that person to be allocated their 30 WAUs, their 40 WAUs, whatever they are, how does that happen after the conversations are happening with different people?---They would engage usually with either Chevaun Haseldine or with the Deputy TPD or with Mary who also oversees the whole process.

PN1126

And so we have heard from Dr Haseldine that then she would put the data into the system and the WAUs come out. To your understanding is there anyone that then looks at an overall WAU for an individual academic and says, 'Look, this process hasn't produced 30 expected, let's look at that', or is that step the individual person has to raise that issue?---From my understanding it's - you know, it's a two prong approach to understanding that the WAUs allocated are correct, so it's both the academic, the form has spit out too big a number or too low a number, let's engage, as well as the Dean (People and Resources) portfolio to decide, 'Actually, yes, we just identify this, it's flagged, it's high, the computer spit out a big number or too low a number, what's going on?'

*** PABLO MUNGUIA MATUTE

XXN MS BUCHECKER

PN1127

And do you have - and, sorry, I might phrase this in quite a conky way - do you have an understanding of the process that goes into working out what work produces a certain output? So you're saying the WAUs are evaluated in terms of the output, what the university expects is deliverables. Do you understand any analysis that's gone into understanding what work goes in to producing those

outputs for the purposes of the formula or the model?---Yes. I was not involved in the creation of those analyses.

PN1128

Thank you. As a supervisor did you have any of those academics that you named in your statement, did you have or were you ever charged with any role in understanding the number of hours they were working, or how their hours were comparing to the 1725 in any given year; was there any engagement with that at all?---The exact number of hours, no, we don't micromanage in that regard. I don't.

PN1129

Thank you. Mr Murdoch?

RE-EXAMINATION BY MR MURDOCH

[12.18 PM]

PN1130

MR MURDOCH: Yes, thank you. You were asked some questions by my friend in respect of paragraph 67.6 of the enterprise agreement. Do you have that still in front of you?---Yes.

PN1131

Yes. Now, noting that the enterprise agreement was operative only from 27 July 2023, in terms of the education area and particularly in respect of the CPE area of the education area, over the last six months have there been any changes made in respect of the structure of the CPE area?---Yes.

PN1132

Just as a broad statement what are they?---There was redesign and realignment of the direction of that area and the degrees that we have within them.

PN1133

As a result of that realignment were there redundancies of staff?---Yes.

PN1134

Was that as a result of there being a reduction in the number of degrees, courses and topics?---That was - that was a consequence of activities.

PN1135

THE COMMISSIONER: Sorry, that was a consequence of activities?---Sorry, it was one of the consequences of the activities of this process.

PN1136

MR MURDOCH: When you say this process you mean the restructure process?---Correct.

PN1137

I don't have any further questions.

*** PABLO MUNGUIA MATUTE

RXN MR MURDOCH

PN1138

THE COMMISSIONER: Sorry, I am just grappling with understanding that answer. Is it your evidence that because of the reduction in staff there was a consequent reduction in topics and qualifications offered?---No.

PN1139

Sorry?---So there's two different processing. One was the redesign of the programs that we have at hand, and then alongside that is the redundancy process.

PN1140

The redesign of the - - -?---Process.

PN1141

- - - process occurred first, and then staffing levels were considered in light of a redesign?---I don't think I can assign cause and effect that way.

PN1142

Sure. Thank you.

PN1143

MR MURDOCH: I don't have any further questions for the witness. Might the witness be excused?

PN1144

THE COMMISSIONER: Yes, thank you, Mr Murdoch. Thank you, Professor, for your evidence. You are now excused and you can remain in the courtroom if you choose.

<THE WITNESS WITHDREW

[12.21 PM]

PN1145

MR MURDOCH: Yes. I am content if the Commission - - -

PN1146

THE COMMISSIONER: I am. Thank you. I think we're moving through it quickly. We might as well conclude your evidence and then we can have an adjournment before the closing submissions.

PN1147

MR MURDOCH: The next and final witness for the respondent is Professor Mary Katsikitis, and I call her now.

PN1148

THE COMMISSIONER: Thank you.

PN1149

MR MURDOCH: Again I have one additional question to ask the professor arising out of the re-examination of Dr Rogers.

*** PABLO MUNGUIA MATUTE

RXN MR MURDOCH

PN1150

THE COMMISSIONER: Thank you. Thank you, Professor Katsikitis. My associate will now administer an oath or affirmation to you.

PN1151

THE ASSOCIATE: Please state your full name and address.

PN1152

PROFESSOR KATSIKITIS: Mary Katsikitis, (address supplied)

<MARY KATSIKITIS, AFFIRMED [12.24 PM]

EXAMINATION-IN-CHIEF BY MR MURDOCH [12.24 PM]

PN1153

THE COMMISSIONER: Thank you, Professor, please take a seat?---Thank you.

PN1154

MR MURDOCH: Yes, thank you, Commissioner. Professor Katsikitis, can you give your full name to the Commission, please?---Mary Katsikitis.

PN1155

Could I ask you, please, what's your current occupation?---I'm the Dean of People and Resources for the College of Education, Psychology and Social Work.

PN1156

And you've been in that role since about when?---February 2020.

PN1157

Now, you've got a bundle of documents in front of you there on the table. Could I ask you, please, to go to page 1255.

PN1158

THE COMMISSIONER: Mr Murdoch, do you want to put the statement into evidence first, or wait until after?

PN1159

MR MURDOCH: I am content for it to go in now.

PN1160

THE COMMISSIONER: Thank you.

**EXHIBIT #R3 STATEMENT OF MARY KATSIKITIS FROM
PAGES 1255 TO 1288 OF THE DIGITAL COURT BOOK DATED
18/01/2024**

PN1161

MR MURDOCH: Thank you, Commissioner.

PN1162

THE COMMISSIONER: Thank you, Mr Murdoch.

*** MARY KATSIKITIS

XN MR MURDOCH

PN1163

MR MURDOCH: That statement that I have just taken you to can you just confirm that the contents of that are true and correct?---That's right, true and correct.

PN1164

Now, I just want to ask you one question in respect of Dr Bev Rogers. She's a person known to you?---Yes.

PN1165

She in 2022 and 2023 was working within the area for which you have responsibility?---Yes, she was in the college.

PN1166

Yes. I understand that in terms of the classifications that apply in respect of academics that Dr Rogers was engaged and remunerated substantively at level B; is that correct?---That's right.

PN1167

Was it the case or not that in addition to the remuneration of level B that Dr Rogers received any additional allowances?---Yes, for course coordination.

PN1168

And those additional allowances that were received for course coordination did they align in any way with level C?---Yes, level C step 1.

PN1169

And it's not a memory test I can assure you, but approximately how much was that per annum?---I don't know. Sorry.

PN1170

That's fine, we can ascertain that from other means. That's the evidence-in-chief of this witness. May it please the Commission.

PN1171

THE COMMISSIONER: Thank you, Mr Murdoch. Ms Buchecker, cross-examination?

CROSS-EXAMINATION BY MS BUCHECKER

[12.27 PM]

PN1172

MS BUCHECKER: Hello, Professor Katsikitis. If I can just take you to page 1256 of the court book, and at paragraph 6 you say you have overall responsibility of overseeing the allocation of workloads to each academic staff member. Can you describe what that involves?---Yes. So we have a framework - I've put together a fairly scaffolded framework for managing the workload allocation of every single staff member. That's evolved over the four years that I've been there based on staff member feedback as well. And at the moment how it currently works is that we're asking how it currently works - - -

*** MARY KATSIKITIS

XXN MS BUCHECKER

PN1173

And what your role is in that - - -?---I'm (indistinct).

PN1174

Yes, that's right. Yes?---A workload draft (indistinct) that I get from various sources in the college.

PN1175

Yes?---Is that - - -

PN1176

If you could provide a little more detail on how deeply you drill down into that information and act on it that would be appreciated?---Yes, sure. So our workload model is derived from various sources from the university. You know, various systems bring out some data for us, and then in about September/October of the year before the allocated workload needs to be drawn up we send out an invitation to all staff members, and copy in their supervisors and the Deputy TPDs and the TPDs to say that we're in the process of now gathering all the information from you that we haven't got yet. So we're able to send them some information we do have from those systems, like a research calculation, maybe a service and leadership calculation of known service and leadership, but we certainly wouldn't have the teaching allocation. We require staff to send that back to us one by one. And then we look at all of that, collate it and do a draft workload.

PN1177

When you say teaching allocation I'm assuming you ask staff to advise you of the topics that they will be responsible for, rather than the allocation that's granted to them?---They advise the Deputy TPD and their TPDs, and/or their supervisors. I leave it up to the staff member to decide on which one of those scaffolded approaches they want to take. But I get that information from the TPDs and/or the deputies. That's how it comes to me.

PN1178

And so you see a consolidated set of workload data at some point?---Yes.

PN1179

Can I take you to page 244 of the court book, and you will see - I will just give you a moment to get there - it's, yes, 244. Just the mike - - -

PN1180

THE COMMISSIONER: Yes, if you do that. You will just need to make sure the mike is closer to you now. Thank you.

PN1181

MS BUCHECKER: Now, if you go to clause 67.2 you will see there that's there a process for the making of workload models, and I am sure you're familiar with that. If you can just confirm that you are?---Page 243?

*** MARY KATSIKITIS

XXN MS BUCHECKER

PN1182

244, and it's clause - yes, you're right, clause 67.2 at 23 going over onto 244. Can you confirm that the workload model referred to in paragraph 6 of your statement is the model made under clause 67 of the enterprise agreement?---Yes, I can.

PN1183

Do you accept that as the college's agreed method for allocating work?---Yes.

PN1184

Is there any alternative workload allocation instrument that's used in concert with that model, or is it the sole instrument?---We only have one workload model.

PN1185

Okay. Can I take you now to page 672 of the court book, and you will see on page 672 that there's a set of principles governing the 2020 CEPSW workload model, which is the one that I think you would have inherited when you came into the role, rather than one that you build yourself; is that correct?---I inherited one, but we've made additions to it.

PN1186

Yes, that's right. So if I can take you to this one, which is the one that you inherited, and you will see down at part 9 of the principles that it provides a statement about 30 workload allocation units comprising a load, but with the university having capacity to make a variation of plus or minus 10 per cent. Can you see that?---(No audible reply)

PN1187

Do you recall the process for the removal of that variation?---Yes, it was following a dispute from the NTEU.

PN1188

Yes. Thank you. And so is it your understanding that from the next version of the model onwards the reference to 10 per cent overload was removed?---So this is 2020?

PN1189

Yes?---I would - yes, I would like to say that it came into effect as soon as we received the information from the university that that is the agreement that was settled.

PN1190

Yes. And what was - - -?---I don't know what the date was.

PN1191

That's okay. Thank you. And what was the information that you received from the university?---There were several issues in that dispute, but the one pertaining to this from memory was that it was to be removed immediately.

*** MARY KATSIKITIS

XXN MS BUCHECKER

PN1192

Thank you. Given that the reference to 10 per cent overload was removed can you explain if somebody is allocated, let's use 40 WAU by way of example, how

does that relate to a full-time workload of 30 WAU?---If we'd seen 40 WAUs like every other - everybody would have got a draft workload. So that would have been something we would have wanted to investigate with the staff member.

PN1193

And investigate and reduce back to 30?---That would have been our process.

PN1194

Right. So we could assume from that that the aim of the college and its mission, and apparently its accomplishment was to get everyone back to 30 WAU?---That's right.

PN1195

If I can just take you back to your statement on page 1256. I will give you some time to get there because it's a cumbersome set of documents.

PN1196

THE COMMISSIONER: Sorry, Ms Bucecker, what is that page number?

PN1197

MS BUCHECKER: 1256.

PN1198

THE COMMISSIONER: Thank you.

PN1199

THE WITNESS: Yes.

PN1200

MS BUCHECKER: At paragraph 11 in your statement you say that WAUs don't directly correlate to a certain number of hours. Can you explain what you mean by that?---We do not attribute hourly workload. So we don't have an hourly workload model. It's a load-based model.

PN1201

So then if I can take you to page 245 - I'm sorry, we're jumping around a bit here. If you look at clause 67.19 it says that the annual hours of work for academic staff is 1725. Can you describe how you ensure your college complies with this limit on annual working hours if there's no correlation between 30 WAU and 1725?---The university model is one of workload of 30 WAUs, and we've got - as you know our workload model that's based on load has all this formulae underpinning it. And from my understanding of those formulae they get our staff members as close to 30 WAUs as they can with adjustments from us after we've spoken to the staff member if they've been over 30 WAUs. We don't - we don't talk in hours in our college. We don't look at hours in our college.

*** MARY KATSIKITIS

XXN MS BUCHECKER

PN1202

And I understand that, and we accept that the 30 WAU is the full-time measure. What I'm trying to get a handle on is in your capacity as the person with governance responsibility for workloads in the college how do you then - if there's

no connection between hours and WAUs how do you ensure compliance with that binding obligation in the enterprise agreement to set a limit at 1725?---We expect our staff to work at 1725, or up to 1725, and we leave it to them. We have very good staff, we pay them salary, and we expect them to be able to manage that workload to 1725 hours should they wish to look at it that way.

PN1203

With respect, I don't think it's a matter of them wishing to look at it, I think it's a matter of compliance with the university's obligation, so - - -?---Yes. We do not expect them to work more than 1725 hours.

PN1204

No, that's a helpful answer. Then I am just trying to get a handle on what it means if somebody is allocated 40 WAU, do they stop three-quarters of the way through the year because they have hit 1725?---They come to see us and we allocate - our workloads are draft workloads all the way through the year. They're not - they're not final workloads, because these things do happen all the time, not to 40, but workloads change due to various things that happen in system such as you get more research money or you may have a higher load of students, or you may take on a service role, and that has now immediately affected the number of WAUs that were allocated last week or yesterday. So we talk to our staff about how we can manage their workload back to 30 in those instances.

PN1205

Do you have a strong line of communication on workloads with Dr Haseldine?---Yes.

PN1206

Are you familiar with the workload adjustments she has made for the workloads of the members who are attached to this dispute?---You would need to be more specific - - -

PN1207

Sorry. Is it appropriate for me to take Professor Katsikitis to an alternative person's witness statement, or would you prefer I didn't, Commissioner? I don't need to.

PN1208

THE COMMISSIONER: Mr Murdoch has alerted us yesterday to needing to do that in his evidence. No objection, Mr Murdoch?

PN1209

MR MURDOCH: No.

*** MARY KATSIKITIS

XXN MS BUCHECKER

PN1210

MS BUCHECKER: Okay, thank you. Just bear with me for a minute, Professor, while I go to the relevant part. Page 1157, and this is Dr Haseldine's witness statement to these proceedings, and I realise that you probably have not seen this, and so I will give you a moment to read paragraph 53 on 1157. Just for a bit of context so you understand what you're reading. We have asserted in these

proceedings that the workloads of the three members who are attached to this dispute were well in excess of 30 WAU, and we have provided evidence to that effect. Dr Haseldine has been through that evidence and has reviewed it, and her numbers are contested, but I think they're interesting nevertheless and I would like your view on them. So I will just give you a moment to read 53?---There's a lot of information in there.

PN1211

There is and I don't expect you to absorb the detail. I am more interested in whether or not you are aware of the extent of the overload that was experienced by this cohort?---Yes, I was, and Dr Haseldine followed proper process, and that is to go back to the TPDs and Deputy TPDs and supervisors to try and get these loads down, initially to the staff member.

PN1212

And who has the final authority over how those loads are adjusted, because it's apparent from the evidence provided by Dr Haseldine that - you know, there's a reference to 2022 load and this wasn't actually reconciled until the end of 23. What are the checks and balances from you to ensure that where you identify an overload that there is some kind of remedial action, and if you need to allocate resources you give them; what is that process?---That process is through the Deputy TPDs and the TPDs, in consultation with the staff member and the supervisor, because I personally cannot remove any of their workload because I am not privy to the actual work that needs to be done and what can be taken away and what can be added.

PN1213

Okay. We might just come back to that in a minute. Are you aware of - or you have indicated your awareness of the academic workload dispute back in 2021?---Yes.

PN1214

You're familiar with that dispute?---Yes.

PN1215

Can I take you to page 1099 of the court book, and it is a document that you are probably familiar with because it was written on your behalf and several others by Professor Menz. I will give you a moment to see if you recall it. The particularly relevant part is the bottom of 1099 at 3, and the continuation of that paragraph over the page. Can you explain the disconnect between this letter from the university on behalf of the Dean P&R in response to a formal dispute, and your statement at 11 where you say there's no direct correlation between WAUs and hours?---Well, in our college we don't have a direct correlation between WAUs and hours. We don't - we don't transfer the WAUs into an hourly rate or hourly model. We stick to the load-based model that the university has in principle.

*** MARY KATSIKITIS

XXN MS BUCHECKER

PN1216

I realise you don't translate, but what Professor Menz has confirmed without any ambiguity is that the algorithms that are contained in your model, and they haven't changed since its inception, have they?---No, not that I'm aware of.

PN1217

They haven't changed since its inception. So he's confirming that although you might not see a connection between 30 WAU and 1725 hours there is nevertheless a direct link. Isn't that what he's saying there?---I think he's divided something by something to get 57.5 hours as I see it here quickly, but that's not anything I would do in my college in that respect like that.

PN1218

If you don't do that in your college then how are you ensuring that you are complying with the 1725 hour, the cap on hours in the enterprise agreement? How do you know you're complying? You've said already that you tell staff not to work more than 1725 hours, but can you explain to me if the algorithm says that 30 WAU equals 1725 hours, and you're saying it doesn't - - - ?---I'm not saying it doesn't, I just say I try to bring my staff back to 30 WAUs.

PN1219

Okay. And so can you explain to me then if you don't how does that intercept with the 1725 hour cap in the agreement?---I look at it in the way that staff will work. We give them 30 WAUs and they will work the way they need to work within those 30 WAUs, and some staff may choose to do more earlier on in the year, like in semester 1, and work differently in semester 2. Some people may spread the workload all out throughout the whole year. I do leave that up to the staff member and their supervisor to discuss any discrepancy in the way their load is based around both semesters, and if there's any grievance or any need to speak further to their TPD and deputy about their workload I trust them to come and speak to us about their workload. I don't ask them how many hours they're doing if that's what you're asking.

PN1220

No, no, I am not, that's not what I'm asking. What I'm trying to understand is that if your answer had been, yes, 30 WAU equals 1725 hours, then we would assume that compliance with the agreement rested on 30 WAU?---Yes.

PN1221

But you're saying it doesn't, because you're saying - - -?---It does, because we try and bring our staff into that area of 30 WAUs every single time, with the staff support, and the Deputy TPD and the TPD managing that for us.

PN1222

And why did you choose 30 WAU, why did the university choose - - -?---I don't know. I came into that model.

PN1223

But are you saying that you try and bring staff back to 30 WAU because 30 WAU is a full workload?---Yes, in our college it is.

*** MARY KATSIKITIS

XXN MS BUCHECKER

PN1224

Okay. I am just trying to understand from the evidence from Dr Haseldine that we have just gone to where the university's own evidence showed that Dr Rogers had over 40 WAU in 2022, and over 40 WAU in 2023, by the university's own calculations, which are contested, it's actually higher in our view, how that connects to the 1725 hours per annum that is Dr Rogers' entitlement in terms of the cap on hours of work? How do you reconcile that?--Dr Haseldine would have been better placed to answer this question, but from my perspective those individuals met - they meet their Deputy TPD or their TPD and they work back to 30 WAUs based on things that they know themselves they can give up so that they can get back to 30 WAUs. That's our process.

PN1225

THE COMMISSIONER: I am also struggling to understand how you make sure that the load you're allocating is such that a full-time academic can do it in 1725 hours, because it seems that you've accepted that 1725 hours is the requirement. It's also 30 WAUs. You've accepted that 1725 is the full load. Do you do anything to assure yourself on behalf of the university that the work that's been allocated in the load can be done in the 1725?---Well, certainly we have lots of procedures and processes that measure performance for the university, but workload sits separate to performance. But during the performance period of the university calendar year that's when the supervisor would discuss future activities for the staff in the following year based on stuff that may or may not occur in the current year around workload if need be. But also different measures of performance, but that's where the performance part of it is grabbed. Is that what you're asking?

PN1226

I am just in these proceedings overall struggling to understand, if the university is looking at this as load as requirement to achieve certain outcomes - - -?---Yes.

PN1227

- - - what process there is or how the university has itself assured that the outputs they require can be done within the requirement of 1725 hours, which the agreement seems to indicate is the required amount of work. That's probably my first - how does the university grapple with that? I think that's the question that Ms Buchecker is also asking you?---Well, from my - the way my supervision works, because I also supervise, and we have plans in place in every academic year of what our staff are striving towards achieving. We look back and we look current and we look forward, and we have drafted up plans that we both sign at the end of every year. If you're a researcher you've got a research plan. If you're a teacher you've got a teaching plan. If you're a balanced academic you have both plans. You also have a professional development plan, a travel plan, a leave plan, a long service leave plan. So, you know, based on all those measures and the staff member who is involved in all of these activities agreeing with that plan being achievable and they have got 30 WAUs. We move on into the year and they're the tasks assigned to that individual that they've agreed they will get through. Does that answer your question?

*** MARY KATSIKITIS

XXN MS BUCHECKER

PN1228

It may be that there isn't an answer to the question about how the university considers these outputs and workload, and then how - it seems that your evidence is we leave it to the individual person to make sure that whatever work we allocate them they then do in that time, rather than the university having a process of any kind that - and if that's not fair to say please say so - that the university doesn't have a process or a way of reviewing or reflecting on whether the work required can be done in the time that there seems to be an agreement is the amount of time that needs to be worked?---Yes, I prefer not to answer it in that respect. I don't know the answer to the university processes the way you've just framed it.

PN1229

But from your perspective in your college is fine. I mean that's what we - - - ?---Yes, in my college that would be our process. It would be consultation with your supervisor and your Deputy TPD and TPD around workloads, for Deputy TPDs and TPDs around workloads, and any teaching activity that may also happen would be between supervisors, staff, Deputy TPD and TPDs as well. That's our mechanism. That's how we manage - you know, the Deputy TPDs and the TPDs wouldn't be involved in the performance management of those staff.

PN1230

In the circumstances if someone has 30 WAUs, which is what everybody expects - and again this might be outside of your experience and understanding - but how has the university looked at the workload that goes into a WAU, or 30 WAUS, and ascertain that that is a fulltime - that that will take 17, 25 hours in output?---I don't know. We were working with the model that had already come to being when I got here and it hasn't changed 30 WAUs.

PN1231

Sorry, Ms Buchecker, if I've interrupted your flow.

PN1232

MS BUCHECKER: That's okay, Commissioner. Can we go back now to the enterprise agreement for a moment on page 246 of the court book, and at 667.23. Are you there?---Yes.

PN1233

You will see that that it says, 'In determining each annual workload consideration will be give to individual's workloads in the previous year and possibly future years.' Are you familiar with that provision?---(No audible reply)

PN1234

If we can then go back to your statement on page 1256 where you say that draft workloads are prepared in September and October, approximately September and October?---What number is that one?

PN1235

It is 1256, number 12?---Twelve. Thank you.

*** MARY KATSIKITIS

XXN MS BUCHECKER

PN1236

Yes?---Yes.

PN1237

Can you describe the process in the college for assessing the past year's workload for each individual to see if they need workload relief in the current year? Do you have a process for that?---It goes through our Deputy TBD's and our TPD's in the first instance, with that staff member.

PN1238

Right. So, we'll come back to that because we'll get to the staffing levels in the college shortly. Because it seems to me, and correct me if I'm wrong, to the DPD's and the TD have authority to appoint staff?---No.

PN1239

Okay. So, let's just now go to 818 of the court book. Do you recognise that document?---Not this particular one but similar ones, yes. Yes.

PN1240

If I could take you over to page 819 you will see there that there's an email from you providing that chart to everybody on 6 June 2022. Would you agree from that chart that it shows the significant majority of staff to be working in excess of 30 WAU?---Yes.

PN1241

What action was taken to remediate that?---Well, this would have been time-stamped at, what date was that?

PN1242

6 June?---6 June. So, this was presented to everybody, to the staff, to – it was also sent up to our Deputy Vice Chancellor, Vice Chancellor. Our steps would have been immediately to – these bars refer to individuals.

PN1243

Yes?---And the office would have gone into immediate processing of who these people are and right into them. It would have been done before the chart was then alerted. We wouldn't have waited till this company chart came out before we started contacting people. These would have been the people that would have had a draft workload right from the start, above 30. We would have known.

PN1244

I'm just trying to reconcile that with our previous conversation about Dr Haseldine's evidence which shows that – I'll take Dr Rogers by way of example, that the college's review of her workload didn't happen until the end of 2023 for this 2022 workload, despite the fact that she is one of the people right up the high end?---It would have happened if she'd spoken to us. So, I'm not sure where that part of the conversation is.

*** MARY KATSIKITIS

XXN MS BUCHECKER

PN1245

Did you not just say though that you observed this chart and then put remedial steps in place?---Yes. The immediate step would have been to contact the staff member and ask them to come and have a conversation with us through the Deputy TPD and TPD.

PN1246

And if they didn't do that, let's say they felt uncomfortable to do that, and I'm not talking about anyone in particular here, but let's say they felt vulnerable or uncomfortable, though that if they complained their job might be vulnerable and didn't come to you, would you just let it rest as a workload of 55 WAU or whatever?---It wouldn't have rested with me. It would have been a continuous attempt by the TPD's and the Deputy TPD's to ameliorate that staff member's workload. So, there would have been a continuous attempt, so I'm just not sure what happened in this point to any of those staff members, sorry.

PN1247

Interesting. Can I then take you to 13 of your statement which is on page 1256, as well?---Thirteen?

PN1248

Yes. And you say there that staff can reduce their workloads back to 30 by among other things, reallocating topics, teaching and assessment to other staff or casuals. I'd like to ask you a question in two parts here. Because if we go back to that 2022 workload chart that's on page 818 we've agreed that it shows that 70 per cent of staff had an allocation of more than 30 WAU. And what I'm struggling to understand is, if I'm overloaded, a), do I have authority to give my work to a colleague given that I'm not their supervisor, and b), against that chart can you explain how there was capacity to give my work to somebody else when all 30 per cent of my colleagues were overloaded? How did that work?---I'm not sure if I understand the question. But if you're an individual staff member that has identified yourself as overloaded then the process we have, as I've mentioned before, is to talk either with your supervisor first or go to your TPD or Deputy DPD. If you don't want to talk to your Deputy TPD or TPD because of some of the reasons you previously thought then the supervisor would be your conduit to those individuals in the first instance to assist.

*** MARY KATSIKITIS

XXN MS BUCHECKER

PN1249

I suppose the thing I'm struggling to understand though, and I'll go back to 13 in your exact words. It says it's the staff member's responsibility to bring their workload down to 30. But we've established they don't have capacity to appoint staff because you've already answered a question to that effect. So, what I'm trying to understand is you say this can be achieved by, amongst other things, reallocating topics, teaching and assessment to other staff. And I suppose the question I'm asking you is, is that not sort of like shifting the seats on the Titanic when you've got 70 per cent of staff who are overloaded all grappling for a solution? Where does that solution rest - - -?---It rests with the Deputy TPD's and the TPD's because they're the people who understand the programs. They understand what's been allocated to those staff and what they need to give up, who's available that may not be at 30 because we've missed a whole group of

individuals who are sitting under 30 and it may be able to take up the load. There may be individuals who are willing to take on a higher load now to assist at this period and then take a lower load the year after. There's a lot of negotiation that can go ahead, as well as them appointing a casual staff member to the class. It's not as – you know, it's a continuous negotiation with our staff to try and help them get their workloads down to 30.

PN1250

Would that not sort of lead to the proposition that it's almost a workload impost in itself, is it not, trying to get your workload (indistinct)?---I don't think so. I don't think so.

PN1251

Okay. Can I ask you who in the college has the authority to approve the establishment of a new academic position?---I do.

PN1252

And who has the authority over the casual academic budget?---I do, myself and the Director of College Services introduction.

PN1253

Okay. What layer of staff does the authority to create new acquisitions go down to? Where does the buck stop?---It stops with the Topic Coordinator.

PN1254

So, a topic coordinator has the authority to create a new academic position?---No, a topic coordinator begins the process of engaging casual – I'm talking only about the causal positions now, sorry. Is that what you're talking about?

PN1255

No, my question is a different one. I'm not talking about the engagement and the mechanical process of getting the person on deck. I'm asking about who has authority to create new academic positions?---I do. And the Vice President and Executive Team.

PN1256

So, that authority stops with the senior leadership?---(No audible reply)

PN1257

Okay. Do staff have unfettered authority to employ casual staff to solve their workload problems?---The Deputy TPD's and the TPD's do.

PN1258

Unfettered?---They would have a conversation with me about it initially and have some - - -

PN1259

My question is a very particular one though. Is it unfettered authority or do they seek approval?---They still have to get my approval.

*** MARY KATSIKITIS

XXN MS BUCHECKER

PN1260

Right. So, would it be fair to say that their capacity to resolve some of these problems through extra staffing are constrained to the budget of the college?---We're all constrained by the budget.

PN1261

Yes. And I think I understand your dilemma. I do. I don't think it's an easy job but I just wanted to be clear about the fact that – and if you could just confirm that the TPD's and the TBD's don't have authority to appoint staff?---That's right.

PN1262

Thank you.

PN1263

We've sort of visited this question a little bit but I just want to be really clear on it. So, if we can go back to page 1257 at your paragraph 14 where you say that any under/over WAU is managed directly with the staff. I was just wondering if you can describe again how you've monitor this process over the course of the year?---We monitor it through the Deputy TPD's and the TBD's. They are the holders of the information as it changes. It's a staff member.

PN1264

Now, I'm just going to take you to another document which is attached to your statement and it's the workload model. And on page 1266 there's an outline of the government structure?---166?

PN1265

Yes?---Okay. Yes.

PN1266

Can you confirm that the responsibility of an academic staff member is limited in the government structure to data checking and review?---Yes.

PN1267

And can you confirm that the primary workload responsibility in that government structure rests with you?---Yes.

PN1268

Okay. I just want to go back again to your statement at 1257, and at 19 you say, 'Irrespective of the number of hours allocated there is no expectation that staff members will work more than 1725 hours per annum. It's instead the expectation that staff members will complete all allocated tasks within 1725 hours.' Can you explain – this is a pretty fundamental question, I think, but if you have confirmed that 30 hours is fulltime load and you appear to have accepted in our previous questioning that 1725 is a fulltime set of hours, can you explain how somebody who is allocated more than 30 WAU – and it's stated in your statement as an expectation that they will complete all their allocated tasks within 1725 hours. Can you explain what you mean by that?---I think I've answered this in a different way but I'll try again.

*** MARY KATSIKIS

XXN MS BUCHECKER

PN1269

Yes?---The staff will work through their tasks with their supervisors and the program directors as the tasks become available for the to take on or leave behind. And we trust the process of that discussion with everybody involved. There's several people involved in that staff member's workload allocation. We trust that process. It's a fair and equitable process. And unless the staff member comes and says this actually feels – the experience of this workload feels high, then unless they've actually come to us or to their supervisor or to the Deputy TPD we accept that their 30 WAUs is a level of activity that they can cope with.

PN1270

My question is a different one and it does go to the words of your statement, so I'm sorry to be like a dog with a bone but it's very important. It says, 'Irrespective of the number of WAU's there is no expectation that staff work more than 1725 hours per annum. It is instead the expectation that staff members will complete all their allocated tasks within 1725 hours.' Do you mean by that that if somebody as 35 WAU's and it can't be reduced any further, they have to do it all in 1725 hours anyway?---We have discussions and help staff manage the way they do things within that 31 or 32 or whatever WAU number you choose, to see if there's a better way of managing the way they do things, as well. It's not just leaving them out, you know, out in the cold with their WAU's. you know, we spend a considerable amount of time with each of these individuals to try and assist them to manage their workload.

PN1271

But with respect, isn't that basically the old management mantra, of work more efficiently and you can get the job done?---Not at all. Not at all. You know, you can speak to any of my staff who've come to see me. As soon as they need more staff assistance with casuals, or long service leave or leave of any description, or professional development, even though they're – you know, they've got a class that they need to teach in the week that have to go on a PD event, they will get my support to do so. I will go – you know, I will speak with them and I will assist them to manage that workload.

PN1272

Can you perhaps give some examples from your own experience of supervision as to the things that you've suggested or have been adopted to ensure that people, irrespective of how many WAU's they've got, still get their work done in 1725 hours per year?---I speak to lots of staff who come to me with a workload over 30 WAU's and have said to me they're fine, they're not overloaded, leave me alone, I know what I'm doing, I've got the casual staff support that I need, this is fine.

PN1273

But those that don't?---You mean those that don't - - -

PN1274

Yes, you said that you?---That aren't fine, or don't come to see me?

*** MARY KATSIKITIS

XXN MS BUCHECKER

PN1275

Those that have raised workload issues?---Yes. Yes.

PN1276

And I think your evidence is that you spent a considerable amount of time assisting people to manage workload better?---Yes.

PN1277

Irrespective of how many WAU's to – so, what are some recommendations or actions that have been taken to help someone manage a workload irrespective of the WAU they've been allocated, right. So, we can give them fixed term assistance where people are there longer term. Because obviously, you know, in some cases it's not a one off event that, you know, it's just this week or next week that you know, I'm not going to be able to manage the amount of activities I set for myself. So, they don't just need a casual support member for a week or a month. They may need a casual support member, for example, for a semester, so we offer that support. If it goes beyond a semester we offer fixed term staff support for longer periods of time where staff are working alongside them as fixed term and continuing staff, and assist them in any way that they can. And if that staff member then has room in their workload to do other things because they're not the 30 WAU, then that fixed staff member can also assist other people within the college.

PN1278

THE COMMISSIONER: And if someone is still grappling with how the WAU system works, if someone has a casual staff support allocated to them does it reduce their WAU's?---Yes. We take off whatever it is that that casual support person will do for them. So, they may take on a lecture, they may take on marking, they may take on a whole topic coordination which is quite a big reduction of your WAU according to our model.

PN1279

Thank you.

*** MARY KATSIKITIS

XXN MS BUCHECKER

PN1280

MS BUCHECKER: Can we just go back to the letter from Professor Menz and we probably don't need to revisit the page but it's 1100 if you wish, where it's categorically established that 30 WAU's equals 1725 hours and one WAU equals 57.5 hours. And this just goes back to my question which I don't feel I have an answer to yet, irrespective of the number of WAU's allocated there's no expectation that the staff member will exceed 1725. And it's expected that might fit their work into the 1725. And I just want to walk us through an example to see what that looks like and to get your response. Because it follows from Professor Menz' letter that if somebody is allocated 35 WAU's then 35 times 57.5 is 212 hours. Now, at 19 you say that regardless of the number of WAU's and we've taken 35 by way of example, the person has to do it in 1725 hours anyway. But the university's own evidence shows that 35 WAU's is actually 212 hours of work, so how do you do that in 1725 hours?---I don't know the staff member – so, you know, I need a particular example because I work with an individual and I help

them get their workload down to 30 WAU's, take things away from them. Hopefully they wouldn't be at 35 WAU's after that conversation.

PN1281

No but we have to go to the what the words on paper in the statements of evidence mean here. And I'm sorry, I don't mean to harangue on this but it's really important because you have said that irrespective of the number of WAU's allocated the person is expected to complete their task within 1725. So, our conversation here is a different one from your efforts to reduce the WAU to 30 and I'm not disparaging that at all because I know you do make those efforts. I know that from my experience elsewhere. What I'm trying to get to the bottom of is, in the statement at 19 that says that even if someone does stay at a 35 WAU because there's no way of getting it down, they still have to fit it into 1725 hours. When Professor Menz' letter on behalf of the Dean's people and resources, says that that's actually 212 hours of work. And what I'm grappling to understand is how am I, as an education academic expected to do 212 hours of work in 1725 hours a year?---So, one of the things we will do immediately is unpack the way they do things. So, the workload in that model gives you a baseload and several other measures based on those formula in the background. And is there a better way to teach a particular topic? Then you know, it's – just say it's an hour's topic, you stand in front of the classroom and you lecture for an hour. Is there a better way to teach that topic, because doing it that way has brought you to 35 hours. Or you know, it's given you five WAU's just to give that lecture that way all semester, right? So, we would start with the basics and we would rope in at that point the Dean of Education, always the TPD's and the Deputies to find out of there's a better way to model a scenario of teaching that is not as heavily loaded on WAU's. It doesn't mean it's the experience of a heavy load. It just means the WAU number gives you that load. Is it a better way to do it if it's just about, you know, helping – it's about helping the individual experience a workload that they agreed with, within the 30 WAUs (indistinct).

PN1282

Yes. And I understand what you're describing. But my experience in working on those kinds of teaching efficiencies is that it has a consequential impact on the WAU's and the WAU's reduce. Is that correct?---I would have to have the specific example in front of me to, you know, say at this point that that reduces WAU's. I don't know. They're not what we're talking about, the - - -

PN1283

It doesn't reduce the WAU's and we're still looking at 2012(sic) hours, working 1725 hours?---We do the maths again on any new model that we work out with that staff member.

PN1284

But the maths would still need to be based on the algorithm that is your agreed workload model?---Yes. That's what I've got to work with, yes.

*** MARY KATSIKITIS

XXN MS BUCHECKER

PN1285

That's right. So, you don't have the luxury of modelling against something else, do you? You can only model against the WAU's and those algorithms?---I can adjust. I can adjust things to incorporate new ideas that the staff member has given that the WAU model may not actually be able to work out itself because it's not part of its algorithm, if you know what I mean.

PN1286

Yes, I understand. So, just in summary you accept that 30 WAU's is a fulltime workload?---I do.

PN1287

And you accept that 1725 hours a year is the limit?---(No audible reply)

PN1288

Okay. Thank you. I don't have any further questions.

PN1289

THE COMMISSIONER: Any re-examination, Mr Murdoch?

PN1290

MR MURDOCH: No. Might the witness be excused?

PN1291

THE COMMISSIONER: Thank you. Thank you, Professor Katsikitis?---Thank you.

PN1292

I appreciate your attendance.

<THE WITNESS WITHDREW

[1.18 PM]

PN1293

THE COMMISSIONER: Given it's 12.45 I think we can have an adjournment for the lunch break. I assume that you both want the opportunity to give oral closing submissions?

PN1294

MR MURDOCH: For my part, yes.

PN1295

THE COMMISSIONER: Thank you. Ms Buchecker?

PN1296

MS BUCHECKER: Yes, thank you, Commissioner.

PN1297

THE COMMISSIONER: All right. What would be a suitable lunch break? I imagine, Mr Murdoch, you also have travel arrangements to comply with this afternoon?

*** MARY KATSIKITIS

XXN MS BUCHECKER

PN1298

MR MURDOCH: Yes, but they've been set so as to accommodate normal court hours.

PN1299

THE COMMISSIONER: Okay.

PN1300

MR MURDOCH: I was wondering, subject to your convenience, maybe 2 o'clock?

PN1301

THE COMMISSIONER: If that works better for you. Yes, 2 o'clock. Yes, that was exactly what I was thinking. All right. That's hopefully the submission time. I agree. On that basis we'll adjourn for the lunch break until 2 pm.

LUNCHEON ADJOURNMENT [1.19 PM]

RESUMED [2.38 PM]

PN1302

THE COMMISSIONER: Thank you, everybody. Ms Buchecker, we'll hear from you with your closing submissions.

PN1303

MS BUCHECKER: Thank you, Commissioner. Bear with me. I have quite a few things to say. But before I start you did ask yesterday for us to identify the intentional omissions from the attachments to the statement of Bev Roger's, the first statement.

PN1304

THE COMMISSIONER: Yes. It did occur to me this morning I'd overlooked that at the time after I'd said that I hadn't inquired with you about that.

PN1305

MS BUCHECKER: Yes. So, I have those for you. The intentional omissions are six, seven, nine and 30.

PN1306

THE COMMISSIONER: Thank you.

PN1307

MS BUCHECKER: Commissioner, in terms of the Commission's role as the NTEU sees it, this dispute can be divided into two parts. And those parts are reflected in the questions we put for determination. The first part goes to interpretation of clause 67, including its intersection with related entitlements of the EA under the academic workload model made in accordance with the EA.

PN1308

And the NTEU submits that this first part of the dispute poses no particular complexities for the Commission but the answers are clear on the plain meaning of the words of the EA and are further supported by the evidence and I'll go to that

shortly. questions one, two and four set out by the NTEU for determination at pages 281 and 282 of the court book are relevant to this first part of the dispute. it's the second part of the dispute that pertains to avenues available to the effected cohort for the workload allocated to them by the respondent over a period of years that is a little more complex because I think we have reduced those complexities considerably by confining the commission's consideration to the years of 2022 and 2023.

PN1309

We have seen from the evidence in these proceedings that the overload is undeniable and the respondent has not been able to refute it. The respondent's own workload document show that management has persistently allocated workloads in excess of the 1725 hour annual limit which has been accepted by the parties as the hard cap on hours of work. And those workload documents can be found at pages 459 to 470, 490 to 495, 563 to 574, and 818 to 819 of the court book.

PN1310

Documents have been provided by the respondent to show attempts to rewrite workloads for the affected cohort over the course of this dispute. But interestingly not before the dispute was notified. And this was confirmed in the evidence of Dr Haseldine today when she stated that the '22 workload for Dr Bev Rogers which was identified as 154.53 for the sense of a full workload in the university's document in 2022, was not reviewed until late in 2023 and after this dispute was notified.

PN1311

We can find the respondent's documents on this matter at pages 1157 and 161 of the court book, and rebuttals at page 65 from the affected cohort. and we are still not clear on the agreed numbers for the workloads of 2022 and 2023 but we will talk later about the fact that we are not sure that this matters too much.

PN1312

I think one of the things that is it important for the commission to note is that even where the respondent reviewed the workloads and took them back to a lower number, all of the cohort remained overloaded regardless, even against the respondent's revisions. and the evidence shows that Dr Rogers, in particular, remained at an allocation of over 40 WAU per annum for 2022 and 2023.

PN1313

And I think it is also important for the commission to be mindful when it's considering its decision that this is not information that the affected cohort have built themselves. They haven't sat down and gone, 'it's taken us this long to do the work.' the evidence that they have provided is data provided to them by the employer on the official documents produced by the employer and that has been confirmed through evidence in these proceedings where the respondent's witnesses have confirmed that the documents that we're referring to are the university's documents and not something fabricated by the affected cohort of their own volition.

PN1314

In these proceedings the respondent has pursued questioning on the proposition that the overload arises from the diligence and commitment of the affected cohort rather than from any misdoing of management. And I think there's no doubt, commissioner, that these employees are diligent and committed and hardworking. And I think it's become evident from these proceedings that there is no doubt either that there has been a degree of management misdoing in terms of its obligations under the enterprise agreement.

PN1315

The NTEU is of the view, and we submit here that it's unconscionable for an employer to state in this place or anywhere that staff diligence and commitments warrant an override of the employer's obligation under an industrial instrument to realise a safe workload. That would make a mockery of the industrial framework.

PN1316

The emotional toll from excessive workloads has been evidenced in these proceedings by the applicant's witnesses and we've heard Dr Skrzypiec describe the extent to which her mental health plummeted as a direct consequence of overwork and the struggles to get that relief which she has said in evidence and which has been supported in other evidence including from the respondent that it took from February to May in 2022 for her to get remediation of her overload. And even then she remained overloaded, albeit not at 57 WAU any more.

PN1317

Dr Wyra has provided evidence of a longstanding and unsuccessful attempt to achieve a workload compliant with the enterprise agreement and samples of these are found at 490 to 496 of the court book. We have seen from the written evidence that professor Katsikitis in her capacity as dean, people & resources has governance responsibility for workload management and oversight in the college. And we can find that at page 1266 of the court book and Professor Katsikitis confirmed that in these proceedings.

PN1318

There has been an attempt in these proceedings to disguise management's – well, what we would say is an egregious application of their responsibilities through an assertion that the responsibilities are delegated almost in its entirety to the teaching program directors and deputy teaching program directors who have no authority over staffing decisions and no cross centre responsibility.

PN1319

We have heard that confirmed in evidence from Professor Katsikitis today that the deputy teaching program director and the teaching program director, per se, can't make staffing decisions and that even the pursuit of casual support requires a high level authorisation.

PN1320

So, the proposition that there is some magic capacity of this cohort to solve workload problems that are actually the responsibility of senior management is a side stepping of the industrial obligation of the employer. Dr Rogers has described in these proceedings to the extent to which she, as a deputy teaching

program director sought to refine courses and create efficiencies in offerings such that there was a better match between staffing resources and the offerings of the college. But there was a limit to how much that could achieve and that has become clear from the evidence.

PN1321

The respondent's proposition that academic staff with no authority over expenditure of funds can be held responsible not only for their own workload but for that of others, is an argument with no merit. In evidence Dr Rogers referred to the CPSW workload chart provided by management in June 2022 where it identifies 70 per cent, roughly, of academic staff as working in excess of a fulltime load. And that chart is found at page 818 of the court book.

PN1322

Dr Rogers described the level of futility she felt in her efforts of DPTD to realign work among the team in an effort to relieve overload because there was no where to realign that work to. And at page 508 of the court book we can see a table prepared by Dr Rogers and it's derived from the 2022 workload chart produced by Professor Katsikitis. It shows that 38 people were overloaded by more than 3 WAU and 20 people were overloaded by more than 6 WAU.

PN1323

And this is extrapolated from the university's own data. It is not people saying, 'I'm overloaded, so put me on the list.' it's actually a data driven set of numbers. So, it's clear that Dr Rogers in her role as a DTPD couldn't solve that problem although there has been much leaning on her as the person who should have solved that problem, to her surprise. Because it is only in these proceedings that she has been advised that she is the go-to, to the extent that it has been asserted by the respondent in these proceedings.

PN1324

The enterprise agreement at clause 67.25 requires that a chart of the type that professor Katsikitis provided in 2022 be provided every year to all staff in the interests of transparency. That has not been provided again since 2022. The respondent asserts that that June 2022 workload chart was a moment in time and it may have reflected peak in workloads that was remediated at another time. I think it is interesting to note that although the respondent has said that that chart was a moment in time, no evidence has been provided to show that it wasn't the norm.

PN1325

We would have assumed that if there had been evidence to that effect it would have been at the forefront of the respondent's case because it would have been compelling, and yet it is not here. The respondent has put to the commission that there are complexities arising from the pursuit in this place of a full compensatory remedy as set out in the NTEU's original submissions. Commissioner, can I just take a quick break?

PN1326

THE COMMISSIONER: Yes, yes.

PN1327

MS BUCHECKER: Because I can't stop coughing.

PN1328

THE COMMISSIONER: Sure. Do you need an adjournment or?

PN1329

MS BUCHECKER: I just suddenly started to cough. Let me see how I go.

PN1330

THE COMMISSIONER: If you need a longer adjournment, say something though. That might be the answer, that you need a longer adjournment.

PN1331

MS BUCHECKER: Yes, if I just take five minutes to just try and - - -

PN1332

THE COMMISSIONER: That's absolutely fine. All right.

PN1333

MS BUCHECKER: I'm not sure where it came from but - - -

PN1334

THE COMMISSIONER: That's fine. We'll have a short adjournment for five minutes.

PN1335

MS BUCHECKER: Thank you.

SHORT ADJOURNMENT

[2.51 PM]

RESUMED

[2.56 PM]

PN1336

THE COMMISSIONER: Feeling better, Ms Buchecker?

PN1337

MS BUCHECKER: Thank you, Commissioner, for that short break. Before we broke I was just making reference to the fact that the full compensatory remedy that had been set out in the NTEU's original submissions is accepted by the NTEU as causing some difficulties for the Commission. And so for that reason and to avoid sort of side debates about the legitimacy of those claims we have agreed to refine the compensatory remedy to the 2022-2023 period.

PN1338

THE COMMISSIONER: Are you now giving your submissions with respect to remedy?

PN1339

MS BUCHECKER: I am about - - -

PN1340

THE COMMISSIONER: I have questions about that. Should they be - - -

PN1341

MS BUCHECKER: I am about to move into the first question.

PN1342

THE COMMISSIONER: Okay, I'll - - -

PN1343

MS BUCHECKER: And I'll do them in the order we put them if that's okay.

PN1344

THE COMMISSIONER: That is absolutely fine. I'll leave it to you.

PN1345

MS BUCHECKER: On the matter of the questions the respondent has reminded the Commission in its submissions that the Commission's is not bound to answer the questions formulated by the parties and is indeed precluded from doing so if it falls outside the Commission's jurisdiction. And the parties agree. That's an established fact. We have no contention over that.

PN1346

But we do respectfully submit that it may be prudent for the commission to answer the questions for determination put by the NTEU to the extent that it can using the full powers provided to it by the act and the enterprise agreement, not least to prevent the parties from returning here repeatedly on similar matters.

PN1347

The first question proposed for determination by the MCU, and it is an agreed question between the parties, is does clause 67.19 of the EA limit annual hours of work for a full academic employee to 1725 hours per annum. The respondent has confirmed in its submissions that they agreed that it does provide a limit and the respondent uses the word, 'limit, in its submissions.

PN1348

And so we are of the view that this question has an agreed answer and that no part of these proceedings has revealed any change to the agreement that was apparent in both parties' submissions, and the NTEU therefore submits that there's no impediment to the Commission making a determination in the affirmative on the first question.

PN1349

The second question for determination is a related question and that is does clause 67.19 prohibit the individual fulltime academic employee from being allocated a workload of more than 1725 annual hours of work. The respondent hasn't made direct submissions on this question but its related submissions are helpful and as are its commitments made in earlier disputes. And evidence of those earlier disputes is before the Commission in pages 1099 to 1100, and 1079 of the court book.

PN1350

On page 1144 of the court book the respondent submits the limitation and again I go to the use of the word 'limit' because it is relevant to this second question. And

the various definitions of 'limit' are set out in the NTEU reply at page 843 of the court book and these show that a limit can only be defined as serving as a boundary, the greatest amount that is allowed or is possible.

PN1351

The parties have agreed in evidence that workload allocations must be sufficient to complete required fulltime work in 1725 hours per annum. The respondent has been a little bit ambiguous in actually how it meets that paper commitment. But it has nevertheless committed to that as a matter of fact in its evidence and its submissions.

PN1352

The 2022 dispute deed of settlement is relevant in that it informed the development of subsequent enterprise agreements including the one that is relevant to this arbitration. That deed is found at 1079 of the court book and it shows that an allocation of overload is not permitted. And on this basis it was removed from workload models and we have Professor Katsikitis' evidence today recalling that settlement and recalling the consequential amendments to workload models in the area of the no longer permissible overload.

PN1353

I think the important thing to note here in addition to the fact that the overload was removed is that it wasn't replaced with a five per cent or a two per cent, or an any per cent overload. The subsequent workload model showed that 30 WAU's of fulltime workload and that there is no permissible overload evidence in those models anymore.

PN1354

And I think it is important to know that there was a permissible overload according to the respondent. It was disputed and it was agreed that it wasn't permissible. And that agreement, I think, does inform these proceedings on what is a fulltime load and is more than 1725 hours per annum, and I think, prohibited.

PN1355

And in the NTEU dispute based on the facts in these proceedings the evidence provided by the respondent, as well as by the applicant is abundantly clear that clause 67.19 not only provides a limit but also by virtue of providing the limit, imposes a prohibition on the allocation of work that exceeds that limit. And that has been validated in evidence from the respondent, as well as submissions made by the NTEU. It would seem that it is not possible to have a limit without having a prohibition on exceeding it. Otherwise, the limit has no meaning.

PN1356

The third question for determination is the one that falls outside, to some extent, the simple matters of interpretation. And that is, if the answer to question 2 is yes and there is a prohibition on the allocation of more than 1725 hours per annum then where a higher workload has been allocated, what is the appropriate remedy to resolve the dispute, and 'appropriate', being within the bounds of the Commission to determine rather than a broad subjective look at what a good remedy might be.

PN1357

We acknowledge that there is a minor tension between clause 67.19 of the enterprise agreement where it sets out the hours of work and provides a clear limit, and clause 67.23 which allows for the equalisation of work over a period greater than a year. But we are of the view that this tension can be explained. The 1725 hour limit set out by clause 17.19 is an agreed limit between the parties.

PN1358

And so we would submit that clause 67.23 provides a safety net whereby the limitation required at 67.19 could be rectified if it's exceeded by the employer in an annual workload allocation. It doesn't seem to have any other purpose.

PN1359

THE COMMISSIONER: What do you say about the fact that in itself it could be the remedy to what could be said to be work done in excess? While you say there's a prohibition on that there is clearly a consideration of a way to address the circumstances in which that occurs.

PN1360

MS BUCHECKER: Yes.

PN1361

THE COMMISSIONER: What do you say about whether that can be a remedy in itself?

PN1362

MS BUCHECKER: That 67.32 is a remedy?

PN1363

THE COMMISSIONER: Yes. You're calling it a safety net.

PN1364

MS BUCHECKER: Yes.

PN1365

THE COMMISSIONER: So, I'm not clear on why you - - -

PN1366

MS BUCHECKER: I've made the wrong – I've called it a remedy. I will call it a remedy when I conclude on what I think the - - -

PN1367

THE COMMISSIONER: I just want to understand what you say about that, that proposition - - -

PN1368

MS BUCHECKER: Yes.

PN1369

THE COMMISSIONER: That it could be a remedy. That is the remedy.

PN1370

MS BUCHECKER: Yes. It's an interesting construction and I think it's an almost contradictory construction. And so I suppose that will be a matter for the Commission to work out the weight between those two provisions and whether 67.23 cuts across the concept of a prohibition. We don't think that it does. We think the limit sets out a prohibition and that that there is a, in the event that the employer doesn't or can't comply with that prohibition - - -

PN1371

THE COMMISSIONER: Which is what you've said has occurred here.

PN1372

MS BUCHECKER: Which is what has occurred here, then there is something that, if you like, rescues that situation because there is no overtime provision for academic staff. And so, if workload exceeds 1725 hours, and we've set out in our submissions that clause 9.2 of the enterprise agreement requires fair and reasonable remuneration, if there's no compensatory mechanism for an employer's failure to comply with that limit then there has to be some rescue remedy.

PN1373

And there is no overtime provision. There is no regulated extra hours of work per year provision for academic staff in the Flinders University enterprise agreement. 1725 is the limit. Anything that falls over that is uncompensated labour. There is no compensatory mechanism except for 67.23. We are not saying it stands in lieu of overtime. It's an unusually constructed provision. But for the purposes of resolving this dispute it provides a remedy to the university's failure to comply with its obligation to set a limit on working hours for the affected cohort.

PN1374

And I think it's clear that the evidence shows that the respondent has failed to comply with clause 67.19 for the affected cohort. They have not had their workload limited to 1725 hours a year. The evidence clearly shows, and it hasn't been refuted by the respondent, that one WAU is 57.5 hours and 30 WAU's equals 1725 hours.

PN1375

And on that basis where Dr Rogers has, for example, been allocated depending on whose figures you look at, somewhere between 40 and 50 WAU in 2022, that is clearly in excess of the 1725 hour limit imposed by clause 67.19 which is an agreed limit between the parties. The clause at 67.23 says, 'consideration will be given', not 'may be given', but it will be given.

PN1376

And the construction of the clause does give the Commission permission to consider 2022, as well as 2023 even though the current enterprise agreement wasn't in operation in 2022. Because clause 67.23 refers to the previous year. And it would be nonsensical for it to refer to the previous year if it didn't have any effect in the first year of an operation of an agreement. So, we submit that there is no impediment to the Commission considering 67.23 as a remedy in these circumstances for affected cohort for 2022 and 2023.

PN1377

In its outline on page 1144 of the court book the respondent identifies clause 67.23 as an entitlement and this is agreed by the parties. It is interesting that it has been acknowledged as an entitlement but in evidence it has become apparent that the college doesn't have any regulated mechanism for ensuring that entitlement is considered for those to whom it should be applicable.

PN1378

And I think that became very clear in the evidence today, is that it's a delegated authority right down to the staff member that there is no senior management oversight about that remedy for equalisation in the event that the employer fails to comply with the limits set out in 67.19. What we are submitting as the revised substantive remedy applicable to the affected cohort is that 67.23 be applied to an order for fair workload for 2022 and 2023.

PN1379

It is clear from the evidence regardless of the clause or whose responsibility is it, it must be a management responsibility to properly apply the terms of the enterprise agreement in the event of entitlements relating to workload allocation. And the evidence shows that for at least the affected cohort who've appeared in these proceedings the entitlement at clause 67.23 has been withheld from them when there was clear evidence that they were allocated well in excess of 30 WAU. And that evidence has not been refuted by the respondent. They have sought to lower it but they have not sought to allocate. That 30 WAU was the workload allocated to any of the affected cohort over those two years.

PN1380

Dr Haseldine's evidence I think showed the absence of any kind of regulated review with regard to the application of clause 67.23 where she stated that Dr Rogers' workload for 2022 was not reviewed until the end of 2023 and after this dispute had been notified, even though it appeared on the data set as 174 per cent of the fulltime workload early in 2022 and continued to appear like that throughout 2022.

PN1381

The respondent submitted that employees have responsibility for adjusting their own workloads. And that became apparent particularly in some of the answers given by Professor Katsikitis today is that the team people in resources who clearly has governance responsibility for the management of the workloads, and this was acknowledged by Professor Katsikitis, is actually a delegated authority in the college to a level inappropriate for that delegation. Because it is delegated to people who don't have capacity to solve the problems that emerge in overwork.

PN1382

We have heard that employees don't have any authority to make staffing decisions and we have heard that even approval of casual allocations rests with the Dean, people and resources. So, the proposition that the teaching program director for an individual staff member can resolve work overload of the type experienced particularly by Dr Rogers just becomes and absurdity, really.

PN1383

And the statement made in evidence by Professor Katsikitis that employees can reallocate their workload to colleagues and do all sorts of things, we know is simply not possible on the ground. It's simply disguising, I think, the abrogation of the management responsibility to properly apply the workload provisions of the enterprise agreement and the related duty of care at 9.2 to provide a safe workplace and reasonable remuneration. It is not only outside the bounds of employees' authority to give work to their colleagues, it's an impossibility when they can see charts that show that around 70 per cent of those colleagues are already overloaded.

PN1384

It is the NTEU's submission that if the affected cohort have ongoing employment and weren't facing the end of their employment shortly that the remedy provided at 67.23 would be easily applied for 2024 and 2025 with workload relief commensurate with the identified overload. We are not saying that there's any impediment to that remedy being applied. It's just that you would actually have a different, I suppose, mechanical application and that would be a deferral of their employment end date commensurate with the extent of the overload rather than time relief in the course of their ongoing employment.

PN1385

And to be clear, that extended period would attract full salary and superannuation but there wouldn't be any work required from the affected cohort for the duration of that period.

PN1386

THE COMMISSIONER: And I'm interested in your response if you want to come to it, or address it now to what the respondent has put as that kind of situation being something not provided for in the agreement and an extra claim that would deliver some benefit not anticipated or not included in the agreement. So, I'm very much interested in what you say about that.

PN1387

MS BUCHECKER: Yes. I will get to that if that's okay.

PN1388

THE COMMISSIONER: Thank you. All right. Yes, that's fine.

PN1389

MS BUCHECKER: The NTEU doesn't have a firm view about how the remedy is to be constructed. We are submitting that the evidence shows that the remedy is warranted and that the agreement provides one at 67.23. We - - -

PN1390

THE COMMISSIONER: Specifically, what do you say 67.23 provides, or could provide in this context?

PN1391

MS BUCHECKER: It requires that the employer will consider the work of the previous year, and it has failed to. And so, we would say that it now needs

to. Because otherwise they have given uncompensated labour. And what is the solution? The solution sits there at 67.23.

PN1392

THE COMMISSIONER: So, the solution is an evaluation of the work? That's the solution, that's the remedy, that they would - - -

PN1393

MS BUCHECKER: Yes.

PN1394

THE COMMISSIONER: Evaluate what workload relief they should get?

PN1395

MS BUCHECKER: Yes.

PN1396

THE COMMISSIONER: Had they remained employed?

PN1397

MS BUCHECKER: Yes. That's right.

PN1398

THE COMMISSIONER: Do you say that the agreement contemplates these circumstances in addressing these circumstances in the way that you've proposed?

PN1399

MS BUCHECKER: I think it has the capacity to. It wouldn't be the normal – we wouldn't normally be looking at somebody whose employment was ending. But we would be looking at the university's obligation to comply with the terms of the enterprise agreement and its failure. And if there is a remedy then it should be applied if it is able to be. And we're arguing that it is able to be, although it is resisted by the employer because it - - -

PN1400

THE COMMISSIONER: Do you accept, do you, that a remedy – there's not a remedy other than 67.23 in the agreement that applies in these circumstances?

PN1401

MS BUCHECKER: We do agree with that, Commissioner. Yes. But we don't think there needs to be another one, as well because there is one, and we only need one.

PN1402

THE COMMISSIONER: Sorry, I'm not clear on what you mean by that.

PN1403

MS BUCHECKER: Well, we don't need an additional remedy because if there is a remedy at 67.23 then we don't need to look further for a remedy because there is one right there.

PN1404

THE COMMISSIONER: But then how can that possibly apply to people whose employment has come to an end by way of redundancy?

PN1405

MS BUCHECKER: It hasn't ended yet.

PN1406

THE COMMISSIONER: But I think that - - -

PN1407

MS BUCHECKER: Yes. If it ends today, and so you know, I mean it's up to the Commission to decide, I suppose, what the Commission does about that. But it hasn't ended yet.

PN1408

THE COMMISSIONER: But would do so forthwith before the Commission makes a decision - - -

PN1409

MS BUCHECKER: Yes. It will.

PN1410

THE COMMISSIONER: In relation to this matter.

PN1411

MS BUCHECKER: It will.

PN1412

THE COMMISSIONER: So, you say that 67.23 is the answer really - - -

PN1413

MS BUCHECKER: Yes.

PN1414

THE COMMISSIONER: Is what can be afforded to any employee - - -

PN1415

MS BUCHECKER: Yes.

PN1416

THE COMMISSIONER: Who's got concerns about past workload?

PN1417

MS BUCHECKER: Yes.

PN1418

THE COMMISSIONER: And then what do you say about the suggestion that there should be this, in effect, ongoing period of employment and no work performed for remuneration paid? How does that work with the terms of the agreement? I mean, I raise this because the respondent has made submissions with respect to section 739, subsection 5. Sorry, it was – yes, 739.5.

PN1419

MS BUCHECKER: Yes.

PN1420

THE COMMISSIONER: I would like to hear from you about that issue.

PN1421

MS BUCHECKER: Yes.

PN1422

THE COMMISSIONER: Your reply submissions seem to infer that it's not relevant but in the event I find that it is relevant, I'd like your response on that issue, as well.

PN1423

MS BUCHECKER: Yes. I will respond on that issue.

PN1424

THE COMMISSIONER: Thank you. I'm sorry, I've interrupted your flow.

PN1425

MS BUCHECKER: No, no, there's not – I'm contemplating what you said. I mean, the respondent has a broad capacity to make an employment relationship. We understand that the Commission has its constraints in that respect. But there is – perhaps if we go through the issue that you just referred to first about whether or not there is capacity and what the constraints are in the Act. Because section 3955 says that the Commission is prohibited from making a decision that is not consistent with the enterprise agreement.

PN1426

THE COMMISSIONER: Yes.

PN1427

MS BUCHECKER: And so, we're saying as we speak here today the remedy sought is consistent with the terms of the enterprise agreement because the employment relationship is intact.

PN1428

THE COMMISSIONER: Are all the employees – is their employment all concluding today? I recall that they had different termination dates.

PN1429

MS BUCHECKER: They all conclude today. On the matter of further claims we are not looking at a new claim. We're looking at the proper application of existing provisions. And the NTEU in its submissions has provided an authority that I think is more relevant to these proceedings than the one in Toyota, which didn't seem to have any bearing on these proceedings and goes to the intersection between a no further claims clause and the parties' mutual wish to vary an agreement which isn't relevant. It's not the topic of this conversation.

PN1430

The topic of this conversation is, does the proper application of the provisions that an employer has failed to comply with lead to a conclusion that the remedy is a further claim. And the authority that the NTEU put forward showed that it isn't. It's not a further claim. It's actually about the proper application of the enterprise agreement.

PN1431

And we have referred to this in our submissions but the proposition that an agreement has to be written to presuppose the employer's failure to comply would be an absurdity. Because it would imply that for every particular term there had to be a provision that contemplated noncompliance and enabled that noncompliance to be rectified. I mean, that's not a proposition that can be contemplated by the Commission.

PN1432

THE COMMISSIONER: Isn't it more a circumstance where the agreement doesn't go as far as to contemplate these circumstances, and how that clause 67.23 could apply or should apply in circumstances where an employee doesn't have continuing employment? Isn't that more the issue?

PN1433

MS BUCHECKER: That's an issue. Our submissions have been based on the time at which these proceedings have been held and that the employment relationship is intact at the time of these proceedings. And I would leave it to the Commission to decide what that means if their employment is finished tomorrow. I think it's abundantly clear from the evidence that the effected cohort have provided to their employer uncompensated labour through the employer's failure to comply with the terms of the enterprise agreement.

PN1434

We have no dispute over the fact that 1725 hours is the limit. We have no dispute over the fact that 31 WAU's is a full-time workload. That has been reiterated, again and again by the respondent in both their written submissions and their evidence. What we have here is an employer who has despite the rhetoric on the evidence, failed to comply with both of those obligations, and a group of staff who have been made redundant effective tomorrow but still employed during these proceedings where a remedy is available.

PN1435

And the Commission has broad scope to make a remedy if the remedy is available under the enterprise agreement. And it currently is. And if it was just through the effluxion of time and the fact that tomorrow is a different story then we would have to consider perhaps a different construction of the remedy. I don't know. But at this point in time the remedy is valid and viable. Dr Rogers, Dr Skrzypiec and Dr Wyra are still employed by the university, as we speak.

PN1436

THE COMMISSIONER: They're concluding a notice period that they otherwise are not disputing?

PN1437

MS BUCHECKER: Excuse me?

PN1438

THE COMMISSIONER: But completing a notice period, in effect, a redeployment or notice period that they're not otherwise disputing?

PN1439

MS BUCHECKER: I'm not sure of the extent to which I can – can I just confer for a moment?

PN1440

THE COMMISSIONER: That's okay. Look, it's probably not - - -

PN1441

MS BUCHECKER: It is kind of relevant, so I'd like to answer your question but I'm not sure if I'm constrained.

PN1442

THE COMMISSIONER: Mm.

PN1443

MS BUCHECKER: I don't – well, I wasn't sure if I could say that, so I'm asking you. Thank you. In order to settle the status quo without going to an additional arbitration we agreed that the employment relationship would be maintained till the end of these proceedings.

PN1444

THE COMMISSIONER: That would explain why the date that everybody is finishing as the date is today.

PN1445

MS BUCHECKER: Yes.

PN1446

THE COMMISSIONER: Because it was previously not the same date. Yes.

PN1447

MS BUCHECKER: That's right.

PN1448

THE COMMISSIONER: Thank you. That was relevant information.

PN1449

MS BUCHECKER: Yes. Commissioner, could I just re-cap on the questions.

PN1450

THE COMMISSIONER: Yes.

PN1451

MS BUCHECKER: And then I'll return to the issue of the remedy for that slightly more complicated part. The first question is effectively agreed. The second question, I think the matter for the Commission to consider is whether or

not a prohibition is in effect, given the 67.23 contemplates a possibility that the limit will be exceeded. And that is for the Commission to decide.

PN1452

Our submission is that a limit imposes a prohibition, and that the answer to the second question is that there is a prohibition. But that 67.23 operates because there is no other compensatory mechanism set out in the enterprise agreement for uncompensated labour. On the fourth question for which, and I've just jumped over the third one for a moment, I think it is beyond doubt that 30 WAU's equals 1725 hours per annum.

PN1453

The respondent has been asked repeatedly to talk about its methods for compliance with 1725 hours and has categorically shown that it has no mechanism to measure that compliance other than 30 WAU's per annum as a full-time load. And Professor Menz, as we have said repeatedly, has confirmed that 30 WAU's equals 1725 hours, and that the reason it went from 1725 point model in 2019 to the 31 WAU model is because it was easily divisible by three, and there are three components of academic work teaching research and service.

PN1454

Thirty is a clean and easy number according to the university but we were assured, as you have seen in writing, that there was no change from 1725, just a different mathematical equation. So, I think on the fourth question, I respectfully submit that the Commission can only find that 30 WAU's equals 1725 hours. Because if the Commission can't find that then in the alternative it must find that the university has no method whatsoever or any evidence to indicate its compliance with 67.19 and the limit on hours which is as identified in its own submissions and evidence.

PN1455

Commissioner, if I return to the third question and the one that is probably going to most exercise the Commission, we submit that the evidence shows without any ambiguity that the affected cohort have given the labour to their employer that is uncompensated. We have heard in evidence, as well, that in addition to the uncompensated labour that is reflected in the university's own data sheets, the method for allocating research in the college is noncompliant with the new enterprise agreement.

PN1456

And that Dr Wyra and Dr Skrzypiec have both provided outputs in 2023 in the area of research that would under the flawed workload model in the college, and it's the research aspect that is flawed, just to be clear, would have been allocated a workload in recognition of their 2023 contribution some time in the near future, probably 2025. But through the event of redundancy they will not ever see an allocation for that labour because it isn't a moment in time, a current year allocation, as we've heard.

PN1457

It is based on a retrospective analysis of outputs which was the old method, which was resolved through an NTEU dispute and which has been resolved through the

new enterprise agreement. So, we would say that the work overload that's been shown in evidence by the affected cohort is at a minimum because two of the three are research actives(?) and haven't yet seen the benefit of the allocation for 2023 and never will.

PN1458

If the Commission finds that the determination sought in answer to the third question is difficult in the form that the NTEU has put it then the union is obviously open to the Commission considering any other construction that is available and preferred. So, on the third question we are saying that we are open to the Commission's consideration of an alternative determination if one is available and the one sought is not.

PN1459

On questions one, two and four, we say these are clear matters of interpretation and should be answered in accordance with the NTEU submissions on each of those matters. I have nothing further at this stage, Commissioner, unless you have questions.

PN1460

THE COMMISSIONER: No, thank you. No further questions from me. Mr Murdoch?

PN1461

MR MURDOCH: Yes. Thank you, Commissioner. I will address you in respect of the questions but just at the outset, the dispute that has been brought has been brought under clause 16 of the 2023 enterprise agreement. And that of course means that the dispute, to be one that the Commission can deal with and provide a remedy for, must be in respect of the interpretation of the interpretation application or operation of the 2023 agreement.

PN1462

So, that's the framework, of course, in which the Commission is considering the matter. And as I'll develop in due course, that in my submission significantly restricts both the time period that's under contemplation, and because of the particular facts of this matter which include the fact that there's been an agreement between the parties that the employment comes to an end today, it also has an impact in respect of the remedy should the Commission be against the respondent that can be granted.

PN1463

But of course the Commission in determining a dispute such as this can only do so consistent with the metes and bounds of the 2023 agreement. And the reason that I'll develop in due course isn't able to grant a remedy that amounts to what is considered to be an extra claim, which of course in the orthodox way has been foregone by the parties in reaching the agreement that they did in respect of the 2023 enterprise agreement.

PN1464

So, that's the legal framework in which this matter is being considered. And the reason that I'll develop that really presents and impenetrable difficulty for the

applicant in achieving the type of remedy that it's seeking regardless of what findings the Commission might make in respect of the situation that existed in respect of the hours worked by the three particular academics in 2023.

PN1465

And I say 2023 purposefully because the dispute has been raised in respect of the 2023 enterprise agreement. That agreement came into being part way through 2023. So, with respect, and I'll develop this, there can't be any contemplation in respect of remedy in regards to whatever may have been done or not done in 2022. Because that was work that was done plainly under the auspices of a prior enterprise agreement.

PN1466

Now, coming back to the 2023 enterprise agreement there's been, and I will of course deal with the issue of WAU's in a moment but there's been a lot of time and energy that's been spent in the course of this proceeding in debates in respect of WAU's and what they represent, and what they don't represent and how they're calculated and things such as this. But the challenge for the applicant in that regard is that the relevant matter to be considered is what is provided by the enterprise agreement.

PN1467

As I read the enterprise agreement and I'm happy to be corrected, it doesn't talk about WAU's. There is no reference to WAU's in the enterprise agreement. WAU's come from, relevantly, the Workload equalisation model guide 2023 which I accept is a product of things that are referred to in the agreement but the WAU's don't form part of the agreement. What is relevant for the purposes of the agreement is clause 67.19 which deals with hours of work.

PN1468

If I can ask you please to go to the enterprise agreement and you'll find that at page 181 of the court book. And if I can ask you please to go to clause 67 and in particular, 67.19. What one seeks there is the reference to annual hours and work for full-time academic, 1725 based on a nominal 37.5 hour working week. Individual workload allocation will be such that a full-time academic is able to undertake their workload in 1725 hours per year.

PN1469

There is nothing in that clause which talks about people being allocated more than 30 WAU or people being able to be only allocated 30 WAU. The focus there and the focus for the purposes of the question of whether there's been a compliance not with clause 67.19, is whether individual workload allocation will be such that a full-time academic is able to undertake their workload in 1725 hours per year.

PN1470

So, the focus is on what's the allocation of workload to an individual.

PN1471

If we then move on to consider that in the context of the workload model itself, and remember what I said a moment ago, WAU's are a creation or the creature of the workload model, not of the enterprise agreement.

PN1472

THE COMMISSIONER: But a tool for workload allocation.

PN1473

MR MURDOCH: We accept it's a tool for workload allocation and that that's – it's a tool for workload allocation that is referred to if workload models are to be developed, and we see that in paragraph 67.2. So, I'm not suggesting that it's unrelated. But the important point is, and this is really the nub of the point, even if the Commission were to find that somehow there's been a contravention of the workload equalisation model 2023, that doesn't translate to there being a contravention of the enterprise agreement. There would need to be a finding that there'd been noncompliance with 67.19.

PN1474

THE COMMISSIONER: Except that we're dealing here with a dispute and resolving an industrial dispute.

PN1475

MR MURDOCH: That's so. Why I take you to that though is that the industrial dispute, and it goes back to what I said at the outset, its structure relate to the interpretation of 'application or operation of the agreement.' And it's not an industrial dispute that relates to the interpretation, 'Application or operation of the workload equalisation model guide 2023.'

PN1476

THE COMMISSIONER: I mean, it's that the agreement contemplates the use of a tool for workload allocation.

PN1477

MR MURDOCH: Yes.

PN1478

THE COMMISSIONER: And this is how it's been implemented, in effect, in this industrial situation.

PN1479

MR MURDOCH: I accept that.

PN1480

THE COMMISSIONER: Am I missing your point, Mr Murdoch?

PN1481

MR MURDOCH: No, no, you're not missing my point.

PN1482

THE COMMISSIONER: No.

PN1483

MR MURDOCH: You're not missing my point, at all, I don't think. But it's my fault, not your fault if you are. The point that I'm making is that what needs to be considered for the purposes of this dispute is the question of whether or not there's been non-compliance with 67.19. And that's really a different question from

whether there's been noncompliance in some way with the model. It's been developed under the agreement but the model isn't part of the agreement.

PN1484

Now, can I deal with the first question very, very briefly. There's really no dispute between the parties, self-evidently in respect of the first question, that being whether the enterprise agreement limits annual hours, the work for a full-time academic employee to 1725 per annum. It is plain from the terms of the agreement that there's a proscription on there being an allocation of work of such a nature that it can't be undertaken in 1825 hours.

PN1485

But the important point, and this is I suppose an important nuance, there can't be an allocation of work to an academic that can't be undertaken in 1725 hours. What the clause doesn't say, and this is relevant to a submission I'll make to you shortly, is that there's a contravention of 67.19 if an academic does work more than 1725 hours. Because there's an important difference between what's allocated and what's the employer's expectation and what an employee does.

PN1486

And in my respectful submission if an employee works more than 1725 hours, if that occurs inconsistent with the employer's expectation that does not amount to a contravention of the agreement. Nor does it amount to some - responding to a comment of my friend, nor does it amount to some unconscionable behaviour on the part of the employer.

PN1487

Industrially, as the Commission would know, there are plenty of situations where employees conscientiously sometimes, and this is said respectfully, for their own purposes, for career advancement, for their own purposes of personal interests or for entirely collateral reasons, work more than the hours that are set in an industrial agreement. But that doesn't mean that that's the employer's expectation of them or the employer's requirement of them.

PN1488

THE COMMISSIONER: One thing that is troubling me in this matter and I haven't really come to understand how relevant and whether I'm required to deal with this or how I am - - -

PN1489

MR MURDOCH: Yes.

PN1490

THE COMMISSIONER: Is that the evidence from the respondent didn't really address how they could assure themselves that the work that they were allocating would allow an employee to work consistently with 1725.

PN1491

MR MURDOCH: Well, I think that can be answered relatively simply and on the basis - I am answering your question but it might take me a little while to unpack it, so I'm not avoiding it.

PN1492

THE COMMISSIONER: Yes.

PN1493

MR MURDOCH: In my respectful submission that can be answered reasonably simply by looking at the evidence that was given by Professor Katsikitis in the witness box today. If one accepts that the enterprise agreement refers to an allocation of 1725 for a full-time employee, Professor Katsikitis, consistent with the workload equalisation model, accepted that 30 WAU are what are to be allocated to a full-time employee.

PN1494

So, that's not to suggest for a moment that as the applicant contends, that that means that each WAU can be broken down into being 57.5 hours. Because the WAU, as explained by Professor Katsikitis and other witnesses, the WAU are load based as opposed to time based. But a full-time academic under a model, and this is what the model says, so I'm not running away from it, is 30 WAU for a full-time academic. 1725 is the time period to be worked by a full-time academic.

PN1495

So, one would expect that over time, and this is why of course you see things such as clause 67.23 that's been referred to over time that put (indistinct) out. But going back to your question, and this really comes from the evidence of Dr Haseldine and also from Professor Katsikitis that the way the system work is – and it's got to be remembered, of course, that this is a very dynamic situation with a lot of moving parts and a lot of people involved – it's not a situation where the employer can simply ascertain readily and quickly what someone's doing, particular because the WAU's are really only able to be known at the end of the year as opposed to at the beginning or before.

PN1496

But the process is that, and this is seen in the evidence from the witnesses, that towards the end of the year prior to the year in question there's a consideration made as to where the particular academic is sitting in respect of the WAU's that are then known, that being the research, that being the leadership, and - - -

PN1497

THE COMMISSIONER: For the past year, or the year coming?

PN1498

MR MURDOCH: For the year coming.

PN1499

THE COMMISSIONER: Yes.

PN1500

MR MURDOCH: Because there are some things that can be ascertained reasonably early and that's the subject of the email that's sent by Dr Haseldine in the September or early October.

PN1501

THE COMMISSIONER: And it seems to be things other than teaching.

PN1502

MR MURDOCH: Things other than teaching. That is set out. And as is apparent from the emails that are in the evidence, that's set out and then once the teaching is allocated the requirement of the employer is for the academic if they're over, to have a discussion with that with their relevant supervisors. So, it's not a situation where there's no oversight on the part of the employer, at all. But that's the system.

PN1503

And the employer, in my respectful submission, ought to be able to rely upon both the academics but more importantly, the more senior staff that are involved to enable the system to work.

PN1504

THE COMMISSIONER: Except that it still doesn't address the difficulty that I raised with you which is the evidence of Professor Katsikitis was, we don't think in hours, we think in WAU's.

PN1505

MR MURDOCH: Yes.

PN1506

THE COMMISSIONER: So, I still am struggling with what steps the respondent takes or can take, or has taken to assure themselves that the allocation is then consistent with the hours requirement in the agreement.

PN1507

MR MURDOCH: Well, if you accept, and I'm not asking you not to accept obviously, if one accepts what Professor Katsikitis has said in respect of 30 WAU's is equivalent to a full-time employee's load, that's the answer. That will get you there if you have 30 WAU's. But - - -

PN1508

THE COMMISSIONER: So, in circumstances where there are either more than 30 WAU's allocated at any given time, and on reconciliation at the end of the year there's more than 30 WAU's, the university has information that that worker has worked more hours than the 1725, that would - - -

PN1509

MR MURDOCH: That's so. But if that's occurred it's because the system that I explained to you a moment ago that the university has put in place hasn't been applied. There has not been the process undertaken to get the employee to the acceptable number of WAU's. My friend says, well, that's because there's no one available. That's because CAT's can't be employed.

PN1510

The difficulty with that of course is that when one goes and looks at the very same evidence that my friend relies upon there are people who are under who can be allocated more work. There have been CAT's employed and the difficulty of

course is, and you heard this from, I think it was the first witness yesterday who, and I say this respectfully, was disdainful of the CAT's who'd been employed. So, even where CAT's are employed there's still a concern held by the academics.

PN1511

So, it's not so much a question of them not being available. It became very apparent from the first witness yesterday that they weren't there to utilise them.

PN1512

THE COMMISSIONER: Would you agree that just as you expressed the difficulties in the respondent really knowing exactly what the WAU's are at any given time because of the fluctuation, that individual academics might have the same difficulties given the fluctuation day to day, in being able to raise it through the system that you say applies?

PN1513

MR MURDOCH: Sorry, I don't - - -

PN1514

THE COMMISSIONER: Sorry. Not raise it, but know at any given time where they sit, in order to then encourage or trigger them to use the system that you say deals with these issues.

PN1515

MR MURDOCH: I don't accept that. Because the evidence is that this dashboard, it's a live instrument and it's open access. So, as I understand the evidence, and I don't think there's any dispute about this, that this dashboard that exists, an academic can go and look at that at any time. And it might change from one day to the next. There's things come in and things come out. So, they can be under no uncertainty as to where their WAU's are.

PN1516

Nor in my submission can the relevant management employee. In the case of the employees in the CPE area, that being the TPD or the DTB. Now you'll recall that Dr Rogers yesterday was at pains to try and point out that this information was somehow unknowable and she couldn't find it out. The problem with that of course is that if there's a live dashboard and there's the assistance of Dr Haseldine there's no reason why, nothing to stop someone such as Dr Rogers finding out very quickly where someone is at.

PN1517

And in any event, the employee themselves know where they're at because of the dashboard. So - - -

PN1518

THE COMMISSIONER: But in any event it appears that the fluctuations cause difficulties for everyone in this situation.

PN1519

MR MURDOCH: I think that's, with respect, a fair point and a point that I don't back away from. And that can be seen from the fact that still as we stand here

there's debate between the parties, and a continuing debate as to where these individuals sit in respect of their WAU's. Because it's a very dynamic situation. And if we use Dr Wyra as the example, as was confirmed by Dr Haseldine this morning and this is all said without any criticism of Dr Wyra, that because of the fact that she went on leave she was given a leave allocation within the WAU's but there wasn't a corresponding adjustment made in respect of her topic coordination assessment.

PN1520

So, in respect of that issue, at least, there's a double counting. Now, that's not suggesting anything improper on anyone's part. That's just the reality. So, it's a matter for the employees, guided by the TPD/DTPD to work these things out. Because at the end of the day they're the ones who actually know. Because they're the ones who actually know what they're doing on a day to day basis, whether they're off sick and not doing marking, whether a casual has been brought in to teach something, whether a topic is being run or not run.

PN1521

That's information that's within their (indistinct) because they're the ones who are there, either doing it or not doing it.

PN1522

THE COMMISSIONER: Yes, but in circumstances where the respondent has got a sophisticated system of allocation involving all sorts of complex formulas about how work is allocated (indistinct).

PN1523

MR MURDOCH: And the difficulty – I'm sorry, I spoke over you. I didn't mean to.

PN1524

THE COMMISSIONER: No.

PN1525

MR MURDOCH: The difficulty with that is, as is apparent from the evidence given by both sides, is that – and I hate to say this but I will – it's a bit like a payroll system. It can have all of the formulas as one likes but it's only as accurate as the inputs. And so, if the inputs are inaccurate what's produced at the end will be inaccurate. And what I'm getting at is, the people who know what the inputs are, are the actual academics on the ground.

PN1526

In any event, going back – I feel I've' taken things away from you a bit - - -

PN1527

THE COMMISSIONER: Sorry.

PN1528

MR MURDOCH: No, no, it's my fault – from the original question to me, it's plain that there was a system in place and that required the people who were over their WAU's, if that was a concern to them and I'll come back to that point in a

moment, that that was a matter that was to be discussed and sought to be resolved in the first instance with their TPD or Deputy TPD. And there's great resistance, it seems on behalf of the applicant to acknowledge that.

PN1529

But it is my respectful submission that one only has to go and have a look at the email that was sent by Professor Katsikitis and that's at page 1284 of the court book, to Dr Skrzypiec on 3 May, copied to Dr Rogers. 'However, the general oversight of workloads including CAT support will rest with the TPD/Deputy TPD.' There's nothing ambiguous about that. It's very clear. That was the expectation of Professor Katsikitis.

PN1530

And despite the fact that the applicant criticises the respondent what's very plain is that in respect of Dr Skrzypiec, whilst it took a little bit of time, once this issue came to the knowledge of the respondent and once Dr (Indistinct) Zakius(?) gave the direction for this issue to be resolved, her workload was very significantly reduced. We accept it wasn't reduced to 30. I think it was reduced to something like 32.5. But it was very significantly reduced.

PN1531

So, that's an example of, a), what the system is, and b), what happens when employees implement the system that the employer has put in place.

PN1532

THE COMMISSIONER: Am I right in my understanding that the TPD and the Deputy TPD, their responsibility is for teaching, that they wouldn't have any ability to influence workload in the other aspects of - - -

PN1533

MR MURDOCH: When you're referring to the other aspects you're referring to - -

PN1534

THE COMMISSIONER: Research and - - -

PN1535

MR MURDOCH: (Indistinct) and research?

PN1536

THE COMMISSIONER: Yes.

PN1537

MR MURDOCH: I think that's a fair statement.

PN1538

THE COMMISSIONER: Right.

PN1539

MR MURDOCH: But in any event, and this can be seen from Dr Skrzypiec, in accepting that there was able to be a very significant reduction to her WAU, notwithstanding that she was a person who had quite the significant research

allocation, and again, this is not sort of disrespectfully, I think the standard research and service allocation.

PN1540

Now the other point to bear in mind is, and this hasn't been touched upon but it might be a matter that's troubling the Commission, it might be said, well, in respect of Dr Rogers, she's the Deputy TPD. Well, what happens in respect of her if she's got concerns in respect of her workload? Well, it's plain that she reports through to Professor Katsikitis and it's also plain from the enterprise agreement if we go to that again and go back to clause 67.27, it deals with how to resolve workplace allocation concerns.

PN1541

And you'll see that it refers to, 'If concerns haven't been resolved in discussions with their supervisor the staff member may raise their concern with the Dean, people in resources or equivalent in the first instance.' Dr Rogers, notwithstanding having this higher than the standard WAU allocation, had no discussions. And more importantly, took no step to having discussions with Professor Katsikitis in respect of her workload.

PN1542

You will recall that she gave some information along the lines of, well, you know, I didn't feel comfortable doing that, or I'd heard about other people, and things like that. But she, herself, and I asked this very plainly, she, herself had no personal or had no negative experience with Professor Katsikitis. So, the Commission ought to find that there was nothing to prevent her if she was concerned about her WAU's from going and seeking redress, not just pursuant to the system but pursuant to the terms of the EA.

PN1543

THE COMMISSIONER: And I understood that the likely submission you are going to make on the basis of those questions. What I don't understand is what you say the significance of it is.

PN1544

MR MURDOCH: The significance of it is this - we can take Dr Skrzypiec out of the equation because hers were brought significantly down – what I say is the significance of it is this, that given that this was the system that was in place of the academic going and talking with the TPD or Deputy TPD, given that it's apparent that Dr Wyra didn't do that and that it's apparent that Dr Rogers didn't go and speak to the person who under the EA she ought to have gone and spoken to, that the Commission ought to infer that notwithstanding their protestation now about their workload that they were content to work that workload of their own volition.

PN1545

Now, I accept that that's a somewhat jarring statement to make. But in my submission the Commission could well infer that from the evidence that each of the three witnesses yesterday gave in the witness box. And again it's something that I don't criticise them for but each of them became quite emotional at some point. But in particular when one looks at Dr Skrzypiec and I'll just use her as an

the exemplar, what she became particularly emotional about was work being taken off her.

PN1546

You'll remember that she was quite emotional when she said, 'And I was left with one subject.' That in my respectful submission indicates someone who wanted to keep doing the work and was actually upset that ultimately it was taken off her. The same with Dr Rogers. It's apparent that she was holding onto this work. And you heard her saying that even after she became redundant she was still doing these things.

PN1547

And I'm not in any way being critical of her. But the flavour is very apparent that they were doing these things, and doing this extra WAU because they wanted to do it. Now, it may well – it may well have meant that they worked over the hours. It may well have had a negative impact on them personally. But they weren't complying with the system to get their WAU's down. So, the obvious inference in my respectful submission is that they were content to keep on working in that situation.

PN1548

THE COMMISSIONER: Even if they were content or any other employee was content, I'm still struggling with then how the university ensured compliance with 1725 hours. So, whether the employee of their own volition works extensive overtime, ultimately do you agree that the university is a party to the agreement and accepts that 1725 is the appropriate hours for a full-time workload?

PN1549

MR MURDOCH: It is. And I would accept that there would be noncompliance if the employer required the employee to do more than 1725. But if the employee of their own volition does it, particularly when they don't work within the systems that the employee has put in place to get the workload down, that's not the employer requiring to do it. That's the employee doing it of their own volition.

PN1550

THE COMMISSIONER: So, it still brings me back – sorry, Mr Murdoch, I spoke over you.

PN1551

MR MURDOCH: No problem.

PN1552

THE COMMISSIONER: It still brings me back to this query about the university and how they've assured themselves that their allocation of work sits within 1725. And there seems to be a gap.

PN1553

MR MURDOCH: Well, I can put it to you in a very simple way and that's not - -

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PN1554

THE COMMISSIONER: That might assist me greatly.

PN1555

MR MURDOCH: That's come out very badly but - - -

PN1556

THE COMMISSIONER: No.

PN1557

MR MURDOCH: It's not because it's – it'd be a simple way because I think this is the best way. The university accepts that the full-time WAU is 30. The university had a system in place to assist academics who went over 30, to get back to 30. That's how the university assures itself that employees are working the expected number of hours.

PN1558

THE COMMISSIONER: Except on the evidence, consistently – well, at least on some of the evidence there's an allocation of more than 30.

PN1559

MR MURDOCH: Yes.

PN1560

THE COMMISSIONER: And then the gap that I'm struggling to understand is it then says, well, in effect by not having any sort of system to oversee that, it's up to the employee to tell us even though we've likely allocated more than 30. And there seemed to be an acceptance from some of your witnesses that there was an allocation of more than 30. So, I think there's a gap or disconnect there that still isn't filled for me.

PN1561

MR MURDOCH: Yes.

PN1562

THE COMMISSIONER: Because it's about work allocation in the agreement and they're allocating according to WAU's and they say not hours. Then where is the step to assure themselves that they're meeting the 1825?

PN1563

MR MURDOCH: Well, the step to ensure themselves that they're meeting the - -
-

PN1564

THE COMMISSIONER: But the allocation is - - -

PN1565

MR MURDOCH: The allocation is calculated by the system. And by the system, I'm talking about the electronic system that when one puts in what's being done it produces the allocation. It's not a situation where there is some person on high saying to a particular academic, you are going to work 1760 hours per year. You're going to work shifts that take you to that.

PN1566

And you've seen the complication of assessment, coordination, whether something is being done online or in person. When that's all factored in the total WAU is produced. And when the total WAU is produced there is then an expectation that the academic who – they're the ones who know what their WAU is, if they have a concern about it, go and talk to their supervisor to seek some redress. And I can't – I would only be repetitive if I took it any further.

PN1567

THE COMMISSIONER: Thank you.

PN1568

MR MURDOCH: But that's the system. But I stress it's not a situation where people are being told by some person in authority that that's what they must do. It's not a situation where, okay, and again it's a bad analogy but sometimes bad analogies are of assistance, it's not a situation of a worker in a fast food shop being told by the supervisor once they get to the point of overtime, you're staying, you're not going home, you've got to work another three hours and then when the pay comes out it's an ordinary time. That's not what's happened here.

PN1569

THE COMMISSIONER: No but there were certain allocations of work that required the employee to do it within full-time hours and - - -

PN1570

MR MURDOCH: Yes, and that's - - -

PN1571

THE COMMISSIONER: Anyway, I don't think I can add any more.

PN1572

MR MURDOCH: That's produced by the inputs and the employees then know what their WAU is. Then they go and seek to have it brought in. Like what happened with Dr Skrzypiec.

PN1573

THE COMMISSIONER: And I don't want to labour this either but there was still evidence that the WAU's are assessed on outputs without consideration of what goes into producing those outputs in any way that correlates to being able to assess hours in accordance with the enterprise agreement and to assess that overall. And I'm still struggling with that concept.

PN1574

MR MURDOCH: Well - - -

PN1575

THE COMMISSIONER: There's probably nothing more I can say about it either, really.

PN1576

MR MURDOCH: Well, I don't think that there's anything more that I can say about it either, except to repeat what Professor Katsikitis said, that 30 WAU's is a full-time load. And as I understand it the applicant doesn't cavil with that. I've probably, in a roundabout way, dealt with everything that I wanted to say except for remedy.

PN1577

THE COMMISSIONER: Thank you.

PN1578

MR MURDOCH: So, unless you have any questions for me about anything else I'll come to remedy.

PN1579

THE COMMISSIONER: Thank you.

PN1580

MR MURDOCH: I'm not going to give the Commissioner a (indistinct) in respect of extra crimes. We've put on – I should say, I've got a hard copy of the authorities if that would assist you.

PN1581

THE COMMISSIONER: It would. Thank you.

PN1582

MR MURDOCH: Yes, I'll just make sure I'm handing you the unmarked copy. I think I am. Yes.

PN1583

THE COMMISSIONER: Thank you.

PN1584

MR MURDOCH: I wasn't going to take you to any authorities now because these are concepts that are reasonably trite. What I wanted to do is to address you in respect of the authorities by taking you to the enterprise agreement itself.

PN1585

As I understand the union's contention now in respect of remedy its limited now to a consideration of how clause 67.23 might apply to this proceeding. And in fact I think my friend conceded that there's no compensatory mechanism save for clause 67.23. That's available. There are a number of difficulties in my submission with applying clause 67.23 to the present case. The first one is the terms of the clause itself.

PN1586

It says that 'in determining each annual workload consideration will be given to individuals' workloads in the previous year and possibly future years.' I accept that it says, 'consideration will be given', but it doesn't go on to say anything about what's the impact of that consideration. It doesn't say, for example, that if someone is over one year that that has to be remedied to the precise amount of it being over in the subsequent year.

PN1587

It's a very, can I say, and this is not critical of those who drafted it because I think at least the representatives of them are all in this room, but it doesn't get the applicant to where the applicant wants to go. Because in order for the applicant to get the remedy that it seems to be seeking, the clause would have to say that in determining each annual workload an adjustment will be made to individuals' workloads in the previous year and will be made in respect of individuals' workloads from the previous year and possibly future years. And that's not what it says.

PN1588

It's, 'consideration', whatever that means. So, that doesn't assist the applicant. The second problem of course with it is that it's a future looking course. 'In determining each annual workload consideration will be given to individual's workloads in the previous year and possibly future years.' So, it's future looking. And given that this clause is contained in the agreement that came in in the middle of 2023, that clause can only sensibly apply to what the annual workload would be for 2024.

PN1589

So, it's not even a situation where it can be said that there was a contravention of that clause for the purposes of 2023. So, given that the relevant employees will not be employed by agreement after the end of today, even if the clause could somehow apply in some way to give them some form of relief, it simply has no operation and can have no operation in respect of their circumstances.

PN1590

And to give it some form of operation by somehow providing them with some form of relief would in my submission to be provide them with an entitlement that does not exist under the agreement and would be providing them with an additional entitlement, and would be consistent with being described as an extra claim.

PN1591

The other issue of course in respect of it is, and I address this for completeness because I don't understand my friend to have been asking for it, but it was said at the end that it will be left up to the Commission as to how the remedy is to be determined, nor is it a situation where the Commission, for example, could either by doing the analysis itself or by asking the parties to the analysis to work out in respect of one of the employees, well, this employee in 2023 was over by, and I'm just exemplifying, over by 10 WAU. That means that they're X per cent higher than 1725. And that means that they should be paid an extra, whatever the percentage is.

PN1592

Because that is not what, even if someone's employed this clause, contemplates. What this clause contemplates is non-payment. It is consideration of workloads at some future time. So, it just simply wouldn't be possible for the Commission to convert this somehow into some sort of a payment and to order that the respondent make a payment.

PN1593

So, it's one of those situations where a dispute has been raised but ultimately there is no remedy that is of the nature sought that's available to be ordered by the Commission.

PN1594

And that's because of the constraints that are imposed by the dispute resolution clause and the need for any entitlements of the employees to be consistent with the agreement as opposed to being an extra claim. And I said I wouldn't take you to a case but there is just one case that I thought I would just ask you to note in particular because it's, in my respectful submission, a good summary of what the metes and bounds of the Commission's powers are in this area.

PN1595

If you could go please to tab 7 in the bundle. That's the Lloyd v Australian Western Railroad decision of the Full Bench from 2017. And this is a decision of Vice President Catanzariti, Deputy President Binet and Commissioner Hampton. And if you can go please to paragraph 37.

PN1596

THE COMMISSIONER: I just happened to read this the other night, actually.

PN1597

MR MURDOCH: Really?

PN1598

THE COMMISSIONER: Yes.

PN1599

MR MURDOCH: And this was a dispute that arose in respect of a discipline matter.

PN1600

THE COMMISSIONER: Yes.

PN1601

MR MURDOCH: And the argument was whether or not what - to what extent the Commission itself in respect of resolving the dispute could sit in the shoes and exercise the discretionary remedies. And it was accepted that under clause 14 there was a range of discretionary responses for the alleged misconduct. So, therefore the Commission in dealing with the dispute was able to avail itself of those discretionary responses.

PN1602

But then if we go to the – and this is the point in principle – the last sentence, 'Provided that any determination made to that end would operate with in the parameters of the agreed provisions in clause 14, the terms of the agreement and that determination could co-exist and be applied without modifying or contradicting the terms of that instrument.'

PN1603

The remedy that the applicant is seeking from the Commission is one that would modify the terms of clause 67.23. And that's why in my submission it would be impermissible for the Commission to make an order in the terms sought.

PN1604

Unless you have any further questions from me there is just one further point I wanted to raise and in the event that the Commission is against us and does form the view that some form of a remedy is required and the Commission was minded for that remedy to involve some sort of calculation exercise in respect of WAU's, that would be limited in my submission to 2023 only. Because that could be the only year that could be relevant to a contravention of the 2023 agreement.

PN1605

And the second point I wanted to make is that there's, as the Commission has seen, quite a strong area of disagreement between the parties as to what the WAU's are for the three individuals. And I note that in the applicant's submissions it said that the Commission might seek that the parties come to some sort of agreement in respect of that.

PN1606

So, we'd respectfully adopt that, that if you got to the stage of considering a remedy and that remedy was to somehow involve compensating in some way for whatever WAU's might have been over the 30, that rather than the Commission conduct its own exercise of going through a thousand pages and trying to work it out, the parties ought to be given an opportunity to try and agree on it.

PN1607

THE COMMISSIONER: I have no difficulty with that, at all.

PN1608

MR MURDOCH: So, unless you had any further questions for me they're the oral submissions. May it please the Commission.

PN1609

THE COMMISSIONER: Thank you, Mr Murdoch. Nothing further from me. Ms Buchecker, any points in reply?

PN1610

MS BUCHECKER: I do have some points in reply, Commissioner. I also have a copy of the authority that we talked about in our submissions.

PN1611

THE COMMISSIONER: Thank you.

PN1612

MS BUCHECKER: I just wanted to correct the record. The NTEU has not notified a dispute over the application of the workload model. The dispute notice that triggered this whole process is clear. It's a dispute over the application of clause 67. At the time it was notified there were several other clauses in contention, as well and those have all been set aside. But it's abundantly clear that the dispute was notified over a failure to comply with clause 67.

PN1613

The respondent stated that the dispute is over the workload model, and it isn't. But the workload model is directly relevant to the failure to comply with clause 67. The respondent says that 1725 hours at 67.19 is the relevant part of the dispute, and we agree. What we haven't got to yet is the compliance mechanism. And the respondent continues to be unclear and contradictory on this part.

PN1614

The respondent has confirmed in evidence that the WAU workload model is the only workload tool applicable in the college. It's obvious on the plain words of the enterprise agreement that there's an obligation to develop a workload model. It therefore follows that the one that we have been talking about is the one that is relevant to clause 67. And clause 67 further says that that is the tool that informs the allocation of work in the relevant area.

PN1615

So, the workload model is directly relevant to this dispute and the respondent is arguing against itself if it says it isn't. Because if we take that out of the equation there is no compliance mechanism for the 1725 hours and so that would trigger a different failure, I would imagine, for the Commission to consider.

PN1616

The respondent said in closing that there can't be an allocation of more than 1725 hours, and we agree. But the respondent further said that if an employer works more than 1725 hours then that's not the employer's problem, as if it's staff incompetence that somehow causes the overwork. Shortly thereafter though the respondent said there is an acceptance of an allocation of more than 30 WAU's is an allocation of more than 1725 hours.

PN1617

So, the respondent is accepting that if someone is allocated more than 30 WAU's they are being allocated more than 1725 hours. That was said just now and it's supported by the evidence. And that's entirely contradictory to the assertion that was made only a couple of minutes earlier by the respondent that people somehow choose to work more than 1725 hours because they're incredibly dedicated or perhaps don't have the capacity to complete their work as quickly as they should.

PN1618

So, it's odd for the respondent to accept the limitation and simultaneously say that it can be breached. And we do have agreement that 67.19 is the limit. And we do now have the respondent affirming that the allocation of more than 30 WAU's is an allocation of more than 1725 hours. So that I think that categorically shows the connection between the obligations set out at 67.19 and the mechanism for demonstration of compliance.

PN1619

And that draws the WAU workload model fair and square into this dispute as a matter directly relevant to interpretation and application of the agreement and gives validity entirely to the fourth question that the NTEU seeks the Commission to determine, which is that 30 WAU equals 1725 hours and both constitute a full-

time workload. And that has been affirmed by the respondent in closing now with an acceptance that an allocation of more than 30 WAU is an allocation of more than 1725 hours.

PN1620

The evidence shows although there is some contention on the numbers, that the affected cohort have consistently been allocated more than 30 WAU's by the university's own reckoning, even though it's lower than the reckoning of the union. So, in closing, the respondent has basically affirmed that those allocations of more than 30 WAU's are an allocation of more than 1725 hours per year.

PN1621

And that's the dilemma we're wrestling with here, Commissioner, is that the affected cohort have been overloaded by their employer, not because they're diligent, not because they're not competent, not because they choose to work every hour of the day and night and forfeit their weekends but because they have been allocated a load that requires them to do that. It has not been of their own volition.

PN1622

There's no denying they are diligent and committed. They have shown that right up until the last minute. But the allocation provided by the employer was not compliant with 67.19 because the model that the respondent has accepted as the legitimate compliance tool shows them to be overloaded.

PN1623

The respondent also stated in closing that if people don't complain and seek workload relief then the overload stands. And this is entirely inconsistent with the respondent's acceptance of 1725 hours as the limitation. The obligation to comply with that limitation is the employer's obligation, not the individual staff members' obligation. And it can't be set aside by the employer simply because people choose not to complain.

PN1624

That's an absurd proposition and not one that could be accepted by the Commission. It would actually lead to a total chaos with any industrial framework if every employee had to take carriage and responsibility for their own safety at work. There's a mutual responsibility but the primary responsibility sits with the employer and the obligation set out at 67.19 is clear.

PN1625

The respondent in closing referred to, as an indication of the efficacy of the system, Dr Skrzypiec's pursuit of a workload reduction in 2022. And to be frank I would be embarrassed to put that forward as an indication of the efficacy of the system. We heard evidence from Dr Skrzypiec that the pursuit of this reduction took four months and nearly broke her.

PN1626

It doesn't inspire confidence in the system. It doesn't inspire confidence for others to seek relief when they see what happens to a colleague who does, and the burden it places on them to try and get workload relief. They tend to burrow

down and just deal with it. Or they come to the union and they seek a collective solution. The fact that people aren't complaining in droves is not indicative of their happiness. It's indicative of their despair.

PN1627

The enterprise agreement sets out at clause 9.2 the employer's obligation to provide a safe and reasonable working environment, exercise its duty of care and provide fair and reasonable remuneration. And we ask that the Commission factor those obligations into its consideration when it's looking at an outcome in this matter.

PN1628

The respondent's misconstruction in closing of the affected cohort's apparent desire to hang onto work is again misleading. They have been clear not that they were handing onto to work but that they were resistant to the chaotic approach and the consequences for students of the ad-hoc approach to workload reductions if they were to raise an issue. And it has been clear from these proceedings that the affected cohort puts students front and centre of their thinking, to their own detriment. Because at times they have actually, I suppose, tried to keep some integrity, some academic integrity in the program while simultaneously trying to protect their own health and wellbeing through a reduced workload. And those two things have not always been compatible.

PN1629

The respondent did accept in closing that there would be noncompliance with 67.19 if the employer required the employee to work more than 1725 hours per annum. And that goes back to the respondent's previous acceptance that an allocation of more than 31 hours is an allocation of more than 1725 hours. Both of those things were said in closing. Most of those things, the NTEU agrees with and most of those things are entirely incompatible with the respondent's substantive submissions that underpin everything that they have provided to date.

PN1630

They have acknowledged that 1725 hours is a full-time load. They have acknowledged that 30 WAU's is a full-time load. They have now acknowledged that an allocation of more than 30 WAU's is an allocation of more than 1725 hours. And so in the NTEU's view there is no ambiguity whatsoever in terms of the Commission's capacity and direction in the answer of questions one, two and four. They, I respectfully submit, must be answered according to the submissions made by the NTEU.

PN1631

When asked again on the 1725 hour compliance mechanism by you, Commissioner, the respondent in closing stated that the allocation is calculated by the system and if there are too many WAU's then a staff member can seek redress. And of course, we contend it's an issue of whose responsibility it is. But the important part of that closing submission was that when asked on 1725 hours compliance by you, Commissioner, the respondent referred to the RAL(?) model as the compliance mechanism.

PN1632

And that affirms the NTEU's submissions that it is directly relevant to the application of 67.19 and directly relevant to the Commission's consideration of the questions the NTEU has put before it.

PN1633

On the matter of agreed numbers should the Commission decide there is an available remedy for the third question, the NTEU is amenable to a conversation with the employer about an agreed set of numbers and we recognise that that would be a concessionary process and we are obviously prepared to undertake that concessionary process simply because it would be unreasonable for us to expect the Commission to make a determination on those numbers without dedicating the next six months to some kind of futile order that would be a waste of everybody's time.

PN1634

So, we would be more than happy to engage in that

PN1635

conversation with the respondent should you think that that was a wise and available course of action. Thank you, Commissioner. I've got nothing further.

PN1636

THE COMMISSIONER: Thank you to both the parties. So, I'll adjourn the proceedings.

ADJOURNED INDEFINITELY

[4.38 PM]

LIST OF WITNESSES, EXHIBITS AND MFIs

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