



TRANSCRIPT OF PROCEEDINGS
Fair Work Act 2009

**VICE PRESIDENT HATCHER
DEPUTY PRESIDENT DEAN
COMMISSIONER SAUNDERS**

C2013/6333 AM2018/9

s.302 - Application for an equal remuneration order

**Application by the Independent Education Union of Australia
(C2013/6333) (AM2018/9)**

Sydney

10.10 AM, TUESDAY, 11 JUNE 2019

PN1

VICE PRESIDENT HATCHER: I'll take the appearances. So Mr Taylor, you appear with Ms Saunders for the IEU?

PN2

MR I TAYLOR: If it please.

PN3

VICE PRESIDENT HATCHER: And, Mr Fagir, you appear for the Australian Childcare Alliance?

PN4

MR O FAGIR: If the Commission pleases.

PN5

VICE PRESIDENT HATCHER: And, Mr Warren, you appear for the AFEI?

PN6

MR R WARREN: With Ms Thompson.

PN7

VICE PRESIDENT HATCHER: Yes. And, Ms Eastman, you appear with Ms Raper for the Commonwealth?

PN8

MS K EASTMAN: If the Commission pleases.

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VICE PRESIDENT HATCHER: And there's an application for intervention in Melbourne as I understand it? Is that right?

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MS R MOONEY: Yes, Vice President.

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VICE PRESIDENT HATCHER: What's the application? Just to cover in short compass, Ms Mooney, can you explain why you're seeking to appear now in circumstances where this matter has been going on for some time, and there were directions extending back in the last year which required participating parties to file submissions and the like?

PN12

MS MOONEY: Yes, Vice President. So the AEU Victoria doesn't pretend that this is a very late application in terms of requesting to intervene in the matters before you. The AEU Victoria, however, has been involved in the IEU's case to date. Most notably, two elected officials of the AEU Victorian branch will be providing evidence for the Bench. I believe the dates - including Ms Ames next Wednesday and Ms Martel Menz who will update the Bench, but they are now both in elected positions with the AEU Victoria.

PN13

The AEU Victoria - and I provided a short email to the parties which hopefully - again acknowledging that that has been submitted quite late hopefully the parties have received that email outlining the coverage of the AEU Victoria, and the impact of any order from the Bench and the Commission will have impact on our members.

PN14

The AEU's request to intervene, I should just submit, is not to - we are proposing to provide written submissions to the Commission at the end of the evidence, and it will be in support of the application of the IEU but also its own submissions as well, and it's intended to file those submissions at the end of the proceedings.

PN15

The Bench will be aware that the AEU had its own application in relation to the equal remuneration order and it is just to make the clarity for the Bench that there is support of this application by the AEU Victoria. I don't think that that was made clear to the Bench, and the submissions will go some way to make that clear.

PN16

VICE PRESIDENT HATCHER: Thank you. Is there any party that wishes to be heard in support of or against this application?

PN17

MR TAYLOR: Certainly for our part we support the application, and the AEU clearly has an interest in the proceedings, and the fact that their intention is limited to making written submissions would suggest there's no prejudice to the parties in allowing that intervention.

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VICE PRESIDENT HATCHER: Mr Fagir?

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MR FAGIR: It's a little bit difficult to understand whether this is an issue or not without some indication of what the submissions might be. If they're simply dealing with the issues that the IEU is dealing with then they're unnecessary. If they're to introduce a fresh issue or a fresh perspective on the proceedings, well, that's a complication that, speaking for myself and my client, we could do without. We would resist the application, although one would have to acknowledge that this may turn out to be a non-issue depending on what it is that the AEU ultimately says. If it's simply a matter of expressing support, we'd rather assume that that would be the case.

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VICE PRESIDENT HATCHER: Do you want to say anything, Mr Warren?

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MR WARREN: Nothing in addition to what my learned friend, Mr Fagir, has just said.

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VICE PRESIDENT HATCHER: Ms Eastman? Well, Ms Mooney, we'll reserve our decision on this application for the time being, but you can obviously remain present in the proceedings in the interim.

PN23

MS MOONEY: Thank you.

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VICE PRESIDENT HATCHER: Mr Taylor?

PN25

MR TAYLOR: If it please the Bench, this is a continuation of part-heard proceedings that were before the Commission on 27 and 30 July 2017 during which submissions were made and evidence was taken. At the end of that on the last day of that as part of the hearing the Commission granted leave to my client to file a further application which I'll turn to in a moment.

PN26

But we intend to proceed today by way of opening to, firstly, in a short form remind the Commission of the application that's made for an equal remuneration order, and, secondly, open in greater detail than that our case in respect of an application to vary the award pursuant to section 157 to lift rates of pay for all teachers in Australia based on work value reasons.

PN27

As for timetable today what we anticipate is that the opening will take approximately the first half of the day. There will be some time after lunch on that basis for those who are otherwise appearing to also make opening statements. We have two witnesses today, Mr Foster, who will appear by video link, who we anticipate will be a relatively short witness, less than an hour, and Dr Press, who is an academic and whose evidence will be taken by phone, who is currently residing in Manchester in the United Kingdom, and who's going to be available, we understand, from about 3.30 pm although there might need to be some time initially just to set up the phone call and make sure it's all operating and that she has the relevant documents in front of her.

PN28

I think we indicated to the Bench that would necessarily mean, if the Bench was able to do so, that we would sit late today. We haven't had an indication as to how long Ms Press will be required for cross-examination, but we hope that her evidence can be completed today and she won't be required to come back on another day at about the same time which was the other option.

PN29

Having dealt with those housekeeping matters there's one more that I'll deal with in a moment when I come to start opening documents, but can I just say some things at the outset about the nature of our case in the broad and then turn to the particular cases in detail.

PN30

Can I start by saying that my client is unapologetic in its aim in these proceedings, that is, to lift the rates of pay of the highly feminised, chronically low paid group of professionals, early childhood teachers, primarily those employed in the for profit long day-care centre industry.

PN31

It will be the evidence that most of those teachers that I'm talking about, early childhood teachers employed in the for profit long day-care centre are paid something in the order of 30 per cent to 47 per cent less than primary school teachers despite the undoubted absolute importance and value of what they do. Contrary perhaps to past misconceptions these teachers are not there as carers. They are there providing critical education at what is now thought to be the most important part of a child's intellectual educational development, the first five years of their life.

PN32

It is, we say respectfully, impossible to say that the value of their work is less than that of the primary school teachers to whom they are compared in the ERO case and in respect of whom, along with secondary school teachers their rates of pay can be compared in respect to the work value case.

PN33

I don't apologise for the note of rhetoric that is now coming into the submission at this stage, but it is in truth a national disgrace that we have a group of teachers who are so poorly paid given their importance to the long-term prosperity of this country, given the importance of the work that they do.

PN34

Let's turn to the two applications. As the Commission is aware there is an equal remuneration order application made where we seek an order pursuant to section 302 to remove that very substantial gap and then there is secondly, and in addition, an application that the Commission make an order pursuant to section 157 of the Act to increase the rates in the Educational Services Teacher's Award 2010 for all teachers, and it is our fundamental contention that the rates that one finds in that award are too low, much too low, to be considered a fair and relevant minimum safety net, and that for work value reasons they need to be increased substantially.

PN35

Now, that is a claim, that is the 157 claim, that will impact approximately - sorry, I'll withdraw the word "impact". It will alter the award that covers something in the order 360,000 teachers in this country. Its practical impact though is to lift the minimum rate which is relevant in a practical effect to early childhood teachers, particularly in the long day-care centre, and that is because the rates that we are seeking will lift the award rate to levels below that at which primary school and secondary school teachers in this country are currently paid. The ERO claim will complete the gap.

PN36

Now, I said there'd be something else I wanted to say about housekeeping. We haven't perhaps moved to an entirely paperless hearing, but we have spent some

time over the last month attempting to make this as paperless a hearing as possible, and what we understand each Member of the Bench has and all advocates at the Bar table have are two documents which I will be referring to during the course of this opening. The first is called simply key documents, and the second is called the link master document. They are, as the Bench I think is aware, in effect an index which allows the Bench and parties to open the documents that I'll be referring to, and I'll do my best to give tab numbers to the two documents so that at an appropriate time the Bench can open the relevant document. There will be inevitably paper as well, and to the extent to which the Bench is assisted by us providing hard copies of any documents please, of course, just let us know and we will do that.

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VICE PRESIDENT HATCHER: So every document has a number, does it?

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MR TAYLOR: So there are two - as I said, there are two link documents. The first one is called key documents and the first word after the heading, Key Documents, in the middle of the page is the word, "Applications". If one goes down to the heading, Witness Evidence, tab 4 or number 4 is Witness Timetable and number 5 is Summary of IEU Witnesses, Alphabetical. Does your Honour have those?

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VICE PRESIDENT HATCHER: Yes.

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MR TAYLOR: Notwithstanding that they're available electronically the two documents which perhaps the Bench might want to have to hand in a hard copy sense from day to day as the matter progresses is a witness schedule and a summary of IEU witnesses. These are the documents that effectively can be found by touching the links to number 4 and number 5 in the key documents. But can I also provide the Bench with hard copies of them.

PN41

As to the witness schedule document we will endeavour to follow it as best can be done and indicate to the Bench and more specifically to the Bench's associates where, if necessary, there is a need to alter the timetable in advance so that the Bench can be aware of which witnesses are coming on any particular day.

PN42

The summary of IEU witness document, which is tab 5 of the key documents provides, as one can see, in alphabetical order with the name of each of the IEU witnesses followed on the left-hand side by some short dot points which just indicate in effect the nature of their employment and then the nature of the evidence and so for example looking at the very first name, Lily Ames, A-m-e-s, one sees on the left-hand side that she's currently a kindergarten teacher at North Carlton Children's Centre and the last two dot points indicate that there are two statements that have been filed in these proceedings and the dates of those statements.

PN43

On the right-hand it is headed, Bundle Documents. So to the extent to which Ms Ames, in her evidence, has referred to documents the approach that's been taken is that they are not annexed to the statement but rather there is in effect a cross-reference. Those documents can be found, the Bench could follow me by looking now at the link master document, which is the other link document that I referred to. If the Bench opens that document you will see it starts with the names of all IEU witnesses in alphabetical order and against their names an indication of what evidence that they have given with a link. And so, again, if one looks at the first entry, Lily Ames, you can see that there are links to her first ERO statement and also her ERO reply statement. If one goes down to Gabrielle Connell, you'll see that in addition to the two statements she gave that were filed in respect to the ERO case she's also given a statement following the commencement of the work value case.

PN44

Can I just pause for a moment. It is our client's understanding and intention that evidence that was filed in respect to the ERO case is also in a large part relevant to the work value case and that accordingly evidence in one is effectively evidence in the other. The exception to that is Ms Issko, I-s-s-k-o, whose evidence is only relied upon in respect to the ERO case.

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Sorry, your Honour, I was just pausing because I could see your Honour was speaking to your Honour's associate. We hope that this approach is going to make it easier rather than harder to find the relevant documents.

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VICE PRESIDENT HATCHER: By the final week it should be going okay.

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MR TAYLOR: We were hoping that your Honour was going to follow the opening, so if at any point I indicate a document that I ask to be opened please do indicate if your Honour doesn't have that material. So that link master document, the first two pages have links to each of the statements, and then the balance of the document has links to 275 documents, and you will see after the document name, the heading, Hyperlink, and the name underneath that is referable to the names of the - or the cross-referencing in each of the witness statements.

PN48

VICE PRESIDENT HATCHER: I've got a document headed Annexure A Contents of All Bundles. Is that it? That's the one that has all the documents. What I can't see is the document linking to the statements.

PN49

MR TAYLOR: Sorry, your Honour, it's our suspicion that what your Honour is currently looking at is a similar document that was filed about a year ago and not one that was provided to the Bench's associates last week.

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VICE PRESIDENT HATCHER: Yes. It's got 275 documents on it.

PN51

MR TAYLOR: Yes. So we haven't changed the documents but we've just in effect, as I understand it, changed the formatting of the links, but we've added a front page which has links to all statements.

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VICE PRESIDENT HATCHER: All right.

PN53

MR TAYLOR: So that document, I understand, is being emailed to your Honour's associate now and at an appropriate time it will be able to be made available to your Honour. There are a couple of times during the opening that I want to refer to some of the statements but the documents that I'm going to be referring to are linked to the key documents index which is the other index that I was referring to earlier.

PN54

So what I want to do now, if it's convenient, is to spend a short time, perhaps 10 minutes or so recapping the pay equity ERO application, then deal with matters which are under the heading, Discretionary Factors, which are factors that are relevant to both applications, in our respectful submission, and then turn substantively to the 157 application and open that.

PN55

As the Bench will recall the primary - sorry, I withdraw this for a moment. The applications as you'll see from the key documents are at tabs 1 and 2, and the first application is the application in respect of the equal remuneration order. The submissions that we filed in respect of that claim initially are at tab 6, the IUE submissions of 22 December 2017, and they identify the primary basis of relief is a comparison with male primary school teachers. The Bench will recall that the employer's response was in essence at two levels. Firstly, they contend that male primary school teachers are not doing work of equal or comparable value to early childhood teachers. They say that if that factual finding is made against us then that is jurisdictional. They secondly contend that primary school teachers being predominantly female do not make a male comparator, and they say that that then is also jurisdictional, but if it's not jurisdictional then it's discretionary. It goes to a discretionary fact.

PN56

The equal remuneration decision is found at tab 20 of the key documents bundle and the Bench will recall that at paragraph 290 the Bench there indicated that jurisdiction arises if you can identify three things. Firstly, an employee, just one, or a group of employees if it's an application on behalf of the group who are of one gender. Second, that their remuneration is less than an employee or a group of employees of another gender. Third, where those comparator groups or individuals perform work of equal or comparable value.

PN57

There is no requirement to prove that the difference as a matter of jurisdiction is due to gender or as a result of discrimination. You could just have two. You could have one ECT and one primary school teacher, and if you could

demonstrate as a matter of jurisdiction that they are of different genders, they do work of equal or comparable value and that the applicant individual has remuneration of less than the comparator then the jurisdictional test is met.

PN58

In our case we say we've identified male primary school teachers who perform work of equal or comparable value to the ECTs which are something in the order of 96 per cent plus women. Now the evidentiary question is the work value of these two groups equal or comparable will, as the Bench might recall, involve Bench hearing evidence as to the respect of similarities and differences in these two groups of teachers. Evidentiary findings will need to be made in respect of this issue.

PN59

Our evidence in a nutshell is that firstly they are of course sitting in the same award with the same classifications. They have in the large part the same qualifications. They get the same degree. There are some who get a degree zero to five years but it is usually and increasingly the case that teachers graduate with a degree zero to eight years or zero to 12 years. They are of course teaching children who have effectively if not the same age, close to the same age. Whereas early childhood teachers will teach children up to six and primary school teachers will teach children from as young as, in some states, four and in most cases five and above.

PN60

As you will hear they are covered by the same national teaching standards. As part of this opening I'll take the Bench to those standards but they are standards which apply equally in identical terms to the teachers, at both ECT and primary school level. In most locations they have the same registration requirements. That is they are required before they can start work to be assessed at meeting the graduate level of proficiency and then within three years they must, if they're going to maintain their teacher registration, demonstrate that they are now at the proficient level as determined by these national teaching standards.

PN61

That is the case in New South Wales and Victoria and South Australia and Western Australia, and in respect of some but not all jobs in the other locations. Now Ms Matthews has already given evidence in this case, Carol Matthews. Part of her evidence was indicating the impact of the ERO claim and what that evidence demonstrated was that about 15,000 ECT teachers are employed at rates that are at or not much above the award. There are of course ECT teachers in this country who are paid the same as primary school teachers, a fact which in and of itself tends to point to an equivalent of work value. They are teachers who are employed schools, such as independent schools and I think Mr Fagir's client will be calling a witness in that category. There are also those employed by government schools in locations such as South Australia and Northern Territory and the ACT, but about 70 per cent, a little over 70 per cent on Ms Matthews' figures of the teachers who will be affected by this ERO claim are found in New South Wales and Victoria, and those are the teachers who as I indicate have the same registration requirements as primary school teachers in the same states.

PN62

Both have a national curriculum. There is a different curriculum for early childhood teaching. It's called The Early Years Learning Framework and that curriculum will no doubt become familiar to the Bench over the course of this case. It is as employers point out less prescriptive, as to the knowledge levels required to meet certain steps. It is understandably so, you're dealing with pre-school children where the curriculum is identifying that what one needs to have to get to be successful at school and to make that transition, are a series of social and thinking skills which aren't necessarily judged by whether they can count to a particular number or are able to spell particular words. They are things that one will find in the primary and secondary school but nevertheless the evidence will show it is a rigorous curriculum against which early childhood teachers teach and will seek to ensure that their children are achieving the levels required.

PN63

There are experts who will give evidence that to teach to that curriculum is in many ways work of a higher level, because it involves higher degrees of judgment and pedagogical learning to be able to - and necessary to take these curriculum guidelines and turn them into hour by hour and day by day learning activities.

PN64

Now can I ask the Bench now to open a document which I'll turn to a couple of times in this opening. If you go to the key documents it's document number 25. It is a decision in 2009 of a Full Bench of the New South Wales Industrial Relations Commission, which considered the rates for early childhood teachers in New South Wales. There were a number of decision between 2001 and 2009 - - -

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VICE PRESIDENT HATCHER: Sorry, what number is this?

PN66

MR TAYLOR: It's number 25 in the key documents. It's the decision that's [2009] NSWIRC 198. If the Full Bench at this point go to paragraph 22 of the decision, by way of background there was a decision in 2001 which I will also open at an appropriate time of Schmidt J who considered the question of whether early childhood teachers should have an award variation which would remove the gap between them and primary school teachers. This was in 2001. The application was to close a 27 per cent gap and her Honour made orders to the effect that there be a 20 per cent increase. In 2009, the gap - - -

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VICE PRESIDENT HATCHER: When it says counterparts in schools is that public or private schools?

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MR TAYLOR: I'm sorry, your Honour, where was your Honour looking?

PN69

VICE PRESIDENT HATCHER: Second line of paragraph 22 of the 2001 decision what was it being actually compared to?

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MR TAYLOR: It was being compared to primary school teachers and as to your question of whether that's a private or public, my recollection is that certainly the 2001 case was both Catholic and government and I suspect the 2009 was as well but I'd need to double check that.

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VICE PRESIDENT HATCHER: Right.

PN72

MR TAYLOR: So in the 2009 decision the Bench was again considering the question of a substantial gap that had arisen between early childhood teachers and primary school teachers, and at paragraph 22 they hark back to Schmidt's J decision in 2001 where her Honour gave some of the history of wage setting in respect of early childhood teachers in New South Wales, and you'll see in particular extracted paragraphs 395 and following which set out some of that history.

PN73

The Bench can read section 395 and note that nexus between them was abandoned by employers in 1999 and that the employers were seeking in effect rates over time 26 per cent lower than teachers employed in schools. Her Honour Justice Schmidt was of the view then in 2001 that she was utterly convinced on the evidence that such a differential cannot be awarded. It would not result in fair and reasonable conditions of employment for these teachers.

PN74

In paragraph 396 she goes on to say something which has been quoted in the submissions of the employers in this case certainly I think EFEI as to what she was unable to conclude, and as the Bench will see by reading that she was unable to conclude that the rate should be precisely the same. Reading the decision as a whole it's clear that the reason her Honour took that view is because she did not have evidence before her as to exactly how those rates for Catholic and government schools had been arrived at. She goes on to say in 396, the second sentence:

PN75

I do not exclude the possibility that a case for such rates could be made out but I have taken the view that it would require a closer examination of the basis upon which increases for such teachers were agreed under the awards being relied upon, together with a more detailed investigation of the similarities and differences in the work of the two groups than was here undertaken.

PN76

Then her Honour says this:

PN77

That is not to say that I accept the views expressed by employer witnesses as to the nature of the differences in the work of teachers employed in early childhood and those employed in schools. I am convinced that no proper basis for such views was demonstrated.

PN78

That is the same approach that the employers are seeking to take in this case. The same approach as to try and convince this Bench in a manner that they attempted and wholly failed to do in that 2001 case, that there is some fundamental difference justifying a different work value between early childhood teachers and primary school teachers. We think that this Bench will have no difficulty coming to a view that there is no basis upon which that can be seriously suggested.

PN79

We are not alone in this. Can I ask the Bench now to look at tab 8 of the key documents. This is a submission made by a party that's not here today but has filed submissions; the Catholic Commission of Employment Relations. Does the Bench have that document?

PN80

VICE PRESIDENT HATCHER: Yes.

PN81

MR TAYLOR: If you go to tab 23, sorry not tab 23 my apologies, paragraph 23 of that document at tab 8, you will see the approach of that employer which the Bench doesn't need evidence to know is the second largest employer of teachers in this country and that is only if one consolidates all government into a single employer as against differentiating state to state. They say this:

PN82

Catholic employers recognise that there is a disparity in the modern award rates of pay for early learning teachers compared with those paid to primary and second school teachers. Given the qualifications and professional standards for early learning teachers are equivalent to primary school teachers, the CCER acknowledges that the legitimate aspirations of early learning teachers for increased rates of pay.

PN83

What they go on to say is that what they would in effect appreciate is some additional income or source of income to pay these additional amounts. So there is, we say, no question that the work value is comparable. To the extent to which something is said to the contrary, we think this Bench is likely to form the same conclusion that Schmidt J formed in 2001 in respect of the evidence that was then led by the New South Wales based organisation representing early childhood, that their evidence was strongly motivated by a desire, being for profit organisations, to reduce costs and that that led to a particular approach to the way in which they gave evidence.

PN84

We accept that early childhood industry and long day care centres are for profit. They necessarily then are looking to reduce costs as far as they can. We understand that too, but that shouldn't be at the cost of paying the teachers which are ultimately the fundamental core of what they do less than what they desire. Let's not forget we're not talking about lifting their rates to some extraordinary level. We are lifting them no higher than on the ERO case what primary and

secondary school teachers are paid, hardly well-paid members of our society, and on the work value case not even that high but to a level below what they are paid.

PN85

Now can I deal with this issue of female domination of the two. Whenever you're going to compare two groups of workers, you're never going to find, one hopes at least, groups of workers who are 100 per cent of one gender versus 100 per cent of another. One like to think in modern Australia that people of both genders are employed in every area but here we have a group of workers in respect of ECT teachers who are 96 per cent or more women. We compare that to teachers, primary and secondary school, which are something in the order of 75 per cent women. So you're not comparing, you are definitely comparing one group that is overwhelmingly women and that we say ultimately is what section 302 is all about.

PN86

Section 302 of the Act calls on the Commission or provides I should say the Commission a power to make an order if it is satisfied that for the employees to whom the order will apply does not equal remuneration for work of equal or comparable value, 302(5).

PN87

Here we have a group of workers for whom the work is of equal or comparable value and they are not being paid the same. They're not even being paid close to the same. The very essence of what this part is about is closing the gap particularly in respect of groups of workers who are overwhelmingly women. Now, we will lead evidence that the under-recognition and the undervaluation of early childhood teachers is linked to gender. This is not jurisdictional. We're not required to do so in order for the Commission to have the jurisdiction to make an order.

PN88

But as a matter of discretion there is evidence that will be led, there will be a historical view and unfortunately if one reads some of the evidence of the employers, a current view of some that the work here is just not much different to that of carers. Some of the witnesses suggest that notwithstanding the professional qualifications, notwithstanding government's mandatory requirements to ensure a minimum number of teachers, the work is no different in value to that being done by non-professionally qualified educators.

PN89

And so the expert evidence identifies that this idea that the work in question of teachers at early childhood level being work that comes naturally to women or is akin to mothering or is in some way easy or instinctual or unskilled is indeed underpinning the nature of the attitude to proper remuneration. In reading the 2001 decision of Schmidt J I was taken by a quote from a decision of Sheldon J back in 1970 when the Full Bench then looked at teachers' rates. At this part of the decision her Honour's using that 1970 decision as a touchstone to identify the types of things which can be the subject of work value analysis in respect of teachers. Sheldon J in 1970 said:

PN90

The notion that some work is so vital that those who make it their vocation can be expected to live off their dedication is today completely outmoded.

PN91

A quote that seemed directly on point. Can I now turn back to - sorry, can I now turn to the 2001 decision. So if the Bench has tab 23 of the key documents and one looks at the - one finds the decision of Schmidt J. Can I just draw this to the Bench's attention. If one goes to paragraph 348 and following, so this is the 2001 decision at tab 23. This is in the context - - -

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VICE PRESIDENT HATCHER: I think paragraph 7 contains the answer to my question.

PN93

MR TAYLOR: Yes. Paragraph 7 of that decision?

PN94

VICE PRESIDENT HATCHER: Yes.

PN95

MR TAYLOR: Yes. Thank you, your Honour.

PN96

VICE PRESIDENT HATCHER: Sorry, what paragraph was that, three hundred and?

PN97

MR TAYLOR: Three hundred and forty eight. So there are other aspects of the decision that are useful but at this point I'm simply identifying the equal remuneration aspect of this application, and I'm drawing attention to the fact that her Honour in paragraph 348 and following identified that the case before her was not advanced as perhaps it might have been under the equal remuneration principle.

PN98

The union explained why that decision was made and explained how it was made against a certain background of the agreement reached in 1970, which was itself designed to achieve equal pay for teachers. But her Honour notes in the last sentence of that paragraph that 'The evidence was that today' - as it is now before this Bench:

PN99

- it is almost entirely women who are employed as teachers under these awards with considerable difficulty experienced in attracting and retaining male teachers in the sector.

PN100

And by these awards at this point we're talking about preschool. At paragraph 349:

PN101

While the employers resisted the notion that these teachers were underpaid it is troubling that it is these teachers, predominantly women, who are employed to teach the youngest amongst us who are the lowest paid of any of the teachers covered by the various awards put forward in the evidence. The employers of course contended that this should remain the position, which will only worsen over the life of the current awards applying to other teachers where agreed increases are still being phased in.

PN102

And her Honour at 351 said that she was:

PN103

... approaching this aspect of the case on the basis that the composition of the workforce is one of the features of the industry which must be taken into account ...

PN104

And referred to the fact that whilst that case wasn't being taken under the equal remuneration principle, the primary obligation was to ensure that the requirements of section 23 of the Act are fulfilled. So this discretionary matter is a matter that is also relevant to the work value. I won't of course repeat the discretionary matters when I'm opening that part of it but can I just identify that as the Bench would be well aware one of the matters in the modern award objective, section 134(1)(e), is the principle of equal remuneration for work of equal comparable value.

PN105

It's one of the things that the Commission when determining this matter by reference to the modern award objective will be required to have regard to, as well as the overall objects of the Act in section 3 which include prevention of discrimination. Can I now turn to some of the other discretionary factors which apply to both cases. The first is the positive impact that an increase in rates will have if one takes into account issues of shortage, issues of turnover and the importance of maintaining experienced teachers at early childhood level.

PN106

The evidence will demonstrate that issues of shortage and turnover are persistent. They are found in those decisions in 2001 and 2009 in New South Wales. Exhibit 4 I think in these proceedings is 2017 workforce data indicating shortage of ECTs in New South Wales at that time. It's unsurprising if you have a gap of 30 to 47 per cent between an early childhood teacher and a primary school teacher in circumstances where the qualifications and registration requirements are the same that it might be difficult to maintain and retain your early childhood teachers.

PN107

Certainly that gap was identified as one of the key issues as a matter of discretion in those 2001 and 2009 cases and we say is a very big factor in this case as well. There will be evidence as to the much higher turnover and the much lower age of teachers in early childhood versus teachers at primary and secondary. Why is that

important? Because of how critical it is to have good, experienced early childhood teachers from a point of view of future prosperity, productivity, and you will hear a lot of evidence - and I'll turn to a couple of things in a moment - where it is now well recognised how important these early years of education are and how it is accepted that the quality of the teacher has a very significant impact on those educational outcomes at that critical point.

PN108

VICE PRESIDENT HATCHER: Can I just touch on the shortage issue. Will the evidence show that there's a movement of teachers out of early childhood teaching into the school sector?

PN109

MR TAYLOR: The evidence will show - so Doctor Press for example who is giving evidence this afternoon will identify that the wage gap between them is a factor in causing issues of shortage and turnover. There will be evidence that teachers who are qualified and in fact have taught at early childhood level are now teaching at primary school level, and that the very existence of this wage gap is one factor, we accept not the only factor but one factor in issues of shortage and turnover and consequential effect on experience of early childhood teachers.

PN110

And indeed can I just - I now ask the Bench to open document number 17 - no, I withdraw that. We'll try it again, 19, 'Understanding Who Cares'. This is an article written by three authors, the lead author being Dr Press who will be giving evidence this afternoon. The title of the paper written or published in 2015 'Understanding Who Cares. Creating the evidence to address the longstanding policy problem of staff shortages in early childhood education and care.' On page 88, looking at the numbering of the journal, the first full paragraph identifies what is highlighted by the paper. That is:

PN111

The limitations of relying on quantitative data as the primary evidence base for addressing the seemingly entrenched early childhood education and care workforce policy problem of shortages of qualified staff and argue for ECEC policy to draw on both quantitative and qualitative data for building robust responses.

PN112

At page 89 there is a discussion as to the importance of high quality ECEC staff and towards the end of the paragraph that starts that page, the second to last sentence after the number 2002 one sees:

PN113

Relevant staff qualifications. Appropriately high number of staff to children, staff child ratios and the stability of the workforce enables such provisions and interactions to occur.

PN114

Being a reference to the previous sentences which talk about frequent and positive interactions between children and staff and thoughtful responses to children's'

questions being the hallmark of high quality ECEC. There is then in the next paragraph - I don't need to read it but references to the authors' summarising various studies which identify why it is or how it has been demonstrated that having university educated teachers providing better outcomes for children at early childhood level. And then the next paragraph starts:

PN115

But it is not only what staff know, it's how long they remain in the setting in which they are employed that's also important. Stability and consistency in staffing enables children and families to build trusting and secure relationships with educators and this in turn supports the ECEC program to respond appropriately to the needs and aspirations of each child and provide effective support for families when required.

PN116

The next paragraph says in effect having identified the importance of having stability and consistency of staffing, the ongoing shortage of appropriately qualified staff is not a trivial matter. On the next page, 90, one sees the heading 'The Known Causes of ECEC Workforce Shortages' and identified that studies have proffered various reasons:

PN117

Most commonly the reasons put forward are poor pay and conditions relative to other workplaces. Also a lack of public recognition of professional status.

PN118

And just pausing there, I think it's well-known and established the public perception of status and rates of pay go hand in hand:

PN119

And then also workers going into the field with unrealistic expectations of the work.

PN120

The next paragraph identifies that high turnover is not itself - while it's often cited as a cause of staff shortages it's not itself a cause. Then there's a paragraph that says this 'At the turn of the millennium' so this is about two-thirds of the way down the page:

PN121

At the turn of the millennium the Australian Commonwealth Childcare Advisory Council report 'Childcare Beyond 2001' highlighted the contrast between the high level of commitment many early childhood professionals bring to their complex role compared with the wide undervaluing and misunderstanding of their contribution.

PN122

And there's a reference to a UNESCO document which identifies the increasing complexity of the work as being a feature of it, and it is this aspect of the case which we say - or this aspect that's very central to our case, that there has been increasing complexity and an undervaluation. The paper then goes on to ask the

question at the bottom of that page 90 'Why the complexity of the work in early childhood education is so poorly understood in popular discourse' and there is a reference there to material which Dr Press deals with in her statement, namely:

PN123

Arguably the reasons lie in maternalist discourses which characterise the work with young children as natural for women, but also a poor understanding of the skills, knowledge and decision making required for high quality early education which may be compounded by the play based nature of early childhood curriculum.

PN124

That is the failure to understand the play based nature of learning is not, as indeed even some of the employer evidence seems to suggest, some lower level or lesser value led type of teaching than the type of teaching one might find in a more formal classroom situation at primary and more particularly at secondary school level. The paper goes on to identify some of the material which the authors reviewed to examine this question of shortage, and at the bottom of page 93 there's a reference to the National Early Childhood Education and Care Workforce Census which is then dealt with on the following page. It provides data about the size of the workforce and workforce demographics and in the middle of page 94 if the Bench could follow me with the paragraph starting 'Nevertheless':

PN125

Nevertheless that census has gone some way to providing information about job satisfaction and qualifications in the ECEC field as highlighted previously.

PN126

The next sentence says:

PN127

Comparison of the results of the current and previous workforce census indicates that job satisfaction and retention of the ECEC workforce deteriorated 2011 to 2013. The picture is complex.

PN128

One wouldn't need to tell the Bench that. These things always have complexity:

PN129

Amongst preschool and childcare staff surveyed 87 per cent were satisfied with their job but only 48.9 per cent were satisfied with their pay and conditions.

PN130

And one mustn't forget in this industry there are some who are paid at primary school level and some who are paid at the award level:

PN131

80 per cent of respondents reported good team spirit and morale as well as supportive management.

PN132

The next paragraph refers to the census findings and the productivity report and note that those documents challenge what appears to be the most commonly cited causes of staff shortages, wages and conditions, and indicate that there are other matters, the causes are multifaceted, found in various stages of workforce cycle and including who's attracted, how well they're prepared and then it ends 'as well as but not only the conditions they encounter within the workforce'.

PN133

Now inevitably wages are only going to be a factor. It's the factor which this Commission has some capacity to address and clearly it is of importance. And the next page there's a heading 'What Can Qualitative Data Offer the ECEC Workforce Policy?' and you will see there there's a reference in the second paragraph under that heading, the middle of page 95, to a paper by Thorpe et al 2011:

PN134

Examined Influences on participants' decisions about whether or not they would work in childcare and found that approximately half resisted childcare as an option because of its pay and conditions.

PN135

So the concluding discussion identifies that there are a range of factors, one of which is very much pay and conditions. At page 96, the last thing I wanted to draw the bench's attention to is the penultimate paragraph. Referring to a paper by Lingard and Ozga opens that paragraph and then the next sentence which starts with the words "To date" says:

PN136

To date, the workforce shortages that have beset the ECEC field have not been effectively addressed through policy. In part this is because policy action in the area of improved wages and conditions for ECEC staff competes with other demands for ECEC to be more available and more affordable.

PN137

This is the policy challenge that the document otherwise identifies, that from a government point of view there is a desire for early childhood to be as available as possible and that necessarily has put downward pressure on wages with the effect - these authors would suggest a negative effect on the quality of education. Now, I had said something about the importance - the well-recognised importance - of ensuring quality teachers at this level.

PN138

Can I ask the bench now to turn to the document at tab 17, Lifting Our Game. I don't need to spend a lot of time on this document because it is one that the bench has seen, although you might struggle to recall, in the original opening. This was a report commissioned by all governments - all state and territory governments - on early childhood education. It is commonly referred to and at - I will just make sure I find the page. There is a section on workforce in particular that is worthy of note.

PN139

At page 63 of the numbering in the top right-hand corner, the bundle numbering 0871, it deals with workforce and here are statements made which we think are uncontroversial and are well accepted. Namely, it starts with, under the heading "Workforce" in the right-hand column:

PN140

A professional and skilled workforce is fundamental to achieving quality early childhood education and high quality learning and development outcomes.

PN141

Going down to the next paragraph:

PN142

A comprehensive literature review on determinants of quality in child care found that, overall, the most influential factors affecting quality across age groups and service settings are the education, qualifications and training of the workforce. Higher educator qualifications are associated with better child outcomes.

PN143

There is a reference then to the E4Kids evidence. That is separately in the bundle of key documents at tab 18. I don't ask the bench to open it, but that E4Kids study summarises the results of a five-year longitudinal study into the impact of ECEC programs on children's learning and developmental outcomes up to the age of eight.

PN144

It found that access to these programs had significant long-term effect on educational and developmental outcomes for children, particularly those from low socioeconomic backgrounds, and that the outcomes were driven by program quality; and that a major factor in ensuring program quality is the presence of qualified and skilled early childhood teachers, and noted the importance of ongoing professional development and training in that regard. If you go down to the bottom of page 63, the paragraph reads:

PN145

A quality service requires a skilled and stable workforce.

PN146

It then goes on to discuss why that is so. On the next page, page 64, the first paragraph starts:

PN147

A recent early childhood education and care workforce study investigated -

PN148

and then next sentence says this:

PN149

The study found that most educators enjoyed their work and appreciated its value, but one in five was planning to leave the profession, with poor wages and conditions a

PN150

driving factor. Educators undertaking study to improve their qualifications were most likely to be planning to leave. This was particularly the case in long day care, where many educators upgrading to teacher qualifications planned to move to stand-alone preschools or schools, where they could expect higher professional status as well as better pay and working conditions.

PN151

VICE PRESIDENT HATCHER: But that's referring to educators who are not yet tertiary qualified, isn't it?

PN152

MR TAYLOR: It is, so rather than retaining these experienced educators - that is experienced within the early childhood industry - it's identifying that having upgraded their qualifications they then used that upgrade to leave the preschool early childhood sector. Still on page 64, in the second column - about halfway down the second column there is a paragraph that starts "The challenges associated" and says:

PN153

The challenges associated with the workforce extend beyond knowing how best to prepare and support educators. The complexity and skill required of early childhood educators is not always understood or appreciated in the community and is not reflected in the wages paid to most educators.

PN154

Through its consultations, the review heard extensively about the many workforce challenges facing the sector, including attraction and retention, low remuneration, weak long-term career prospects, variable entry and registration standards, and lack of workforce diversity.

PN155

Then at the bottom of the page, the paragraph starts:

PN156

The review heard that there are substantial disparities in teacher compensation between child care and preschool services. In most jurisdictions, preschool teachers are paid less than their counterparts in primary schools, while educators in long day care are even more poorly compensated yet they may be working longer hours, have less leave and have more demanding working conditions.

PN157

The wages of these educators do not reflect the responsible, professional job that they perform for children, families and the community.

PN158

As I said, that is the conclusion of an authoritative report provided to all states and territories. It comes to a conclusion which we think this bench will have no difficulty accepting as correct. Can I draw attention to one matter that perhaps is not normally something that one would draw attention to and that is tab 40, which was a document which describes a policy that was taken by the Australian Labor Party to the federal election just completed.

PN159

Now, a policy of a political party might normally be of little weight, but we think it is notable that a political party that was seeking to achieve government identified a single - one single group in our society for which the view was taken there needs to be a very substantial increase in remuneration. The policy indicated that if the ALP had been elected, they would have sought to bring about a 20 per cent increase in pay in early childhood. That would be both educators and teachers. Now, the fact that a major political party of this country identified such a crying need, we say is not irrelevant and certainly consistent with the findings that we think this bench would otherwise come to.

PN160

Another discretionary factor which is relevant to both cases, in effect, can be put under the heading "Employer's capacity to pay". Now, when it comes to the section 157 case, of course, as I indicated this is not a factor other than in respect of certain parts of the early childhood industry, because the increase does not seek to lift the award rate above the rates that are currently actually being paid to primary school teachers and secondary school teachers in this country.

PN161

In the 2009 New South Wales Industrial Relations Commission Full Bench decision - that is at tab 25. You don't need to open it - the bench noted that when the proceedings were before Schmidt J in 2001 there had been extensive evidence about incapacity to pay, about how child care centres would close, staff would be made redundant, numbers of children would be reduced to go below cap levels above which a further teacher must be employed.

PN162

Her Honour, in 2001, awarded a 20 per cent increase and the Full Bench in 2009 noted at those paragraphs 253 and 254 that the prospective evidence that would be given by the employers had not come about; that that very substantial 20 per cent increase had not in fact caused any of the difficulties that the employers had identified would occur in 2001. They then - the rates having increased by 13 per cent in 2006, only three years earlier - increased them again by a further 12 per cent in 2009; so something like more than a 45 per cent increase over that period of time.

PN163

In each case the bench was very mindful of the gap that had been created in the meantime between primary school teachers and early childhood teachers, and indeed in that 2009 decision at paragraph 260 that gap is identified as and said to be unfair, and it is. This is absolutely unfair that you have this massive gap between two sets of teachers.

PN164

Can I also now identify and ask the bench to open one of the statements that the employers will rely on in their work value case. This is not in our key documents link, so this will be a document that the bench will need to find from the material filed on - it's all up on the web site. This is the statement of Mr Carroll. Could I ask the bench to indicate when they have found that document. I'm less familiar than I am with our key documents as to how the bench goes about finding that document, but I understand that the bench has available to it all the witness statements that have been filed by the employers.

PN165

VICE PRESIDENT HATCHER: Is that a convenient time for a morning tea adjournment, Mr Taylor?

PN166

MR TAYLOR: Thank you.

SHORT ADJOURNMENT

[11.27 AM]

RESUMED

[11.44 AM]

PN167

VICE PRESIDENT HATCHER: Have I got the statement?

PN168

MR TAYLOR: Thank you. So as the Bench will see, this is a statement by Mr Carroll, who is the chief executive officer of G8 Education Limited. He will give evidence in paragraph 3 that G8 has 6.8 per cent market share, and paragraph 6 that G8 has approximately 500 centres across Australia, operating under 24 brands; a major employer. There is a claim of confidentiality over paragraphs 9 to 17. Before I turn to them, can I just say this: the approach that I've agreed with Mr Fagir is that I am going to talk about what is in these paragraphs. If there is any application at the end or anything that's been said to be redacted from the transcript, then that will be done at the end.

PN169

Can I just say something while I'm talking more generally about confidentiality? Your Honour, the presiding member, will be aware that we took a view which we brought to your Honour's attention a few weeks ago that the claims of confidentiality over large parts of the ACA evidence seem to be somewhat overdone. We have no difficulty with those parts of the evidence which reveal particular operating costs to be dealt with on a confidential basis. But at the point where the job title of the deponent is claimed to be confidential or the amounts that they charge parents - something which is both advertised to them and through the government websites - is claimed to be confidential or indeed photos of baby lambs are said to be confidential, we draw issue.

PN170

What we are going to do, your Honour, rather than spend time now dealing with this, we have provided a schedule to Mr Fagir's instructors of those things which we accept are confidential and those things which are not. What we hope will

happen is before these witnesses give evidence, a further agreement can be reached, and to the extent to which there isn't, that will have to be dealt with at the outset. For our part, we think it's just fundamentally inconvenient as well as contrary to concepts of open justice for things which are clearly not confidential to be subject to confidentiality orders. We just think it's sensible to limit these things to that which is truly confidential.

PN171

As I said, these paragraphs are said to be confidential. I draw these paragraphs to the Bench's attention in opening, against a background in which there are two issues that we say are features of our case: (1) that there are issues of shortage and issues of retention and secondly, that the employer's claim of incapacity to make higher payments than the award rates is significantly overstated. What you will see in these paragraphs, at paragraph 11, G8 as an organisation decides to increase all ECT remuneration to be 10 per cent above the minimum wage as set in the award, effective 1 October 2018; in paragraph 12, that that was sought to be viable for their business without the need to pass on costs to families.

PN172

Just pausing; our work value claim seeks a 25 per cent increase as the second alternative. The first alternative is a series of increases which alter internal relativities, where for the initial grades, the increases are somewhat less than 15 per cent and then they increase for the more experienced teachers. The reason identified for this approach by G8 is identified at paragraph 14. One of the reasons for increasing the ECT wages was to assist G8 with the attraction and retention of ECTs. The role is the most challenging in terms of sector, supply and demand. Now, this is someone who would know; the CEO of the entity that is running 6.8 per cent of the market.

PN173

As a sector we also have to compete with schools for this role. Your Honour the Vice President asked a question about what evidence there is in this area. This is evidence directly from the employers. In the last sentence of that paragraph:

PN174

For G8, a 10 per cent increase for ECTs was able to improve retention and attraction of ECTs whilst not impacting the families who use our services.

PN175

MR TAYLOR: Finally, can I draw attention to paragraph 17:

PN176

Paying the award rate was resulting in attraction and retention challenges for G8. Increasing ECT wage rates has added to G8's value proposition for ECTs.

PN177

MR TAYLOR: I think that is management speak for making it a nicer place to work:

PN178

And has assisted with attraction and retention. This in turn reduces turnover in ECTs and allows each G8 centre to provide a more consistent, quality education offering to our children and families, which will drive increased occupancy and improved financial performance over time.

PN179

MR TAYLOR: So, in a nutshell, it's good for everyone to give these teachers a wage increase. It's good for the business, it makes it more profitable. It's good for the families and obviously, it's good for the children. We say this Bench will have no difficulty coming to that view more widely in respect of both our claims. But as to the capacity of smaller organisations to bear these increases, you will hear contested evidence as to that. My client has already led evidence from Ms Matthews and will also lead evidence from Ms James to the effect that the increase in costs to parents before one takes into account government subsidies, will be something in the order of \$1 to \$4, depending on the centre, per child per day.

PN180

Government subsidies vary, as the Bench will hear, depending on the amount of hours that the parents work and also their remuneration, but for those who work full-time, who have low income, up to a certain figure, 85 per cent of the cost of the childcare is funded through subsidy, so it's \$1 to \$4 for some. That will come down to 15 cents to 60 cents per child per day. But this is an area of contest and you will hear evidence about that, particularly when the employer witnesses start giving evidence. Finally, as the bench will recall, the pay equity claim, the ERO claim, is also put forward on an alternate basis. If indeed the Bench takes a view that there is some fundamental difficulty with the choice, as the employers would content, of the comparator group, an alternative comparator group has been identified that is male-dominated; that is professional engineers.

PN181

You've already heard evidence from Ms Issko as to the comparative complexity and size of the work, comparing graduate engineers and those with some years of experience to teachers at the same points in their career. There will be some - I think two professional engineers who are giving evidence and who will be cross-examined as part of the IEUA case.

PN182

VICE PRESIDENT HATCHER: Sorry, can you just remind me what the pay comparison was for that?

PN183

MR TAYLOR: Yes, so for that purpose, the approach that my client has taken is to point to market rates paid to professional engineers and it's relied on a wide survey of rates that is done every year by the Association of Professional Engineers, Scientists and Managers Australia. In evidence is the survey that was I think done in 2017. We do intend, at an appropriate time, to provide the bench with the more recent survey data which has been produced since the evidence was filed. The way in which we have contended it in our submissions is that one sees in that survey, as is common in remuneration surveys, different quartile and we have conservatively taken the 25 per cent quartile and indicated that the

comparator rate of pay is that of that quartile, which we say in answer to some extent the fact that there might be some higher-level duties that might be remunerated at higher amounts.

PN184

At that 25 per cent quartile there is a significant disparity in pay for a graduate engineer who comes out of university and is expected to apply their degree knowledge but in a highly-supervised manner with little or no final responsibility for work and that can be compared to teachers who come out as graduates and who are immediately required to do the whole job, that their value is not at the level that they will be when they are proficient or highly experienced but they nevertheless are doing a significant role in usually a low or hardly-supervised manner and can be compared in that way to be doing work of equal, comparable value.

PN185

We accept without reservation that it is so much harder when you are comparing two entirely different professions to come to a view about whether they are equal or comparable. It is genuinely hard. It is one of the difficulties, frankly, with the way in which the part is currently structured, that one has to engage in that exercise, a difficult which doesn't exist in our primary ERO case. But we think relying on the evidence of Ms Issko and relying on particularly, at least at the graduate level, there is enough material for this Bench to be satisfied that the difference in work value is if not equal then comparable, such that one can say that here we have a male-dominated group who, on market survey data, is being paid considerably more than a female-dominated group, who are also professionals and are doing the work of professionals.

PN186

VICE PRESIDENT HATCHER: Where is the current version of the survey?

PN187

MR TAYLOR: It's not yet in evidence - - -

PN188

VICE PRESIDENT HATCHER: Sorry, I meant the 2017 one.

PN189

MR TAYLOR: Document 102, I'm told - I didn't intend to take the Bench to it today so I haven't refamiliarised myself with the relevant part of that document. But we have, I think, in our submissions identified the relevant parts of it. I suspect I did in the previous opening as well. Can I turn now to the 157 application? I've already dealt with, as I said, a number of discretionary matters. But I need to spend some little time identifying, by way of opening, the way in which we put our work value case. The application at tab 2 of the key documents identifies how we seek to alter rates. Perhaps more conveniently the alteration is found in the IEUA submissions, paragraph 2.

PN190

In short, the primary case is to make an alteration to internal relativities and then increase all rates by 17.5 per cent. The alternative is a uniform increase of 25 per

cent, which is contended is the minimum to ensure fair and relevant minimum safety net. Could the Bench turn to the reply submissions by the IEUA filed on 3 May? They are tab 11 - and to the last page, the annexure. I've mentioned more than once the comparison to the rates of primary and secondary school teachers. If the bench has that schedule you will see on the left-hand side the current rates in the award, MA77, and the claimed rates, and then you will see - - -

PN191

VICE PRESIDENT HATCHER: That's the primary claim?

PN192

MR TAYLOR: Yes, that is the primary claim. You will see there the comparison of the rates to current primary school and secondary school rates covering public sector; that is government teachers across the country, and on the right-hand side, the differentials against both the state average, but also the lowest current rate of a government teacher across the country. Hence you will see that those rates, as I indicated in my - one of the first things I said this morning, the current award rates range from 30 per cent to - I think I said 47 per cent but in fact at one point it is 49 per cent, is the highest difference at level 11, the highest current rate.

PN193

VICE PRESIDENT HATCHER: Something you've just taken us through is Schedule A to the reply submissions?

PN194

MR TAYLOR: Yes, and - - -

PN195

VICE PRESIDENT HATCHER: The numbers are different to the application.

PN196

MR TAYLOR: I'm sorry.

PN197

VICE PRESIDENT HATCHER: I don't think - they're not the current award rates, either.

PN198

MR TAYLOR: If that's right - and I don't doubt what your Honour says - we might need to update it.

PN199

VICE PRESIDENT HATCHER: Annexure 8 to the application has a current (indistinct) level one, \$50,017. I see, you start at 3 on this table?

PN200

MR TAYLOR: Yes.

PN201

VICE PRESIDENT HATCHER: Okay, now I'm with you.

PN202

MR TAYLOR: Levels one and two remain in the award but have I think no application anymore. If they do, it's very unlikely that they have application because a four-year trained teacher - and all teachers now must be four-year trained - starts at level three. Our submissions identify - - -

PN203

VICE PRESIDENT HATCHER: So if you go to the award clause 13.4(d), the clause talks about - in (a) - talks about three year, (b) four year, (c) five year and then (d) says: "All other teachers and two-year trained teachers." What is that referring to?

PN204

MR TAYLOR: There are no longer any two-year trained teachers and as for other teachers, one presumes - well, I don't know, actually, what that means. I don't understand that there are any teachers now that would start with less than four or five years' training. There were such people as two-year trained teachers but that is so long ago that they would no longer - they would have moved well beyond level three if they were still teaching.

PN205

VICE PRESIDENT HATCHER: Are these pay increments based on years of service, are they?

PN206

MR TAYLOR: Yes, they are based on years of service, yes.

PN207

VICE PRESIDENT HATCHER: Can you just tell me in the award where it actually says that or is that just assumed?

PN208

MR TAYLOR: 13.4, I'm told, "Progression", wherein, at (a) and (b) and (c) there is an expression of progress to normal years of service or progress according to normal years of service and I presume the expression, "normal years of service", would suggest that if someone takes some - - -

PN209

VICE PRESIDENT HATCHER: Sorry, I thought that there might be something more explicit there which I'd missed, but that's as good as it gets?

PN210

MR TAYLOR: It is, and as I understand it, it is understood by all those who apply this award that it is an annual progression.

PN211

VICE PRESIDENT HATCHER: Speaking for myself - and you can make up your own mind whether you want to talk about this, maybe in closing submissions - but I'm puzzled as to how a system of annual increments based on service has anything to do with properly assessed minimum wages based on work value.

PN212

MR TAYLOR: We can do that in closing submissions and one of the things we will identify is that it has been a feature of award setting by industrial tribunals, at least that 1970 decision of the Full Bench involving, amongst others, Sheldon J. There is a specific reference to the view that experience adds to work value. The Commission was satisfied that as one gets more experience, one's value increases as a teacher and that that has presumably underpinned a view that there is indeed a higher work value as one gets more experienced. Within the teaching profession, as we'll come to in a moment, the national standards identified, that one starts as a graduate and with current qualifications that means you start at level three or if you are a five-year trained at level four and then you must - in order to maintain your registration - become recognised as proficient.

PN213

That normally takes two years but it can take as much as three. It can't take more than three. If you haven't done it by the third year then you are no longer registered and as such one can see there that whilst it's not as - set out in the award, there is similarly some concept of increased work value as one gets more experienced. The evidence that is coming before the Commission by way of enterprise agreements shows that in some states and territories - and New South Wales is certain one of them - there have been effectively broad-banning exercises that have occurred that perhaps arguably correlate levels of experience with value. But that is being done by way of enterprise agreement. Ms Saunders tells me that's also the case with the New South Wales state awards in 2016; a broad-banning exercise has occurred.

PN214

But this has been the approach now. There are a number of things one can say about the approach of this award and I was about to turn to them but as we'll see from our submissions, the rates in this award with these particular levels derives from a Victorian independent teacher award which last had a review from work value in October 1995. The history of how these rates came about is set out in the submissions that we've filed from paragraph 24 onwards, that the Victorian Independent Schools Award 1998, there was a 1.8 per cent increase in work value grounds in a decision of the Federal Commission, the Australian Industrial Relations Commission, on 16 October 1995. There has been nothing other than standard national wage case increases in the 24 years since.

PN215

VICE PRESIDENT HATCHER: What paragraph was this?

PN216

MR TAYLOR: If you go to our submissions - - -

PN217

VICE PRESIDENT HATCHER: Paragraph 26?

PN218

MR TAYLOR: Yes.

PN219

VICE PRESIDENT HATCHER: Has there been any research on this pre-existing state award and where that came from?

PN220

MR TAYLOR: There has - the research, to the extent to which we have found it and that it would be relevant to the Commission, we have summarised in those paragraphs. But it appears that there was - it was the first federal award made governing teachers - government schools in Victoria and following the move in Victoria into the federal system, the rates at the time that the modern award was being considered were seen by my client to be so low that the submission was actually put to the Commission that this federal award shouldn't include any rates because they were just so unreal. But nevertheless, these rates were picked up and used, I think - and Mr Fagir cross-examined Matthews about this - I think by the time the award was being made, effectively the position that there would need to be some rates and that this would be used as rates, was not seriously in contention.

PN221

But our position is that if you are considering datum point - and I want to say something about datum point in a moment - but if you're considering datum point, these rates, if they were ever relevant, were last considered some 24 years ago and there have been very substantial changes in the work value of teachers in the 24-year period and indeed, there have been very substantial changes to the work value of teachers in the nine years since the modern award was made in 2010.

PN222

VICE PRESIDENT HATCHER: Is the decision at footnote 15 - is that in the materials somewhere?

PN223

MR TAYLOR: It isn't at the moment. I think that is a decision of the predecessor of this Commission. If you'd like us to provide a copy, we can.

PN224

VICE PRESIDENT HATCHER: I know you're coming to say something about datum point but assuming for present purposes that that serves as some sort of datum point, we need to know, don't we, what the starting point was and what was considered to help identify what has changed?

PN225

MR TAYLOR: Yes. I'm not in a position to help you with that at the moment but we will look at that. As you say, your Honour, to say something about datum point, the first thing that we say in our submission about datum point is that under the provisions that this Commission is applying - section 157 - there is no requirement to focus on a datum point. The overall objective is to ensure that the rates of pay provide a fair and relevant minimum safety net by reference to work value reasons that we accept that in doing so rather than starting with an entirely blank piece of paper, the Commission will have regard to rates that have previously been set and changes that have occurred over the period since they were last considered.

PN226

Hence, we have proceeded on the basis that what will be persuasive is to identify the frankly revolutionary changes that have occurred in teaching over the 24-year period and because we are conscious that we might be faced with an argument that the rates are presumptively thought to be correct when they were made in January 2010 the witnesses are also directing attention to changes since then. We don't accept that the rates were in fact correct in 2010. They were too low then. They were substantially lower than the rates that were applying to early childhood teachers in New South Wales that have been set by the Industrial Relations Commission in those decision that I've taken you to.

PN227

Those higher rates were maintained for a period of time by way of transitional instruments but have been eroded, so some thousands of dollars - I think \$11,000 at the top level - has been lost as a result of the loss of those transitional rates when those teachers' rates effectively fell off a cliff in July 2014 when the transitional period came to an end.

PN228

VICE PRESIDENT HATCHER: That pre-existing award, did that have any application to early childhood teaching?

PN229

MR TAYLOR: No, I don't believe it did. I accept those early - actually, I might have to withdraw that because I think - I'll have to check. In Victoria, there may well have been a nexus to early childhood rates for certain preschools funded by the state government. But where that award applied to them directly, I don't believe it did but I'll have to check that. Ms Saunders says that - and we will look at this more closely - but there was a separate award for early childhood teachers at that time but some correlation in rates that was applying between government and early childhood rates.

PN230

VICE PRESIDENT HATCHER: Just going back to the classification structure, so once you get registration as a proficient teacher, is there any higher standard of teacher that is recognised by the registration system or accredited or anything like that?

PN231

MR TAYLOR: There are. There are two higher levels: highly accomplished and lead. I'll come to those standards in a moment. This opening is taking, I immediately acknowledge, much longer than I anticipated and I'm sorry about that but it's important, I think, for these things to be identified at the outset. There are those two higher levels. They are both optional. There is no requirement for a teacher to be accredited under those two higher levels. There are disincentives to be accredited at those two higher levels, the primary amongst them being that they are not ordinarily recognised by way of any higher rate of pay. So you achieve a higher standard but there is necessary correlation to pay.

PN232

Sometimes people, because they have reached the higher standard, might be able to access a promotional position so there might be a correlation. But there is not

necessarily the case that promotional positions require it, and vice versa. As a result there are relatively low numbers of people who have achieved that qualification as a result of that factor and one other; that is, it is not easy to do. It requires a very large amount of work over a considerable period of time to achieve a portfolio which is then assessed to be at those higher levels. So those two things mean - I'm informed - that the number of teachers across Australia over the 360,000 who have been accredited at that higher level might be less than 1,000.

PN233

VICE PRESIDENT HATCHER: So the state government systems don't reward that in terms of remuneration?

PN234

MR TAYLOR: Ms Saunders tells me that the answer to your Honour's question is in New South Wales it does, since 2016, have a higher rate of pay for highly accomplished. The standards themselves are relatively new and the time it takes to achieve the high levels of registration is not insignificant. So one would anticipate that higher numbers of teachers will qualify at those higher levels over time. But just on a related question, your Honour, I think I said - I might have made this point earlier but if one starts at levels three or four in the award at the moment, as a graduate, as either a four or five-year trained, one is going to be at the proficient level, one would think, by about level six. It normally takes about two years. It can't take more than three.

PN235

So that is effectively an indicator of the proximate levels that teachers will be at at the level where they're determined to be registered as proficient. Now, before turning to the evidentiary opening and outlining the evidentiary case that we rely on by way of work value reasons, can I just say again that the decisions of Schmidt J in 2001 and the Full Bench in 2009, both of them contested cases involving early childhood teachers, provide guidance as to the types of matters that an industrial tribunal will think is relevant when determining work value change for teachers; in particular, teachers in early childhood.

PN236

In the second case, the Full Bench gave rise to a decision to increase wages by 12 per cent in just that three-year period between 2006 and 2009. Substantial workplace change was identified, justifying that increase. All of these changes are changes which fall within, we say, the datum period that we are looking at so it's instructive at a second level. Not only is it instructive as to the types of matters that can give rise to relevant work value change, but as to the actual change that was occurring to teachers during this period; things like changes to regulation. In 2001 Schmidt J was looking at what was then changes to regulation of early childhood centres in New South Wales and the impact that had on teachers. What we now have since then, from 2009, there is the National Quality Framework that applies to all early childhood centres in Australia. They must meet certain quality standards, and these obligations fall on the childcare centre, they fall on the licensee, they fall on the director, but they have, of course, just as Schmidt J found in that case in respect of the New South Wales regulatory

requirements at that time impact on the teachers who themselves must make the changes and implement the changes necessary to obtain the quality standards.

PN237

I think it is of utility if the Bench would bear with me to open that decision again, this is the 2001 decision so that's at tab 23 of the key document bundle to identify some other matters which are equally relevant we say here given the changes that have occurred. Can I ask the Bench first to go to paragraph 356 of that decision. So at this point of the decision her Honour is dealing with consideration of the evidence that had come before her by way of work value change and she was addressing in paragraph 356 and 357 the submissions that is normally made by employers in work value cases involving professionals, and that is well, you're professionals and you must accept change, and the very nature of being a professional is you must stay on top of relevant changes and apply them, and her Honour starts at 356 by identifying all work changes over time and employees are expected as a normal part of their work to accommodate such changes. She identifies in that paragraph after the reference to the authorities that that applies to professional employees here in question.

PN238

And then at 357 says:

PN239

Undoubtedly the evidence established that teachers were equipped to deal with these changes although there was evidence of the need for in service training in relation to a variety of these developments. Were it not so the teachers could hardly have been called upon to meet the changes. Other employees would've had to be employed to perform the work or it would've had to be managed in some other way. The fact that employees are able to meet changed work requirements does not mean that the changed work has no increased value. That is after all what the work value principle is concerned with, to measure whether the changes have led to a necessary change in value as the principle describes.

PN240

And I draw attention to that because that is one of the things that's said by the employers against us in this case.

PN241

Then from paragraph 358 her Honour deals with some of the changes identified in the 1970 case and in a nutshell they are things like gradual changes in teaching methods, which is a feature of the evidence in this case; the work becoming more exacting; a third being more reporting/recording requirements; and the fourth being greater teaching aids, and by that it's a-i-d-s not a-i-d-e-s, and your Honour will hear evidence as to changes in what's referred to as ICT, information and communication technology which has fundamentally and significantly changed the way in which teaching is done.

PN242

From paragraph 366 and following her Honour identifies the series of changes that were considered give rise to a substantial change in work value in that case.

370 she identifies the regulatory licensing regime. At 373 child protection legislation being a major change at that time, 376 an increased emphasis, this is in early childhood, upon school transition with additional reporting requirements and closer co-operative working relationship with local schools, increases in the number of children with special needs. And that issue, increases in the number of children with special needs, is a big feature of the case that will come before you.

PN243

At 383 - I'm skipping some of them. Her Honour concluded that the changes identified established changes of work sufficient to satisfy the requirement of the work value principle, and came to the conclusion that her Honour did. And when one goes to the Full Bench decision one finds reliance again on very similar changes. In that case, as I said, in a fairly short time scale.

PN244

I'm sorry, I won't be a moment. In particular in 2009 there was reference to a more rigorous structure and documented teaching regime, increased administrative responsibilities, an increase in the extent and complexity of client requirements and more onerous regulatory requirements, each of which again are a feature of this case.

PN245

So let's turn to this case. What you will hear is evidence that our client will lead firstly from six union officials, five IEU officials and Ms Menz from the AEU, in respect of Victoria, giving evidence as to broad trends that have occurred in the industry for both early childhood teachers and primary and secondary school teachers. There is academic expert evidence being given by four academics, three who are professors or associate professors of early childhood education. That's Dr Dockett, Associate Professor Dr Irvine, and Professor Press, who is giving evidence this afternoon, and then fourthly, Dr Tania Aspland, a Professor of teacher education gives evidence about changes in teaching that are not identified specifically by reference to early childhood. In addition there are 13 lay witnesses, early childhood teachers, primary school teachers, and secondary school teachers.

PN246

That evidence establishes that since 2010 and certainly since 1996 there has been a revolutionary change in teaching. There are two overall themes: the first is substantially increased professionalism; and the second, substantially more complex and intense work.

PN247

The increased professionalism we put under five broad headings: firstly, changes to ITE, initial teacher education. So there is now quality assurance of those teaching programs, so lifting the quality of the programs themselves. There are, secondly, higher qualification or entry requirements, that is, in order to be able to study to be a teacher various States and Territories are now mandating certain levels of educational achievement at high school, ATAR ratings and the like before you can access that. Degree length, one of the major changes in this area is that what used to be a three year degree is now a minimum four year degree in order to qualify to be a teacher or if you already have a degree you can do a

Master's degree that used to be one year, that's now two years. And then finally we're now finding - - -

PN248

VICE PRESIDENT HATCHER: So it's three, is it? Did you say there were five elements you were telling us?

PN249

MR TAYLOR: The first element is ITE.

PN250

VICE PRESIDENT HATCHER: Yes.

PN251

MR TAYLOR: That's as far as I've got. Within that there were - - -

PN252

VICE PRESIDENT HATCHER: I see.

PN253

MR TAYLOR: - - -some elements.

PN254

VICE PRESIDENT HATCHER: I thought these were the second and third items.

PN255

MR TAYLOR: I might have confused your Honour, I'm sorry. So within changes to ITE there are four elements: quality assurance of teaching programs, higher entry requirements, increased degree length, and then at least in New South Wales there's now in effect exit requirements, so even if you have a degree you can't actually qualify, at least for Government schools, unless you can satisfy as to the quality and nature of the study. You have to have a credit average in a certain number of subjects to even become a teacher. So at that initial stage there is a focus on higher quality professionals.

PN256

The second change, or the second of the five, is the new national registration requirements that we've been discussing which involved the new national standards which apply to all teachers including ECTs, and I'll come to that in a bit more detail.

PN257

The third is post registration requirements. So in order to maintain registration there is now mandatory professional development, and as we've discussed, mandatory requirement to qualify at the proficient level.

PN258

Fourth there are substantial increases in accountability. Now, this is not driven by necessarily a legislative standard but by changes in the way in which education is being delivered and reported on. A lot of these changes are inter-related but one of the very significant changes that's occurred over the last decade and beyond are substantial increases in student testing and reporting of results. That then has an

effect on accountability of teachers. The days when a teacher would give a student a single mark at the end of the term or a year, which wouldn't necessarily be compared to any previous mark they got have gone. Now teachers are at every level assessing children and reporting on outcomes. Those assessments are themselves being analysed both within the school and against schools. So NAPLAN results are a major factor of the effectiveness of schools, schools then turn to the teachers to try and drive up those results, but also for each individual student the evidence will be, some of the teachers say this in their evidence, student aren't allowed to fail any more.

PN259

What it means in practice is that teachers are then assessed, they're held accountable for the outcome of each student's education while they're teaching them in a way which is carefully measured and can be compared, so they have higher accountability. In respect of early childhood I've already spoken about the national quality measures introduced in 2009. They're quality measures for the preschool, but they are measures against which the teachers are employed to ensure the preschool continues to meet, you don't just meet it once, you are assessed on a regular and ongoing basis.

PN260

And the fifth area of increased professionalism arising from community and parental expectations, this is turn linked back to student testing and reporting of results but increasingly the parents are asking the teachers, "What are you doing for my children?" and there's a real focus on, and an expectation, that teachers are delivering for individual children and the way in which their work is reported, both by them and by effectively the school on a broader level, has substantially changed community and parental expectations.

PN261

The second broad theme is that the work is substantially more complex and intense and we identify in this 12 aspects or areas, six of them are in effect skills and six are more intensity of workload and, again, a lot of these are inter-related. But the first is differentiation also known as individualised learning, personalised teaching. There are a number of different expressions, but the effect of it is this, that there's a fundamental change that over the recent years particularly - sorry, I withdraw that - at every level of teaching whereas the teachers are expected to teach for each child at a level for that child. So the days in which a teacher walked in, presented the curriculum to the class, some got it, some didn't, there's a test at the end, some passed, some didn't, has gone. There is now an individualised approach linked to the testing which is no longer at a global level but at a granular level where the students are tested for their knowledge in respect of each aspect of the curriculum.

PN262

The teachers are identifying what areas a particular child is not doing well in and then teaches to that level, and so some of the witnesses will talk about the fact that within their class of year 7 students there will be some with a reading age at year 3 and some at year 9 and they are teaching to each of those levels. They're breaking them up into smaller groups. They are altering the assessment for those who will

be struggling with the higher level of assessment. They are giving them different levels of work.

PN263

So clearly a different way of teaching but one that is you're no longer teaching a class of 30 once you're teaching 30 individuals is the way the witnesses talk about. That linked to that second aspect of skill, and that is assessment of each child's proficiency, there's a skill involved in that and a related third skill of analysing that data to allow the teachers to target those areas that need attention and to teach at that individual level.

PN264

The fourth area which you'll hear evidence about is demographic changes of students. As a result of a move to universal education at preschool which has meant that those in education at preschool have gone from 30 per cent to over 90 per cent of four year-olds over the last nine years, as a result of moves to retain more students at year 11 and 12, as a result of recognition of obligations under the Disability Discrimination Act to provide schooling to children with special needs, and, fourthly, as a result of the fact of just a straight recognition that comes from this individualised testing of where students have additional needs there's been a major change in the way in which teachers teach. They are teaching many more students with disabilities, students with autism, students with speech and language problems. Some of those students will get assistance from teachers' aids in the classroom, but those teachers aids are led by the teacher in the classroom. Some of them don't qualify for that level of funding and yet need to be assisted by the teacher, and so you will hear evidence that this has been a significant feature of the work of teachers and the change of the work of teachers involving them requiring the development of individual learning plans or ILPs for individual students which involve spending considerable time developing the plan in conjunction with parents and health professions and the plans involve modifying significantly the way in which the student is taught, the assessment, and has a series of goals which require a level of individual focus of the student.

PN265

A fifth area involving skill change is technology, and the major change in use of technology in the classroom from white boards to computers to laptops, iPads, use of programs, the use of Apps and the like.

PN266

And then the sixth area is in respect to changes in curriculum and there've been some substantial changes in curriculum over the relevant period. When it comes to the six areas of sort of more intense higher workload what you will hear is evidence about increasing numbers of reports as to progress of students, again, very much focused on these changes of testing and individual approach to teaching, substantially increased reporting to parents.

PN267

The third, a substantial increase in accessibility of parents to the teacher, the use of emails and increasing phone calls mean that teachers increasingly are in contact with parents and need to respond to parents.

PN268

Fourth, the need to document a whole lot of information that didn't previously need to be documented, and by that I'm not talking about assessments but aspects to do with health and safety, medical requirements, risk assessments, parental approval for excursions and the like.

PN269

Fifth, a substantial increase in policies that must be known and abided by and applied. And, finally a substantial increase in extra-curricular activities which require teacher time in addition to their ordinary teaching duties.

PN270

One of the things we identified in our reply submission that won't be lost on the Commission is that of the approximately 360,000 teachers who this award applies to there is no party who contests the IEU's case of significant workplace change in respect to about 329,000 of them, the primary school and secondary school teachers. The opposition only comes from the employers of the approximately 15,000 who are currently being paid at or around the award rates. What that means is that when you're hearing the evidence there will be a focus on early childhood teaching and changes in that area, but that shouldn't distract the Commission, and I'm sure it won't, from the fact that what we are dealing with here in this part of our case is substantial change in teaching at every level.

PN271

VICE PRESIDENT HATCHER: So all the matters you've just outlined do they all apply equally to early childhood teachers?

PN272

MR TAYLOR: Equally is probably, to be absolute - - -

PN273

VICE PRESIDENT HATCHER: Or equivalently.

PN274

MR TAYLOR: Certainly equivalent, and so, I mean, when it comes to things like national registration requirements there are some states where those requirements in respect of some employers are not currently required but they are in Victoria and New South Wales for example. When it comes to - in fact, I think, looking at the rest some of them are more acute at early childhood, so reporting requirements, for example, it's said against us in respect of early childhood that technology has made things easier, and that nowadays teachers can take photos using an iPad and provide parents with the reports using such mechanisms. We reject the notion that that's made things easier for teachers.

PN275

The days when preschool students - you know, what parents knew about what their pre-schooler had done at preschool was what art they took home have gone. You now get in many cases daily reports from the school using this technology to send the parent a record of what their child has done with a narrative as to how that links to the curriculum goals and so technology and reporting to parents are areas of perhaps more acute change but certainly - and in other areas with early

childhood I think it's fair to say early childhood has always had a greater focus on an individual child's development than has perhaps been something that we've seen a bigger change of that in primary and secondary. But you'll hear from early childhood teachers that even within early childhood that differentiation of individual children has become more of a feature even in early childhood education.

PN276

VICE PRESIDENT HATCHER: Mr Taylor, one of the criticisms made of your evidentiary case by the ACA is that although the witnesses talk about their work you don't find an actual straightforward description of their work.

PN277

MR TAYLOR: Yes.

PN278

VICE PRESIDENT HATCHER: And that is, what do they do, you might call it an idiot's guide, but what do they actually do hour by hour during their working day? Is there some way that could be rectified?

PN279

MR TAYLOR: Yes.

PN280

VICE PRESIDENT HATCHER: Because I don't myself have a clear understanding, not having gone to childcare, as to what they actually do, what they teach, how they go about it? Do they have lesson plans? Do they have - I don't know.

PN281

MR TAYLOR: Yes. Yes, there is more evidence than perhaps the ACA is willing to acknowledge in the material, but there is also the capacity of witnesses, at least those early childhood witnesses, if that's what your Honour is minded to focus on - - -

PN282

VICE PRESIDENT HATCHER: Yes.

PN283

MR TAYLOR: - - -who could give as to the way in which they go about it. But can I - one of the things I wanted to do, as part of this opening, is to go to the national standards and from them the national standards website contains short videos, which are called illustrations of practice, and these assist, in my respectful submission, to understand how teachers at every level, including early childhood teachers, go about teaching to establish the curriculum goals and a number of them are useful in understanding some of these key changes as a matter of practice in circumstances where we're not doing visits to sites, and so I wanted to show some of these videos as part of this opening, and in light of your Honour's question in respect of early childhood could I ask whether - and I'm sure it's going to come up later, but it just seems a convenient time before lunch to show this one. Could I ask whether the video that is called - actually, before I do that can

we just ask whether your Honours' associates could firstly go to the ATSIL website which is tab 35 and see whether that can be brought up on the screens.

PN284

Ms Hickey gives evidence about this in her statement, in particular at paragraphs 22 and following, and she gives evidence about the way this website is - so if you just scroll back up to the top of the page, your Honours and Commissioner will see - you will see graduate proficient highly accomplished lead, and then if one scrolls down, at the moment we're looking at graduate and we're looking at - there are seven as you'll see on the right-hand side, seven numbers, each of them relate to a different area of knowledge, and then within them, there are particular requirements. So 1.1, a graduate, under the broad heading of, Most Students and How They Learn, is sub-titled:

PN285

Physical, social and intellectual development and characteristics of students, demonstrate knowledge and understanding of physical, social and intellectual development and characteristics of students and how they may affect learning.

PN286

If you just go back to the top and click on "proficient" and then scroll down again you'll see that at the proficient level the same professional knowledge requirement is now described as:

PN287

Use teaching strategies based on knowledge of students' physical, social and intellectual development and characteristics to improve student learning.

PN288

On the right-hand side of each of these there are videos which are illustrations of practice, and so in the time that we have can I ask whether we can see two of those, the time we have before lunch. The first is if you go to proficient 6.1, so if you go to 6 on the right-hand side and then .1, improving professional practice.

DVD PLAYBACK

[12.54 PM]

PN289

MR TAYLOR: That's a convenient time for lunch.

PN290

VICE PRESIDENT HATCHER: Yes, we'll adjourn now and resume at 2 pm.

LUNCHEON ADJOURNMENT

[1.03 PM]

RESUMED

[2.05 PM]

PN291

VICE PRESIDENT HATCHER: Mr Taylor?

PN292

MR TAYLOR: Mr Warren wants to say something.

PN293

VICE PRESIDENT HATCHER: Right.

PN294

MR WARREN: Your Honours, my brief in this matter is of somewhat of a limited nature and that does not reflect of course on the importance AFEI places on this matter. I had anticipated my learned friend Mr Taylor may have finished by lunch time, but that's an observation not a criticism. AFEI have filed submissions in the ERO case on 14 May and the work value case on 1 April. That reflects the importance they place on this matter and the thrust of their submissions they'll be making in the case they're running. I personally have a difficulty this afternoon and I have to by your leave vacate the bar table and Ms Thompson will be remaining here.

PN295

VICE PRESIDENT HATCHER: All right, thanks, Mr Warren, you're excused.

PN296

MR WARREN: Thank you so much.

PN297

MR TAYLOR: And while we're on that subject can I indicate that over the lunch break Ms Mooney of the AEU who appeared this morning from Melbourne indicated that she also would be unable to be here this afternoon and asked the Commission to in effect give her leave to not be here. Before I go back to what I will be dealing with can I just do two things, firstly identify what we expect to deal with this afternoon in circumstances where I've taken a little longer than expected to complete the opening.

PN298

Mr Fagir has indicated to me that he will need more time than we will have available this afternoon to make some opening statements, and as a result given the witness availability issues what we have agreed between us, if it's not inconvenient to the Bench, is that I'll complete the opening and then we will take the evidence of the two witnesses scheduled for today, Mr Foster which hopefully by about three-ish, followed by Professor Press, and Mr Fagir will then speak tomorrow morning before cross-examining Professor Irvine.

PN299

On his estimation, which I have no difficulty accepting, there won't be time tomorrow in those circumstances to complete the cross-examination of Ms Hickey and in those circumstances she will be moved to a slot next week and Mr Fagir has been good enough to indicate that there will be a slot on either Monday or Tuesday morning next week because there is witnesses on those mornings that he will either not cross-examine at all or will cross-examine in a manner that's short enough to allow that to occur.

PN300

VICE PRESIDENT HATCHER: All right.

PN301

MR TAYLOR: The second thing I wanted to do before I returned to finishing the submission about the nature of the work value change that my client identifies is to address one of the questions that your Honour the Vice President asked before lunch about the approach that state awards have made in respect of teachers' salaries, and can I ask if the Bench could open up document 4 in the master link. It's bundle A at page 364. It's the current New South Wales award applying to government teachers, and I'll just pause there while that document is brought up.

PN302

It's the Crown Employees Teachers and Schools and Related Employees' Salaries and Conditions Award 2017, document number 4 in the master link. Does the Bench have that document? Yes. Could I indicate if you turn to under the bundle pages 371, the document page 8, you will see the salary bands that apply in New South Wales. So there are three bands which have band 2 has a number of steps. The first band is graduate and that is the starting rate, and I'll take you to the rates in a moment, and the band 1 is effectively - the progression from band 1 to band 2 is described in clause 3.6 and the expectation is that they must be employed for a minimum of two years in order to progress from graduate to proficient.

PN303

Having obtained proficient status, and this is proficient status as in proficient accreditation under the national standards, then there is then progression within band 2 based on time. That's at clause 3.7 - sorry, clause 3.8 and you see the progression from 2.1 through on an annual basis and then to get to the final band 3 that then requires accreditation against the national standards. This only applies -
- -

PN304

VICE PRESIDENT HATCHER: Sorry, so the three steps, they're all a year apart are they?

PN305

MR TAYLOR: They are a year apart. Four steps. So you start at the proficient level and then for the next four years or on the anniversary, the next three anniversaries thereafter you then progress. Sorry, yes, Ms Saunders said I might not have made myself clear. So the very first level of graduate is you are there for two years. Once you've got to proficient it's then one year assessed. I hadn't read it - I should have read it more carefully.

PN306

So two years at band 1 then two years at the proficient level and then after completing two years at that level then one year steps thereafter until you get to the top of band 2, and then there you stay until you - unless you achieve the national standard of highly accomplished, so that it's a mixture of accreditation and time based progression. This only applies to those who start after 2016. So if you go to clause 3.17, 3.17, you see that those who commenced employment before 2016 remain eligible for progression via the previous steps as part of the transitional provisions.

PN307

If the Bench then go to page 25 of the award, bundle page 388, you find schedule 1A which has the rates and what the Bench will identify from that is that the band 1 graduate commences at a little under \$69,000 per annum and then having achieved proficient standard there is a substantial jump to 83,136 and then two years later a further substantial jump to 90,000 and then each year after that further increases to a top rate of 102,806 without achieving the highly accomplished classification. So there is a big jump between graduate and proficient.

PN308

The next page, schedule 1B, shows you the rates for those who commenced prior to January 2016, unusually in reverse order with the highest step first, and that allows for that comparison. And the Bench will note that the highest step for a teacher under the old system, 102,806, is the same rate as the top of the proficient band. Returning then to outlining those areas in which we say that there have been substantial work value change, I've dealt with initial teacher education and teacher registration, and before the break the Bench saw the video dealing with improving professional practice, which identified how the standards operate.

PN309

That video also demonstrated an aspect which I touched on earlier, that is post-registration requirements. Firstly the fact that post-commencement there is then a requirement under the standards to continue to meet post-registration obligations so that you can reach the proficient status and secondly, and you'll hear evidence about this, there's the introduction of compulsory professional development, minimum of 100 hours over five years, 20 hours a year. Some teachers will give evidence that their various schools or Catholic systemic requirements give rise to more professional development than that. But the very existence of a minimum compulsory standard for professional development is part of a change to increasing professionalism in this area.

PN310

VICE PRESIDENT HATCHER: Was that something entirely new or did it formalise an existing expectation?

PN311

MR TAYLOR: I think it's entirely new as a minimum requirement. No doubt some teachers have their own and have always had their own personal expectation that they would do what they could to stay in place, and some schools no doubt either explicitly or implicitly expected it. But what were - - -

PN312

VICE PRESIDENT HATCHER: I think professional self-education is regarded as inherent in being a professional.

PN313

MR TAYLOR: Yes. What we are pointing to these things, the increased education requirements, the need to meet national standards, professional development, we're identifying that the minimum standard was previously not set in the way it is now at a clear national level and so the overall standard that all teachers must meet as a minimum has now been established so that you have and

can say with some degree of confidence increased professionalism across the board and increased expectation that everyone is going to be meeting the standards. They can't get registered unless they do, they can't be considered a teacher unless they maintain those professional standards.

PN314

True enough that many teachers would have done so in the past, but these changes to the requirements at a mandatory level are a recognition of changed level of recognition of their professionalism, which we say is very much part of this first aspect of our case. The second aspect I've touched on, that the work has become substantially more complex and intense and I've identified 12 matters but I just wanted to explore a few of them in a little more detail.

PN315

If the Bench could have the IEU statement, and this will be found in the master link index McKinnon Work Value Statement. McKinnon, M-c-K-i-n-n-o-n. Mark Andrew McKinnon, a high school teacher at St John the Evangelist Catholic High School in Nowra. I spoke earlier about differentiation and Mr McKinnon deals with that at paragraphs 5 and following where he says that:

PN316

The biggest trend in my experience is the move towards differentiation in teaching. When I started teaching I taught a class to a single program and I differentiated for individual students to a level I thought appropriate. In 2018 a teacher is required to teach 30 individuals. This involves a significant increase in the accountability towards individual student's learning and their education. Teachers are increasingly being required to think, plan, record variations of their programs and teaching practices to account for the different learning requirements of different students, special needs students and other individual learning needs.

PN317

And pausing there the Bench will see how these various changes are in many ways interlinked. In the next paragraph he says:

PN318

The school I work in currently has 74 students on special learning plans or other sorts of behavioural management plans. There are also mental health plans in place for students.

PN319

And then towards the end of that paragraph he says:

PN320

74 students represent approximately 10 per cent of the overall number of students at the school. This is higher than a decade ago when it would have been approximately 5 students.

PN321

So that just demonstrates - and each of the witnesses turn to this subject and say this is a feature of teaching and how it's changed - this level of individual

differentiation. If one goes further into the statement from paragraph 31 Mr McKinnon is dealing with technology and refers to flip learning methodology, and I want to show the Bench one of the videos that deals with that in a moment. In paragraph 32 he talks about using a particular program called Maths Pathway which allows him to understand what each student is doing and what level they are, what the levels of growth are for each individual child, and at paragraph 33 he says this:

PN322

This is a fabulous development in teaching and learning however it requires significant reskilling for the teacher involved. I can now have 30 students in my class, all different work ranging from Year 3 work to Year 9 work. There are several challenges involved in this new method of teaching. Firstly, the challenge of attending to each student where they have problems has increased significantly. Even more challenging is keeping each student motivated and not feeling isolated.

PN323

In my experience students can quickly get bored at being isolated and working on their own. The product allows for greater levels of differentiation that teachers reach for, however the students begin to feel isolated. As a teacher I have to reskill myself in order to manage this emerging feature of teaching. These programs have necessitated a shift from the paradigm of a teacher being a sage on the stage to all being a motivator of 30 individuals.

PN324

And this change as Mr McKinnon is identifying is directly linked to changes in assessment which allow for that granular understanding of each child's level of progress within the components of a particular subject, combined with the need to understand and analyse data. Now this is something which is true at a secondary school level. It's true at a primary school level and it's true at an early childhood level. Could I pause to give a practical example. If we could pull up that standards website again and another one of the illustrations of learning videos. If we can go to 'Proficient' 1.5.

DVD PLAYBACK

[2.23 PM]

PN325

MR FAGIR: While that's happening, and I'm sorry to interrupt, and I'll be ask quick as I can. I wonder if I can ask, through the Bench, whether there are to be any more videos played or any other evidence introduced, and that's, we take it, what's happening, that this is material which the Bench will be asked to consider and take into account, if there are any more videos, or any other documents that are to be produced in this opening, I wonder if Mr Taylor can give an indication of what they are, so that we can with it.

PN326

I didn't want to interrupt earlier, with the first two videos and the additional document, document 276, but for this to continue, respectfully - - -

PN327

VICE PRESIDENT HATCHER: This is all in the filed and served material, isn't it?

PN328

MR FAGIR: No.

PN329

VICE PRESIDENT HATCHER: It's not?

PN330

MR FAGIR: No. No doubt there's been a reference to these standards and this website, but - - -

PN331

MR TAYLOR: And the videos themselves. Well, let me say this. To answer my friend's question, Ms Hickey, who's the witness who's evidence is to be postponed, gives evidence about the national standards, she gives evidence about the existence of the website, which explains how the standards work, and she gives evidence about the fact that there are instructional illustrative videos, which identify particular aspect of the standards and, to answer the second question, there is an intention to show, I think, approximately three more videos after this one, to identify some aspects of the work value changes.

PN332

These aren't anything more or less than what the standard setting authority has produced, in order to explain the nature of the particular aspects of the standards and we thought it was a convenient way for the Bench to see and have some understanding of what some of these things mean, in practice, and they're all about three to four minutes long.

PN333

VICE PRESIDENT HATCHER: Thank you.

PN334

MR TAYLOR: So if one has - go down 1 - firstly - - -

PN335

MR FAGIR: I'm sorry, just if you thought that my silence is some sort of acquiescence in this course, can I just say this now, briefly, and I'll deal with this in my opening tomorrow. There's a real issue in this case about the way material is being introduced. The bundle is the obvious example, 3000 pages, some dealt with in some of the evidence, others not. This is now what we would regard as being a continuation of that problem, perhaps an exacerbation, and I just don't want it to be thought that by sitting here and saying nothing, or acquiescing in the proposal that any video on these websites that are referred to can be introduced and relied upon in circumstances where we had no understanding of what its place was in this proceeding and where we had no opportunity to deal with it until this very day.

PN336

VICE PRESIDENT HATCHER: Mr Fagir, no doubt you'll tell us, at some point, what needs to be done to cure any prejudice you see you've suffered.

PN337

MR FAGIR: I will say that that's not the starting point. The starting point is that if someone wants to introduce material that wasn't introduced in accordance with the directions that they need to make an application explaining why that is so. But I'll deal with the question of prejudice as a secondary opposition. Commission please.

PN338

MR TAYLOR: So can we just check we're in the - can we just move over to Proficient and then to go 1.5 and then Oral Language, is the second one. Yes, that's it. Just while the associate is looking at getting the sound going - is that going to take a while, I can move on.

PN339

If the Bench still has Mr McKinnon's statement available, on the issue of ongoing assessment you will hear evidence that there have been a variety of standardised individual student tests that have been introduced, NAPLAN, Progressive Achievement Tests, specific state-based tests, like the Queensland Core Skills, Catholic systemic system and independent schools have their own tests. Each of them requiring test design - this is from teachers, test design, data entry, result analysis, report writing and then incorporating these outcomes into planning and determining individual student goals and then teaching those students to those goals.

PN340

So Mr McKinnon, at paragraph 17, talks about the amount of time, given to marking and recording marking, having significantly increased and in the middle of that paragraph says this:

PN341

We now do not simply record one mark but rather we record all the various curriculum outcomes associated with that assessment. This is linked to the trend towards outcomes based teaching.

PN342

And, in paragraph 18, identifies how that works in practice. That is, within a maths assessment there might be a variety of learning outcomes which are separately marked. The first question might relate to learning outcome 1, algebra. Question 2 might relate to learning outcome geometry and so forth. He sees that as a good teaching development, as it allows children and parents to use more specialised feedback and for him to plan future learning, but it adds significantly to the administrative burdens on his.

PN343

Then at 21 and 22 and 23 he talks about how this testing, the standardised testing, in this case Progressive Achievement Tests, required by the Catholic Education Office, as well as NAPLAN and the like, impacts upon him, as a teacher. He identifies the expectation, midway though paragraph 21:

PN344

The expectation is that I identify a need within the results, such as a need to spend more time on quadratic equations and then build that into future learning. However, the skills involved in such an analysis make it very difficult to do in a way that's not just lip service. The data is complex and difficult to interpret in a meaningful way. Through the data a teacher can, however, identify individual student progress, which I consider to be important.

PN345

In paragraph 23 he says:

PN346

To look at data properly, and assess and analyse it, it takes considerable time for me to look at data and to really understand what it's telling me and to think about what part of the programs I should adjust and how and whether adjustments will have any unintended effects takes a serious amount of time and is an entirely new set of skills that are needed to read data properly.

PN347

This is an issue not just for secondary school and primary school, but it's something that is also a feature of early childhood. Now, if we could go back to look at - so there's now, effectively two videos, because I wanted to show the video, in respect of how it impacts on early childhood teaching, but if we could return to the website, if sound is now available, and go back to Proficient 1.5.

DVD PLAYBACK

[2.32 PM]

PN348

MR TAYLOR: If you could now go to Graduate 5.4. We're still in Proficient, you may need to go back to Graduate. Sorry, it was Proficient. Problem Solving and Block Corner is the video, the last of them.

DVD PLAYBACK

[2.35 PM]

PN349

MR TAYLOR: One of the subjects that a number of witnesses give evidence about, at both primary and secondary school level, is the subject of individual learning plans and the increasing need to develop them. One of the criticisms that was made by ACA, in their submissions, was the fact that whilst many witnesses refer to them, none have been put into evidence, so that they can be understood as to what they are.

PN350

Mr Foster, who happens to be the first witness is able - he refers to them, he has provided a supplementary statement, over the weekend, which attaches a single example of such an individual learning plan, which we provided to Mr Fagir over the weekend, and we intend to have that added to Mr Foster's evidence. I ask if these copies could be provided now to the Bench and, at an appropriate time I'll make an application, when Mr Foster gives evidence, for it to be received.

PN351

But the evidence that will be given, by various witnesses, is that the increase in the number of students with special needs, at various levels, whether that's intellectual development needs, physical or simply, in this case, non-English speaking, requires a certain approach to be taken and you will see, from the nature of the document, in this particular case it's an ESL, someone who doesn't have English as their first language, has moved to Australia, from China, two years ago and you get the impression of the nature of the work that's required, on this individual basis, under the heading Teaching Strategies. There's a variety of individual teaching strategies that must be engaged in, extra time for test exams, check in with the student on a regular basis, write instructions, homework checklists on the board, extra support with reading, assistance with writing expression, providing a list of key vocab and definitions, learning mentor support, identification of coordination with someone else, English support in the library and there are targets that are then set and special provisions made monitoring assessment arrangements, involving monitoring and assessment between teachers, an inclusion team, the child and the family and then certain success criteria.

PN352

As we understand it, this is a relatively straightforward one, because this isn't one that's involving, as those do that have medical aspects, the need to also coordinate with relevant specialists, whether that's speech specialists, mobility specialists and the like.

PN353

Now, we identified earlier that one of the changes has been curriculum changes and I don't ask the Bench to open it now, but you'll see links to, in the key documents, links to the Australian curriculum site, which allows one to go into the curriculum for primary and secondary single site, and it sets a new national curriculum. Some of the evidence will be given as to how that has led to changes to teachers now teaching at a national level and also evidence, in respect of early learning, referable to the early learning years framework, which is another of the documents to which the key document index links.

PN354

I ask to have some understanding as to how this curriculum is taught, at an early learning level, to come back to the website and go to a video, which is seen under Highly Accomplished. While it is under Highly Accomplished, and I accept that that is, on one view, above the Graduate Proficient level, it, nevertheless, assists in understanding the curriculum pedagogy for the early years, which is an issue that is clearly central of the evidentiary dispute between us and the ACA.

PN355

So if we go back to that website and go to Highly Accomplished 2.5. The second one, Curriculum and Pedagogy in the Early Years. Thank you.

DVD PLAYBACK

[2.46 PM]

PN356

MR TAYLOR: That illustration of practice identified and underlined a number of different aspects, including, as it ended, planning, but also one can see the way in

which the teachers necessarily teach at different levels. The other thing that that particular site demonstrates is the, in effect, lack of difference between pre-school and school age children teaching. It happens to be that they co-locate at the same location, pre-primary school and primary school children.

PN357

We will, though, take up your Honour's question and see whether - to what extent witnesses who are to come can expand, to some extent, on the way in which they actually organise their work, on a day-to-day level, when it comes to pre-primary school level of teaching.

PN358

I'd like to think some of those videos have given some idea of the way in which it's done. It's, necessarily, somewhat reactive to the children. A child has a certain interest, you don't block that, you embrace it and then you're taking that particular interest they've come to school with that day, whether it's flowers, their mother got a bunch of flowers, they're interested in flowers. Other children start talking about flowers and the lesson for the day starts turning into a lesson about flowers. That might then be progressed the next day, as we saw with dinosaurs, into how that enthusiasm can then turn into a learning experience, a planned learning experience.

PN359

VICE PRESIDENT HATCHER: I think that - I'm not saying it's entirely this case, but the videos tend to involve conceptualisations of what they're doing, rather than a simple description of what they're doing. I think what we might be looking for is, in effect, a day in the life of a pre-school teacher.

PN360

MR TAYLOR: We'll endeavour to do that. I suspect they'll tell you no two days are the same, but there might be a level, nevertheless, that they can provide some assistance in that regard as, no doubt, Mr Fagir's witnesses could do as well.

PN361

Now, can I turn to just saying a little bit more about the subject of technology, because it has been a very significant change in the way in which teaching is done and presented. It's a change which actually emerges, if one pulls up that website again, it is actually one of the teaching standards now, as to teach involving ICT, involving technology, it's an essential standard.

PN362

What one finds that this derives from, and Ms Hickey will give evidence about this, the - I'm just finding my note. The Melbourne Declaration, paragraph 55 of her statement, I don't ask the Bench to open it, but the Melbourne Declaration was a major declaration, in December 2008, the Melbourne Declaration on Education Goals for Young Australians, which reiterated that:

PN363

Successful learners have the essential skills in literacy and numeracy and are creative and productive users of technology, especially ICT, information and communication technology.

PN364

So it became, as a result of that requirement of the curriculum, to have practical knowledge and skills development in areas such as ICT. That, necessarily, required the teachers themselves to be skilled in the use of technology. What one sees, nowadays, if you walk into classrooms is electronic whiteboards, which allow the teachers to having pre-produced material, to who videos, to write - for the students to come up and write on it, and then for the page to be scrolled up and down. But there's a variety of other areas of change of technology which the witnesses will give evidence about. The introduction into classrooms and the need to have knowledge of a variety of computer programs, Google classroom, Google docs and Google sheets get repeatedly mentioned, as do a number of other programs.

PN365

The concept of flipped learning, at secondary school level, where what the students do is they do at home - they watch videos that have been prepared by the students and they come in and effectively do their homework, the do the actual problem solving while the teacher's there. So the teacher is preparing videos in advance, they're watching those and then in the classroom the learning is occurring because the teacher can then identify, on an individual student level, where they're having trouble answering the questions and give them immediate assistance.

PN366

One - if we could pull the website back up again and go to Graduate 2.6, there is a graduate student who is illustrating what is understood by the use of technology in a particular case, so it's at 2.6. If you just scroll across, it's the last one, Creating Wikis. This is a secondary school level graduate.

DVD PLAYBACK

[2.57 PM]

PN367

MR TAYLOR: Technology is said by the employers to be making things easier for teachers. The evidence will demonstrate, rather, that it's not only required additional skills but takes a lot of time. It's also had a number of other impacts on teachers, including the increased out of hours accessibility to parents and students and, for that matter, teaching management. The fact that, inevitably, more data is available to be analysed and reported on and teachers talk about the fact that the breadth of available contact requires skill to find the right material and to curate it for the students.

PN368

There will be evidence about a variety of increases in administration tasks and changes in working environment. In that area, particularly at primary and high school level, the change to increasing use of open plan classrooms, also known as working in agile spaces, an expression I quite like, often with multi-aged groupings. So there might be three classes who are all, effectively, working in the same area, with three teachers, those teachers have to interact. The teachers will then split the students into self-paced learning environments and teach students at equivalent levels, which means that they no longer have 30 students, they might have 90 students that they are now effectively teaching. The witnesses talk about

having laptops, taking them in, an expectation that they're checking emails during the course of the day and responding while they're teaching, and the like.

PN369

Can I just deal with, finally, two employer contentions, in short form? The first is the assertion that what we are seeking here is nothing more than comparative wage justice, both in the ERO case and the work value case. That we're simply pointing to the fact that these teachers are paid less.

PN370

The fact that they are paid so much less for doing the same job does, we say, point to fundamental undervaluation. It does identify inherent unfairness. The fact that we are identifying, by reference to others, that there's a fundamental undervaluation, doesn't mean that our case rests on that. It exemplifies something which we say we're otherwise demonstrating, and that is that the work value of teachers is simply not being recognised by the current rates.

PN371

VICE PRESIDENT HATCHER: In respect of your work value case, I haven't detected any reference to the notion that the work's been undervalued, for gender related reasons?

PN372

MR TAYLOR: No, but we do point to the fact that when it comes specifically to early childhood teaching, there is an effect of what is the undervaluation. That is, it is having a negative effect on an overwhelmingly female workforce. So it's not working backwards, it's not because they're women they're being undervalued, but the undervaluation is having an impact on a feminised workforce. We have pointed to the fact that part of that undervaluation, historically, has been linked to notions about early childhood teaching. But the award rates itself, we say, should be moved because they would have a practically positive effect on a cohort of low paid, highly feminised professionals.

PN373

The other argument I wanted to deal with is the need - the claimed need that this Bench must have, to ensure rates are externally consistent. That is, that there's a fundamental principle that would constrain this Bench from making the changes that are sought because it would mean that the award rates for teachers would be rates that were higher than professional rates paid under other awards, such as professional engineers, such as nurses.

PN374

So we say a couple of things about this. The first is that, with great respect to any long-standing concept of external relativities, this Bench has an obligation to ensure that there is a fair and relevant minimum safety net for the workers, in respect of whom the application is made, and one doesn't, having concluded that it's not, say, "However, we can't make that change because it would have an effect on external relativities."

PN375

The concern, the historic concern that industrial tribunals had about external relativities was, effectively and, in essence, one of flow on. A concern that if you moved one group of workers it would have an effect of flowing increasing rates for other workers.

PN376

There is much in the ACA submission about how ridiculous it is to think that teachers are somehow worth more than university academics or professional engineers or the like, as if a change in these award rates would leave these teachers being paid more than those people. There's a level of unreality about that. There would be no flow on, in any real sense, no other professionals would be paid more, as a result of this application being successful. This Bench is, in our respectful submission, directed to examine the question of teacher rates.

PN377

The arguments of the ACA and the AFEI raise may have some greater validity if one could say that the rates for other professionals, on those other awards, had been carefully considered and had been determined to be appropriate rates. But there hasn't been an examination of those rates and so one can't, in any event, draw a comparison to them, with any confidence that one is comparing to properly fixed rates.

PN378

The last thing I wanted to say about this is to ask the Bench to open the recent statement by the President, Ross J. It is in the key documents bundle, under the heading of Decisions, tab 21, the statement, Annual Wage Review 2018/19 of [2019] FWC 3761.

PN379

This was a statement made by the President, arising out of a submission made by a party appearing before the National Wage Case at the Australian Catholic Bishop's Conference. The proposition being put by the ACBC was that the Commission engage in an award relativities review and adjustment process, looking in to appropriate margins for skills and responsibilities, i.e. work value, of the C10 rate and contended that the current award relativities were inadequate.

PN380

Various parties put submissions as to this, as to whether if it was appropriate. The Ai Group strongly opposed it and the ACCI didn't support it either. Should I pause?

PN381

VICE PRESIDENT HATCHER: I'm just trying to stop that sound. Go on.

PN382

MR TAYLOR: Is that coming from one of the other - - -

PN383

VICE PRESIDENT HATCHER: Yes.

PN384

MR TAYLOR: His Honour, the President, Ross J, concluded, at paragraph 10, saying:

PN385

Outside the four-yearly review -

PN386

Firstly - sorry, concluded that it wasn't necessary to determine whether the Act would permit, in paragraph 9, an award relativities review. He doesn't decide that because his Honour doesn't consider it would be appropriate and then says, in paragraph 10:

PN387

Outside the four-yearly review there remains clear jurisdiction, under section 157 of the Act, for the Commission to consider applications for award variations, based on work value, in respect of the Manufacturing Award, the Professional Employees Award and any other modern award.

PN388

Which would, of course, include the one that we're dealing with today.

PN389

In my view, such an application is the appropriate manner in which to address the issues raised by the ACBC.

PN390

In other words, with respect to this external relativities argument, one award has to go first. The fact that an award moves may or may not have an impact on any other award but if, fundamentally, the rates of pay, on a proper work value basis, are not fair and relevant, then they need to move and they can't be stopped from moving, simply because there are other professional awards which have rates that are equally low, in essence.

PN391

Now, I think our written submissions have given, maybe, a little more detail as to the work value grounds, but, in the interests of time, I'll cut short that aspect of the opening and, in light of what I indicated earlier, we'd now be ready to take the evidence of Mr Foster, who is joining us by video link from Warrnambool, in Victoria.

PN392

I think Mr Foster might be available now, on the screen. Can you hear me Mr Foster?

PN393

MR FOSTER: Yes, I certainly can.

PN394

VICE PRESIDENT HATCHER: Mr Foster, can you hear us?

PN395

MR FOSTER: Yes, I can.

PN396

VICE PRESIDENT HATCHER: One of the court officers is going to administer the affirmation to you. Just hold on a second. Can you stand, please?

PN397

MR FOSTER: Certainly.

PN398

THE ASSOCIATE: Mr Foster, can you please state your full name and address?

PN399

MR FOSTER: Certainly. My name is Clinton Wayne Aubrey Foster, (address supplied).

<CLINTON WAYNE AUBREY FOSTER, AFFIRMED [3.13 PM]

EXAMINATION-IN-CHIEF BY MR TAYLOR [3.13 PM]

PN400

MR TAYLOR: Mr Foster, you are currently employed as a teacher at Bayview College, an independent co-educational secondary school in Portland, Victoria, is that right?---That's correct.

PN401

For the purpose of these proceedings, have you signed two statements?---Yes, I certainly have.

PN402

Do you have copies of those two statements with you?---I do.

PN403

Turning to the first one, the one that is 11 paragraphs long, do you say the contents of that are true and correct, to the best of your knowledge and belief?---I do.

PN404

The second statement, that was prepared over the weekend, dated 10 June 2019, attaching individual learning plan, is that also true and correct, to the best of your knowledge and belief?---That is.

PN405

I tender those two statements

PN406

VICE PRESIDENT HATCHER: The statement of Clinton Foster, undated, consisting of 11 paragraphs will be marked exhibit 7.

**EXHIBIT #7 WITNESS STATEMENT OF CLINTON FOSTER,
UNDATED**

*** CLINTON WAYNE AUBREY FOSTER

XN MR TAYLOR

PN407

The further statement of Clinton Foster, dated 10 June 2019, will be marked exhibit 8.

EXHIBIT #8 FURTHER WITNESS STATEMENT OF CLINTON FOSTER, DATED 10/06/2019

PN408

MR TAYLOR: Mr Foster, in paragraph 2 of exhibit 7, your first statement, you refer to certain positions you've held, at Heywood and District Secondary College. You refer to occupying the position of leading teacher and then expert teacher. Can you just explain what were those position levels?---Yes, certainly. So I did four years at Bayview, originally as a graduate teacher, or a beginning teacher as they used to call it then, and then I took a promotion to Heywood Secondary, in the government sector, where I worked as a leading teacher, which was working with the leadership team, the principal class, and then we have the three leading teachers. So back then it was beginning, expert - sorry, graduate, expert, leading teachers and then principal class. So I worked as director of teaching and learning for five years, at Heywood Secondary, in that role as a leading teacher.

PN409

Then you moved to expert teacher?---That's correct. So then I did three years as an expert teacher, at Heywood Secondary, before returning to Bayview College, where I've worked as an expert teacher.

PN410

Within the Victorian system, where to leading teacher and expert teacher fit, vis a vis each other? Which is the higher of the two?---So, yes, so we have graduate, accomplished, then expert then leading teachers, I think they have a different name now, and then principal class is the highest class.

PN411

Thank you, no more questions.

PN412

VICE PRESIDENT HATCHER: Mr Fagir?

CROSS-EXAMINATION BY MR FAGIR

[3.16 PM]

PN413

MR FAGIR: Thank you. Mr Foster, I appear for the Australian Childcare Alliance, and I have a few questions for you, about your statement, and I hope not to keep you very long at all. Could I, firstly, ask you, you've just mentioned that you occupied a position of director of teaching and learning, could you just, in summary, explain what's involved in that position?---Okay. So back at that time, it was different times, but curriculum cordo, basically oversaw the curriculum. I worked with the faculty leaders to implement change across the school.

*** CLINTON WAYNE AUBREY FOSTER

XXN MR FAGIR

PN414

So in practical terms, what did that actually mean? What did you do, day-to-day?---So day-to-day I still taught. You know, 90 per cent of a load, in a small school, and then the other 10 per cent was involved in the leadership team. So I worked closely with the KLA, or faculty leaders, to look at curriculum structures, to look at innovations to improve student learning and student wellbeing.

PN415

Were those innovations and investigations then actually passed on to the teachers teaching the various subjects or how did your work actually manifest itself in the teaching of the school?---Yes, I was there, I guess, in the role to support the KLA or the faculty leaders in implementing change and also to lead that change.

PN416

You said you talk 90 per cent of a load in a small school, do I take it from that that the proportion of actual teaching might vary, depending on the school that you're in?---That's correct. So at that time, the time allocation for director of teaching and learning was quite small, so a full load was 22 face-to-face periods, plus other duties, and I taught 20 face-to-face, plus other duties, at that time when I started.

PN417

I see. Now, Mr Foster, you've been a teacher since 1998, is that right?---Yes. I started - I did a little bit of teaching in '97, but as a full-time teacher, working in schools on an ongoing contract since 1998 until now.

PN418

You're an IEU member, presumably?---I was an Australian Education Union member, which I was in the government sector and an IEU member when I've been in the private sector, ongoing, yes.

PN419

I see. Now, when you were asked to prepare this statement, what were you actually asked to do?---Basically we had a conversation to - over about an hour, hour and a half, in late November last year, just to reflect on the last 20 years that I'd been in the game continuously, in the teaching game, and talk about how things had changed and how work value had changed over that time.

PN420

Obviously you wouldn't ever be able to describe every change that had happened, but you set out to describe what you saw as the major changes?---Certainly. From my experiences, as a teacher who has been a classroom primarily, I talked about how I felt the role has changed, yes.

PN421

I see. Now, how many children are, typically, in a class that you would teach?---So the maximum class size we'll have is 25, but I've got quite a few senior classes, so, typically, the smallest class I've got is seven and the largest class I've got is 20.

*** CLINTON WAYNE AUBREY FOSTER

XXN MR FAGIR

PN422

Am I right in thinking that you don't deal with the same group of students every day, you deal with different groups of students, all of whom are studying chemistry, maths or physics?---So because I've got physics and mathematics, I have five different classes, sorry, four different classes, I should say, and then I also have some mentoring time with students that are working in distance education.

PN423

Now, please tell me if you don't have the exact number at your fingertips, but approximately how many students would you teach, over the course of a term? How many different individuals do you teach?---Yes. So I'll be writing reports next week on approximately 55 students.

PN424

Mr Foster, you began teaching chemistry and maths, is that right?---That's correct.

PN425

Then you, at some stage, by necessity, began teaching physics?---Yes, that's true. So we went through a workforce change process in 2015/16 and the physics teacher left, so I was pushed into that.

PN426

Is this, in your experience, something that happens, from time to time, to secondary teachers, that you need to begin teaching a subject, other than that which you had previously?---Yes. Well, it's quite common, certainly where I've taught, which is probably harder to staff schools, in remote Victoria, so obviously Portland is nearly four hours from Melbourne and I've taught at Heywood, which is an even harder to staff school.

PN427

You explained, Mr Foster, that when you had to begin teaching physics it took you some time to get up to speed, is that a fair summary of what you've explained in your statement?---That's a fair summary. So I hadn't done physics teaching at all, and I hadn't studied physics since second year university, which was 1994. So in 2016 I had to teach - it might have been 2015, correction, to teach Year 12 physics. I obviously had a lot of work to do so I spent, you know, the summer holidays and in between term breaks. Luckily I had a mentor to catch up with but, yes, a lot of time outside of school to get to the level I needed to be at, to give the best opportunity for the students.

PN428

Mr Foster, presumably the pedagogy, the method of teaching, doesn't vary as between chemistry, physics and maths, is that fair, or would you disagree with that?---Yes, I - I would say, you know, if you - yes, it's a fair statement. So if you can teach then you just need to learn the content. So across chemistry, physics, maths there's not a huge difference, no.

*** CLINTON WAYNE AUBREY FOSTER

XXN MR FAGIR

PN429

But if you do need to teach a different subject then you need to spend some time investigating not so much the pedagogy of the new class but the subject matter, would you agree with that?---I'd agree with that. Obviously if it's a Year 7 or a Year 8 it's a lot different to teaching a Year 12, okay, because we need to - - -

PN430

Why is that?--- - - - prepare the students for external exams.

PN431

I'm sorry to interrupt, Mr Foster, but why is it different?---Well, if you're teaching a Year 12 class the academic difficulty is a lot greater and obviously you've got the responsibility to the parents and the students of preparing them for external exams and, you know, state-wide assessment.

PN432

And, Mr Foster, you mentioned two things. One was the academic difficulty and the other was the preparation for the external testing. Can I just ask you firstly about the first point. When you say academic difficulty are you talking about difficulty of the subject matter itself?---Yes, I'm talking about in order to explain it so all kids can access the material. I think when it's more academically difficult it's a little bit harder to find different ways to explain, especially if you haven't got the background in that subject. So I guess at our school I was seen as the best person to teach Year 12 physics due to my maths background.

PN433

Yes?---So for me it wasn't as much of a difficulty as it might have been for someone else but it was still challenging.

PN434

And if you were to take on teaching Year 12 physics that would be more difficult having regard to the subject matter than teaching for example Year 7 maths?---For sure. Certainly.

PN435

Now do you have a copy of your statement there, Mr Foster?---I do.

PN436

You may not need to turn to it but if you do just let me know. At paragraph 5 of your statement you refer to some worksheets and handouts that are provided to students from time to time?---Yes, paragraph 5. Continue.

PN437

Let me try and put it a bit better. You explained that you had a student that wasn't always in class?---Yes.

PN438

And one of the things that that meant for you was that you had to send to her or to her parents worksheets and handouts that otherwise would be provided in class. Is that right?---Yes, correct.

*** CLINTON WAYNE AUBREY FOSTER

XXN MR FAGIR

PN439

And those worksheets and handouts, where did they come from? Were they something that you create or where are they found?---Yes, that's correct. So that was for last year for Year 11 chemistry. So work, you know, set some homework or revisions tasks and some classwork, so they were things that I created.

PN440

And at paragraph 8 you describe again in passing in the course of dealing with something else, writing an exam or writing exams?---Yes.

PN441

Can you just explain what that means? Do you write exams yourself?---Correct, and so Year 7 to 10 exams - sorry, correction. We have Year 8 to Year 11 exams.

PN442

Yes?---And we write our own exams, that's correct, but we do have support material from the text books. But there's some time involved in writing and preparing exams. But I guess the change is, you know, you'd write one exam for a class whereas these days given the diagnosed learning difficulties and capabilities we have to write multiple exams, and exams are on starting today in three separate venues, depending on the learning needs of the students.

PN443

You might begin with a template of some kind but you then adapt that to your particular needs or to the needs of your students. Have I understood you correctly?---That's correct, and more so with the younger students because obviously the older students we still have the responsibility if they're doing a VCE subject of the endgame of preparing them for Year 12 exams should they continue into Year 12. So not so much Year 11s but certainly the Year 8s to 10s.

PN444

Just dealing with that point, Mr Foster, I'll just read this out as it might be quicker. At paragraph 8 you say this, that:

PN445

There's a challenge in squaring the individualised and differentiated nature of teaching in the earlier years with the realities that are faced by students sitting their Year 12 VCAA examinations which remain quite inflexible.

PN446

You remember saying that in your statement?---Yes, that's true. Yes.

PN447

Do you mind just again - -?---Sorry, in my opinion that's true. Yes.

*** CLINTON WAYNE AUBREY FOSTER

XXN MR FAGIR

PN448

Certainly. Do you mind just keeping it as simple as you can for those of us who aren't experts in this area, can you just explain what you mean there?---Yes, so certainly we obviously collect data on students right through and we have individualised learning plans for students which then get submitted to VCAA, the

Victorian Curriculum Assessment Authority and then VCAA makes a decision on whether they will - what needs they will have for the - sorry, what needs will be addressed for the students in Year 12. So for instance in my Year 12 class this year I've got one student who will have extra time for SACs and exams, only one, whereas say my Year 7 class, of the 20 students I've got eight that have special needs allowances. So what happens is what the school allocates or believes the allowances should be and what VCAA thinks don't quite align. So we collect information but at the end VCAA, Victorian Curriculum Assessment Authority, independently makes decisions and they're not so lenient.

PN449

I see?---In my experience.

PN450

Okay, now I'm sorry to jump around like this but can I ask you to look at paragraph 12 or can I remind you of what you say at paragraph 12 - I'm sorry it might take you a while to find that, Mr Foster?---Paragraph 12?

PN451

Paragraph 10. I'm sorry, Mr Foster, paragraph 10 if you don't mind. I'm not a maths teacher, obviously. Now, Mr Foster, at that paragraph you refer to the need to look at the results of standardised tests, analyse them, identify issues and create plans to address. You see that in the paragraph?---Yes.

PN452

And again can you just explain again, keeping it as simple as you can, what's involved in analysing the results of standardised tests?---Yes, so our faculty leader gets all of the results. We sit down as a faculty and analyse where there's deficiencies across the board for our students and whether we can better teach certain content.

PN453

And how is the analysis actually carried out? Is it a matter of sitting down looking at the results and - well, what happens then?---Yes. Yes, so the faculty leader has the results, goes through them with us. She actually has on her wall like sheets of paper where she has the students' names and the different - so she does a lot more work than obviously we do. We sort of look at it and then reflect on it and then look at how we can implement improvements to the curriculum, which seems to be an ongoing thing.

*** CLINTON WAYNE AUBREY FOSTER

XXN MR FAGIR

PN454

Right, and are you also referring at paragraph 10 to improvements in data analysing? What are the improvements that you're referring to?---Well, I guess 20 years ago we didn't really look at data at all and I guess certainly with the VCAA their tools for analysis are a lot greater. So we get a printout of say our Year 12 results, how every student has gone and how they line up with their predictor score from the general achievement test, and then the onus is more on staff to ensure we're evaluating. In other words the students are getting their projected

score or better. If not then, you know, the question's asked are we teaching at the level that we should be teaching at.

PN455

That's a kind of accountability for you that if the student's not reaching what their projected to achieve, that you have to do something about it?---Yes, it's a fair accountability but it's certainly due to the improvement in analysis tools I guess it's improved our work - you know, our work complexity of what we can do to help, which improves - increase - it improves the student outcomes which is our end goal, but increases our complexity or workload I would suggest.

PN456

Now, Mr Foster, I don't think you need to turn to this but you can if you need to. You describe in your statement some difficulties that arise from the prevalence of mobile phones today?---Yes.

PN457

Now, kids have always found - I'm sorry, I shouldn't put it in those terms. School students, students have always found ways to distract themselves in class, why is it any different in the era of the mobile phone?---Yes, it's a great question.

PN458

Or is it any different?---We have a lot of discussions about this in school. I guess for me our kids are getting so much screen time I feel like if we could have the students with a little bit less screen time that would be beneficial for them, and I guess having travelled and - at schools overseas, like I went to one in Japan, a Japanese trip two weeks ago and will head off again next week and see how some other countries handle the phone issue. I just feel like it is an unneeded distraction in class, and I'm talking about in class time.

PN459

I see. Social media seems to be something that goes hand in hand with smartphones. Is that an issue that you have to contend with in your role as a teacher?---Well, because it - - -

PN460

The use of social media and some of the - - -?--- - - affects student wellbeing it's something we end up with dealing with. So, you know, the - there's a lot more time in schools spent on welfare and the welfare people, you know, are always telling us as teachers to be much more aware of, you know, the interactions students are having with their mobile phones. But it's very difficult in our role to police it when - with the - you know, with current phone policies in place. So it's hard to articulate, but it's an ongoing issue which is growing.

PN461

One which is a recent development or relatively recent?---Well, certainly it wasn't an issue 20 years ago, no.

*** CLINTON WAYNE AUBREY FOSTER

XXN MR FAGIR

PN462

And you've referred I think just now and certainly in your statement to the welfare team. Do you recall dealing with that in your statement?---Yes.

PN463

You explained that schools such as yours have had to create and build a strong welfare team and system?---Yes.

PN464

What is a welfare team?---Well, I guess over the journey you have different opportunities to do student management but when I was doing student management 20 years ago basically we had a small amount of time where we would deal with issues and then refer to the assistant principal. So as a coordinator of, say, a Year 9 or 10 group, or a third of the school, I would direct - work with students and then with the assistant principal. Whereas now the welfare teams, because the job has got so large with the prevalence of mental health issues and diagnoses and so forth, that essentially we have a full-time welfare person. We still have our student management people, we still have our system with the principal but there's - I guess there's a lot more time and energy and - allocated because of that need. So we don't have two people working on an issue, it's more like a team of about five in our school.

PN465

I see, and is this similar to a curriculum coordinator role in the sense that it's not that the job's taken out of the teacher's hands but there's another resource to assist you in dealing with the issue, whether it's delivering the curriculum in one case or managing student welfare in the other, or have I misunderstood?---I can see your analogy. Yes, I see your analogy. It's certainly - because it's so big it's a bigger team and then every staff member has their role to play as a care group teacher who meets with the students in the mornings. So you could liken it to that scenario. But I guess what I'm saying is that it's a lot more complex than it used to be and all teachers need to be more involved in that process because of the complexity.

PN466

Mr Foster, you provided us - it was provided to me yesterday, a short statement attaching a personalised learning plan. Can I just ask you a couple of questions about that?---Certainly.

PN467

Do you have a copy of it in front of you there?---I do.

PN468

Now is a document similar to this prepared for every student or for the students who have additional needs?---The students that have additional needs. So for instance this is one of my Year 7 students and I have eight students with such learning plans.

*** CLINTON WAYNE AUBREY FOSTER

XXN MR FAGIR

PN469

This semester you've prepared eight of these individual learning plans. Next semester might be more or less presumably?---So just to clarify, I haven't prepared this. I've worked with this. This was prepared by the welfare team. So I have some input but I don't personally prepare this plan.

PN470

Okay, can you just explain that process to me a little bit? The student goes to see the welfare team and together they come up with this plan or what's the process?---The process is fairly long and complicated but I'll go through it quickly. So when the student comes in in grade 5 they have a trial day then in grade 6 they have a second trial day. Then, when they enrol, information is fed from the primary schools and that information starts a template of the initial individual learning plan. So it's determined from their primary school report if we feel that they would be candidate to have some additional time spent on them with an individual learning plan and then this student - this is probably finalised by the end of term 1 after you've had six, seven, eight weeks working with a student. As a group of teachers you get together and help finalise the learning plan but the actual writing it is a collaborative effort.

PN471

Now I think this is the last issue I wanted to ask you about, Mr Foster. You describe something called Maths Pathways in your statement?---Yes.

PN472

Can you just tell us again in the simplest possible terms what it is, Maths Pathways?---Yes, certainly. So Math Pathways is in a lot of schools. So at Bayview we've taken it on. This is our third year and we're using it with Year 7s, Year 8s and Year 9s and basically it's an adaptive online text book which diagnoses what the student's levels are at, their deficiencies and then the students do individualised learning, all students. So not just eight students out of a class of 20 but all students, and it's used to improve performance by them working at their level.

PN473

And is this right that Maths Pathways actually gives you a graphical representation of where students are at in different aspects of their maths education?---Yes, so the diagnostic tool is the first step, and it's very powerful, and then the students have the choice with some direction from their teacher to work at their level across whichever parts of the curriculum they're interested at initially.

PN474

Is this right; there's an actual screen that will show that student X is at level 7 in algebra but might only be level 4 in geometry? I'm using crude examples but is that the gist of it?---That is correct.

*** CLINTON WAYNE AUBREY FOSTER

XXN MR FAGIR

PN475

Now this is the final issue, Mr Foster. You deal at paragraph 10 of your statement with standardised testing. Can you just again in simple terms explain what

standardised testing is required at your school?---Certainly. So we try to I guess triangulate data. We don't just take it from one source. So we might have, say, the Math Pathways as a source of some data as you've suggested, through their diagnoses tools and what they're doing. We'll have NAPLAN data, which is only biannually, and we'll do things like ICAS maths testing or some other tool, adaptive testing online, and then that gives us - you know, triangulates at least three sources to give an accurate snapshot of where the students are at and then we use that data obviously to try to see how we amend curriculum programs to improve learning. So we obviously don't teach the same class - if you have a Year 8 maths you're not going to teach the Year 8 maths the same from year to year. It will change with the cohorts.

PN476

And having conducted that standardised testing at point A, that then provides some kind of base line or some picture of where each student is at that you can then measure that student's progress against as time goes on. Is that right?---Yes, that's correct, and I guess there's a lot of focus on the NAPLAN or NAPLAN data with My School's website and that kind of thing, because it does affect enrolments is the message that we get from the top down. So we certainly work hard to try to improve student performance as well - you know, not just day to day but also toward standardised testing.

PN477

Thank you, Mr Foster.

PN478

They're my questions, if the Commission pleases.

PN479

VICE PRESIDENT HATCHER: Mr Taylor, is there any re-examination?

RE-EXAMINATION BY MR TAYLOR

[3.42 PM]

PN480

MR TAYLOR: Just one matter of detail, Mr Foster. You were asked in respect of a personalised learning plan as to whether this was an example and you said this is a student in Year 8 and it's one of eight students. Can you just clarify - - - ?---Yes.

PN481

- - - earlier you talked about having 55 students so this is one of eight students within what cohort?---Sorry, so this is the Year 7 group so that's - in my Year 7 class which has 20 students or thereabouts, there are eight on individual learning plans. But for instance if I had a Year 11 physics, I would have one of those 10 students with an individualised learning plan. So there's more focus in the junior years, and obviously the subjects I teach with the academic difficulty, usually the more capable students are doing physics at Year 11 say than a - than the standard. So I would have less students with individual learning plans at the higher levels.

*** CLINTON WAYNE AUBREY FOSTER

RXN MR TAYLOR

PN482

And the Year 7 class - -?---So that's Year 7 and there was eight of 18 or eight of 20.

PN483

And what subject matter was that?---That's mathematics.

PN484

Thank you. No further questions. If the witness could be excused?

PN485

VICE PRESIDENT HATCHER: Yes. Thank you for your evidence, Mr Foster, you're excused?---Thank you.

<THE WITNESS WITHDREW [3.43 PM]

PN486

VICE PRESIDENT HATCHER: We'll now take an adjournment until not before 4 pm to arrange the link with the next witness.

PN487

MR TAYLOR: If it please. Thank you.

SHORT ADJOURNMENT [3.43 PM]

RESUMED [4.03 PM]

PN488

VICE PRESIDENT HATCHER: Dr Press, can you see and hear us? You can see some of us, right. Well, the court officer will now administer the affirmation to you.

PN489

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

PN490

DR PRESS: Frances Louise Press, (address supplied).

<FRANCES LOUISE PRESS, AFFIRMED [4.05 PM]

EXAMINATION-IN-CHIEF BY MR TAYLOR [4.05 PM]

PN491

MR TAYLOR: Dr Press, firstly could we just identify your location. You are giving evidence from your home, are you, in (suburb supplied)?---Yes, I am.

PN492

Is it the case that on 14 January this year you took up a new position of head of school of School of Childhood, Youth and Education Studies at the Manchester Metropolitan University?---Yes, I did.

*** FRANCES LOUISE PRESS

XN MR TAYLOR

PN493

Now, for the purpose of these proceedings you have prepared three statements each attaching an expert witness report. Is that right?---Yes.

PN494

Just for the record, we identify them. There is an original statement dated 22 December 2017, which is a seven-paragraph statement which you signed and which attaches an expert witness report, along with a curriculum vitae and a letter from the IEU asking you to prepare a report. Is that right?---Yes.

PN495

VICE PRESIDENT HATCHER: Sorry, what was the date of that again, Mr Taylor?

PN496

MR TAYLOR: 22 December 2017 is what I've been told. The document itself doesn't appear to bear a date.

PN497

VICE PRESIDENT HATCHER: Yes, all right. Thank you.

PN498

MR TAYLOR: Ms Saunders says it might actually have been prepared in November 2017 and there might have been an error in the note that I had.

PN499

Secondly, Ms Press, you prepared, did you not, a statement in reply which responded to - amongst other things - submissions that the ACA had made and that was a statement prepared and dated 18 July 2018 that annexed an expert witness report in reply?---Yes.

PN500

Do you have that with you, as well?---Yes, I do.

PN501

Then third and most recently in respect of the IEU's application for a change in the award rates based on work value, you prepared a statement that is dated 22 November 2018 - a four-paragraph statement dated 22 November 2018 - annexing a third expert witness report?---The next expert witness report that I have is dated 22/11/2018.

PN502

Correct. If I said something different, then - I think we're all on the same page, so you have that with you, as well?---Yes.

PN503

Now, do you say that the expert reports you have prepared - all three - convey to the best of your knowledge and belief your opinions in a manner that you think is accurate?---Yes.

*** FRANCES LOUISE PRESS

XN MR TAYLOR

PN504

I tender those three statements and their attached reports.

PN505

VICE PRESIDENT HATCHER: All right. The first statement and report - I'll just say it's undated - of Dr Frances Press will be marked exhibit 9.

EXHIBIT #9 UNDATED STATEMENT OF DR FRANCES PRESS PLUS ANNEXURES

PN506

The statement in reply and attached report, dated 18 July 2018, will be marked exhibit 10.

EXHIBIT #10 STATEMENT IN REPLY OF DR FRANCES PRESS DATED 18/07/2018 PLUS ATTACHMENT

PN507

The further statement and report of Dr Press, dated 22 November 2018, will be marked exhibit 11.

EXHIBIT #11 STATEMENT OF DR FRANCES PRESS DATED 22/11/2018 PLUS ATTACHMENT

PN508

MR TAYLOR: Dr Press, at the time you prepared all three of those reports, am I right in saying that you held the position of professor in early childhood education at the School of Teacher Education at the Charles Sturt University in Bathurst?---Yes.

PN509

And that you have held academic positions in respect of early childhood education since 1996?---Yes.

PN510

You have, amongst other things, a PhD awarded from Macquarie University on the subject matter of critical analysis of early childhood education and care policy in Australia?---Yes.

PN511

Thank you. They are our questions.

CROSS-EXAMINATION BY MR FAGIR

[4.10 PM]

PN512

MR FAGIR: Is doctor or professor the appropriate way to address you?---I don't mind. Doctor is fine.

*** FRANCES LOUISE PRESS

XXN MR FAGIR

PN513

I'll try professor. Professor, can I just confirm that I understand your qualifications. You have a bachelor in arts. Is that right?---I have a bachelor of arts majoring in history.

PN514

And a masters degree also in arts?---In women's studies.

PN515

And a PhD in sociology. Is that right?---Yes.

PN516

You wouldn't claim any particular qualification as an economist, for example?---No.

PN517

You wouldn't hold yourself out as an expert in labour relations?---No.

PN518

Nor as a statistician?---No.

PN519

Professor, you will recall you were provided with something called an expert witness code of conduct, together with the briefing letter that you received from the IEU?---Yes.

PN520

You were asked to comply with that code of conduct?---Yes.

PN521

Did you?---Yes.

PN522

Could I just remind you of some of the requirements of the code. I'll run through them and perhaps you could tell me whether you have abided by all or some of them. The first requirement was that the assumptions and material facts on which each opinion expressed in your report is based be included in the report. Secondly, that included in the report be the reasons for any opinion. Thirdly, the report was to include any literature or other materials utilised in support of the opinion. To the extent that a particular question, issue or matter fell outside your field of expertise, you were to include that fact in your report. You were to include any examinations, tests or other investigations on which you had relied. You were required to include any qualifications on an opinion expressed in the report without which the report was or might be complete or inaccurate. Do you say that you abided by all those requirements?---Yes.

PN523

In particular, do you say that each of your three reports includes to the full extent possible the reasons for the opinions contained in them?---Yes.

*** FRANCES LOUISE PRESS

XXN MR FAGIR

PN524

It is not the case that there is some reasoning process which provides a basis for your opinions which does not appear in the report. Is that right?---Not that I'm aware of, no.

PN525

Now, could I ask you some questions beginning with your first report, exhibit 9. Beginning on page 11 of that report, I hope there's a heading number 5, "Why is there only full remuneration", et cetera. Do you have that page, Professor?---Yes, I do.

PN526

You have set out under that heading some opinions as to the reasons for wage differentials between teachers in early childhood as opposed to teachers - I'm sorry, I'll start again. You set out there some reasons for the wage differentials between teachers employed in long day-care centres and kindergartens on the one hand and teachers employed in primary schools on the other hand; is that right?---Yes.

PN527

You have set out there the reasons that you say explain a wage differential?---Yes.

PN528

Professor, do you say that you are qualified to opine on this question?---Yes, I have done a lot of work in early childhood history around the philanthropic roots of early childhood and I've reviewed a lot of the literature in relation to the work of early childhood.

PN529

Professor, do you understand the different ways that wages are set for employees across Australia?---I have a basic understanding.

PN530

For example, do you understand the difference between the way that award wages are set for private sector employees on the one hand as opposed to New South Wales public sector employees on the other?---I know they're set differently, yes.

PN531

You know, don't you, that wages are set differently in areas where there is a prevalence of enterprise bargaining on the one hand as opposed to areas where there is no enterprise bargaining on the other?---Yes.

PN532

Do you have any understanding of the prevalence of enterprise bargaining in small business as opposed to in relation to large organisations?---No.

PN533

Do you understand union density to have some relationship to enterprise bargaining?---I would imagine that it does, but I don't know that it does.

*** FRANCES LOUISE PRESS

XXN MR FAGIR

PN534

Are you aware whether and to what extent union density differs in early childhood services as opposed to primary schools?---I know it's low in early childhood services. I wouldn't know the comparison between early childhood services and primary schools.

PN535

Professor, I think you told me in answer to a question a few minutes ago that you understood there is a difference between the way award wages are set for New South Wales public sector employees as opposed to employees of corporations in Australia?---Well, I would - yes, I would imagine there is. I don't know the exact differences; I'm not a labour expert.

PN536

We don't find anywhere in your report any attempt to deal with the potential influence of those differences on wage differentials between long day-care centres and kindergartens on the one hand and primary schools on the other; is that right?---I think - I'm not - can you just - I'm not quite sure what you're asking me actually.

PN537

I am asking you whether you have in your report dealt with the impact, if any, of the difference between the two systems?---I have insofar as a school - there is a system around public education but early childhood education is very diffuse with many different employers.

PN538

Professor, do you know how the federal award rates for early childhood teachers compare to the federal award rates for other professionals?---No.

PN539

Is it your understanding or do you not know whether the federal award rates for a graduate early childhood teacher are higher than the rates for a graduate engineer, lawyer or doctor?---No.

PN540

Do you know how the federal award rates for early childhood teachers in long day-care centres compare to the federal award rates for teachers in schools?---Only insofar as I've seen the case of the union.

PN541

Sorry, Professor, I don't understand that answer. Could you try to expand?---I have looked at the documents presented before the court for the wages of long day-care centres and teachers in schools for award rates, but that's all I know.

PN542

What is your understanding of the relative award rates for early childhood teachers in long day-care centres on the one hand and teachers in schools on the other?---I'm not - I don't know. I'm going to say I don't the answer to that question. I couldn't give you a firm response.

*** FRANCES LOUISE PRESS

XXN MR FAGIR

PN543

But do you know how the rates of pay for early childhood teachers under enterprise agreements compare to wage rates for school teachers also covered by enterprise agreements?---No, I don't.

PN544

Do you know how the award rates under New South Wales awards for early childhood teachers compare to school teachers?---No, I don't.

PN545

Whatever you have said in your report about the under recognition of the complexity of the work of early childhood teachers is an opinion expressed without knowing what the level of award rates for early childhood teachers is; is that right?---No, it's an opinion based on an assessment of the depiction of early childhood teachers' work.

PN546

Can I ask you some questions about the topics you deal with at pages 12 and 14 of your first report, which might broadly be described as questions of attraction and retention. Could I begin on page 12 of your report, please, under heading 6 - do you have that - "How difficult or easy is it", et cetera?---Yes.

PN547

The first proposition under that heading is:

PN548

It is difficult to attract students to work in the early childhood sector.

PN549

Do you see that?---Yes.

PN550

Can we take it that that is an opinion that you have expressed following some investigation of this question?---Yes.

PN551

For example, you refer in the first paragraph to a 2016 Department of Employment survey?---Yes.

PN552

Obviously you have read a document of some kind that matches that description?---Yes.

PN553

You have referred elsewhere in your report to a Productivity Commission report of 2011. Can we take it that you have read that report?---Yes.

PN554

What about the Productivity Commission 2015 report?---I probably have read that. I've read a lot of reports.

PN555

The 2016 Department of Employment survey that you refer to, I couldn't find it annexed to your report, nor could I find it in the list of references. Have I missed something or can you point me to a precise description of that document? I just want to know what it is exactly?---I can't do that immediately, but I would be able to source it for you. I wouldn't have cited something that I hadn't actually read and reviewed.

PN556

Can I just describe another document to you and, if you don't know, tell me you don't know. Is it possible that the document you are referring to is something produced by the Department of Employment and it's titled "Current Labour Market Rating Early Childhood Pre-Primary Teacher"?---I don't know. Without seeing it, I don't know.

PN557

Can I just discuss with you the proposition that it's difficult to attract students to work in the early childhood sector. You know, don't you, professor, that the number of ECTs in the workforce has been growing significantly in recent years?---Yes, because there's a requirement for more ECTs, under the new regulation.

PN558

You've pointed out, in at least one journal article that you've published, between 2010 and 2013 the number of ECTs grew by something in the order of 10 per cent per annum?

PN559

VICE PRESIDENT HATCHER: Sorry, doctor, you'll need to give a verbal response to that answer?---Yes. Yes. But growth doesn't - there can still be growth and still a shortage, given the number of graduates from universities in early childhood teaching.

PN560

MR FAGIR: If I suggested to you that between 2011 and 2016 the number of ECTs in the workforce grew by 48 per cent, you'd agree with that proposition?---I'm not sure, I'd have to look at the source material.

PN561

Are you familiar with a document titled Lifting our Game?---Yes.

PN562

If the statistic I just quoted appeared in that document, you'd accept it's likely to be correct?---Yes. I'd still want to look at it and see where it was sourced from.

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XXN MR FAGIR

PN563

Certainly. Now, if we just assume, for the sake of argument, that the two statistics I've suggested to you are correct, that would be quite inconsistent with the idea that there's any difficulty attracting students to work in the early childhood sector, you'd accept that?---No, because there are still shortages of early childhood

teachers and as a teacher of early childhood teachers, I know that many of my graduates when to the school sector, rather than into early childhood.

PN564

When you say there's a difficulty attracting students to work in this sector, are we to read that as, there's a difficulty attracting the required number of employees to the sector?---Yes, and I think there is a difficulty in attracting early childhood teachers to the sector still.

PN565

Well, if the number of people doing the job has gone up by about 50 per cent in five years, can I suggest to you that's perfectly inconsistent with the idea that there's any attraction difficulty?---I think you'd have to look at it in relation to the total number of graduates from early childhood programs.

PN566

You know, don't you, professor, that the real cause of the difficulty is the sharp increase in the number of ECTs required in the workforce, that's why there's a shortage?---No, I don't think that is the - I think that is part of the picture, but there has been a long-standing shortage of early childhood teachers working in the early childhood sector.

PN567

Do you know that to be the case in New South Wales?---Well, I know that there have been periods where there it has been. I'm not sure what the current situation is.

PN568

You know, professor, that there have been a series of cases in the New South Wales industrial tribunal, which increased wages for early childhood teachers?---I don't know that, but I accept that.

PN569

Well, you were involved in one, weren't you, professor, 2009?---Mm.

PN570

Did your research into this question reveal that those wage increases resolved any shortage?---I didn't - I have not looked at that particular issue.

PN571

Now, professor, do you mind turning to page 14 of your report? You see that the top, heading Recruitment and Retention et cetera?---Yes.

PN572

Do you see, about halfway down the page, a subheading Retention?---Yes.

PN573

The first sentence which appears under that subheading is this:

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XXN MR FAGIR

PN574

The 2016 workforce census reported that paid contact staff, with EC related qualifications, not only teachers, averaged 3.6 years tenure at their current service.

PN575

Do you see that?---Yes.

PN576

Now, out of all the statistics that you could have cited, why did you cite that one?---I'm not - because it appeared relevant.

PN577

Well, it'd be more relevant to cite a statistic dealing with the tenure of early childhood teacher specifically, surely?---I may not have had that to hand.

PN578

Can I see if I can jog your memory, professor?---One of the issues with some of this information is that not all the workforce information differentiates teachers from other staff.

PN579

Yes, quite. But you'll recall that when you read the 2015 Productivity Commission report, you saw that there was, in there, a specific figure for tenure for early childhood teachers and directors?---Can you put - is that from the - can you point to me where that is, please?

PN580

I can, but I don't want to spend the time doing that, unless we need to. Can I suggest this figure to you, 11.6 years is the average tenure for early childhood teacher or director? Can I put it to you this way - - - ?---Is that from the Productivity Commission report?

PN581

Let me put it to you this way, professor? Do you agree, disagree or do you not know, whether the tenure for teachers and directors in early childhood is higher than the workforce average?---I'm - I can't recall at this point in time. It may well be. I can't - I'd have to look at the data again.

PN582

Surely, when you're preparing an expert report dealing with the question of retention in early childhood, you investigated that very question?---I looked at as much data as I could. The problem with this sector is that there are many different reports that are produced at different times, some of which is specifically focused on teachers, many of which are focused across all staff. So it's a matter of garnering the best information that you can, from the sources that you can, at the time.

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XXN MR FAGIR

PN583

Yes. You, professor, have previously published a report that dealt with this question of the quality of the data that's available, in relation to early childhood workforce issues?---Yes.

PN584

That is, the Understanding Who Cares journal article?---Yes.

PN585

One of the observations that you and your co-authors made in that article is that there are limitations on the data available, in dealing with the question of shortages?---Yes.

PN586

Another observation you made in that report is that better qualified employees tend to stay in the sector whereas lesser qualified employees tend to leave?---Yes.

PN587

Ultimately, you said, that the NECECWC, and findings of the 2011 Productivity Commission report, challenge what appears to be the most commonly cited cause of staff shortages being wages and conditions?---Yes, it says that it's more complex than wages and conditions. However, the NECECWC report didn't cover all early childhood programs, it was looking at early childhood teachers in the years - in the later years of programs.

PN588

In your journal article you went on to say that, "A review of a wide range of existing studies", alongside the two reports I just mentioned have made it clear that the causes of staff shortages are multifaceted and they are to be found in various stages of the workforce cycle, including who is attracted or recommended to work in early childhood, how well prepared they are for the reality of the work, as well as, but not only, the conditions they encounter in the workplace?---Yes.

PN589

That's a much more subtle proposition than that which you have advanced in your report, isn't it?---Yes, but to say that it's complex doesn't negate the fact that wages and conditions play a part in that picture.

PN590

Can I ask you some questions about the part of your report dealing with dissatisfaction with pay and conditions, particularly on page 14. Would you mind turning back to that if you are not there already?---Yes.

PN591

You refer to a report prepared by Associate Professor Irvine and others based on a 2013 National EC Workforce Centre Staff survey; is that right?---Yes.

PN592

You say that 80.4 per cent of all workers, not only teachers, expected to be with the same employer or business in 12 months' time; you said that?---Yes.

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XXN MR FAGIR

PN593

And amongst those staff that said they wanted to leave their current job in the next 12 months, the two biggest reasons were to seek work outside the sector, 30 per cent, dissatisfaction with pay and conditions, 28.5 per cent. You have set out those facts or statistics?---Yes.

PN594

Can we just interrogate those figures a little more closely. Firstly, these are statistics that are concerned with the whole of the workforce, not only teachers; that's clear enough?---Yes.

PN595

The statistics deal with workers who intend to leave their employer as opposed to the sector within 12 months; correct?---Yes. Well - yes.

PN596

Twenty per cent of the workforce is in that category, planning to leave their particular employer within 12 months?---Yes.

PN597

Of that 19.6 per cent, 30 per cent said they were seeking work outside the sector; correct?---Yes.

PN598

And 28.5 per cent of that group said they were dissatisfied with pay and conditions?---Yes.

PN599

Those two groups aren't mutually exclusive, it's not 30 per cent of one and 28.5 per cent of the other, but it was that 30 per cent of them said reasons for leaving their employer was to seek work outside the sector and 28.5 per cent said a reason was dissatisfaction with pay and conditions?---Yes.

PN600

If we do some fairly simple maths, the results are that about 6 per cent of the workforce, not teachers but the workforce, was planning to leave the sector within 12 months. You would accept that's just a simple mathematical fact derived from those stats?---I'm not quite sure what you're getting the 6 per cent from.

PN601

It's 30 per cent of 19.6 per cent, 6 per cent of the total workforce?---I'll accept your maths on that.

PN602

And about 5 per cent intended to leave their particular employer within a year because of dissatisfaction with pay and conditions. You would accept that on the same basis?---Yes, I'm not doing the mathematical calculation here.

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XXN MR FAGIR

PN603

That leaves something in the order of 95 per cent of the workforce who are in a different category, that is, they had no intention of leaving their employer within a year because of dissatisfaction with pay?---I'm actually finding it a bit difficult to follow how you are doing this mathematics, so I'm declining to comment on that. If I look at this, it says that 20 per cent of workers wanted to leave, expressed a desire to leave within 12 months.

PN604

Yes?---And two of the biggest reasons were to seek work outside the sector and dissatisfaction with pay and conditions.

PN605

That's all right, we can do the maths for ourselves, but can you tell me this: how do these figures compare with other professions or occupations?---I'm not - I don't know in terms of that detail.

PN606

These statistics deal, as we have said, with the whole of the workforce not only teachers; right?---Yes.

PN607

We know that teachers have longer tenure than non-degree qualified educators; correct?---Are you saying that they stay in the workforce longer on average?

PN608

Yes?---Yes, there are - yes.

PN609

Whatever the figure is for the workforce overall, it's likely to be lower for teachers and directors?---I just need to think about this for a minute because if you're looking at the longer tenure from the NE - I just have to go back to my figures for a minute.

PN610

Professor, I will move on. Another document that you have referred to in your report is the OECD Starting Stronger 5 report. Do you remember dealing with that in your report?---Yes, I do.

PN611

Do you say that is a document that is of some use to the Commission in this proceeding?---I think the Starting Strong reports generally are of use to the Commission in the proceedings.

PN612

Of course, you would accept that a report pitched at this higher level across the whole of the OECD has to be treated with caution reflective of its vast breadth? Let me try to put that differently. One wouldn't readily conclude that a proposition said to be applicable to the entire OECD is applicable to Australia?---That's correct.

PN613

You have pointed out in your report that the OECD says that early childhood teachers earn less than their peers in secondary education. Do you remember making that point?---Yes.

PN614

You also said that the OECD recommends higher salaries for teachers in early childhood education?---Yes.

PN615

Is the OECD report concerned with statutory minima or actual paid wages?---I couldn't answer that question.

PN616

Do you know what the level of the minimum wages is in Australia relative to the OECD or to other OECD countries?---For the labour force generally?

PN617

Yes?---No.

PN618

I'm sorry, Professor, I might have missed the answer. Did you say "No"?

PN619

VICE PRESIDENT HATCHER: The witness said "No".

PN620

MR FAGIR: Thank you, your Honour.

PN621

Professor, you no doubt noticed while you were reading this report that it indicated that Australia is one of only two countries where pre-primary teachers earn more than primary teachers. That's a proposition that appears in the report?---Yes.

PN622

Is that right?---Yes, I have seen that, correct, yes.

PN623

That indicates to you, doesn't it, that the OECD is talking about statutory minima as opposed to actual rates of pay?---I'm not sure.

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XXN MR FAGIR

PN624

It certainly suggested to you that whatever the OECD was saying, it would have to be treated cautiously in respect of Australia given its premise that pre-primary school teachers are paid more than primary teachers in Australia?---When I looked at that report, I was interested - I was trying to find the data that would form that statistic and I couldn't see where that came from. My question was, does it include - because early childhood teachers in Australia are covered by so many different awards, including pre-school teachers being covered by the school

sector, I was - I would like to interrogate that data more, but I'm not sure - I couldn't see how to do that.

PN625

Professor, on page 15 of your report you say something about the effects of making an equal remuneration order, do you see that, under heading 8?---Yes.

PN626

Can I just put this to you, you're completely unqualified to give the opinion that you've set out, under heading 8, aren't you, professor?---Why do you say that?

PN627

You're not an economist?---No, but I've read a lot of the longitudinal studies about the impact of early childhood education on outcomes for children and benefits for society.

PN628

Have you read the Productivity Commission report that said:

PN629

It's impossible to measure the effect of the whole labour relation system on the economy, because it's all just too complicated.

PN630

I'm sorry, professor, I might have missed your answer?---No.

PN631

Now, on page 16, professor, you offer this proposition:

PN632

A recent longitudinal Australian study, E4Kids, found higher level qualifications were associated with higher quality ECEC and, as a result, improved child cognitive outcomes.

PN633

Do you see that on page 16, about halfway down?---Yes.

PN634

One will not find that proposition in the E4Kids report, will we?---I took it from the report, on the E4Kids report, so, yes, it would be somewhere.

PN635

Can I suggest to you that the report says two things relevant to this issue, firstly, that directors with degree qualifications produced better outcomes in something called process quality, that was one of the conclusions?---Yes.

PN636

Second conclusion was that degree qualified teachers scored more highly than non degree qualified educators, on something called instructional support?---Yes.

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XXN MR FAGIR

PN637

Instructional support was one of six criteria that were assessed in the E4Kids report, is that consistent - - -?---I'd have to have the - - -

PN638

- - - with your understanding of the report?---I'd have to have the report before me to see what the other criteria were and I don't have it before me at the moment.

PN639

Can I suggest to you that the proposition that the report found higher level qualifications were associated with higher quality ECEC and, as a result, improved child cognitive outcomes is a fairly significant oversimplification of the conclusion of the report?---No. I would not have written that had I not verified it with the readings of the report.

PN640

Professor, I want to ask you some questions about your second report, essentially a report in reply. It' exhibit 10. Can you just turn that up, please?---Yes.

PN641

The pages don't seem to be numbered, but can you turn to the third page, to paragraph 4?---Yes.

PN642

You see there the heading:

PN643

The work of early childhood teachers is distinct to that of other educators in early childhood settings.

PN644

Do you see that?---Yes.

PN645

What was this actually replying to, was this replying to evidence or a submission?---I must have been asked to respond to a number of questions. This report addresses the following propositions.

PN646

VICE PRESIDENT HATCHER: Is it in paragraph 2 of the statement, Mr Fagir?

PN647

THE WITNESS: Quoting:

PN648

I have reviewed the submissions, subsequently filed by the Australian Childcare Alliance.

*** FRANCES LOUISE PRESS

XXN MR FAGIR

PN649

MR FAGIR: The report replies to submissions, as opposed to evidence, is that right?---I imagine, yes, that's right.

PN650

Now, can you turn to the fourth page, to the heading above paragraph 9?

PN651

The work of early childhood teachers is more complex than that of teachers in primary schools.

PN652

Do you see that?---Yes.

PN653

Now, is the reasoning and support of that proposition what follows at paragraphs 9 and 10?---Yes.

PN654

That's it?---I'm not quite sure what you're saying. Do you want me to expand on why I think it's more complex?

PN655

I most certainly do not, I just want to make sure that the whole of the reasoning, in support of that proposition, is what appears at paragraphs 9 and 10?---I don't think it's - I think it goes beyond the paragraphs 9 and 10.

PN656

To what?---To paragraph 12, for instance. Paragraph 13, for instance, 14, to the subsequent paragraphs under that heading.

PN657

Okay. Now, professor, what we don't find in this report is any attempt by you to really deal with this question in depth, you'd accept that, wouldn't you?---I think I give a reasonable overview of a response. I could probably write a paper on it, if you would like.

PN658

For example, professor, you've made no attempt to come to grips with the factors that weigh against the proposition, the factors that might suggest that the work of primary teachers is more complex than early childhood teachers?---No, I haven't run an argument and counter argument along those lines. However, I think the environment of the early childhood teacher does make it very complex.

PN659

Professor, you did your best in your report and it's what appears at paragraphs 9, 10, 11, 12 through to 17, is that right?---I've addressed a number of issues through 12 to 17, about the complexity of the work, and I could probably expand on it now, if you would like me to.

*** FRANCES LOUISE PRESS

XXN MR FAGIR

PN660

No, I certainly wouldn't, professor, that's the last thing that I want. Can I ask you some questions about your - sorry, excuse me for a moment, professor. Can I ask the Commission to reject, as non responsive, the parts of the professors answers to my last two or three questions that travel beyond the issue of what is contained in the report into other matters?

PN661

VICE PRESIDENT HATCHER: For what purpose?

PN662

MR FAGIR: To avoid an argument about - - -

PN663

VICE PRESIDENT HATCHER: Re-examination?

PN664

MR FAGIR: Yes.

PN665

VICE PRESIDENT HATCHER: Quite. Well, I don't think, given the time, we'll be receptive to re-examination on those lines.

PN666

MR TAYLOR: If the Commission please.

PN667

MR FAGIR: Professor, can I ask you some questions about your work value report now, exhibit 11? Professor, do you mind running your eye to the bottom of page 2 to the heading: "Changes in teaching theory and practice"?---Yes.

PN668

You set out below that heading, "Reasoning in support of the proposition that there have been changes in teaching theory and practice and they have impacted upon the complexity of teachers' work", is that right?---Yes.

PN669

You identify four reasons that you say weigh in favour of that conclusion: research, increasing numbers of children entering programs at very young ages, diversity and the multiplicity of theories that inform teachers' work?---Yes.

PN670

Again, doing the very best you could and setting out in full the reasoning in support of your opinions, that's what you've been able to produce?---Yes.

PN671

What you will not find in this report, to take one example, is an explanation of when classrooms became diverse, for example?---Are you stating that I don't give a date at which point classrooms became more diverse?

*** FRANCES LOUISE PRESS

XXN MR FAGIR

PN672

Yes - nor do you tell us, for example, when there first emerged a multiplicity of pedagogical theories?---No, because these things accumulate over time and they are likely to be an accumulation of incremental changes rather than a specific - changes that occur at a specific point in time. There are some developments, such as the introduction of accreditation or the National Quality Reform agenda, that do trigger particular changes.

PN673

Could I ask the Commission to reject that answer as non-responsive?

PN674

VICE PRESIDENT HATCHER: No, you can make submissions about its weight.

PN675

MR FAGIR: Next, Professor, you deal with changes in the accountability of teachers under heading 2 on page 4. Do you see that?---Yes.

PN676

If I can attempt to summarise what follows, you effectively point to the introduction of the National Quality Framework?---Yes.

PN677

You tell us on page 4 that before the NQF or NQS there were, for example, licensing regulations which focused on such things as floor space numbers and qualifications of staff?---Yes.

PN678

There was something called the quality improvement and accreditation system which focused on children's experience within the early childhood setting?---Yes.

PN679

You would agree with me if I suggested to you that there were either those very things or different versions of them applied around the country in different jurisdictions?---Yes, with variations as to what types of services were covered.

PN680

Quite?---From jurisdiction to jurisdiction.

PN681

On page 6 you deal with changes in the professional recognition of teachers and you point out there that there are now registration, accreditation systems applying across the country?---Yes.

PN682

Page 8: the administrative functions of teachers and whether they are more complex. Can I again try to summarise what you say under this heading: in short, it's that all teachers in early childhood need to be familiar with the requirements of the NQS and ensure they acquit their responsibilities under the NQS?---Yes.

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XXN MR FAGIR

PN683

Those obligations - to be familiar with and acquit responsibilities under the NQS - don't apply differentially to teachers as opposed to any other worker in ECEC?---I think all staff have to be aware of the regulations but teachers often have more responsibility in ensuring compliance with the regulations.

PN684

Paragraph - - -?---Because they are more likely to be appointed in roles of responsibility within the services.

PN685

I see. For example, they are more likely to be appointed educational leader. Is that what you're suggesting?---Yes.

PN686

Or director?---Yes.

PN687

It's on that basis that you say they're more likely to have more onerous obligations, in effect?---Yes, but also I think there is an assumption from my work with services whether they're appointed in official positions of responsibility that they do assume a role as a more highly-qualified staff member in ensuring that there is compliance.

PN688

I see. Other than saying, "from my work with services", can you point us to some kind of statistical basis or any sort of external material that would support the proposition?---From the research that I've conducted with services on the workability childhood education talking to directors and all educators within those services about the nature of the work and what they do.

PN689

I see. All right, now 4.3, do you see a paragraph that reads this way, beginning of the second sentence: "According to the regulations requirements of an ECT, including new graduates in a program, involves carrying out education and care activities including one or more of the following", and you've set out there four dot points?---Yes.

PN690

You're not suggesting that the regulation requires that ECTs perform these roles, are you?---Well, I'm not quite sure what you're asking.

PN691

I suggest to you that the regulation you've referred to - - -?---They're employed - - -

PN692

I'm sorry, Professor, go ahead?---Well, they would be employed to carry out those roles.

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XXN MR FAGIR

PN693

The effect of the regulation you've referred to is to say that an ECT is counted as an ECT for ratio purposes if they're doing one of those things. That's right, isn't it?---Yes.

PN694

Now, in the next paragraph you tell us that ECTs typically oversee the development of the educational program within a room or centre?---Yes.

PN695

You know, don't you, that the national law requires that there be an educational leader appointed in each service?---Yes.

PN696

The law requires that that person lead the development of the educational program at the service?---Or provide leadership to that program, yes.

PN697

That person may or may not be a qualified teacher?---They're not required to be a teacher.

PN698

Aside from the educational leader, the persons with legal obligations in respect of the educational program, insuring compliance with the framework by the approved provider and the nominated supervisor?---Yes.

PN699

In the next section, 5, you deal with changes in curriculum and their impact on the work of teachers. You say, for example, at 5.3 the Early Years Learning Framework requires teachers to have an understanding of pedagogy. Do you see that paragraph?---Yes.

PN700

Pedagogy simply means the method of teaching, doesn't it?---I think it's about the art and craft of teaching.

PN701

That is the essence of what a teacher is taught to do: pedagogy, the method of teaching. This isn't some recent development. You agree with that proposition?---No, I don't think it is a recent development and I think people understand the word, "pedagogy", in different ways or the work of pedagogy in different ways. I think it's to do with not only the application of the curriculum but how it is applied.

PN702

Before the Early Years Learning Framework came along, there were other frameworks in place in various jurisdictions; correct?---Yes.

PN703

Do you recall from the 2009 proceedings an IEU official named Verena Heron?---Yes.

PN704

Did you have anything to do with Ms Heron?---Yes, I know - - -

PN705

In those proceedings, I'm sorry to interrupt you?---No, that's okay.

PN706

In the 2009 proceedings, Ms Heron described something called a framework for constructing meaning rationale for the practice, relationships, essential provisions of children's services. That is something that she said was promulgated by DOCS in New South Wales. Do you know anything about that?---Yes.

PN707

Ms Heron described it in these terms as a document:

PN708

which included a list of outcomes expressed more generally that is usual for curriculums towards which professional educators should be working.

PN709

You would agree with that description?---Yes.

PN710

On page 11 you deal with matters under the heading of "The Complexity of Teachers' Work." You firstly deal with the fact that, or the asserted fact, that more children attend ECEC in Australia than ever before and from younger ages?---Yes.

PN711

Professor, you know, don't you, that ECTs, not as an absolute rule but usually , work with the older children rather than the younger children in early childhood services?---I think that there's a variation around that. I think if you differentiate a standalone preschool from a long day-care centre, teachers will be working with the older children. I think one of the impacts of government policy has been to push more teachers towards the older children. However, in many services, teachers do work with children from birth, yes, so I think it's not a rule that teachers mainly work with older children; many teachers are responsible for the program for all children from whatever age they attend.

PN712

Another factor that you point to is variability in attendance patterns and I suggest to you again that this is not a recent development?---No, there has always been variability in attendance patterns. However, I think with the expansion of the sector and the requirement for teachers to be employed across Australia now, across the whole sector means that more teachers are working in a sector where there's highly variable attendance. Most children attending long day-care attend on a part-time basis.

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XXN MR FAGIR

PN713

Have you undertaken some analysis of the number of teachers that a typical ECT interacts within a term as opposed to a typical primary or secondary school teacher?---I haven't done a detailed analysis, but it would be higher because a primary school teacher is usually responsible for the children within their classroom, which will be a stable cohort across a number of weeks in the school year. In a long day-care centre, there will be many children going through that classroom within a year because of the part-time nature of the attendance.

PN714

Excuse me for one minute, your Honours. Thank you, Professor, thank you, your Honours, they are my questions.

PN715

VICE PRESIDENT HATCHER: Re-examination?

PN716

MR TAYLOR: No, there's no re-examination.

PN717

VICE PRESIDENT HATCHER: Thank you for your evidence, Professor Press, you are excused and you are free to go, which means you can simply terminate the connection?---Thank you.

<THE WITNESS WITHDREW

[5.08 PM]

PN718

VICE PRESIDENT HATCHER: Mr Fagir, before we finish, do you have the page reference for the tenure figure in the Productivity Commission report?

PN719

MR FAGIR: Yes. The figure is 11.6 and it is page 1828 of the bundle numbering.

PN720

VICE PRESIDENT HATCHER: That is in volume 2, is it?

PN721

MR FAGIR: It is volume 2, page 325 of volume 2, 1828 of the bundle, bundle B, and in my original version of these documents, it was part 2 of bundle B. Document 27, I am told.

PN722

VICE PRESIDENT HATCHER: Yes, all right, thank you. Is that all we need to deal with today?

PN723

MR TAYLOR: Yes, if it please.

*** FRANCES LOUISE PRESS

XXN MR FAGIR

PN724

VICE PRESIDENT HATCHER: All right, we will resume at 10 am in the morning.

ADJOURNED UNTIL WEDNESDAY, 12 JUNE 2019

[5.10 PM]

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