



TRANSCRIPT OF PROCEEDINGS  
*Fair Work Act 2009*

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

**C2013/6333**

**s.302 - Application for an equal remuneration order**

**Application by Independent Education Union of Australia  
C2013/6333**

**Sydney**

**10.05 AM, FRIDAY, 27 JULY 2018**

**Continued from 26/07/2018**

PN493

VICE PRESIDENT HATCHER: Yes, Mr Taylor.

PN494

MR TAYLOR: Yes, if it please, two matters first arising out of yesterday before Ms Matthews comes into the witness box. I indicated that we would provide a corrected version of the document behind tab D in the opening bundle and it turned out that the changes that were seen as appropriate were more extensive than I had anticipated but can I provide to the Bench copies of what we would replace it with and I can then explain the nature of those changes.

PN495

The Commission will recall that the annexure C to Ms Matthews' first statement contained a comparison of rates comparing, amongst others, primary school teachers in New South Wales covered by the Crown Employees (Teachers Schools and Related Employees) Award and the modern award and that the document behind annexure D sought to update that in light of increases that have occurred since that statement that was prepared in late 2017 and as I said, that document itself, it became clear, required some alteration.

PN496

The first alteration I'll identify is the one that I identified yesterday, that is the second page. The modern award rate for long day-care teachers has been adjusted to include the additional four per cent that long day-care teachers get paid which was omitted from the previous draft but a more fundamental change has occurred when one is comparing the modern award rates to the primary school rates.

PN497

I think it was the vice president indicated a question which I answered but this document, I think, answers it better as to whether one can correlate the years, the stepped years, the 12 stepped years in the modern award, to the primary school teachers award and if so, how that correlates. The evidence that is given, including, in particular, by Ms Matthews, explains that there has been a banding exercise in respect of primary school teachers and high school teachers, they're covered by the same instrument, in New South Wales and that is for government schools and that is replicated for Catholic schools, and the banding exercise, if you look at the left-hand column of either of the two pages works this way, that the graduate teacher commences at band one year one as the graduate rate and then assuming, which is, as I understand, invariably the case, they haven't reached and gained recognition as proficient by the end of the first year, they then move just by year progression to the band one second year rate.

PN498

Sorry, Ms Saunders rightly corrects me, it's the same rate. The rate doesn't change in what is effectively the first two years, it's the band one starting rate. It's been set out as a two year period to correlate with the modern award because of the fact that it is the case that teachers take in the order of two years ordinarily to reach the proficient level. At the point they are proficient, they move to band two and they stay at the same rate for two years, hence you see the figure, or the same figure, for both year three and year four.

PN499

Thereafter, they move by progression of years of service and those years are then being tabulated across to the 12 levels of the modern award. What this table does not include is the band three highly accomplished level which is a hard barrier which a teacher under the state and Catholic system achieves by being effectively credited or rated at that higher level and there isn't a correlation or equivalent for early childhood teachers so that has been omitted from the table.

PN500

We say this is - if the Commission were to make an equal remuneration order that raised early childhood teachers to the same rates of pay as primary school teachers in New South Wales it would be to the rates that are set out in this document.

PN501

VICE PRESIDENT HATCHER: On the second page for long day-care centres, the claim figures are higher than for preschool teachers. Is that because you've then added on the four per cent?

PN502

MR TAYLOR: Yes. I'm sorry, your Honour, Ms Saunders, I think, was about to claim an error but I think your Honour - I didn't hear the end of your Honour's question but was it that because the question is have we added an extra four per cent?

PN503

VICE PRESIDENT HATCHER: Yes.

PN504

MR TAYLOR: The answer is yes, we have and we've done so on the basis that the additional rate is effectively recognised if one looks at it on a hour and day work basis, one that can be said to be equivalent going across so that those long day-care teachers are working on an hour and daily rate the same - they have an hour and daily rate which, when compared to primary school teachers who are working the school hours and school weeks would mean that they would get the additional four per cent in order to be paid the same.

PN505

VICE PRESIDENT HATCHER: You're equalising hourly remuneration which then produces a higher salary, is that the logic of it?

PN506

MR TAYLOR: Yes, and that is the basis upon which we say there would still be equality in rates of pay. That was the first thing I wanted to do. The second thing I wanted to do was correct something.

PN507

VICE PRESIDENT HATCHER: This is, in effect, an amended claim is it?

PN508

MR TAYLOR: Yes, we need to formally amend the claim but I am foreshadowing that the claim will be amended to reflect that document.

PN509

VICE PRESIDENT HATCHER: Yes, all right, we'll make that then.

PN510

MR TAYLOR: The second thing I wanted to do is correct something I said yesterday in respect to the coverage of the application. When I was going through the statistics, I identified at a certain point that Ms Matthews had given statistics as teachers excluding government employees and I think the Vice President asked me a question about that and I answered the question as to coverage really mindful only of the situation in New South Wales.

PN511

I said the claim doesn't apply to local government employees. That isn't the case in a total sense because the application, as drafted applies to national system employees. The statement I made yesterday wasn't intended to indicate that we seek to amend that coverage. It remains the coverage of the claim. That would mean that local government employees in Victoria, for example, would be covered by the claim and it would also mean, apropos the Vice President's question yesterday in respect of constitutional corporations that might be owned by local government, as drafted, the claim would apply to them too.

PN512

We haven't heard any complaint about that to date and so while the evidence, I accept, doesn't identify whether there are, and if so the extent to which, any employees of constitutional corporations owned by local government that would be affected by this claim in New South Wales, as drafted, the claim applies in the terms it applies and I mis-stated the position when I spoke about it not applying to local government which I was on my feet yesterday.

PN513

VICE PRESIDENT HATCHER: Actually my question was directed to something to referrals to local governments which are themselves constitutional corporations.

PN514

MR TAYLOR: Yes.

PN515

VICE PRESIDENT HATCHER: Can you remind me with the referrals where local government leans in the various states.

PN516

MR TAYLOR: The position, as I understand it, is that the referrals do not include local government in New South Wales, Queensland or South Australia and as such, employees directly of local government in each of those states are not national system employees because the employer is not a national system employer but as I said, that wouldn't exclude, I accept, the potential for a constitutional corporation in those states owned by local government to be within the coverage of the order.

PN517

VICE PRESIDENT HATCHER: But can't a local government be a constitutional corporation?

PN518

MR TAYLOR: Can it be?

PN519

VICE PRESIDENT HATCHER: Etheridge Council case isn't it?

PN520

MR TAYLOR: There is some potential argument to that effect. I think it hasn't been authoritatively determined at a High Court level but certainly the approach that we are taking is that the local government in New South Wales, Queensland and South Australia is not caught and I think if there was a submission made that the application needs to make that clearer, then I don't understand there'd be any resistance to that in respect of those states.

PN521

VICE PRESIDENT HATCHER: All right.

PN522

MR TAYLOR: They were the two matters I wanted to raise at the outset. I don't understand from anyone else at the bar table there is any other preliminary matters that need to be dealt with. There is a notice to produce that's been made returnable against my client today that I will need to deal with before we rise for the day. Otherwise what we were dealing today with is the evidence of Carol Matthews.

PN523

Your Honours, the Commission, might recall that we did have a second witness for today but, by request, we're not going to call that person today and as I indicated yesterday, speaking to Mr Fagir, it seems some likelihood that we won't, as a result, sit for the whole day if that's not inconvenient to the Commission. The next order of business then, unless there's anything else that the Commission wishes us to deal with, is for us to call Ms Matthews.

PN524

VICE PRESIDENT HATCHER: All right.

**<CAROL MATTHEWS, AFFIRMED** [10.18 AM]

**EXAMINATION-IN-CHIEF BY MR TAYLOR** [10.18 AM]

PN525

MR TAYLOR: Your name is Carol Matthews?---Yes.

PN526

You are the assistant branch secretary of the New South Wales/ACT branch of the Independent Education Union of Australia?---Yes.

\*\*\* CAROL MATTHEWS

XN MR TAYLOR

PN527

Your current work address is (address supplied)?---Yes.

PN528

For the purpose of these proceedings, you have prepared two statements, is that right?---Yes.

PN529

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

PN530

For the Bench's benefit, the two statements are found behind tabs 10 and 11 of the folder of statements that the applicant provided to the Commission yesterday. The first statement was filed on 20 December 2017 and the second filed on 19 May 2018. Ms Matthews, are there any changes or corrections that are required to those statements to make them true and correct?---No, there aren't.

PN531

Do you say that the contents of those statements are true and correct to the best of your knowledge and belief?---I do.

PN532

I ask for those statements to be read or alternatively tendered as to Commission's preference and received into evidence.

PN533

VICE PRESIDENT HATCHER: Right, any objections?

PN534

MR FAGIR: No, your Honour.

PN535

VICE PRESIDENT HATCHER: All right. The statement of Carol Matthews undated, I think, will be marked exhibit 1 and the statement in reply of Carol Matthews dated 19 July 2018 will be marked exhibit 2.

**EXHIBIT #1 STATEMENT OF CAROL MATTHEWS UNDATED**

**EXHIBIT #2 STATEMENT IN REPLY OF CAROL MATTHEWS  
DATED 19/07/2018**

\*\*\* CAROL MATTHEWS

XN MR TAYLOR

PN536

MR TAYLOR: Ms Matthews, can I ask you to look at exhibit 1, your first statement, and go to paragraph 49 where you deal with rates of pay applying to teachers in the Catholic and government schools in New South Wales, and you say there that those are rates as at 1 January 2017. You also say in that paragraph that the rates – at that point, the teachers in Catholic schools were agreed, but not at the date of the statement contained in an up-to-date enterprise agreement. What is the position now, in respect of rates of pay in the Catholic system for primary

school teachers vis-à-vis government school teachers?---The rates are the same for both Catholic systemic teachers and teachers in government schools.

PN537

You indicate there that at that point, there wasn't yet an up-to-date enterprise agreement. What is the position at the moment in respect of the Catholic system?---There is still not an up-to-date enterprise agreement. The matter - an agreement was finalised and endorsed, voted on by employees earlier this year, and it is currently before the Fair Work Commission, waiting approval.

PN538

Ms Matthews, you were in court yesterday when a question was raised by the Bench as to information that the applicant might have as to the question of shortage of teachers at a primary school level. Can I show a document. Is it the case that, arising from that question, you too steps to ascertain whether there was any publications dealing with the question of shortages of teachers?---Yes, I did.

PN539

What is this document that I have provided you?---It is a document which I found on the Internet, which is a publication, it appears, of the Department of Employment, which contains information about shortages of teachers in New South Wales. I should add, I was unable to find any corresponding document in relation to other states.

PN540

I tender that document.

**EXHIBIT #3 DOCUMENT ENTITLED "LABOUR MARKET RESEARCH TEACHERS NEW SOUTH WALES, APRIL 2017".**

PN541

MR TAYLOR: Thank you, your Honour. They are the questions.

PN542

VICE PRESIDENT HATCHER: Mr Fagir.

**CROSS-EXAMINATION BY MR FAGIR**

**[10.23 AM]**

PN543

MR FAGIR: Ms Matthews, you are the Assistant Secretary of the New South Wales branch of the IEU?---Yes.

PN544

And you have worked for the Union since you've finished your uni degree?---No, but I've worked for the Union for most of my working life. But I did work for another union prior to working for the IEU.

\*\*\* CAROL MATTHEWS

XXN MR FAGIR

PN545

I see. In terms of your career at the IEU, before you moved into a leadership position of the kind that you're in now, you were an industrial officer?---Yes,

that's generally the case. It has been a long career. I also held the position of the Assistant Federal Secretary for a period around 1991, but I relinquished that position when the federal office moved to Melbourne, and I returned to the branch. And I returned to the position of an industrial officer.

PN546

All right. And in your position now, you have oversight of the industrial activity of the branch, if I can – is that a fair way of putting it?---Yes, in a general sense, yes.

PN547

Were you involved in the award modernisation process?---Yes, I was.

PN548

Someone from the IEU made submissions that demonstrated very comprehensive knowledge of award coverage of the industry. Were you the person that drafted the submissions?---Well, probably.

PN549

Were you involved in - - - ?---I'm not quite sure exactly which submission, and I don't know what industry you're referring to. Are you talking about early childhood specifically?

PN550

Yes?---Because, as you know, the award was a teachers' modern award, so it applied to school as well. But, yes, it is most likely – that would have been me.

PN551

I see. Now, I want to deal with a few of the topics that you've addressed in your evidence. Can I start with some of the workforce issues that you've explored in your statement. I'm sorry; before I do that, you've referred to a variety of documents in your evidence, and one of them is a Productivity Commission Report titled Childcare and Early Childhood Learning Productivity Commissioner Inquiry Report?---Yes.

PN552

And it is a report in two volumes, and it's a very comprehensive document?---Yes.

PN553

Could you tell the Commission briefly what the inquiry involved, and how report came to be made?---Well, first of all, I don't have a copy of the attachments to my statement with me. I think I referred to – I would have to refer specifically to that report. I think I used that report to refer to some particular conclusions and findings in the Report. I'm not an expert. I can't recall, off the top of my head, what led to that report being set up.

\*\*\* CAROL MATTHEWS

XXN MR FAGIR

PN554

And do you regard that report as being a reliable source of information? Can we infer that from your reference to it?---Not necessarily in relation to everything that's contained in it, no.



PN555

All right. Now, in your statement – turn to this if you need to; you may not. If we start at paragraph 14, where you say something about average tenure, early childhood. Perhaps you could turn that up and just refresh your recollection of the paragraph?---Yes.

PN556

Now, you point out that 21.2 per cent of staff within EC, EC-related qualification have less than one year's tenure with their current employer. Do you see that?---Yes.

PN557

And that compares, you say, with an average across all industries and occupations, of 18 per cent?---Yes.

PN558

What is the significance of that statistic, if any?---I suppose I was trying to point to some objective evidence about what is generally perceived, and, I think, conceded by employers to be a significant problem in the industry, that there is high staff turnover, particularly of teachers. You'll note that in paragraph 14, I was referring to staff with a qualification, not just teachers. So I was just referring to what statistics were available. But to be honest, I think the evidence in this proceeding shows that there's a general consensus of high staff turnover, which is probably, in fact, higher than the figures suggested by those statistics.

PN559

I see. Now, you know the Productivity Commission said something about the issue of tenure within this industry, or profession, don't you?---I would have to refer to it.

PN560

Do you mind doing that? The Report is in bundle B, part 2, or it's otherwise accessible as document number 27 in the hyperlinked index. Ms Matthews, the page that I want to take you to is page 1828 of the bundle, which is page 325 of this volume of the Report.

PN561

VICE PRESIDENT HATCHER: Sorry, Mr Fagir, what document did you say it was?

PN562

MR FAGIR: I should have asked this at the outset. Is the Bench working from the bundles or from the hyperlinked index, or - - -

PN563

VICE PRESIDENT HATCHER: We're working from the hyperlinked – that's why we've got it.

\*\*\* CAROL MATTHEWS

XXN MR FAGIR

PN564

MR FAGIR: Yes. It is document 27.

PN565

VICE PRESIDENT HATCHER: And what is document 27 entitled?

PN566

MR FAGIR: Volume 2 of the Childhood Care and Early Childhood Learning Productivity Commission Inquiry Report.

PN567

VICE PRESIDENT HATCHER: Yes, all right, and what page?

PN568

MR FAGIR: Page 325 of the Report, which is 1828 of the bundle. Ms Matthews, can you just let me know when you turn that page up?---Yes, I've got that page.

PN569

Just take as long as you need to read the paragraphs on the page, and then I just want to ask you something about them?---Yes.

PN570

Now, you see that the Productivity Commissioner, for its part, concluded that the average tenure of educators was seven years, and for teachers and directors it was 11 years; do you see that?---I would have to have a look – refresh my memory as to whether these statistics are referring to the early childhood development workforce, which would normally include preschools and long day-care or just long day-care. Because the reference in paragraph 14 of my statement was to staff in long day-care.

PN571

VICE PRESIDENT HATCHER: This is talking about tenure in the sector isn't it?

PN572

MR FAGIR: Yes. It deals with a couple of things but the paragraph that I've just referred to deals with tenure in the sector, that's quite so.

PN573

DEPUTY PRESIDENT DEAN: Ms Matthews, in paragraph 14 where you're talking about tenure, is that tenure with each employer rather than the sector?---Yes, that's correct as well and it's also confined to the long day-care sector. It wouldn't pick up other services.

PN574

COMMISSIONER SAUNDERS: So by other services you include preschool?---Preschools. I'd have to go back to this survey to see what - to go back to the Productivity Commission to preschools, for example. It could also refer to preschools attached to schools.

PN575

MR FAGIR: Ms Matthews, you concede the Productivity Commission concluded that the overall tenure for the early childhood development workforce sector was roughly the same as the rest of the workforce. Do you see that?---Yes.

\*\*\* CAROL MATTHEWS

XXN MR FAGIR

PN576

It's the last sentence of the first paragraph?---Yes, yes, I do.

PN577

Do you have any different view about that or do you accept that it's likely that the Productivity Commission's right about this?---It could be correct but I'd have to say that if that includes preschools, I think the evidence in these proceedings, which is not really being contested, is that the turnover in preschools, particularly for teachers, is much less than in long day-care. So I don't know that it - so it may well be accurate but I don't know that it's directly comparable to the statistics in my paragraph 14.

PN578

Do you see in the third paragraph on that page the National ECEC Workforce Centre Staff Survey reached various conclusions. Are you familiar with that survey that's referred to there?---Look, only generally but what I do know is that that ECEC workforce survey included preschools. Now subsequent ECEC workplace surveys did not include preschools, so unfortunately they ceased - the 2013 one was the only one that covers preschools to my recollection.

PN579

I see. You see that the Productivity Commission drawing on that survey concluded that most workers, that is 80 per cent, bearing in mind what we've spoken about the cohort, 80 per cent of workers expected to be with the same employer and business or business in 12 months time. Do you see that?---Yes.

PN580

Do you have any different view or do you accept that's likely to be correct?---In relation to the preschools and long day centres, yes.

PN581

Now do you see some of the reasons why staff thought they might finish are identified. 30 per cent gave a reason seeking work outside the sector, 28.5 per cent identified dissatisfaction with pay and conditions. Do you see that?---Yes.

PN582

Does that sound about right to you?---Look, I'm not in a position to comment on whether that was the correct statistics in 2013.

PN583

Do you have a sense of how 28.5 per cent might compare to the workforce generally or to other professions?

PN584

VICE PRESIDENT HATCHER: When you say the workforce generally what are you talking about?

PN585

MR FAGIR: All employees.

\*\*\* CAROL MATTHEWS

XXN MR FAGIR

PN586

VICE PRESIDENT HATCHER: Perhaps it goes back a few questions but when you asked the question by reference to the annual over (indistinct) which tenure for the sector was roughly the same as the workforce, you've read that as being the general Australian workforce?

PN587

MR FAGIR: Yes. In any case I can move on. Ms Matthews, you say somethings about a shortage of qualified teachers in the sector beginning at paragraph 15 and at the heading to paragraph 17 you say:

PN588

*The shortage of qualified teachers in the sector is caused by low remuneration.*

PN589

Do you see that?---I'm sorry, are you taking me to a particular sentence?

PN590

I'm asking you about the heading?---The heading, I'm sorry.

PN591

Paragraph 17?---Yes.

PN592

*The shortage of qualified teachers in the sector is caused by low remuneration.*

PN593

Do you see that?---Yes.

PN594

You then set out in the following paragraphs evidence that supports that proposition. Is that right?---Yes.

PN595

You agree with me, don't you that low remuneration is one factor that the various surveys and studies identify but there are various other factors that influence this issue?---There may also be other relevant factors, yes.

PN596

You point out at paragraph 15 that the Productivity Commission says shortage is particularly acute in New South Wales, is that right?---Yes.

PN597

You refer specifically to page 1831 of the bundle which for the Bench's convenience is page 328 of the report. Can I take it that at some stage you've looked at at least this portion of this report?---Yes.

PN598

Do you mind turning, if you haven't already, to that page 1831 that you've referred to?---Yes.

\*\*\* CAROL MATTHEWS

XXN MR FAGIR

PN599

You know, don't you, that the Productivity Commission says a variety of things about the shortage of teachers in Australia?---Yes.

PN600

For example, you know that the Productivity Commission has pointed out that the problem is New South Wales because New South Wales has higher than NQF requirements for ECTs?---Well, I'm not sure whether it makes that link. If it does you can tell me where it makes that link.

PN601

Certainly. Do you mind running your eye halfway down the page to the two dot points?---Yes.

PN602

Do you see this text:

PN603

*Early childhood pre-primary school teachers is experiencing recruitment difficulty, meaning some employers are unable to attract and recruit sufficient suitable workers.*

PN604

Do you see that?---Yes.

PN605

Do you see the next sentence:

PN606

*Shortages of particularly acute in New South Wales partly due to the maintenance of requirements for teachers that are higher than those adopted by other jurisdictions under the NQF.*

PN607

Do you see that?---Yes, so they're saying as at the date of this report which, what are we talking about, 2013, the shortages were partly due to that reason. Well, if that's - - -

PN608

Is that consistent with your understanding of these issues?---Well, I think in my statement I produced some evidence of shortages currently, not just in New South Wales but elsewhere. So I can find it for you but there were, for example paragraph 18 I indicated that there were shortages in Queensland. In paragraph 19 I indicated shortages in the ACT. I'm not sure about Victoria. And I have to say the evidence for this Commission is that they have - employers have difficulty attracting people. So yes, in 2013 the Productivity Commission may have made that conclusion but I'm not sure that that's generally reflective of the situation in 2018.

\*\*\* CAROL MATTHEWS

XXN MR FAGIR

PN609

I see, and you pointed to some labour market surveys dealing with Queensland, New South Wales and the ACT a bit later in your statement?---Yes, I do.

PN610

That provides a more up to date picture doesn't it?---Well, I actually don't think there's a dispute about the fact that it's difficult for employers to recruit early childhood teachers. I mean I haven't heard one employer in their statement - none of the employer statements that I've seen refers to - disputes that and in fact they all seem to support that contention.

PN611

Yes, but you understand that what's controversial is the proposition that I have just read out that's contained in the heading above paragraph 17, that is that the shortage of qualified teachers is caused by low remuneration?---Well, I don't know that it is controversial. A number of the employers in their evidence also agreed with that proposition.

PN612

Ms Matthews, do you still have page 328 in front of you there?---Yes.

PN613

Do you see in the third paragraph the Commission says this:

PN614

*Workforce shortages were most evident for (indistinct) services particularly LDC services with those that do not offer a preschool program, especially effected because they did not previously require a teacher.*

PN615

Is that consistent with your understanding of these issues?---Well, if that's a reference to the fact that when the new NQF came in, in 2012, that required for the first time in some states the employment of teachers, then, yes, I would agree with that. So if what they're saying there is that previously in long day-care services that offered a preschool program, teachers were employed but in ones that didn't, they weren't employed but then 2012 they had to start employing teachers, well, that would seem to make sense but I'm not in a position to comment in a lot of detail about what caused the shortages at that time and I certainly know that in Queensland, for example, where they did not previously require teachers to be employed prior to 2012, certainly the evidence in these proceedings is that at the moment, many long day-care centres have preschool programs. Now I don't know whether they did in 2012 or not. I don't know what - whether that is an accurate assessment of the change. Could be.

\*\*\* CAROL MATTHEWS

XXN MR FAGIR

PN616

But, no, try to summarise it this way, tell me if you disagree or you just can't answer, the short version of the Productivity Commission's analysis is that the shortage of teachers was caused really by the sharp spike in demand as a result of regulatory change from 2009 onwards?---I don't know that it is saying that because there are other references to remuneration being an issue so I'm not sure

that - so, yes, there was a greater demand for early childhood teachers but I'm not sure that that's the only reason for the shortage because elsewhere in the report, they refer to the significance of the pay, in particular, and the conditions.

PN617

I see. You know, don't you, that the Commission pointed out, among other things, that ECTs hadn't been in shortage or experiencing recruitment difficulties at any time between 1986, when the government started tracking these things, and 2009?---Well, I don't think that's the case. If you're talking about - are you talking about nationally?

PN618

Let's just take it step by step. Do you mind looking at the second to last paragraph on this page and you see about halfway through the paragraph the Commission says this "Before 2009, ECTs had not been classified as in shortage or experiencing recruitment difficulties since skill shortage list began in 1986"?---Well, I don't know what that means because - can I give you this example, in Queensland, prior to 2009, generally teachers were only employed in preschools and so presumably there was no shortage of teachers in preschools. Similarly in Victoria. Now in New South Wales, there was a shortage. I mean, there's evidence before the - that went to the state Industrial Relations Commission of shortage throughout that period, so I mean I can't comment on what those statistics indicate. I mean, the fact was that teachers were mainly employed in preschools outside New South Wales prior to 2012.

PN619

Do you see the first paragraph on that page, the Commission says this "The new staff ratios and qualification requirements in the NQF have made it more difficult for services to attract and retain sufficient staff by substantially increasing the demand for EC workers". Do you see that?---Yes.

PN620

That's clearly right isn't it? That's a statement of the obvious?---No, actually it's not. I mean, it had no impact in New South Wales.

PN621

I see. You see the Commission goes on to say that it had previously examined the effect of the NQF on the EC workforce and estimated that 15,000 additional workers would be required as a result of the reforms?---Yes.

PN622

Do you cavil with that proposition?---I don't know. I'm not suggesting it's incorrect. I don't know whether it's correct or incorrect.

PN623

You understand that early childhood pre-primary school teachers are classified as experiencing recruitment difficulty. That's a particular classification of skills shortage?---Yes.

\*\*\* CAROL MATTHEWS

XXN MR FAGIR

PN624

You understand, don't you, that childhood workers are in a more acute category being a national shortage?---At the time of that report, yes.

PN625

You understand that ECTs had previously been in the category of national shortage but have stepped down to the less acute classification of recruitment difficulty?---Yes, I can see that in that report, yes.

PN626

Yes, the position seems to have improved as time went on?---Well, that would suggest that between that period, yes, that would be correct.

PN627

Apart from the ratio and qualification requirements reforms, the other thing that's happened as a result of the reforms is that the number of kids in childcare has gone up quite sharply over the last 10 or so years?---The number of children in early childhood services in general, yes, and probably also in childcare as well, yes.

PN628

No doubt that contributed to demand, continues to contribute to demand for ECTs?---Yes.

PN629

You mention paragraph 17 through to 19 in your statement. Can I ask you some questions about that?---Yes.

PN630

You refer in those paragraphs to a series of surveys and is that right? That these are current labour market ratings documents but they're based on surveys, is that your understanding?---Yes, that's my understanding from having a look - from looking at them, yes.

PN631

You understand that a respondent to a survey is likely to be focussed on their own narrow issue and isn't likely to deal with broader market sort of dynamics. Is that consistent with your understanding of these things or do you not know?---Well, I'm assuming they were asked a specific question and would have answered the specific question, so yes.

PN632

I wonder if we could turn firstly to the Queensland market survey. It's document 37 of the index and it's in bundle B part four page 2592.

PN633

MR TAYLOR: Just give that reference again.

PN634

MR FAGIR: Bundle B part four page 2592?---I can't see it, I don't think, on this version of mine.

\*\*\* CAROL MATTHEWS

XXN MR FAGIR



PN635

Ms Matthews, at paragraph 18 of your statement you refer to this document.

PN636

VICE PRESIDENT HATCHER: Just hold on, Mr Fagir.

PN637

ASSOCIATE: What page of that bundle there?

PN638

MR FAGIR: 2592?---Thank you. Yes.

PN639

As you point out in your statement, the first observation made in this survey is that there are no shortages for early childhood teachers with 100 per cent of vacancies in this year's survey filled. Do you see that?---Yes.

PN640

Do you accept that as likely to be correct or do you have a different view?---No.

PN641

You know there's a - well why don't you turn to it, a few pages along in the bundle, and document 38 in the index, is an equivalent survey for New South Wales. Do you mind turning that?---Well, can - - -

PN642

VICE PRESIDENT HATCHER: I thought the arrangement was you were going to provide hard copies of the relevant pages to the witness.

PN643

MR FAGIR: Is that right? I'm sorry, I didn't understand that.

PN644

VICE PRESIDENT HATCHER: I'm not sure this is going to work, Mr Fagir.

PN645

MR FAGIR: Document number 38?---Can I make a comment about the section you just took me into in that annexure compared to what I had in my witness statement?

PN646

Certainly?---Well, in my witness statement, I specifically was referring to - - -

PN647

VICE PRESIDENT HATCHER: What paragraph, Ms Matthews?---Paragraph 18, in relation to long day-care. So the quote in my - in paragraph 18 comes from towards the end of that survey where they comment specifically on the situation in long day-care compared to the sector as a whole.

\*\*\* CAROL MATTHEWS

XXN MR FAGIR

PN648

MR FAGIR: Yes, thank you, Ms Matthews. Do you have the hyperlinked index there, do you?---I don't think so.

PN649

It is document number 38. I'm sorry, I thought I've said that.

PN650

Do you have that, Ms Matthews?---Yes, thank you.

PN651

Now, you haven't referred to that in your statement, but you can see that it seems to be a similar survey to the Queensland document that we were just looking at?---Yes.

PN652

Most ECTs are actually in New South Wales, is that right?---I would have to go back to the beginning of my first statement, but I think it's fair to say it's - probably at least 40 per cent of the sector is in New South Wales.

PN653

Do you see the comment here is that, "Employers in regional New South Wales were able to fill early childhood positions without difficulty, but there continues to be a recruitment difficulty in the long day-care sector in the metropolitan area." Do you see that?---Yes, I do.

PN654

Do you see, on the next page, there's a heading, Demand and Supply Trends? About halfway down the page, in bold?---I'm sorry, I've just got duplicate pages on my document. Yes.

PN655

And do you see, the first dot point reads, "Demand for early childhood teachers has been increasing due to higher underlying demand for early childhood education and care and new regulatory requirements under the NQF." Do you see that?---Yes.

PN656

That is a statement of the obvious, isn't it?---Look, it is, although, to be honest, I think, in relation to New South Wales, I actually wondered whether some of this data was a bit of a national perspective, because in New South Wales, there was only a pretty minor impact from the introduction of the NQF, because, as you would be aware, the New South Wales existing requirements were well above the NQF requirements. There was only a minor change in relation to services to below 29 places, which were required to have some access to an early childhood teacher if they had more than 25 children. Now, that was – there's not many services that fall into that category, and many of them – for example, a single-unit preschool would have already employed a teacher. So I don't think the "new regulatory requirements" part of that sentence is correct, because there was very limited impact in New South Wales.

\*\*\* CAROL MATTHEWS

XXN MR FAGIR

PN657

And you say that based on what?---Well, my knowledge that the regulations in New South Wales have been in place since the 1970s, is my recollection, and so those requirements have required one teacher to be employed from 30 children, and two teachers from 40 children, in both preschools and long day-care centres. Now, those requirements are higher than the requirements in the NQF.

PN658

Now, finally, can I deal with the ACT version of this survey, and I hope you'll find that at document 36 of the index. 2589, for those who are following on the bundles. Do you have that, Ms Matthews?---Yes, I do.

PN659

Now, you have extracted in your statement a portion of that, that reads as follows, "Employers reported that ECTs often prefer to work in the school sector, where remuneration and other conditions are considered to be more attractive in the childcare centre." Do you see the opening comments in this survey, to the effect that, "A large majority of employers fill vacancies for early childhood teachers, although some in the childcare sector experience difficulty recruiting experienced teachers, with vacancies attracting fewer qualified applicants than those in the school sector." Do you see that?---Yes.

PN660

Is that consistent with your own experience?---Well, the situation in the ACT is interesting, because there are, as I understand it, no independent preschools. So a survey of early childhood pre-primary school teachers would be surveying applicants for positions in preschools attached to schools, or in childcare centres. And the preschools attached to schools in the ACT pay schools' rates. So where it says, "A large majority of employers fill vacancies for early childhood teachers", some – that could include those positions in schools, in preschool programs. "Some in the childcare sector experience difficulty"; well, that would be our view that the childcare sector is where the difficulty is.

PN661

I see. And do you see, on the next page of this document, again, the heading, Demand and Supply Trends?---Yes.

PN662

And the first dot point is, "Demand for early childhood teachers in the ACT has been growing in recent years"?---Yes.

PN663

Do you cavil with that, or do you accept that?---No, I accept that.

PN664

Now, isn't the short version of all of this that there has been a significant increase in demand for ECTs and educators over the last ten or so years?---Yes.

\*\*\* CAROL MATTHEWS

XXN MR FAGIR

PN665

And, in fact, what has occurred over that period is that the number of early childhood teachers has increased significantly?---Sorry, the number of positions for early childhood teachers has increased significantly.

PN666

The number of early childhood teachers in the workforce has increased significantly?---Yes.

PN667

Something like 48 per cent between 2011 and 2016?---Yes.

PN668

It is one of the fastest growing professions in the country?---Yes.

PN669

Whatever difficulties are confronted, it hasn't created a problem, in terms of attracting people to the profession, obviously?---Well, that is not correct. I mean, the evidence is – and I think these labour market surveys bear it out – that there is no difficulty filling positions in preschools. So it's not as if there's a significant – there are more positions available, and they can't fill them, because they don't have teachers to fill them. The fact is, there are more positions available. The ones in preschools can be filled, and certainly, in some long day-care centres, can be filled. But there are teachers available who are choosing not to work in a part of the sector. It's not that there are not teachers out there who are qualified for these positions. There are, but they are choosing not to work in particular types of workplaces, because of the pay in particular, and conditions.

PN670

Can I suggest to you, what the information that we've just considered demonstrates is that there's a sharp increase in demand. There has been an increase in ECTs in the workforce, and – well, firstly, do you accept those two propositions: so, a sharp spike in demand, and, at around the same time, a sharp increase in the number of ECTs in the workforce?---Yes.

PN671

And that probably explains why the skills shortage has ameliorated from a national shortage to a recruitment difficulty in the last few years?---Sorry, what explains why its' ameliorated?

PN672

There is a spike in demand. Perhaps after a bit of lag, there was also a spike in workers joining this sector of the workforce. Is that the phenomenon - - - ?---I'm sorry, are you saying that there was a particular increase around – at a particular time, and now, the increase is not as rapid? I'm sorry, I don't actually understand what you're saying.

\*\*\* CAROL MATTHEWS

XXN MR FAGIR

PN673

It's probably because I'm putting it very poorly. I'll try again. From about 2009 onwards, there has been a sharp spike in demand for ECTs?---There has been an increase in demand, yes. Probably a little bit later, but, yes.

PN674

And, perhaps not at exactly the same time, but at least from a few years later, there was a sharp increase in the number of ECTs joining the sector?---From about 2012, there would have had to have been an increase.

PN675

And that rather explains why the skills shortage has reduced from a national to recruitment difficulty?---I'm sorry, you're telling me that the demand has reduced, that there is less of a shortage than there used to be? Is that what you're suggesting?

PN676

It's what the Productivity Commission suggests?---Yes, in 2013, that's what they suggested.

PN677

I see, and then, something else has happened between 2013 and now, and there has been a reversal?---I think it's difficult to say, in such black and white terms. I mean, I would have to have a look at the data about – I think there's some data in Lifting Our Game, which talks about the increase in the sector. I would have to have a look generally at the statistics. So, yes, I concede that there was apparently a shortage, a particular shortage at one time. Subsequently, it wasn't so severe. But also, you have to be mindful as to whether we're comparing like with like. In other words, are we talking about a particular sector which is long day-care. Are we talking about the whole sector? I mean I'm not trying to be difficult but I think it's quite hard to generalise a national picture in that way.

PN678

Ms Matthews, you've offered the opinion that the shortage of qualified teachers in the sector is caused by low remuneration. That's black and white in your statement?---I have said - yes, particularly in long day-care, that's right.

PN679

Did you offer that opinion on the basis of some considered analysis of all the information or how did you arrive at that conclusion?---Well, I looked at the data that was available and it shows that there are repeated reports of difficulties in getting teachers in long day-care. That doesn't mean every long day-care provider but clearly there's enough of a problem that it's been reported in quite a few of these surveys. So I am reporting what is in these surveys. I should say it also said - as I've said it before, it seems to be consistent with the evidence of the employers in these proceedings.

PN680

If one is to take any kind of meaningful analysis of shortages in this sector?---Yes.

PN681

The starting point is you have to discuss what's happened with demand over the last 10 years surely?---Well, I agree, obviously demand is a relevant - is a factor that should be looked at, yes.

\*\*\* CAROL MATTHEWS

XXN MR FAGIR

PN682

It's certainly not a factor that's explored in your statement?---Yes, but if it was just demand there would be reports of shortages in preschools and not one of those surveys refers to a shortage in preschools.

PN683

Can I ask you some questions about what the academic literature says about the value of ECT qualifications. You don't need to turn to it but in paragraph 13 you refer to the "lifting our game" report?---Yes.

PN684

That is the reply statement although there will have to be a very large question mark about what evidence it's reply to. But it doesn't matter, I can deal with it.

PN685

VICE PRESIDENT HATCHER: Is that paragraph in the reply statement?

PN686

MR FAGIR: Yes?---If I could just comment. That report was actually - I think Mr Taylor said yesterday it was published in December 2017. Although it's dated that, it actually wasn't released until January I think 2018 or February 2018.

PN687

We got it in July 2018. It matters not. Now can I see if I can shortcut this discussion. You know there is some academic literature dealing with the connection between teacher qualifications and student outcomes?---Yes.

PN688

Are you familiar with that literature?---In a broad sense, yes.

PN689

Is this the short version of the current consensus that there's at least one study which has found that there's a correlation between diploma or bachelor degree qualifications on the one hand and outcomes for preschool children on the other?---Are you talking about the E for kids - which survey - which report are you talking about? There's a number of reports I think which go to that issue.

PN690

Yes. Why don't we go back to the Productivity Commission Report. If you don't still have it, it's document number 27 in your index. I'm sorry, Ms Matthews, just give me a moment.

PN691

VICE PRESIDENT HATCHER: What page do you want to take us to?

PN692

MR FAGIR: That's an excellent question, your Honour. Could I just have a moment, I'm sorry to do this. I'm terribly sorry about this but it's page 256.

\*\*\* CAROL MATTHEWS

XXN MR FAGIR

PN693

VICE PRESIDENT HATCHER: Which page of the bundle?

PN694

MR FAGIR: 1761 of the bundle. Can you just let me know, Ms Matthews, when you've turned that up and had a moment to read it or refresh your memory as the case might be?---Yes, I see that.

PN695

Now do you disagree with that summary or do you accept that it's likely to be correct?

PN696

VICE PRESIDENT HATCHER: Disagree in what respect?

PN697

MR FAGIR: I'll take it step by step. Ms Matthews, do you see - that's a fair point. Do you see the first study referred to is Warren and Haskin (indistinct) 2013?---Yes.

PN698

That's a study that's referred to, we see it again and again in the reports and papers dealing with this issue?---Yes, if you say so.

PN699

I'm asking, you don't have to accept what I'm putting to you, just tell me if you don't know or you disagree?---Well, I don't recall whether - if I was - well, if you say you see this cited again and again in other reports, I don't recall this particular survey being - this particular study being cited in other reports, so you'd have to - I'm not trying to be difficult but no, I don't agree with that - I don't recall whether that's correct or not.

PN700

You see that the Commission says that:

PN701

*The study provides direct comparison to the effects of types of qualification held by preschool teachers on later cognitive outcomes.*

PN702

Do you see that?---Yes, I see that. I do.

PN703

That:

PN704

*The highest NAPLAN scores were amongst children whose preschool teacher had a diploma level qualification.*

PN705

?---Yes.

\*\*\* CAROL MATTHEWS

XXN MR FAGIR

PN706

That the difference between those schools and those whose teacher held a degree level qualification were not statistically significant. Do you see that?---Yes.

PN707

Is that consistent with your understanding of the literature or do you say there are other views out there?---Well, that's not - no, that's not consistent with my understanding and to be honest I'm not quite sure what diploma level qualification means in the context of a preschool teacher. Are they talking about a three year university qualification, I'm just not sure but certainly the evidence was reviewed pretty extensively in Lifting Our Game, which was a report written by probably Susan Pascoe and Professor Deb Brennan, who is probably the pre-imminent authority in early childhood education at the moment. The conclusions in Lifting Our Game are not consistent with that report.

PN708

Now Lifting Our Game was a survey of other studies as well as some analysis and discussions, is that right? There was no research actually conducted by the authors of Lifting Our Game?---They didn't - no, they reviewed the studies that had been conducted by other academics, yes, that's correct.

PN709

One of the studies that they refer to is the E4Kids study?---Yes.

PN710

You tell me if we need to turn to it, we may not need to, isn't the effect of - this is the conclusion of the E4Kids study - with university educated directors there was some evidence produced better outcomes for students?---Fairly strong evidence I think was the position.

PN711

The position of university educated teachers generally was much more equivocal in their view?---I think what they said was that it was still an identifiable benefit to have university educated teachers, but they said the effect was even stronger for university educated directors.

PN712

That's really the high point when it comes to studies correlating university level education among teachers with outcomes among students, E4Kids?---I think there's another survey as well, some other research as well that's quoted in Lifting Our Game. I'd have refer specifically to Lifting Our Game.

\*\*\* CAROL MATTHEWS

XXN MR FAGIR

PN713

Ms Matthews, you on my reading offer some opinions about these topics along with some extracts from various papers. Are we take it that you're not holding yourself out as actually having expertise in this area, you are just perhaps identifying sources and information for the benefit of the Commission?---That's right, I would see myself as providing information, an overview I suppose about



the general reports and research that has been done in this area, yes. I certainly don't hold myself out as having any expertise in early childhood research.

PN714

VICE PRESIDENT HATCHER: Ms Matthews, just a question about teachers and directors am I correct in saying that it appears to be the case that in childcare centres, particularly smaller ones, directors will also hold the function of teacher, that there's some sort of director/teacher role?---The situation is that the teachers modern award has a classification for teacher appointed as director, and that teacher could teach, for example for four days a week, or they could be what's called a non-teaching director. There's also a classification in the Children Services Award which doesn't apply to teachers, which includes someone who holds a diploma and is appointed as director. Is that - - -

PN715

Leaving aside what the awards say, but just as a matter of fact is it relatively common - - -?---It's common for example - it's common in pre-schools in particular and long day-care centres in New South Wales it's very common for the teachers to be appointed as directors. So whether or not they're actually teaching the whole week they would nevertheless be in charge of the educational program and may or may not do some teaching. In other states probably because there tend to be fewer teachers you also see a pattern where non-teachers can be appointed as directors.

PN716

And you were saying that there's a classification under the Teachers Award for that situation?---Yes, so that - yes, so there's a definition of director means a teacher appointed as a director, and that reflected the long standing award coverage in New South Wales, and there's an allowance for that position on top of the teacher salary. So the director receives an allowance based on the number of children in the centre on top of their teacher salary, whatever that might be.

PN717

Are you able to direct as to where you find that in the award?---There's a definition of director in the definitions. If you tell me what document it is I can find it.

PN718

MR FAGIR: Your Honour, 15.1 deals with directors allowance.

PN719

VICE PRESIDENT HATCHER: It's an allowance?---Yes, so it's an allowance on top of - so for example I think it's between \$4,000 and \$6,000 a year from memory -I'm not absolutely sure of the modern award rates - on top of the teacher salary, the incremental pay scale.

\*\*\* CAROL MATTHEWS

XXN MR FAGIR

PN720

Yes, I see. It's that that applies in lieu of the directors rates and the Children Services Award?---Yes. Well, the Children Services Award we say has no work to do at all in relation to teachers, including teachers appointed as directors.

PN721

thank you.

PN722

MR FAGIR: Ms Raper helpfully points out that the definition of director appears in clause 3.1 of the Teachers Award. Ms Matthews, you say something about directors at paragraph 38 of your statement, your first statement. Do you mind turning to that. You identify there various responsibilities of a director. Do you see that?---Yes.

PN723

What's the basis for that proposition that directors have those responsibilities?---I think you'll find - I don't have the modern award in front of me, but a teacher is appointed - a director is a person appointed for the overall management and administration of the service. So they would normally hold the role of nominated supervisor and also fulfil those other functions.

PN724

Are these responsibilities that attach to all directors or some directors of long day-care centres and other childcare services?---Well, it would be correct to say, it would be fair to say that in relation to private centres some of the financial aspects and - some of the financial aspects might be dealt with by the owner, but in other services - but generally speaking all of those duties would be performed by the director.

PN725

And all of these duties are performed by the director whether or not the director is an ECT or an educator?---Well, yes, that would be correct, except for the pedagogical leadership. So obviously if you have someone who was not an ECT it would be much less likely that the - it's harder to see how someone who is not an early childhood teacher could be responsible for pedagogical leadership in that sense.

PN726

On what basis are you drawing that distinction, is that a distinction that comes from the statutory regime or the award or is it just something that you're saying based on your experience?---Well, pedagogic to start with basically means in relation to teaching, so it's hard to see really how someone - so we might say - you could use other words, but it's hard to see how pedagogical leadership can apply in the same way as someone who is not qualified as a teacher.

\*\*\* CAROL MATTHEWS

XXN MR FAGIR

PN727

Perhaps I didn't ask the question very clearly. I asked you what the basis is for the distinction you have just drawn between the responsibilities of a director who is an ECT and a director who is not, and is that to be found in some sort of

regulation or in the award or something of that nature, or is it just something that you're putting based on your own experience and - - -?---I would say - well, the regulations require services to appoint an educational leader. Now it's my understanding that where you have a teacher who is the director that person would normally perform the educational leader role. Now I would think in a service where there is a person - I mean we've got a lot of different types of services, but generally speaking a teacher is going to be more likely to be appointed to the educational leader role if there is a teacher employed in that service. In some services there are - there's evidence before this Commission are very large services where the teacher is teaching in a kindergarten program for 30 hours a week, which is quite significant. Now in those services if there is one teacher and 80 children it would be more difficult for that teacher to perform an educational leadership role. So you might employ someone else as the educational leader, and I think Mr Fraser gave evidence that he was criticised by the Queensland Government for not having his early childhood teacher face to face teaching pre-school. So what I'm saying is there will be particular situations, exigencies of the staffing in a particular centre which might mean that the early childhood teacher can't perform the educational leader role because they're required to face to face teach for 30 hours a week, and that seemed to be the point that Mr Fraser was making in his evidence. However, generally speaking it's my view that, one is that the regulation requires an educational leader, and secondly that normally that person would be a teacher if a teacher was employed in the centre and if a teacher was available to perform that role.

PN728

What I'm trying to understand, and I've been unsuccessful so far, is the extent to which there is some prescription in a law or the award in respect of these issues or whether you say it's just your understanding of the way things actually operate in practice?---So of whether a teacher or an educator is not a teacher would be appointed as director or the difference in the roles?

PN729

Let's take it step by step firstly. There is no rule which requires that a director be an ECT as opposed to an educator?---That's correct.

PN730

There is no rule which distinguishes the responsibilities of a director who is an ECT by comparison with the responsibilities of a director who is not an ECT?---That's correct, although I'll just make some comment about where educational leader might fit in.

PN731

Can I just keep going while I'm making some progress. The same applies in respect of the nominated supervisor position?---Yes.

PN732

Yes, there is no rule which requires the nominated supervisor be an ECT?---That's correct.

\*\*\* CAROL MATTHEWS

XXN MR FAGIR

PN733

There is no rule which distinguishes the duties of a nominated supervisor who is an ECT as opposed to one who is not an ECT?---That's correct.

PN734

I'm sorry, you wanted to say something else, I think?---Well, I don't think so.

PN735

I cut you off?---That's all right.

PN736

Here's your chance. You wanted to say something about educational leaders?---Well, I think I said that, that the fact is that I referred to the role of an educational leader which may or may not be - which would often be performed by the director if the director is a teacher.

PN737

Can I move to a different topic, Ms Matthews, and it's one that's dealt with at paragraph 51 of your statement and following and I'll try to take a shortcut by asking you some questions that you might be able to answer off the top of your head. If you can't and you need to go to your statement or elsewhere, please just let me know. Can you tell me is this broadly correct, and no doubt there are exceptions to all of these propositions, but generally ECTs who work in a preschool or a long day-care centre which is attached to a school are paid the same rates as the teachers in the school?---That is generally true for preschools. It - I'm not saying it's universally true because I understand there are some issues in WA and there are some issues in relation to Catholic schools, but it is more common than not. In relation to long day-care centres, it tends to be more variable.

PN738

I see, and noting what you've just pointed out, does the same general phenomenon apply in respect of government, Catholic and independent schools or is there some difference in the way the different sectors deal with the rates of ECTs in preschools attached to schools?---Yes, there is. Government instruments, as far as I'm aware, tend not to specifically identify early childhood teachers as a separate classification, so they are simply treated and paid exactly the same as any other teacher in the school. So typically in New South Wales, for example, the Department of Education runs preschools attached to schools. They are just encompassed in the school's instrument. My understanding is that that is generally the case in other states. The ACT, for example, where preschools are attached to government schools and elsewhere. In relation to Catholic schools, they - the instruments applying to Catholic schools probably do not normally cover preschools attached to schools. Certainly that would be my sense, but particularly long day-care centres tend to be a problem. Independent schools, typically they - the rates for preschools attached to independent schools are the same but for long day-care centres they could be the modern award rate or they could be excluded from the agreement but get a rate which might be comparable to the rate in the school.

\*\*\* CAROL MATTHEWS

XXN MR FAGIR

PN739

I see but there's some variation as between the sectors and even within the sectors in the way that attached ECTs are paid?---Look, I think generally there is some variation. I think generally in government schools where it's mainly preschools we're talking about and they're - I mean, it's - the ECTs are mainly employed in preschools and they're paid the same. In independent schools, they're generally, but leaving aside Christian schools, they're generally paid in preschools the same. Catholic schools tend to be a bit more old fashioned about the way they see these things and they tend to pay different rates.

PN740

I see, and then there are other state based variations. For example, all childcare teachers in the ACT are paid above award, is that right?---Where did you get that from?

PN741

I thought I got that from a different IEU submission but if I'm wrong about that, just let me know?---Well, in relation to the - in that paragraph, I talk about preschools and long day-care centres conducted - I think they're long day-care centres for four to five year olds so it's a bit of a hybrid between a preschool and a long day-care centre. In the ACT, which are conducted by the Catholic diocese, archdiocese, are paid the same rates but under a separate agreement. Other teachers in childcare centres which are not connected to a school, I think, are generally paid the modern award rates.

PN742

All right, and then you have the private sector where there's a little bit of bargaining and then either award or above award payments generally speaking.

PN743

MR TAYLOR: Can I just ask for Mr Fagir to just identify where we're talking about, still in the ACT or some other category.

PN744

MR FAGIR: No, that's a fair point. Leaving aside the ACT and speaking very broadly, we've just discussed the position of preschools and long day-care centres attached to schools, if we leave that to one side and just think about privately run, unattached long day-care centres - - -?---When you say - sorry, when you say privately run, you mean for profit or you mean not for profit?

PN745

Let's take them step by step?---Okay.

PN746

For profit?---I think there are very few enterprise agreements in the for profit sector.

\*\*\* CAROL MATTHEWS

XXN MR FAGIR

PN747

Then not for profit is, what, in a different position again?---Not for profit in long day-care, there are certainly some agreements in - some quite large agreements in

Queensland. Some of those agreements are quite large and I think the Victorian agreements also cover long day-care centres but it is - there are some agreements covering large providers, so for example, Goodstart, which is the largest provider of long day-care in Australia, does have an agreement but I think it was really inherited from ABC Learning and - if I could put it like that, that seems to be the reason. There's not that many agreements in the not for profit sector as well.

PN748

I might ask you a couple of things about that in due course. Just before we take a break, Goodstart, is that a for profit operator or something else?---No, it's not for profit.

PN749

What type of organisation or entity is Goodstart?---Well, Ms James might be able to answer a little bit more about that in her evidence but it's my recollection that it's not for profit and what happened when ABC Learning went broke, a consortia of providers took over certain ABC centres and Goodstart was - took over a large number of those services and it's not for profit.

PN750

Do you know, and tell me if you don't, whether Goodstart pays payroll tax and income tax and so on?---Well, I would assume so.

PN751

VICE PRESIDENT HATCHER: Is this the position, Ms Matthews, there is a proportion of ECTs in some states in preschools and in childcare centres attached to schools that do pay teacher's rates?---Yes. Yes, definitely. So there's both in services attached to schools, the most common pattern is that they pay teacher rates. The very common pattern is that they pay teacher rates, and also there's a large group of preschools in Queensland that pay school teacher rates in Queensland. That's the CNK Group, which I think is referred to towards the end of my statement, and similarly there's also large groups of services in Victoria for preschools but I think also long day-care centres that pay rates which are comparable to school. So they tend to be - yes, so there are some but the overall pattern is, in New South Wales, preschools tend to pay closer to schools rates. Some pay around schools rates. They're all not for profit, preschools tend to be not for profit. Long day-care centres, some have agreements but in both the for profit and not for profit sector, they tend not to have agreements so the more common pattern is that they'll be paying rates at or close to the modern award.

PN752

Thank you. Is that a convenient time to take a morning tea adjournment, Mr Fagir?

PN753

MR FAGIR: Yes.

\*\*\* CAROL MATTHEWS

XXN MR FAGIR

PN754

VICE PRESIDENT HATCHER: That's all right. We'll adjourn for approximately 10 minutes.

<THE WITNESS WITHDREW [11.31 AM]

SHORT ADJOURNMENT [11.31 AM]

RESUMED [11.50 AM]

<CAROL MATTHEWS, RECALLED [11.50 AM]

CROSS-EXAMINATION BY MR FAGIR, CONTINUING [11.50 AM]

PN755

VICE PRESIDENT HATCHER: Mr Fagir.

PN756

MR FAGIR: Ms Matthews, just before the break we were having a discussion about rates of pay for ECTs in preschools attached to schools?---Yes.

PN757

And the short point seemed to be that, more often than not, the ECTs in those attached preschools are paid school rates. That was a phrase that was used once or twice?---Yes. To be honest, I would say the overwhelming pattern is, that's the case, but perhaps not a universal pattern, but the overwhelming pattern, yes.

PN758

Now, those school rates themselves vary as between sectors, between states, and so on and so forth?---Yes, to some extent, although there tends to be a pattern by the teacher unions to maintain some sort of relationship between the rates in different states. So there is some variation. Catholic sector in each state tends to be identical to the government sector, and the independent schools generally pay a little bit more than that.

PN759

I see. And in New South Wales, the rates for government schools are set by the IRC in an award, obviously?---Yes.

PN760

And the Catholic schools generally track that rate, in New South Wales?---Yes. I think the bishops nationally have a policy, which is that they will reflect the rates applying in government schools. So, yes, certainly in New South Wales, and I think that has been the general approach interstate as well.

PN761

In Victoria, the rates aren't set by an award, they're generally set by enterprise bargaining. This is school teacher rates, I mean?---Yes, that would be correct.

\*\*\* CAROL MATTHEWS

XXN MR FAGIR

PN762

And those rates – generally, the Union might try to keep them consistent, or in some sort of - - - ?---Sorry, consistent with whom?

PN763

Well, perhaps I should ask the question. I thought you had said that the education unions generally try to keep the rates within contact with one another, as between states. Did I misunderstand that?---Well, I think it's fair to say that the rates tend to be more or less comparable nationally. WA would be an outlier to that. WA rates got a fair way ahead of everywhere else a number of years ago, and I think they're still slightly ahead, but they haven't – but not to the extent that they were. And Tasmania has generally paid less, because it's Tasmania. But certainly, the unions tend to look at - unions and government, I think it would be fair to say, tend to look at the rates paid interstate as well.

PN764

I see. But the fact is that, certainly outside New South Wales, the rates that's paid in a particular school will depend on the enterprise bargaining arrangement in place at that school?---In the non-government sector, that would be correct.

PN765

Now, the ECTs, in all the categories that we've discussed, tend to do the same type of work?---Yes.

PN766

And there is no discernible difference in the gender composition of these various sectors and workforces?---I haven't looked specifically at the gender composition in preschools attached to schools, but as I said earlier, they tend to be just treated as part of the school. So they're not carved out, is the general approach.

PN767

Ms Matthews, in your statement you include a helpful annexure to the statement that deals with the history of awards in New South Wales?---Yes.

PN768

You don't deal, really, to any extent with the process by which the modern award was made, and the rates in that award were set. Is that right, or have I overlooked something in your statement?---Yes, I think I probably ran out of time.

PN769

I see. Now, the IEU made fairly extensive submissions on the point during award modernisation, is that right?---Yes.

PN770

Why don't I just give you a copy of the submissions, so we're on the same page. Take as long as you need, Ms Matthews, to familiarise yourself with that document, and then I want to ask you some questions about it?---Well, perhaps if you direct me to the section you want me to look at, that would – rather than -

\*\*\* CAROL MATTHEWS

XXN MR FAGIR

PN771



Does the document ring a bell? I'm sure you don't remember its contents in any detail, but do you remember the IEU putting on a submission along these lines?---Yes.

PN772

Now, perhaps you could turn to paragraph 26, on page?---Yes.

PN773

Do you see there that the IEU's proposal was that the wages and conditions be set on the basis of a Victorian Catholic Schools and Catholic Education Officers Award?---Yes.

PN774

And the short point is that that was because that was the award that the IEU said covered the largest number of workers?---That was the federal award that we said covered the largest number of –

PN775

I'm sorry, the federal award that covered the largest number of workers?---Yes.

PN776

And it was the IEU's view that it was the principal federal award, and for that reason, it should be used at least as the starting point, or the basis for the modern award, is that right?---Yes.

PN777

And at paragraph 29, the Union pointed out that, "The federal awards referred to – there were two Victorian awards, as well as an ACT award – were all made by the Commission comparatively recently, and based on arbitrated state predecessors." Do you see that?---Yes.

PN778

Then, the Victorian award that the IEU suggested should be the template had been reviewed in the award simplification process sometime, presumably, between 1996 and 2006?---Yes.

PN779

Now, the rates which ended up in the modern award were those Victorian award rates, is that right?---No, I don't think they were. I don't think I actually wrote this submission, to be honest. I can't quite recall. But the rates that were used were not these rates, which were the Catholic rates. The rates which we used were the Victorian independent schools rates, which are referred to elsewhere in the document.

PN780

Just above paragraph 27, there's a reference of Victorian Independent Schools – Teachers' Award 1998?---Yes.

PN781

Is that the independent schools award that - - - ?---That I'm referring to, yes.

PN782

All right. Now, if I understand the Union's case in this proceeding, one of the things that the IEU says is that it is a relevant factor that ECTs and primary school teachers are covered by the same award. Have I understood that correctly?---Yes. We certainly think it's relevant, yes.

PN783

How is it relevant?---Well, if they were covered by different awards, then the Commission might take that into account in considering whether or not – might think that was a factor which played against the application by the Union. So it's a factor which helps, rather than hinders.

PN784

I see. Now, during award modernisation, there was a real issue about whether ECTs would be covered by a general teachers' award. Is that a fair summary?---Yes. So it had been agreed that there would be a teachers' occupational award, and an issue arose as to whether teachers should be covered by that award or by the Childcare Services Award.

PN785

Firstly, there was a question about whether ECTs would be in an education industry award or, I think, strictly speaking, the industry's health and welfare services industry award?---Well, the modern awards were being dealt with, as I recall, in groups. So the health and welfare group – I don't exactly recall, but there were different tranches. So the childcare award was in a different tranche from the teachers' award. It was being dealt with at a different date from the teachers' award. So I don't think there was ever any suggestion that it would be an award, other than one of those two.

PN786

Now, there was then a question as to whether ECTs would be covered by their own award, or whether they would be covered by the same award as primary school teachers?---Yes, I think that position was put at one point.

PN787

In fact the IEU had suggested that there should be separate modern awards for ECTs on the one hand and primary school teachers on the other?---Well, I think there were a lot of proposals put in the modern awards proceedings and it was seen as a way of trying to accommodate the issue, but I think that was put - I can't recall at what point that was put in the proceedings.

PN788

If you have a look at paragraph 10 of the document that I hope you still have?---Yes.

\*\*\* CAROL MATTHEWS

XXN MR FAGIR

PN789

You see that the IEUA have proposed the making of at least four awards, the first of which was the Non-Government Schools Teachers Award and the third of

which was the Non-Government Early Childhood Services Teachers Award?---Yes.

PN790

Perhaps you don't recall but this position was actually reiterated not long afterwards in a second submission?---Well, it might have been but I mean this was 2008, so this was relatively early in the award modernization process. So this issue was finalized in - towards the end of 2009. So I think this was our - and you'll notice as well for example that the first proposed modern award is non-government schools. So the first proposed award was Educational Services Non-Government Schools. Now what actually ended up happening was educational services teachers, there's no distinction between government and non-government, so at this early stage how many modern awards would be made was very unclear and how they would apply to different sectors was very unclear.

PN791

Certainly if IEU's view had carried the day, PCTs and primary school teachers would not be in the same award?---Well, that's correct and government school teachers and non-government school teachers would not be in the same award.

PN792

While you have that document do you mind turning to paragraph 67 and could I just tell you that this paragraph appears in a section that deals with hours of work and so on for teachers?---Yes.

PN793

What I'd like to draw your attention to is the extract from the Full Bench decision that appears at the very bottom of page 24. I'll just read it out:

PN794

*The uncontradicted evidence in these proceedings is that the standard working week of 38 hours is no more than a formality with some teachers spending in the order of 50 hours a week or more at their work in order to discharge their duties.*

PN795

The Full Bench goes onto observe that:

PN796

*There appears to be no issue that normal hours required of teachers during the 200 day working school year are well in excess of 38 hours per week.*

PN797

?---Yes.

\*\*\* CAROL MATTHEWS

XXN MR FAGIR

PN798

You would embrace that - both of those propositions, wouldn't you?---Well, I would agree that some teachers spend in the order of 50 hours per week. Whether or not that's a pattern across the industry is not clear but it's quite clear that the deal in relation to schools essentially, or the deal in the awards tends to be that

you get 40 weeks term time. You can be required to work more than 38 weeks during term time and you get the 12 weeks holidays. So long day-care has more of an approach of a 48 week year and a more regulated I suppose 38 week attendance time, but of course long day-care teachers and preschool teachers would also, the same as other teachers, do work at home.

PN799

That's not right is it, Ms Matthews?---Which bit?

PN800

The suggestion that ECTs perform as much work outside of hours as primary school teachers is just completely wrong, isn't it?

PN801

VICE PRESIDENT HATCHER: Did she say that?

PN802

MR FAGIR: I withdraw the question. It is certainly not the case, Ms Matthews, that ECTs spend anything like the amount of time outside working hours on their duties by comparison to a primary school teacher?---Well, I think that's a very broad generalisation.

PN803

In fact school teacher workload, that is primary and secondary school teacher workload is a constant concern of education unions?---Yes.

PN804

For example, the IEU points out regularly that there are serious workload issues in respect to school teachers arising for various reasons including, for example, the need to conduct various meetings?---Meetings is an issue of contention in schools, yes.

PN805

Electronic communication, teachers having to deal with emails?---Email, yes.

PN806

Curriculum changes?---Yes.

PN807

NESA compliance?---NESA compliance in relation to the teacher accreditation issue?

PN808

These are issues that the IEU has raised hasn't it?---Well, you've used the word NESA compliance, I'm asking you - I don't think the IEU uses that expression, "NESA compliance". If you're quoting from a publication of the IEU I'm happy to tell you what that means, but generally speaking references to compliance in relation to NESA would normally I would have thought refer to the teacher accreditation issue. I'm just not sure what you're referring to in relation to NESA compliance.

\*\*\* CAROL MATTHEWS

XXN MR FAGIR

PN809

Another cause of workplace issues among primary and secondary school teachers is the burden of standardised testing?---You mean NAPLAN?

PN810

Is there another form of standardised testing?---Yes, I think there's different forms of standardised testing.

PN811

Are you aware of May 2018 survey commissioned by the New South Wales Teachers Federation on the topic of teacher workload?---There has been some recent media publicity about a survey arising from government schools but I am not familiar with the survey and I'm not familiar with the questions or the findings.

PN812

Do you recall a survey that came with the headline, "Teachers suffer from unsustainable administrative demands"? Does that jog your memory?---Yes, there has been media coverage about administration requirements of teachers in government schools, yes.

PN813

The IEU itself is concerned that things like increasing administrative demands mean that teachers are increasingly doing things like marking test results at home?---Look, I'm not trying to be difficult but obviously there are many elements of teacher workload. I'm not sure that the union has specifically raised the question of marking tests at home as a particular issue. I'm not trying to be difficult but I don't know what you're quoting from in relation to that.

PN814

Can I move onto a different topic. I don't think you need to turn to this but at paragraph 48 of your statement you observe that:

PN815

*The New South Wales award rates are the fourth lowest in terms of staffing salary.*

PN816

Perhaps you should turn to it?---Yes.

PN817

This is in comparison to what, certainly not in comparison to award rates around the country?---I was comparing the claim that the union - I was comparing the rates paid to teachers in New South Wales with the rates paid to teachers, government teachers in other states.

\*\*\* CAROL MATTHEWS

XXN MR FAGIR

PN818

As far as I can tell and I could be wrong about this, the New South Wales award doesn't seem to be in the bundle. Perhaps you can just tell me this from your own knowledge. To progress beyond the second step in New South Wales award two

things need to happen; one is that you need to have at least two years' service, is that right?---Yes.

PN819

The second is that you need to be certified as proficient?---Yes.

PN820

Is that you say a mere formality or a real hurdle?---Well, it's a requirement to progress.

PN821

It is a requirement that every single teacher meets or is it something that is in practice a real barrier to progression to the next step?

PN822

VICE PRESIDENT HATCHER: Document four in the bundle is it?---It - sorry, can you just ask that question again.

PN823

MR FAGIR: Yes. The requirement to achieve proficiency before a teacher can go from the second step to the third step, is that, in practice, a real barrier or is it really a formality?---No, you have to have that status. In New South Wales and in any other state, you can't actually - I mean it's a real barrier but teachers cannot remain in the teacher workforce if they're full time beyond three years without having proficient status. So it's an obligation on a teacher in New South Wales, school or early childhood, to attain proficient teacher status within a certain period. So it reflects a requirement that is already on the teacher, pursuant to the accreditation legislation, but it is a real barrier.

PN824

I see. Perhaps you don't know but do you have a sense of how many teachers stumble at this hurdle?---Well, if you don't achieve proficiency within three years and you're full time, you leave the workforce.

PN825

Do you know how many teachers leave the workforce for that reason?---Well, very few in the non-government sector and I think very few in the government sector.

\*\*\* CAROL MATTHEWS

XXN MR FAGIR

PN826

DEPUTY PRESIDENT DEAN: When you say they leave the workforce, what do you mean?---If you don't have - it's a requirement of teacher accreditation or registration in other states that you have to achieve proficient status within a certain period and it depends on whether you're full time or part time. So by taking a - the time period depends on whether you're full time or part time, but taking a full time person, in order to teach in a school or early childhood in New South Wales, you have to have accreditation to teach and initially when you graduate, you have provisional status which is that you're a graduate but you're not yet proficient. If you don't gain proficient status within three years and you don't seek an extension, for example, so you can get around it, but basically the

requirement is you have to achieve proficient status or you lose your teacher accreditation. It is then unlawful to employ that person as a teacher anywhere in New South Wales so it is a requirement to teach that you are accredited, so you must - and there is a timeline, you must gain proficiency within three years. Yes, is that - - -

PN827

MR FAGIR: Ms Matthews, what I was asking was do you know how many teachers actually leave the workforce for that reason, that is they're unable to obtain proficiency?---Okay, there is some data that - from what I've seen, there is some data that suggests that casual teachers might fail to get proficient teacher status but I'm aware of very few in New South Wales who are not casual who fail to meet that status. So - - -

PN828

VICE PRESIDENT HATCHER: Is there any analogue of that position applying to ECTs, that is where you go to a job as a graduate, that you have to demonstrate some standard performance in a certain time or you can't stay in the profession?---The same requirements. So the - in New South Wales and in most other states, the same requirements apply, so you must obtain proficient teacher accreditation, or registration, within a certain timeline or you must - - -

PN829

Who determines that?---The state registration authority. So in New South Wales, the school is what's called, it's a bit complicated, but there's a central body in New South Wales called NESAs but the school is the teacher accreditation authority so the school determines whether or not you gain proficiency and they advise NESAs.

PN830

Who does that with an ECT?---So in ECT, however, it's a little bit different because I think NESAs formed the view that there was no expertise, or not sufficient expertise, within the early childhood sector, so my understanding is it - and Ms James would know more about this, that it's either NESAs itself or there are certain designated employers like KU, for example, which is a large early childhood employer, which would fill the TAA, teacher accreditation authority, role. So in the school sector - - -

PN831

DEPUTY PRESIDENT DEAN: I think the organisations like AIS can also perform a TAA role can't they?---That's right. So in some cases in independent schools, there are some independent schools that struggle with the requirements, if I can put it like that, and so the AIS, the Association of Independent Schools, would be the TAA authority for that school. So I think there's probably only a handful of schools, would be less than 20 out of say 300 independent schools in New South Wales, maybe less than 20 or 10 even, would use AIS as the teacher accreditation authority.

\*\*\* CAROL MATTHEWS

XXN MR FAGIR

PN832

MR FAGIR: Thank you. Ms Matthews, at paragraph 68 and following of your statement, you deal with some workplace agreement database data. Do you mind turning to that paragraph?---Yes.

PN833

Can I just see if I'm following this correctly. The department maintains some sort of database that contains 140,000 enterprise agreements?---Yes.

PN834

You requested and received a subset of that database which contained, as you explain at paragraph 70, 3460 records?---Yes.

PN835

How were those 3460 selected from the 140,000?---As I understand it, and I instructed another officer to perform this function, the - as I understand it, we requested, I'd have to look at the attachment, the data for particular types of employer from amongst their database.

PN836

Thank you. Can you tell us what the criterion was, or what the criteria were?---Well, you'll see that - - -

PN837

I'm sorry, Ms Matthews, I think I missed the answer if there was one?---I think I was reading the paragraph and reminding myself as to how it was done. I think - - -

PN838

I'm sorry?---I think we got data from a range of services. So in paragraph 75, I say we requested a - the data provided by the department was broader than just early childhood services and we then removed from that data agreements that did not apply to preschools or long day-care centres only.

PN839

Are you able to say whether you asked for all the agreements in primary education, secondary education and special school education as well as a range of social assistant services or- - -?---No.

PN840

- - - was there some other - I'm just trying to understand how you or the department selected the 3460 from the larger group?---I think it was the way they were coded. So I think that the - that there was a category on the coding and so the data they could provide us could not be further differentiated beyond that area, so we got a broader range of agreements which we then had to analyse.

PN841

I'm being too loud.

PN842

MR ASSOCIATE: No, I think the papers were hitting the - - -

\*\*\* CAROL MATTHEWS

XXN MR FAGIR



PN843

MR FAGIR: I see. Of the 3460, a further 1930 were manually excluded from the list were they?---Yes.

PN844

That was done by some very unfortunate person at the branch?---I don't know, sounds like a good job if you ask me.

PN845

But was it Mr Wright that - - -?---Dr Wright, it was Dr Wright.

PN846

I'm sorry, Dr Wright, and Dr Wright went through and looked at each agreement and decided whether it fell within the appropriate category or not?---Yes. As I understand it, the ones that would have been clearly outside that category were removed and only the ones that were obviously preschool or long day-care were retained, and exclusively preschool or long day-care.

PN847

Perhaps I don't need to keep going through this but there was a process of refinement by which the 3460 were reduced to 412. I'm looking at paragraph 77?---Yes.

PN848

Then there was some sort of analysis that was conducted in respect of the 412, the results of which are summarised at tables four and five?---Yes.

PN849

No doubt there were a series of judgments that were made at each step about what should stay in, what should stay out, how the rates were calculated and so on and so forth?---Yes, so in relation to - yes, there would have been a series of judgments made in relation to analysing that data.

PN850

Would there be any difficulty in producing to the parties via the Commission the data that was actually analysed in this way?---I don't imagine there would be, but I would have to get - perhaps my counsel for the union can get back to you about that. The union has no problem about producing the data. If it's available we've got no difficulty about that.

PN851

Just as a matter of curiosity in tables 4 and 5 you've identified the lowest rate amongst the 224 agreements, but not the highest. What's the logic of that?---Okay. So this - the layout of these tables might be a little bit confusing. You have to read the heading of the table. So the heading of the table is not within the table itself. So table 4 refers to graduate entry. So it's the graduate entry rate and the lowest rate - were you asking me why didn't we have the highest rate for graduate entry?

\*\*\* CAROL MATTHEWS

XXN MR FAGIR

PN852

Yes?---I'm sorry, we can probably provide that.

PN853

I am sorry to jump around like this, but at paragraph 78, am I reading this correctly, that there were 412 agreements and then they were further reduced in the ways that you set out at the four following dot points, is that right?---Yes, that's correct.

PN854

So anything that depended on the early years quality framework was excluded?---Yes, for the reasons outlined above.

PN855

What about the Queensland agreements?---Yes, they were excluded. There's separate data elsewhere, a separate description of the operation of those agreements elsewhere in the statement.

PN856

Thirty agreements were too difficult to code, does that mean it was too hard to work out what the wage rates would be?---Yes. So I think - for the reason that - I think there was - I mentioned earlier that Goodstart, we provide the rates within my statement, but Goodstart is an example where you can't actually get the rates out of the agreement. It's bizarre in my view, but there would be other examples where there would be a pay rate and say this will be increased by CPI for the next four years, but - you know, that's quite a bit job to then calculate it, or in relation to other factors. So where it wasn't obvious what the rates were they were not included.

PN857

Any agreement which provided for example that the annual pay increase will be CPI or wage price index was out?---Well, that's what it says there, yes.

PN858

The Goodstart agreements were out because the wage rates don't appear in the instrument itself. Is that right?---Yes, so let me just - - -

PN859

You don't need to do that, Ms Matthews, but can you just tell me do you know how many employees were covered by the Goodstart agreement?---No, I'm sorry, Goodstart was included because I think we must have used the actual - because we had the actual rates. So you'll see in paragraph 82, you'll see that - sorry, paragraph 85, that the Goodstart one is actually included. I withdraw that. So paragraph 86 explains that we were provided with the rates by the employer, and so we included them in that table there.

PN860

Are they included in table 6 and 4 and 5 or just in table 6?---They would have been included in the other tables because there's a reference to 224 agreements and that's the agreements that were also included in table 4 and 5.

\*\*\* CAROL MATTHEWS

XXN MR FAGIR

PN861

In terms of the agreements that were excluded what proportion of employees were covered by the 200 or so that were ruled out?---I'm sorry, how many employees were covered by the ones that were not included? Is that what you've asked?

PN862

Yes?---I don't know the answer to that, but just explain to me which paragraph specifically you're looking at.

PN863

Look at paragraph 78 which explains that after a series of steps you ended up with 412 agreements and then ruled out slightly less than 200 of them?---Yes, that's correct.

PN864

I am trying to understand what proportion of the employees covered by the 412 agreements were ruled out at this step?---Okay. So let's have a look at - if I can go back to paragraph 78, the first dot point means, as I've explained in paragraphs 55 to 56, there is actually no increase above the modern award in those EYQF agreements. So in a sense it's not really an enterprise agreement because it simply reflects the modern award rate. So in relation to the second lot I've said there's 726 employees. So if you divide 726 into the number of employees, 28,000, there's a percentage there. I'm not aware in relation to the third and fourth dot points the number of employees covered, but I think it's fair to say that Goodstart is easily the largest employer and, you know, I'd be very surprised if those other agreements added up to a significant number.

PN865

This analysis is fairly rough and ready in the finish, isn't it?---I absolutely agree with that. I mean this analysis tries the best evidence available to the Commission as to what is happening in this sector. It is incredibly hard to get data, and even this data took a lot of work. So it's not easy to provide data on enterprise agreement rates in this sector. Probably any other sector as well.

PN866

Can I move to a different topic, which is engineering pay. You say something about this at paragraph 94 of your statement?---Yes.

PN867

You explain that you read the APESMA report and it's produced, it's document 102, and for those working from bundles it's bundle F, page 1. Can you just let me know when you have that, Ms Matthews?---I've got the document, yes.

PN868

If you turn to page 8 of the document you see there that - - -

PN869

VICE PRESIDENT HATCHER: What's the bundle page?

\*\*\* CAROL MATTHEWS

XXN MR FAGIR

PN870

MR FAGIR: It's bundle page 8. It's document 102, bundle F, page 8?---Yes.

PN871

There are a number of key findings set out on this page. No doubt when you were reading the report you noticed that the average wages varied between \$153,000 in one sector down to \$102,000 in another sector. I am looking at the sixth and seventh dot points on the left-hand side of that page?---Yes.

PN872

Do you know why there was a variation of a third between two sectors of the engineering workforce in terms of average pay?---I can't recall whether that's explained elsewhere in the report or not.

PN873

Do you know whether anyone else in the union has any insight into that issue, this variation in engineering rates of pay?---No, I don't, but can I just point out this is the average wage, whereas in my statement I'm referring to the rate of level 1 engineers. So that's the commencing rate.

PN874

Do you see under the heading "Sector" that in respect of engineers the public sector outperformed the private sector in terms of wage growth 2.5 per cent compared to 2.2 per cent for the private sector. Can you see that dot point?---Yes.

PN875

Do you know whether that's consistent across the workforce or not, that public sector wage increases are higher than private?

PN876

MR TAYLOR: When my friend says the workforce I think it might be helpful if he clarifies whether he's talking about professional engineering workforce, early childhood workforce or some other workforce.

PN877

MR FAGIR: No, the workforce generally?---Are you asking me now the difference between private sector earnings as reported by the ABS and public sector earnings? Is that what you're asking me?

PN878

Yes.

PN879

VICE PRESIDENT HATCHER: So wage growth or absolute wages?

PN880

MR FAGIR: Wage growth?---And at what time? At the moment or - for what period are you asking me about?

\*\*\* CAROL MATTHEWS

XXN MR FAGIR

PN881

The period dealt with in this report?---Well, let me just check. I'm aware that in - so this looks at the analysis, let's have a look, for wages - let me just check the date of the survey. I think it was probably sometime in 2017, and I'm not sure how the public sector or private sector wage growth was in 2017. I am aware now that I would think that public sector wage growth is probably slightly above the private sector, but I'm not an expert of the figures.

PN882

I see. When you were reading this report did you notice at page 11 an observation that the wage growth for engineers was outpacing the wage price index?---Well, look, you mean wage price - you mean CPI? What do you mean wage price index?

PN883

Do you mind turning to page 11?---Yes.

PN884

You see the headline, "Salaries" - I'm sorry not the headline but the first paragraph:

PN885

*Salaries across each industry increased to varying degrees with the median salary across the profession increasing by 2.4 per cent, outpacing the wage price index WPI at 1.9 per cent.*

PN886

To be honest I don't know what the WPI is. I see CPI - if I look at that graph I can see CPI is indicated separately from WPI. I don't know what WPI is.

PN887

Ms Matthews, I can't help but notice a bit of a difference between the confidence of the opinions expressed in your statement and the way that you're responding to some of my questions here today.

PN888

MR TAYLOR: Objection. That is not a question. It is just a comment and it's of no assistance with great respect.

PN889

VICE PRESIDENT HATCHER: I don't think the witness can - well I don't think the witness can say what you've noticed, Mr Fagir.

PN890

MR FAGIR: I'll move on. Did you observe, Ms Matthews, in this report an observation that employees in the private sector work longer hours than the public sector in engineering?---I don't recall that observation.

PN891

It said even though public sector engineers are paid more then work less hours than engineers in the private sector.

\*\*\* CAROL MATTHEWS

XXN MR FAGIR

PN892

VICE PRESIDENT HATCHER: Where does it say they're paid more?

PN893

MR FAGIR: Page 16.

PN894

VICE PRESIDENT HATCHER: Sixteen. Where's the bit about the hours of work?

PN895

MR FAGIR: Page 46.

PN896

VICE PRESIDENT HATCHER: Right, so the question was had Ms Matthews noticed this?

PN897

MR FAGIR: Yes.

PN898

VICE PRESIDENT HATCHER: Had you noticed that?---No, I hadn't.

PN899

MR FAGIR: Did you notice on page 18 that there seems to be a fairly large difference between the base salary and the total package for various levels of responsibility of engineers?---Well, if I can go to page 18 and look at it. So is your question did I notice that there was a difference between the total package and the base salary?

PN900

Yes?---Yes, I did notice that there was a difference.

PN901

Do you know what comprises that gap between base salary and total package?---I don't recall if that's explained. In my analysis I've quoted the base salary figures.

PN902

You don't know what the difference is, whether it's superannuation or allowances or bonuses or something else?---No, but I quoted the lower figure in my comparison.

PN903

Now did you read in the report an observation that most engineers aren't paid for overtime or is that something that you're otherwise aware of?---I'm not aware of whether engineers are paid for overtime or not. But it is usual that - but it does not surprise me if they're not paid for overtime.

PN904

You don't know, do you, how much overtime the average engineer works?---No.

\*\*\* CAROL MATTHEWS

XXN MR FAGIR

PN905

VICE PRESIDENT HATCHER: It's on page 46, I think.

PN906

MR FAGIR: Yes, the report deals with it. Who from the IEU instructed Ms Issko in respect of her task job sizing?---Dr Wright.

PN907

Perhaps you don't know but does Dr Wright have any more insight into these issues than you do, do you know?---In relation to this section of my statement, which issues?

PN908

No, these aspects of the report that we've just been discussing. The difference between base salary and total package, the amount of overtime work, the payment for overtime, wage growth in the sector?---I don't know but I don't think he's an expert on engineering wages, no.

PN909

I'm about to leave this document but did you notice that 30 per cent of engineers were recorded as being dissatisfied with their current rate of remuneration?

PN910

VICE PRESIDENT HATCHER: What page is that, Mr Fagir?

PN911

MR FAGIR: Pages 8 and 38?---I'm sorry, what question are you asking me? Was I aware that a percentage of respondents were unhappy with their remuneration levels? No, I had not particularly looked at that aspect of the report.

PN912

What about the fact that about a third of engineers were considering leaving their position?---I've no comment to make on that.

PN913

Did you notice that two thirds of those who said they were planning to leave nominated pay as the reason for leaving?---I've got no comment to make on that but given the significant variations between different sectors then I think also men and women revealed in this report, I mean there are disparities so one might think that some of the lower paid people were unhappy with their rates. I don't know.

PN914

On my calculation at least this survey suggested about 20 per cent of engineers are thinking about leaving their job because they're unhappy about their rate of pay. Does that sound right to you?---I'm unable to comment on that.

\*\*\* CAROL MATTHEWS

XXN MR FAGIR

PN915

Do you remember what percentage of ECTs who were thinking about leaving their job because of dissatisfaction of pay is?---Yes, but I think we talked about

the fact that the figures you were relying on were the 2013 survey, which included preschool teachers.

PN916

Ms Matthews, I just want to deal with one final issue?---I'm sorry, if I could just add. I think the report - the statistics are in my first statement that preschool is a significant portion of the industry, approximately 40 to 50 per cent is my recollection, it might be a bit less than that, 40 per cent. So - - -

PN917

In your reply statement at paragraph 81, Ms Matthews, you do a bit of a calculation in respect of Ms Viknarah's business. Can you just refresh your memory of that? This is in your reply statement, Ms Matthews, 81?---Yes.

PN918

You've done a - making a series of assumptions you've done a kind of back of the envelope type of calculation about the effect of the pay rise on Ms Viknarah's business?---Yes.

PN919

Can I just explore this very briefly. Firstly, you have assumed that the centre is earning income five days a week, times 52 weeks a year?---Well, I think the evidence in her statement is that her service is open 52 week a year. So, normally, the service is open 52 weeks a year. They would charge fees for every day the service is open. So in other words, if you don't use the service on a particular day, you still get charged for it.

PN920

I suggest to you that the evidence is, the service is open is 50 weeks - - - ?---Fifty weeks. All right, if that's the case, that would make some marginal difference to the calculations.

PN921

And another factor that would make a difference is public holidays?---Parents are charged for public holidays.

PN922

Is that right?---Well, that's my general understanding, yes.

PN923

Even if your child is at home, you still have to pay?---Yes.

PN924

Now, Ms Matthews, the IEU sought and obtained from (indistinct) financial information?---Yes.

PN925

And you have now had that information for a week or two?---Well, I haven't had a chance to have a look at it.

\*\*\* CAROL MATTHEWS

XXN MR FAGIR



PN926

If you look at that information – I'm sorry, you haven't looked at it?---No, I don't think we've had it for that period. We subpoenaed it. I'm not sure when it was produced. I haven't seen it.

PN927

It was produced two weeks ago, wasn't it?

PN928

VICE PRESIDENT HATCHER: The question simply is – your questions was, has Ms Matthews seen it? I think she has answered that question.

PN929

MR FAGIR: All right. Excuse me, your Honours. Thank you, your Honours and Commissioner. They are my questions. Thank you, Ms Matthews.

PN930

VICE PRESIDENT HATCHER: Ms McDonald, do you want to cross-examine this witness?

PN931

MS McDONALD: Thank you. Having heard the cross-examination, we have no further questions.

PN932

VICE PRESIDENT HATCHER: Do you want to ask any more questions?

PN933

MS EASTMAN: No questions, Your Honour.

PN934

VICE PRESIDENT HATCHER: Any re-examination, Mr Taylor?

PN935

MR TAYLOR: No, no re-examination, if it please.

PN936

VICE PRESIDENT HATCHER: All right. Thank you for your evidence, Ms Matthews. You are excused, and you can go?---Thank you.

PN937

MR TAYLOR: Just while I'm on my feet; at one point, Ms Matthews was being cross-examined about the document that was the Professional Engineers Remuneration Survey, bundle F, page 1 to 69. On page 58, there are the definitions of base salary and total package. I think Ms Matthews indicated that it was of no relevance to her, because of the fact that she had used the base salary figure. But for those – in circumstances where there seemed to be some question as to what the latter meant, it's defined – the terms are defined on page 58 of bundle F, and it's also numbered 58 in the original publication number.

\*\*\* CAROL MATTHEWS

XXN MR FAGIR

PN938

VICE PRESIDENT HATCHER: I'm sorry, Ms Matthews, I did have a question I wanted to ask you, so I revoke my order excusing you. The Victorian Independent Schools Teachers' Award 1998: you said that was the source of the rates in the modern award?---Yes.

PN939

Do you know if that award had any application to ECTs?---It would have had application to early childhood teachers attached to schools. I could add that - - -

PN940

And was that a thing in 1998?---Yes, I think so. I think preschools have been attached to schools for some time. I should say that – I don't think it's clear in this submission, but some of the later submissions, the Union actually thought both the IU and the AU, there should be no rates attached in the modern award, which, unfortunately, we were unsuccessful with that proposition.

PN941

Sorry, say that again?---Well, the Union thought that there should be no rates in the modern award, because those Victorian rates were seen to be so far out of date that they were seen as absolutely irrelevant. Nevertheless, they were the rates which went into the awards.

PN942

All right. Anything arising out of that?

PN943

MS EASTMAN: Your Honour, can I raise one issue.

PN944

VICE PRESIDENT HATCHER: Yes.

PN945

MS EASTMAN: There was some cross-examination in relation to a document described as Submission by the Independent Education Union of Australia. It wasn't marked for identification or sought to be tendered as an exhibit.

PN946

VICE PRESIDENT HATCHER: Do you want to tender that, Mr Fagir?

PN947

MR FAGIR: Yes. I'm grateful to Ms Eastman.

PN948

MS EASTMAN: Thank you.

**EXHIBIT #4 DOCUMENT HEADED "SUBMISSION BY THE  
INDEPENDENT EDUCATION UNION OF AUSTRALIA TO THE  
AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION"**

\*\*\* CAROL MATTHEWS

XXN MR FAGIR

PN949

MR TAYLOR: Ms Saunders informs me that we received yesterday an application to – an order that was issued at the request of Mr Fagir's client to produce documents at 2 o'clock today. My client will be able to produce those documents, and has informed the ACA that it will be able to do so by Monday. And we understand there's no objection from the ACA to our application to extend time to produce documents from 2 o'clock today to midday on Monday.

PN950

VICE PRESIDENT HATCHER: Well, the time for production specified in that order will be extended to midday on Monday which is 30 July.

PN951

MR TAYLOR: If it please the Commission, that is as far as we think we can take it today.

PN952

VICE PRESIDENT HATCHER: Can I just ask you one question, Mr Taylor, which has puzzled me.

PN953

MR TAYLOR: Yes.

PN954

VICE PRESIDENT HATCHER: Do you have the Commission's July decision from last year?

PN955

MR TAYLOR: Yes.

PN956

VICE PRESIDENT HATCHER: At paragraph 18, this is where it sets what the three jurisdictional prerequisites are.

PN957

MR TAYLOR: Yes.

PN958

VICE PRESIDENT HATCHER: The two groups we're comparing are all female ECTs?

PN959

MR TAYLOR: Yes, within the definition of the order, with some exclusions, but, yes, in a broad sense, that's correct.

PN960

VICE PRESIDENT HATCHER: And we're comparing them to male teachers in the New South Wales government and Catholic systems?

PN961

MR TAYLOR: Yes. I think specifically government, but the same rate applies in the Catholic system as well.

PN962

VICE PRESIDENT HATCHER: There's some lack of precision about it. The evidence, I think to this point and the submissions as well, demonstrates that there are some members of the identified female group who do receive teachers' wages.

PN963

MR TAYLOR: Yes.

PN964

VICE PRESIDENT HATCHER: And they be the same or more than New South Wales rates.

PN965

MR TAYLOR: Yes.

PN966

VICE PRESIDENT HATCHER: So what consequence does that have, having regard to the third element of the prerequisite? That is, if you select a group, and then part of them are in fact not unequally remunerated, where does that leave you? If you want to take that on notice, you can.

PN967

MR TAYLOR: I will. The approach that we have taken, as a matter of practicality, is that if there is an ECT teacher who is getting at or above the relevant rate, then the order would have no practical effect on such a person.

PN968

VICE PRESIDENT HATCHER: Well, it may be more than that; we cannot make an order applicable to that person.

PN969

MR TAYLOR: Indeed. And hence, the form of the order – and I should say, one thing I omitted to say yesterday, and this question reminds me that I intended to do it yesterday: we do say that it would be appropriate for the question of the eventual form of any order to be a second stage, after the Commission has determined effectively the primary questions. Because we anticipate the form of the order would, in effect, and particularly in light of your Honour's question, identify the primary group, that is, the female ECT teachers, to be those who are being paid less, so that there is, effectively, an identification – it's not an order that could, as your Honour has quite rightly said, apply to early childhood teachers who are already being paid at or above.

PN970

Now, the exact form of that order, whether the form of the order is sufficient to simply identify that they are early childhood teachers who are being paid less, or whether the question arises – and we haven't seen the submission yet, from the employers, but it may be a submission made, or it may come from the Bench, that

the Commission is only satisfied of our case in respect of certain categories, as against, simply, teachers who are paid less, such that we need to subidentify. That is something that we thought we would be addressing, in effect, in light of the decision of the Commission.

PN971

I do understand your Honour's question, and we understand that that is something that we need to – that we're clear that the order can only apply to people who are currently being paid less.

PN972

VICE PRESIDENT HATCHER: Well, if we are satisfied of the jurisdictional prerequisite, we need to be able to identify the group about which we are satisfied. So if it's not the whole of the group, it has to mean that some group has to be identified in some way.

PN973

MR TAYLOR: Yes.

PN974

VICE PRESIDENT HATCHER: So you might want to consider that.

PN975

MR TAYLOR: Thank you.

PN976

VICE PRESIDENT HATCHER: Does any other party want to talk about that issue? We just plan to adjourn briefly, for about ten minutes. Can I ask the parties to remain in the courtroom.

**SHORT ADJOURNMENT**

**[12.51 PM]**

**RESUMED**

**[1.01 PM]**

PN977

VICE PRESIDENT HATCHER: Yes, we just want to make a short statement at this point in the proceedings which is as follows, the Full Bench considers, on the basis of the opening submissions received yesterday as well as our very preliminary perusal of the evidentiary materials filed to date, that there may be an issue as to whether the minimum rates of pay applicable to early childhood teachers in the Educational Services Teachers Award 2010 are properly set having regard to the value of the work performed by such teachers.

PN978

This proceeding is, of course, being conducted outside of the four yearly review of awards. We note that the Commission has the power under subsections 157(2) and (3) of the Fair Work Act to make a determination varying the minimum wages in a modern award for work value reasons either on its own initiative or upon application. We invite the parties to give consideration to this potential issue in the future conduct of this proceeding. We'll now adjourn and resume the proceedings at 10.00 am on Monday.

**ADJOURNED UNTIL MONDAY, 30 JULY 2018**

**[1.03 PM]**

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